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IMPROVING THE ABILITY OF INSPECTORS GENERAL TO DETECT, PREVENT, AND PROSECUTE CONTRACTING FRAUD

HEARING

BEFORE THE

AD HOC SUBCOMMITTEE ON CONTRACTING OVERSIGHT

OF THE

COMMITTEE ON HOMELAND SECURITY AND GOVERNMENTAL AFFAIRS
UNITED STATES SENATE

ONE HUNDRED ELEVENTH CONGRESS

FIRST SESSION

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CONTENTS

IMPROVING THE ABILITY OF INSPECTORS GENERAL TO DETECT, PREVENT, AND PROSECUTE CONTRACTING FRAUD

TUESDAY, APRIL 21, 2009

U.S. SENATE,
AD HOC SUBCOMMITTEE ON CONTRACTING OVERSIGHT,
OF THE COMMITTEE ON HOMELAND SECURITY
AND GOVERNMENTAL AFFAIRS,
Washington, DC.

The Subcommittee met, pursuant to notice, at 2:30 p.m., in room SD–342, Dirksen Senate Office Building, Hon. Claire McCaskill, Chairman of the Subcommittee, presiding.

Present: Senators McCaskill and Collins.

OPENING STATEMENT OF SENATOR MCCASKILL

Senator MCCASKILL. Good afternoon. The hearing will now come to order. I want to welcome everyone to today's hearing. It is the first hearing of the Subcommittee on Contracting Oversight of the Homeland Security and Government Affairs Committee. I am extremely honored to have the opportunity to conduct this hearing and many others that will follow. This is going to be about our concerted effort to identify the waste, fraud, and abuse that has occurred in government contracting.

Last year, the Federal Government awarded $518 billion in contracts. This year, that number will grow even higher due to the hundreds of billions of dollars in stimulus money that will be awarded through contracting. Even a very small percentage of fraud costs taxpayers dearly. That is why we have chosen this first hearing to look at the issue of fraud. It is talked about a lot, but frankly, I think if all of us are really honest, we probably don't get a lot of it.

I think the witnesses today understand the challenges that we have in government in terms of rooting out fraud, and they are numerous, and hopefully we will have a chance today to go over them in some detail. After this hearing, the important work then must begin, and that is continuing to put pressure on all parts of the system to make sure that fraud is found and that people are held accountable for that fraud. It does no good to find it if nothing happens because if you find it and nothing happens, that sends a big green light to the next bad actor that they can take advantage of taxpayer money in a way that is criminal.

So we are happy to start with contracting fraud. Obviously, there are going to be many hearings of this Subcommittee that will deal

in many different aspects of the challenges we face in government contracting, but today is about fraud.

Let me introduce our witnesses and ask for their testimony, and then I will have a number of questions. I want to welcome all four of you and I appreciate all of your work.

Brian Miller is the Inspector General for the General Services Administration. He is also the Vice Chair of the National Procurement Fraud Task Force and the Co-Chair with Mr. Skinner of the National Procurement Fraud Task Force Legislation Committee.

Richard Skinner is the Inspector General for the Department of Homeland Security. He serves with Mr. Miller, as I said, as the Co-Chair of that National Procurement Fraud Task Force.

Charles Beardall is the Deputy Inspector General for Investigations at the Department of Defense. As the agency with the lion's share of government contracting, you are going to get a lot of attention in this Subcommittee, Mr. Beardall. The Department of Defense also has the lion's share of contracting fraud. I welcome your perspective on these issues.

Tony Ogden is the Inspector General of the U.S. Government Printing Office. He is the Chair of the Legislation Committee of the Council of Inspectors General on Integrity and Efficiency.

It is the custom of this Subcommittee to swear in all witnesses that appear before us, so if you don't mind, I would like you all to stand. Raise your hands, please.

Do you swear that the testimony you will give before this Subcommittee will be the truth, the whole truth, and nothing but the truth, so help you, God?

Mr. MILLER. I do.

Mr. SKINNER. I do.

Mr. BEARDALL. I do.

Mr. OGDEN. I do.

Senator MCCASKILL. Thank you all. We will ask you all to try to hold your testimony to 5 minutes. Obviously, we will include any of your written testimony in the record, and Mr. Miller, let us begin with your testimony.

TESTIMONY OF HON. BRIAN D. MILLER,[1] INSPECTOR GENERAL, GENERAL SERVICES ADMINISTRATION

Mr. MILLER. Good afternoon, Madam Chairman. Thank you for inviting me here today and the opportunity to testify on these important matters. I and my distinguished colleagues here today would like to thank you for your strong support of Inspectors General. We are especially honored to be part of the first hearing of this Subcommittee.

The American Recovery and Reinvestment Act brings with it a sharp mandate to move quickly in addressing our Nation's economic problems. Doing so means that traditional oversight may need to be modified. This afternoon, I would like to highlight four new ideas that I believe will help expedite OIG reviews and control fraud and criminal activity.

[1] The prepared statement of Mr. Miller with an attachment appears in the Appendix on page 29.

I call the first proposal "Don't tip off the target." Basic investigative techniques include not tipping off a subject about an investigation. Premature disclosure can lead to destruction of evidence, intimidation of witnesses, or flight. It can also preclude undercover work and provide an opportunity for the subject to manipulate his finances to frustrate the government's interests.

As an illustration, telling someone like Bernie Madoff that he is under investigation would only give him an opportunity to hide or transfer ill-gotten gains before the government had an opportunity to understand the full extent and scope of his crimes. Therefore, I ask that you treat Inspector General subpoenas the same as Grand Jury subpoenas, which are exempt from giving the subject notice when financial records are sought.

Second, I propose that you require a simple report from OMB regarding how many debarred companies and individuals are currently receiving Federal grants and contracts. This can be done by a cross-check of the Excluded Parties List System (EPLS), and USASpending.gov, which contains all of the Federal grants and contracts. Generally, one would not expect to find the same companies or individuals on both USASpending.gov and EPLS. These reports would highlight the critical need to fully check on the status of contractors and grantees before the government does business with them.

My third proposal is in response to the decision by the U.S. Court of Appeals for the D.C. Circuit in the case of *United States v. Safavian.* The D.C. Circuit held that Federal employees have no legal duty to disclose all material facts when they provide information in response to a direct question from an OIG special agent. In the absence of such a legal duty, Mr. Safavian could not be convicted criminally of concealing information when he provided half-truths to a special agent, intending to mislead the special agent. To correct this, we propose legislation that would clarify that Federal employees have a duty to tell the whole truth, not half-truths, to special agents.

My fourth proposal is to restore the contract clause that allowed GSA Office of Inspector General to do defective pricing reviews when they conduct post-award audits. Essentially, the regulations currently provide that we cannot look at pricing after the contract is signed under GSA contract terms. So if no pre-award review is done of pricing, the contractor gets a free pass audit-wise from any look at whether their pricing information was defective. Two qui tam lawsuits show that we need to have post-award audit rights. One case settled for $98.5 million and the other case settled for $128 million, both for defective pricing. The irony is that my office does not have audit authority under GSA contracts to audit for these very issues, these defective pricing issues, when we conduct a post-award audit, and we ask the Subcommittee to consider correcting this.

Thank you for your attention. I ask that my statement and material records be made part of the record. I would be pleased to respond to any questions that you may have. Thank you.

Senator MCCASKILL. Thank you very much. Mr. Skinner.

TESTIMONY OF RICHARD L. SKINNER,[1] INSPECTOR GENERAL, U.S. DEPARTMENT OF HOMELAND SECURITY

Mr. SKINNER. Thank you, Madam Chairman, and good afternoon. I appreciate the opportunity to be here today.

I want to begin by thanking you for your leadership, ensuring that American taxpayers are receiving the biggest bang for their dollar in government contracts and for the support you have shown the Inspector General community. I also applaud the creation of this Subcommittee. The American taxpayer is demanding and deserves to know how its tax dollars are being spent and that they are being spent wisely. The work of this Subcommittee can go a long way to bringing accountability to the management of Federal contracts. We in the Inspector General community look forward to working with you in this endeavor.

Finally, I wish to commend the Department of Justice and the IG community for their hard work on the National Procurement Task Force. As my colleague, Brian Miller, already pointed out in his testimony, much was accomplished as a result of their hard work. But our work is not done. We are in the first mile of a marathon. There is still an array of legislative proposals that were considered by the Task Force but did not make it into legislation or regulation.

Two proposals in particular, I believe, could go a long way in improving the ability of Inspector Generals to detect, prevent, and prosecute contract fraud. The first proposal deals with IG access to contractor and subcontractor records and employees. One can argue that access rights are implicit in the IG Act, yet in reality, this is not the case. We are continually being challenged by contractors, causing undue and prolonged delays in our ability to carry out our audits and inspections.

This problem was recognized by Congress, I believe, when it enacted the Recovery Act of 2009. The Act gave IGs explicit access rights to contractor employees and records and access rights to subcontractor records. Unfortunately, for some unexplained reason, the legislation did not give IGs access rights to subcontractor employees. In my opinion, this simply does not make sense, especially when you consider that many government contractors rely heavily on subcontractors to meet their contractual obligations.

For example, after Hurricane Katrina, FEMA awarded four major contracts valued at over $2 billion to help with response efforts. These four contractors then subcontracted 63 percent of their work to subcontractors. Under the Recovery Act, we would not have legislative authority to interview subcontractor employees during the course of our audits or inspections. To do our jobs effectively, IGs should be authorized to interview subcontractor employees regarding all transactions involving taxpayer money.

The second proposal deals with the IG's ability to match computer data being maintained by Federal, State, and local government agencies. The Computer Matching and Privacy Protection Act set forth procedural requirements that agencies must follow when matching electronic databases for the purpose of establishing Federal benefit eligibility, verifying compliance with benefit program

[1] The prepared statement of Mr. Skinner appears in the Appendix on page 43.

requirements, or recovering improper payments under a benefit program. The procedural requirements include formal matching arrangements between the agencies, notice in the *Federal Register* of the agreements before any matching could occur, and review of the agreements by data integrity boards at both agencies. While the Computer Matching Act provides certain exemptions for statistical matches, matches for research purposes, and law enforcement if a specific target of an investigation has been identified, agency decisionmakers and data owners rarely consider OIG oversight—its work to fall under any of the exemptions.

Interagency sharing of information about individuals can be an important tool in improving the integrity and efficiency of government programs. By sharing data, agencies can often reduce errors, improve program efficiency, identify and prevent fraud, evaluate program performance, and reduce the information collection burden of the public by using information already within government databases.

The work in the IG community in identifying management control weaknesses, which is our primary objective here, within agency program activities would be facilitated by permitting IGs as part of their regular audits and inspections to match computer databases being maintained by Federal, State, and local government agencies. Because IGs rarely control the databases to be matched, valuable time and resources are lost persuading system managers that matching is appropriate and necessary for us to do our job.

Finally, I would like to comment briefly on the issue of Federal Acquisition Workforce shortcomings. Madam Chairman, as you stated in your March 19 open letter to the acquisition community, the contracting workforce is no longer adequate to handle the volume and complexity of the workload.

In response to these concerns, acquisition shops throughout the government have begun to implement two statutory hiring flexibilities to assist in recruiting acquisition-related positions: Direct hire authority and reemployed annuitant authority. These authorities expedite the hiring process and make it easier to hire qualified candidates. Overall, according to a recent GAO report, these initiatives are beginning to show some preliminary results. Just as agency procurement officers across government face a shortage of experienced staff, so do we in the IG community. To be effective, we need a mix of auditors, inspectors, investigators with acquisition experience. It would be extremely helpful as we continue to add experienced acquisition professionals to our staffs if those same statutory hiring authorities were expanded to the IG.

Madam Chairman, that concludes my statement, and again, thank you for this opportunity to share my thoughts with you today.

Senator MCCASKILL. Thank you. Mr. Beardall.

TESTIMONY OF CHARLES W. BEARDALL,[1] DEPUTY INSPECTOR GENERAL FOR INVESTIGATIONS, DEPARTMENT OF DEFENSE

Mr. BEARDALL. Good afternoon, Chairman McCaskill. Thank you for inviting me to appear before you to discuss the important issue of procurement fraud. I am here representing Acting Inspector General Gordon Heddell and the women and men of the Office of the Inspector General Department of Defense, including the special agents of the Defense Criminal Investigative Service, the law enforcement arm of the DOD Inspector General.

DCIS was established in 1981 in response to the Defense contracting scandals of the 1970s and 1980s. From its start as an office of seven special agents, DCIS has grown to 366 agents. Initially, DCIS special agents focused almost exclusively on combatting fraud and corruption. However, as the organization matured, its priorities expanded. DCIS's current top priorities include investigations of contract fraud, corruption, terrorism, illegal diversion and theft of sensitive technologies and weapons, and the protection of the Global Information Grid.

Although its mission has expanded significantly, DCIS has remained true to its roots. Today, 61 percent of over 1,800 DCIS active investigations involve DOD contracting. Cases in which DCIS has led or participated in have recouped $14.67 billion for the U.S. Government. Clearly relevant to today's discussion, $9.9 billion of those recoveries have occurred within the last 10 years.

DCIS has an ever-increasing workload. Implementation of critical initiatives related to the Global War on Terrorism and technology protection has reduced our ability to devote additional resources to fraud and corruption. Further, since September 11, 2001, and the beginning of Operations Enduring Freedom and Iraqi Freedom, DCIS's law enforcement partners in combatting procurement fraud have had to divert significant resources to competing priorities, such as terrorism, force protection, and counterintelligence.

During the past 8 fiscal years, DOD contracting increased more than 250 percent, while the numbers of DCIS special agents has grown 13 percent. During the past 5 fiscal years, investigations involving financial crimes increased 35 percent, kickbacks increased 66 percent, and bribery increased an astounding 209 percent.

Recent increases in contract fraud and corruption investigations are largely the result of overseas contingency operations. To date, DCIS has initiated 173 Global War on Terrorism contract-related investigations. Of these, 41 percent involve procurement fraud and 42 percent involve corruption.

DCIS is a key participant in various procurement fraud task forces and working groups, which have proven to be effective alliances to combat contract fraud. The multi-disciplinary, multi-agency National Procurement Fraud Task Force has been extremely effective in fostering communication and better coordination to combat procurement fraud. Worthy of special mention, its offshoot, the International Contract Corruption Task Force, was formed to target contract fraud and corruption in Southwest Asia. Consisting of nine agencies, the Task Force is a model of law enforcement cooperation.

[1] The prepared statement of Mr. Beardall appears in the Appendix on page 53.

The recommendations in the Legislative and Regulatory Reform Proposals, the White Paper, will significantly enhance the government's ability to combat procurement fraud. The DOD Inspector General strongly supports improving contractors' internal oversight and ethics programs to enhance the government's ability to prevent and detect fraud. Requiring contractors to implement internal compliance programs before a contract is awarded will help prevent fraud.

The DOD IG also supports recommendations to expand the authority of Inspectors General to include enhanced subpoena authority. We also support establishing a national database to determine contractors' suspension or debarment history, and we favor extending criminal conflict of interest provisions to contractors.

In response to a recent amendment to the Federal Acquisition Regulation imposing mandatory self-reporting, the DOD IG has established the DOD Contractor Disclosure Program to process the disclosures. We believe this requirement will improve the Department's oversight capabilities.

While the White Paper identifies significant improvements, we hope to work with the Legislation Committee on more proposals. Two examples derived from the new FAR cases relate to the American Recovery and Reinvestment Act of 2009. One would expand whistleblower protections to subcontractors and the other would enhance contractor reporting requirements. As Congress considers the recommendations of the Legislation Committee, it is critical that IG resource requirements be considered. Adequate numbers of investigators and auditors are indispensable, particularly in an era of massive growth in contacting and diversification into other national priorities.

I hope my testimony today has been helpful and I look forward to your questions.

Senator MCCASKILL. Thank you very much. Mr. Ogden.

TESTIMONY OF J. ANTHONY OGDEN,[1] INSPECTOR GENERAL, U.S. GOVERNMENT PRINTING OFFICE, AND CHAIRMAN OF THE LEGISLATION COMMITTEE, COUNCIL TO THE INSPECTORS GENERAL ON INTEGRITY AND EFFICIENCY

Mr. OGDEN. Good afternoon, Madam Chairman. Thank you for inviting me to testify on the role of the Inspectors General in detecting, preventing, and helping prosecute contracting fraud. While I am the Inspector General at the U.S. Government Printing Office, I am here today representing the Council of the Inspectors General on Integrity and Efficiency in my capacity as the Chairman of the Legislation Committee.

On behalf of the Council, I would like to echo our appreciation to you for your unwavering support of the IG community and congratulate you on being the first Senator to lead this new Subcommittee on Contracting Oversight. We look forward to working with you.

Senator MCCASKILL. Thank you.

Mr. OGDEN. My testimony today will focus on the general views of the IG community regarding the major recommendation pro-

[1] The prepared statement of Mr. Ogden appears in the Appendix on page 65.

posed by the Legislative Committee of the National Procurement Fraud Task Force in their White Paper.

We are happy to report that some significant recommendations proposed by the Task Force have already been enacted. For example, in November 2008, the Federal Acquisition Regulation Council issued a final rule that imposes, among other things, a mandatory requirement on Federal contractors to disclose credible evidence of certain criminal violations and civil False Claims Act violations, and to establish an ethics and internal control program.

The IG Reform Act of 2008 also included several changes recommended by the Task Force. For example, the IG subpoena authority language was amended to clarify that its reach includes information and data in any medium. In addition, the Reform Act granted to IGs from designated Federal entities the authority to use the Program Fraud Civil Remedies Act. However, IGs from Legislative Branch entities are still excluded.

Although these changes are encouraging, many other Task Force recommendations have not been acted upon. To gauge the support of the IG community for some of the remaining recommendations, the Council through the Legislation Committee conducted an online survey of its members. Our survey covered three general Task Force recommendation areas: One, the Inspector General subpoenas for compelled interviews; two, reform of the Program Fraud Civil Remedies Act; and three, other general recommendations, including establishing a National Procurement Fraud database and allowing the use of Social Security numbers to identify individuals in the Excluded Parties List System (EPLS).

The Task Force proposed that IG subpoena authority include the authority to compel witnesses to appear at interviews in connection with OIG investigations, audits, and other reviews. You have heard some of that testimony already. This proposal is similar to recent limited authority provided to some IGs under the American Recovery and Reinvestment Act. The proposed subpoena authority would not include the power to compel witness testimony.

The survey results show overwhelming support for this enhanced IG subpoena authority for all IGs. The issue is about access. Supporters cite the need to have access to contractor employees, former employees, third-party subcontractors, to discuss aspects of civil or criminal investigations still in development. In addition, this authority is necessary to be able to ask questions regarding voluminous records that companies serve in response to a subpoena.

In 1986, Congress enacted the Program Fraud Civil Remedies Act to enable agencies to recovery losses resulting from false claims and statements where the claims are $150,000 or less. Our survey focused on the major Task Force recommendations regarding the use of PFCRA authority, the increase of jurisdictional and civil liability amounts, agency retention of recoveries, and the revamping of procedural requirements. There was overwhelming support for these recommendations, and in the interest of time, I will defer discussion to questions.

The Task Force also recommended specific areas to generally prevent and detect procurement fraud. The Task Force recommended the creation of a National Procurement Fraud Background Check System, the Procurement Inquiry Check System (PICS), which

would be used by Federal, State, and local procurement officials prior to authorization of contract actions involving Federal funds. The PICS database would include information on debarred or suspended contractors from all participating Federal, State, and local government entities engaged in procurement and non-procurement activities where Federal funds are at use.

Again, more than 90 percent of the responding IGs supported the idea of a National Procurement Fraud database. However, many respondents suggested that it would be more efficient and cost effective for PICS to be an expanded version of the EPLS, given that the EPLS is a mandatory database and could be upgraded to include links to State and local government online databases on suspended and debarred contractors.

The Task Force also recommended the use of Social Security numbers to enable agencies to properly identify individuals who have been debarred or suspended in the EPLS. While there was support for this proposal, there was substantial opposition generally focused on the privacy concerns with the use of Social Security numbers, which is also bolstered by the requirements of OMB Memo 716, which requires that agencies reduce the use of Social Security numbers and explore alternatives.

Finally, some survey respondents suggested other recommendations to combat procurement fraud. Let me identify briefly two of those. First, some recommended that a Federal contractor be required to certify that he or she has no knowledge of any convictions of civil or criminal fraud for owners, officers, or managers involved in the contract, with no time limit on the convictions or civil fraud judgments.

And second, survey respondents noted that the FAR does not apply to Legislative Branch agencies. Because Legislative Branch agencies operate under different acquisition regulations, consideration should be given to require Legislative Branch agencies to adopt in their acquisition regulations the FAR provisions related to the prevention and detection of procurement fraud.

This concludes my testimony and I have submitted written comments for the record. I would be pleased to address any questions you may have, and thank you again for the opportunity to testify before the Subcommittee.

Senator MCCASKILL. Thank you, Mr. Ogden.

We have been joined by the Ranking Member of the Homeland Security and Government Affairs Committee. Would you like an opportunity to speak now? We just finished testimony.

OPENING STATEMENT OF SENATOR COLLINS

Senator COLLINS. Thank you, Madam Chairman. That sounds good to you, doesn't it?

Senator MCCASKILL. It does.

Senator COLLINS. I would welcome the opportunity to make just a few comments, and I will put my full statement into the record.

First, let me commend you for taking over the charge of this Subcommittee. There is no one in the Congress who has a better understanding of Federal contracting of auditing issues than you do. I am certain that we will be able to accomplish a great deal. In fact, a group of our colleagues were talking just the other night

that your auditing background is so useful to this Subcommittee, so I thank you for your leadership.

The Inspectors General are vital partners in our effort to identify inefficient, ineffective, and improper government programs. By leveraging the expertise and the independence of the Inspectors General, Congress has been able to better identify, and in some cases take action to stop wasteful spending. It also helps us by giving us recommendations which shape legislation and oversight activities. As General Skinner knows, we have worked very closely together on some of the FEMA reforms and the anti-waste, fraud, and abuse legislation for the Department of Homeland Security.

In the last Congress, working with the Chairman as well as with Senators Lieberman and Levin, our Committee was able to pass important reforms to the Federal contracting process as well as to strengthen our Nation's IGs.

I mention those two separate bills together because the contracting reforms we successfully enacted were based in part on the recommendations of the IGs.

The most recent report of the President's Council on Integrity and Efficiency provides some insight into the effectiveness of the IG community, and I will put the list of statistics into the record. But suffice it to say that the IGs have identified $11.4 billion in potential savings from their audit recommendations.

[The information of Senator Collins follows:]

- $11.4 billion in potential savings from audit recommendations;
- $5.1 billion in investigative recoveries;
- 6,800 indictments;
- 8,900 successful prosecutions;
- 4,300 suspensions or debarments; and
- the processing of nearly 310,000 hotline complaints.

We do need to make sure, however, that we are constantly updating the laws to ensure that the IGs have the tools that they need. It was more than 30 years ago when the IG Act was first passed in 1978. I believe the legislation which we authored last year and which Chairman McCaskill was the chief proponent of improves the independence and the effectiveness of the IGs. But I recognize that the White Paper produced by the National Procurement Fraud Task Force provides additional proposals for us to consider.

Finally, I want to note that two of our witnesses have proposed an additional effort that I believe is desperately needed to improve our government's acquisition programs, and that is a well-trained, properly resourced acquisition workforce. No matter how good the reforms, no matter how strong the law, if you don't have well-qualified and a sufficient number of acquisition personnel to administer the laws, we are not going to make a difference.

So again, I thank the Chairman for convening this hearing and I apologize for being late. I was giving a speech, unfortunately.

[The prepared statement of Senator Collins follows:]

PREPARED STATEMENT OF SENATOR COLLINS

The Inspectors General are vital partners in Congress's effort to identify inefficient, ineffective, and improper government programs. By leveraging the expertise

and independence of Inspectors General and their staffs, Congress has been able to identify, and take action to stop, wasteful spending.

The investigations and reports of IGs throughout the government also help Congress shape legislation and oversight activities—improving government performance, providing important transparency, and giving Americans better value for their tax dollar.

Last Congress, working with Senators Lieberman, McCaskill, and Levin, our Committee was able to pass important reforms to the Federal contracting process and to strengthen our Nation's IGs.

I mention these two separate bills together because the contracting reforms we successfully enacted were based, in part, on the recommendations of our Nation's Inspectors General. Moreover, the reforms themselves will be amplified by the indispensible efforts of IGs.

The most recent report of the President's Council on Integrity and Efficiency provides some insight into the effectiveness of the Inspector General community. In fiscal year 2007, IG efforts resulted in:

- $11.4 billion in potential savings from audit recommendations;
- $5.1 billion in investigative recoveries;
- 6,800 indictments;
- 8,900 successful prosecutions;
- 4,300 suspensions or debarments; and
- the processing of nearly 310,000 hotline complaints.

More than 30 years after the Inspector General Act was passed in 1978, the Inspector General Reform Act of 2008 improves the independence and effectiveness of Inspectors General and contributes to better relations among the IGs, the agencies they serve, and the Congress. The Act helps to insulate and protect Inspectors General from inappropriate efforts to hinder their investigations and preserves their independence. Finally, the law explicitly mandates that IG appointments be made on the basis of ability and integrity, not political affiliation.

The white paper produced by the National Procurement Fraud Task Force provides additional proposals for us to consider.

I also note that two of our witnesses have proposed an additional effort desperately needed to improve our government's acquisition programs—a well-trained, properly resourced acquisition workforce. These personnel reforms are important for the proper execution of government contracts. But a well-trained group of acquisition personnel can also help our IGs identify and audit inefficient or ineffective procurement programs.

I look forward to hearing from all our witnesses regarding their proposals for reform.

Senator MCCASKILL. Thank you, Senator Collins. And speaking of champions, no one has been a more aggressive champion on acquisition workforce issues than Senator Collins. I have had the pleasure of working with her on some of those issues, but she has been at it for many years before I got here. And clearly, not only IG personnel but acquisition workforce is a one-two punch that is going to be needed to do the kind of job that we all know we need to do in this area of fraud.

Let me start by asking each one of you to try to prioritize. As a former auditor understanding performance auditing, I would like to begin with a challenge to the Subcommittee to try to keep track of our metrics, and that is at each hearing try to walk away with a list of things that we need to try to get done, either through the Homeland Security and Governmental Affairs Committee or other places as it relates to what we learn in these hearings. I am going to try to keep track of this list so we can be publicly accountable for it.

And the list I would like to come out with at this hearing is each of you to name the one thing that you think could make a meaningful difference in how many bad guys we could catch, the one tool that you don't have now. If you could only pick one, what would that one tool be that you would add to your tool chest to do a better

job in finding people who are ripping off our government? Mr. Miller.

Mr. MILLER. Thank you, Madam Chairman. That is a difficult question because there are so many tools that could help us in our jobs. I think, of all the proposals, and there are many very good proposals here, I think the one tool that could help us immediately is what I call the "don't tip off the target" proposal, that is, getting financial records without tipping off the owner of the financial records. That puts IG subpoenas on parity with Grand Jury subpoenas in that respect. It will allow us to quickly investigate without having to go around—we can plan our investigations better. We don't have to plan to go around contacting the subject or going overt, so to speak. And we can better plan and move quickly and have a rapid response to investigating fraud. So that is the one proposal I would choose. Thank you.

Senator MCCASKILL. I will come back and follow up on that.

Mr. MILLER. OK.

Senator MCCASKILL. So you want to make sure that you don't have to tell them ahead of time you are coming after them.

Mr. MILLER. That is right.

Senator MCCASKILL. OK.

Mr. MILLER. Thank you.

Senator MCCASKILL. That makes perfect sense to me. Mr. Skinner.

Mr. SKINNER. As I stated in my testimony, I think the one thing that would really help us and other IGs is the ability to do electronic computer matching.

Senator MCCASKILL. Computer matching for you?

Mr. SKINNER. Yes.

Senator MCCASKILL. OK. Mr. Beardall.

Mr. BEARDALL. Well, as is probably evident from my written and my oral testimony, more agents. I would also probably say more auditors and more agents, but certainly with the challenges we face in the Department of Defense, 366 agents spreads very thin. I am heartened by certain recent pronouncements by the Secretary of Defense, including the fact that he is going to up DCAA by 600 auditors. Of course, the 600 auditors are probably going to bring us a whole lot more business, I would hope. So I think mainly the challenge for us is enough resourcing to do the job in view of today's massive spending.

Senator MCCASKILL. I heard Secretary Gates say the magic words of DCAA auditors and I heard him say acquisition personnel. I don't remember him saying anything about DCIS.

Mr. BEARDALL. No. He didn't.

Senator MCCASKILL. OK.

Mr. BEARDALL. And that is one of the points. And again, the point is accurate. Not only the auditors, but contracting officials, as well. We faced that problem a lot in Southwest Asia, seeing folks who were not prepared to undertake the duties of contracting officers.

Senator MCCASKILL. OK. Mr. Ogden.

Mr. OGDEN. I think that based on the survey results, and again, my responses here today are limited to the survey results, clearly, it was the expansion of the subpoena authority to be able to compel

access to contractors and subcontractors. It is to compel—to summarize one of the comments, it is perhaps the single most important change that we seek. It is very important for those of us who do a significant amount of oversight work that involves third parties. But it really is about access.

There was some confusion in the National Procurement Fraud Task Force White Paper about the issue about compelling interviews or compelling testimony, but it is about compelling attendance at an interview, and I think that Mr. Skinner identified that issue very poignantly, as well.

Senator MCCASKILL. That brings me to one of the things that I think we are struggling with here, is what are you? I think that some people in government see you as someone who is causing trouble for the head of the agency, and I am not sure enough people in government see you as someone who should have the same authority as any other law enforcement entity. You are tasked with finding crime as part of your job. Can anyone help me figure out where we are getting this push-back? Why is it that they are asking you to tip off subjects of an investigation with that much notice as it relates to their financial documents? Where do we need to drill down to find people in government that are pushing back in terms of giving you all the subpoena authority and the basic law enforcement protocols that are going to allow you to catch criminals?

Mr. MILLER. Madam Chairman, if I could try and respond, I think it is a historical quirk. I think that the Right to Financial Privacy Act was enacted over 30 years ago at the same time as the Inspector General Act, 1978, and I don't think there was a whole lot of thought that went into the requirement of requiring IGs to give notice but not—IGs when they issue IG subpoenas but not prosecutors on the issue of Grand Jury subpoenas.

I think at that time, what the Congress knew and was familiar with was the Grand Jury subpoena, so they naturally exempted Grand Jury subpoenas. I think it just didn't occur. I think it was an historical quirk that they didn't also exempt IG subpoenas. That is my speculation as to what the problem is.

Senator MCCASKILL. Does anyone else want to speculate on why we have difficulty with this? How about compelling interviews? Mr. Ogden, do you want to take a shot at that? Why is it that people are so unnerved about the idea that an IG ought to be able to compel an interview?

Mr. OGDEN. Well, and again, I might defer to Mr. Skinner to address this more specifically since he and Mr. Miller have had more experience in the area of where this issue has arisen. They can share some more specific examples with you. But I think that under the circumstances, it is how far do we want to let the IGs go? The ability some would perceive giving that much authority to IGs would be overstepping the bounds of the IGs, but I believe that the community would agree with you wholeheartedly, Senator McCaskill, that under the circumstances, we need to have the same tools. We need to have the ability to be able to go and reach out to those subcontractors.

One of the issues that I know that has occurred within my agency and other agencies, as well, is when you have contractors and

subcontractors, if we don't have the same access as we would with our own employees within our agency, it does prevent us from being able to do our jobs effectively. The contracting workforce has expanded significantly since many of these laws and rules were put in place. So in order to kind of catch up with the time, we have to look at the entire scope of the issue and realize that the reach now for IGs has to be to contractors and subcontractors.

Senator MCCASKILL. Thank you very much. Senator Collins.

Senator COLLINS. Thank you, Madam Chairman.

Mr. Skinner, I want to follow up on your answer to the Chairman about the need to do more computer matching. As I understand it, under the Computer Matching and Privacy Protection Act of 1988, Federal agencies must follow a number of procedures prior to matching electronic databases, and those include entering into a formal matching agreement, noticing that agreement in the *Federal Register,* obtaining a review of the agreement by the Data Integrity Boards at both agencies.

Now, a lot of these steps are intended to be safeguards to prevent misuse of electronic records. But according to the Task Force Legislation Committee, those computer matching requirements limit the IGs' ability to detect contracting fraud in an expeditious manner because of all the steps that are required.

Is there also an issue where the IGs have to persuade multiple agency managers that the process should proceed? Are there delays involved that impede your ability to detect fraud?

Mr. SKINNER. Absolutely, and therein lies the problem. We agree with the safeguards that are in the Computer Matching and Privacy Protection Act. That is not the issue. There are exemptions to that Act, for example, to do research, to garner statistics, and for law enforcement if you have a target. With the IG, it would enhance our ability if we were included in one of those exemptions as part of our oversight role so that we could do computer matching, so then in turn demonstrate to the departments and the respective departments that you have weak internal controls. And we can demonstrate to them that they can improve their internal controls, be more efficient, and prevent fraud up front before it occurs.

At the same time, when we do this computer matching, of course, some of the collateral fallout is we will identify cases of fraud. For example, when we did—GAO did computer matching after Hurricane Katrina with VA and small businesses, we identified people were self-certifying that they were disabled vets when, in fact, they were not. As a result, they got over $10 million in contracts and excluded qualified small businesses in that process. There were other areas, as well, with the HUD, for example. We demonstrated that you need to have these types of computer matching agreements in place ahead of—at all times if you are operating a benefit program, and DHS operates many benefit programs, so that you can protect yourself.

When we asked for this authority, yes, there were delays. For example, to be able to match HUD housing data with FEMA housing data, it took us almost a year. By then, millions and millions of dollars were already out the door, and it is very difficult to get that money back once it leaves. Had those controls been in place beforehand, we could have stopped that.

Senator COLLINS. I think that is an excellent point.

Mr. Ogden, do you have anything to add to that?

Mr. OGDEN. Senator Collins, not with respect to the computer matching specifically. I think that Mr. Skinner has really summed up the issue directly.

I can add on behalf of the IG community, we have submitted comments and certainly support—I mean, I can represent on behalf of the IG community that we support the proposal.

Senator COLLINS. At a hearing that our full Committee had to look at the stimulus legislation and procedures to prevent waste, fraud, and abuse, there was discussion about the hiring needs of those entities that have gotten sufficient increases in their budgets, such as the IGs and the GAO and the Special Oversight Board, and the Acting Comptroller General told us that GAO is currently permitted to compensate a returning annuitant without offsetting the annuity. In other words, you could hire a retired GAO auditor to come back and work for the next year on stimulus oversight without there being a financial penalty paid.

GAO has this authority. I believe DOD has this authority. But most departments and agencies in the Federal Government do not. I have introduced a bipartisan bill with Senator Herb Kohl and Senator Voinovich that would seek to provide that authority across government, particularly to help out with a situation like this where we need trained people quickly, and you have got this retired workforce that would be willing to come back and help if there were not a financial penalty.

Starting with you, Mr. Miller, and going across, do you support legislation to give that authority?

Mr. MILLER. I strongly support that legislation. That would help us respond rapidly and provide the oversight we need, so thank you for introducing it.

Senator COLLINS. Thank you. Mr. Skinner.

Mr. SKINNER. Yes, I would, and as I said in my opening remarks, this is one of the things that we were asking for. Some of the departments—right now in the field of acquisition management, there are authorities out there. They just need to be invoked. And I believe that OPM did, in fact, say acquisition—those associated with acquisition management can use these authorities, and they defined who those people are. What they excluded were the auditors and investigators. And that is something I think that legislation would be very helpful, to give us that authority, as well, especially now in this time and age.

Senator COLLINS. Exactly. It doesn't make sense to carve out investigators and auditors.

Mr. Beardall, am I correct that DOD has this authority?

Mr. BEARDALL. Yes, we do, and we have used it very effectively, as you point out. When you have an agent with 25 years of experience and who retires and you can bring him back in a lot of cases just as a special agent rather than hire someone new and I have senior managers who go out and still have years left before they hit the mandatory retirement age of 57. They can come back and help us. We have actually recently had the head of our operations in Southwest Asia as a rehired annuitant who was one of our Assistant Special Agents in Charge. We did a fabulous job.

Senator COLLINS. Thank you for that example. Mr. Ogden.

Mr. OGDEN. Senator Collins, your bill, S. 629, I believe is what it is, today we actually, lo and behold, had a meeting of all the Inspectors General and I raised the issue of S. 629 and I can say here today I have been given authorization to say there was wholesale support for S. 629 and there was absolutely no objection in the room. There is tremendous support from the community for——

Senator COLLINS. Excellent. I am really happy to hear that. I, believe it or not, did not know that in advance of asking the question today. If you would be willing to send a letter to the Subcommittee to that effect to follow up, that would be wonderful.

Mr. OGDEN. We would be happy to do so.

Senator COLLINS. Thank you.

Senator MCCASKILL. Thank you, Senator Collins.

Let us talk a little bit about the Department of Justice. It is my understanding that Justice has expressed concerns about expanding the IG authority as it relates to compelling interviews, and let me make clear that I understand that GAO now has that authority, correct? GAO now has the authority to interview both contractor and subcontractor employees in terms of interviews?

Mr. SKINNER. GAO has the authority to have access to records and employees at the contractor and subcontractor level. I am not clear—you may want to talk to GAO—I am not clear whether they have subpoena authority.

Senator MCCASKILL. OK. But they have the ability to, in fact, interview at the contractor and subcontractor level?

Mr. SKINNER. That is correct.

Senator MCCASKILL. OK. And it is my understanding that in the stimulus bill, we also gave limited power to compel interviews for audits and investigations concerning the stimulus funds, correct?

Mr. SKINNER. Under the stimulus bill, the IGs have access rights to contractor records and employees and subcontractor records——

Senator MCCASKILL. But not subcontractor employees?

Mr. SKINNER. For whatever reason, I don't know why, that was left out. And the FAR then emphasized that the authority does not go to sub-grantees, the recently-published FAR.

Mr. OGDEN. Senator McCaskill, if I might just dovetail on that response, as well, under Section 1515(a) of the American Recovery and Reinvestment Act, it provides to interview any officer and employee of the contractor grantee, sub-grantee, or agency. It does not go, as Mr. Skinner has pointed out, to subcontractors.

The other issue, it only applies to the IGs that are affected by the stimulus package——

Senator MCCASKILL. Right.

Mr. OGDEN [continuing]. So there are 28 IGs and there are 68 of us in the community. So there is a significant exclusion of IGs that do not have that particular——

Senator MCCASKILL. And that is what I am trying to figure out. It is almost like we are saying it is more important to catch crooks in the stimulus money than it is to catch crooks anywhere else?

Mr. SKINNER. Exactly.

Senator MCCASKILL. I mean, to me, common sense is on a vacation. We had the chance to fix it in that stimulus bill. We should have made it government-wide. Obviously, if there is not an objec-

tion to using these tools in the stimulus funds for some IGs, I don't understand why there should be objection by Justice or anyone else using it——

Mr. SKINNER. I don't believe anyone is objecting to the rights of access. I would like to believe it was just an oversight in the stimulus bill. Also GAO obtained access right authority through the defense authorization bill, which is somewhat different than the issue of compelled testimony or issuing subpoenas. IGs have the authority to issue subpoenas for documents, but we cannot issue subpoenas for testimony of employees—testimonial evidence. That is one of the things we were asking for, as well. If we can issue subpoenas for documents, we should have the authority to issue administrative subpoenas——

Senator MCCASKILL. So you can't make anybody talk to you?

Mr. SKINNER. With pressure. It takes time. [Laughter.]

Senator MCCASKILL. Like if somebody just says, "I am not going to talk to you"—if you have got a contractor and you want to talk to them about a contract in FEMA and they just say, "I don't want to talk to you," you are done unless you go to Justice and get them to issue a subpoena?

Mr. SKINNER. That is correct. It is very difficult. Our hands are tied.

Senator MCCASKILL. And how often do you get those refusals?

Mr. SKINNER. It has happened to me, since I have been IG, in our audit of the Coast Guard Deepwater program, for example.

Senator MCCASKILL. All right.

Mr. SKINNER. We asked for records. It took us months to get those records because our authority was challenged. The contractor challenged our authority to ask for those records. Then we asked to talk to employees to help explain what was in those records and the contractor would not give us access. We had to delay the audit for over a year while we negotiated access to the employees. Then when they did give us access, they said the supervisor must be present, the attorneys must be present, and others, and obviously that sends a chilling effect on our relationship with that employee, so therefore we did not interview the employees.

Senator MCCASKILL. Yes, go ahead.

Mr. BEARDALL. To take it a step further, we also would like to have subcontractors have whistleblower protection.

Senator MCCASKILL. Right.

Mr. BEARDALL. The Recovery Act provides for that, but otherwise, it is not available to subcontractors in investigations. And again, a recent example, we had a subcontractor who was willing to talk to us, so we didn't have to compel anything, but when she found out that as a subcontractor rather than a prime contractor she was not afforded whistleblower protections, she refused to talk to us. Fortunately, we were able to convince her to do her duty and got the information, but that is a no-brainer.

Senator MCCASKILL. It makes no sense.

Mr. BEARDALL. No, ma'am.

Senator MCCASKILL. Absolutely no sense whatsoever.

On the Deepwater contract that you struggled with, I am familiar that the National Reconnaissance Office (NRO) has included some contract language now, and I don't know how familiar all of

you are with this, but the contract clause they are including in all of their contracts states the IG shall have access to any individual charging directly or indirectly to this contract whose testimony is needed for the performance of the IG's duties. In addition, the IG shall have direct access to all records, reports, auditors, reviews, recommendations, documents, E-mails, papers, or other materials relating to this contract. Failure on the part of any contractor to cooperate with the IG shall be grounds for administrative action by the Director, Office of Contract, including contractual remedies. Would that have helped?

Mr. SKINNER. I am familiar with that language. I took that language and I brought it to the Coast Guard, who referred me to the Chief Procurement Officer, who did not act on it. Yes, that language would help. I have asked that it be included in all contracts.

Senator MCCASKILL. And can I get any input from the rest of the panel as to whether or not you are seeing this language in any government contracts right now, because we can do this by contract and not by legislation. If the individual agencies decide they want cooperation from people they do business with, they can demand it.

Mr. MILLER. Madam Chairman, that would help. That would give us access to the employees of contractors and subcontractors, and we need that access to do audits as well as investigations, because as you know, as an auditor, if you just get documents——

Senator MCCASKILL. Right.

Mr. MILLER [continuing]. You need to have people explain the system and that sort of thing.

Senator MCCASKILL. Or you need a lot more people.

Mr. MILLER. You need a lot more people.

I would point out there is a distinction between that and a subpoena authority, for example——

Senator MCCASKILL. Right.

Mr. MILLER [continuing]. In an investigation. The Recovery and Accountability Transparency Board, I understand, has subpoena authority to actually gain access in investigations. That may also be helpful, too, because if you have an investigation and you have an employee, for example, of GSA who may be conspiring with an employee of a contractor, we can talk to the GSA employee, but if we talk to the employee of a contractor, as you pointed out before, they could just say, "Go away," and we have no real authority to go back. We can try and get a prosecutor interested enough to issue a Grand Jury subpoena, but at that point, we have very little information to attract the attention of the prosecutor. So that may be a very difficult thing for us.

So I guess my point is there are two different things. There is the contract clause that would allow us to gain access, and then there is the subpoena authority that would actually give us the power to have the attendance at the interview.

Senator MCCASKILL. But the contract language could maybe get you enough information that you could get the attention of a prosecutor that could get you the subpoena short of us getting Congress to do what I think we should do, which is give you all the same identical powers that others have in terms of rooting out this kind of fraud.

Mr. MILLER. It certainly would help.

Senator MCCASKILL. OK. Speaking of Justice, according to a *Washington Post* article, there are over 900 cases of alleged fraud in Iraq, Afghanistan, and at home that are stalled at the Department of Justice. Some whistleblowers have evidently been waiting as long as 7½ years while they have waited for the Justice Department to decide whether to take on their case. Maybe Justice is worried about your subpoena power because they don't want any more business. Is that accurate, Mr. Beardall? Are there that many cases backed up at Justice?

Mr. BEARDALL. I am not aware of that number, and in fact, as I stated earlier, the International Contract Corruption Task Force (ICCTF) has been a boon to us because we have right in country access not only to other Federal law enforcement agencies, but also the Department of Justice. If there are delays in cases, I can't say that it is because of our support from attorneys. Not only that, cases that we get to a certain point in Southwest Asia, we then transport back to the States so we can have prosecution by AUSAs. I am not aware of that type of back-up. There takes time, of course.

The trouble with a lot of the cases from Southwest Asia are the fact that they end up being tendrils. It is a real spider web of one main actor and then the others, and of course, as you know, you wait to bring to prosecution until you have got everybody that you want and use those who have come first to help you with others. So, that at times delays it. Otherwise, we have had great cooperation, and I am not aware of that kind of a backlog.

Senator MCCASKILL. Well, if you would, follow up for the Subcommittee and find out, what is the backlog at Justice as it relates to these fraud cases. I am aware of the spider web you have been dealing with in Iraq on several different levels and have had the opportunity to be briefed on that. But clearly—I am not saying it is not possible that the *Washington Post* is not accurate, but clearly, if you don't think there is a serious issue of back-up and the article says there are 900 cases, we have got to figure out what the problem is there, if there is one.

Mr. BEARDALL. Well, as I said, my current inventory is 1,800 cases, so I don't have 900 of those backed up and we are the main actors. There are very few things going on in Southwest Asia right now that DCIS is not involved in.

[The information submitted by Mr. Beardall follows:]

ADDITIONAL INFORMATION

After reviewing the July 22, 2008, article in *The Washington Post,* it was apparent that the reference to the 900 cases involved a backlog of *Qui Tam* investigations/prosecutions. *Qui Tams* are lawsuits brought by individuals on behalf of the government under the False Claims Act (31 U.S.C. § 3729 et seq.), in which they come forward with information of wrongdoing and participate in an investigation and potentially litigation against the wrongdoer. The Department of Justice (DOJ), Civil Division, is responsible for reviewing *Qui Tam* allegations, determining if an investigation is warranted, and deciding whether to join the individual in the litigation. If DOJ determines that an allegation may have merit, it refers the allegation to the proper investigating agency. As such, the DOJ Civil Division is the most appropriate agency to respond to the information contained in the *Post* article. DCIS is not privy to the facts and circumstances pertaining to the alleged backlog.

In regards to how many DOD IG investigations are currently referred to the DOJ, and, of those referrals, how many prosecutions has DOJ initiated, we provide the following statistics. As of May 11, 2009, 573 DCIS investigations include subjects that have been referred for either criminal or civil prosecution. The number of sub-

jects referred for criminal prosecution is 1,445, and 87 percent of those subjects have been accepted for prosecution. An additional 237 subjects have been referred to DOJ for civil prosecution, of which 88 percent of those have been accepted. These figures do not relate to the context of the article in *The Washington Post* but reflect all DCIS cases, whether *Qui Tams* or not. Of DCIS' current caseload of 1,821 open cases, 181 were initiated on the basis of a *Qui Tam* complaint.

Senator MCCASKILL. OK.

Mr. BEARDALL. And I would certainly know that.

Senator MCCASKILL. OK. The next area that I would like to ask questions about are whistleblower protections. The Project on Government Oversight recently released a report on whistleblower protections and they found that in some instances, the Offices of Inspectors General had not done as much as they should do in terms of whistleblower protection. Are you all familiar with the POGO report that I am referring to?

Mr. SKINNER. Yes.

Mr. MILLER. Yes.

Mr. OGDEN. Yes.

Mr. BEARDALL. Yes.

Senator MCCASKILL. One of the places they cited particular problems, Mr. Skinner, was, in fact, with the DHS IG in terms of the hotline. They found really long waits, operators who didn't know anything about the agency, an inadequate system for dealing with anonymous calls. Could you tell the Subcommittee what your office has done to deal with what the POGO report laid out?

Mr. SKINNER. Yes, and I would be happy to talk about that, and I think the POGO report was somewhat incomplete. Before I became IG, we didn't have a hotline. What you called, you called between——

Senator MCCASKILL. We call those cold lines.

Mr. SKINNER [continuing]. Between nine and five and you got a recording.

Senator MCCASKILL. Right.

Mr. SKINNER. And that is all you got.

Senator MCCASKILL. Not really hot.

Mr. SKINNER. So what I have done is we tried to create a 24/7 hotline where someone would answer the phone 24/7, and we analyzed the cost of that. It was cost prohibitive because of our budget at that point in time. That was back in early 2005, calendar year. The only thing—my only options were to take agents off the ground, off the line, and put them on the hotline, and our workload was so heavy and still is so heavy that I could not afford to take those agents off the line to operate a hotline.

I had funds but not staff. So what I chose to do was hire a contractor that was doing this for other Federal agencies. I believe HUD was one of them who actually made the referral to me, and we looked at two or three and hired this company on an interim measure until we could build up the resources to operate our own hotline.

I now have a proposal in to—as a matter of fact, I have submitted proposals to the full Committee and our appropriators, as well as to the new Secretary, Secretary Napolitano, proposing that we integrate the two hotlines within the Department. The Department operates one and the OIG operates one. I proposed that we

merge those at a cost savings of about $375,000 a year and that we use our people to manage that.

But as it stands right now, I just do not have the FTE that I could take off the line to answer those phones. So until I can get those FTE, I will have to use a contractor.

What is transparent to POGO when they made those phone calls is that our hotline also has a direct link to the Gulf Coast disaster hotline. And depending on your queries, for example, if you say, I have allegations of public corruption along the border, that will go to a particular operator. If you say, I have a question of corruption dealing with Hurricane Katrina, there is fraud associated with that program, well, that is automatically routed, and it is transparent to the caller, down to Baton Rouge, where we have a hotline set up there that is run in conjunction with the FBI and the Department of Justice and it is operated by LSU students on campus, on site at our site.

I agree, it can be improved. We want to improve it. It is a resource issue.

Senator MCCASKILL. Well, now we have a reason for you to come to another hearing because one of our issues that we have got to deal with in contracting is what government agencies have done. While some folks have been trying to boast that we haven't grown government, what government agencies have done when they don't have FTEs is they have hired contractors, and I will tell you it is not reassuring to me at a hearing on contracting oversight that I find out that maybe the reason that we weren't doing as well as we need to do with the hotline is because we were hiring contractors to do it. And so obviously there is an irony there that I am sure doesn't escape anybody in the room that we need to look at.

And a lot of it is prioritization in deciding whether or not the hotline and the information that comes from a hotline is—and I don't doubt, Mr. Skinner, I know that you work hard as an IG and you have got a great record—I don't doubt that you don't realize the value of whistleblowers. But I know how long you all have been doing this kind of work. I know you understand that the life blood of many investigations that you do is, in fact, the whistleblower, and their ability to get information to you in a timely way with protection is just about as important as it gets.

So I hope that as we move forward in looking at these issues, usually, it is someone who is—especially in the area of contracting because there are a lot of good Americans, and I know at DOD it happens all the time, people in theater that were calling and saying, this is unbelievable what is happening over here. And frankly, I don't think the Department of Defense believed it at first because the calls were so almost—it sounded like some kind of bad movie plot.

Mr. BEARDALL. Yes, ma'am. Let me compliment our current IG. He has made this a top priority, both his hotline and reprisal investigations. Part of my hat as the Deputy Inspector General for Investigations is I handle reprisal investigations and he has plussed-up my staff significantly in the last couple of weeks, and he is also working hard to make the hotline as effective as it is. It is a focus of his and he is doing a great job.

Senator MCCASKILL. Generally speaking, do most IG shops have a formalized reprisal investigation protocol? Mr. Ogden, could you speak to that, or if not, can you get back to us and let us know?

Mr. OGDEN. I can certainly get back to you on that. I think the other panelists can probably directly address the question.

Senator McCaskill, I do want to come back on the hotline issue, though, too.

Senator MCCASKILL. OK.

Mr. MILLER. Madam Chairman, I can speak for our office. We do conduct retaliation investigations from time to time in conjunction with the Office of Special Counsel and we will conduct those investigations. Ultimately, we can make findings, but ultimately, we cannot make the agency do anything. We can find that there is a whistleblower, that the whistleblower was subject to retaliation, but we don't have the authority to have the agency correct it. And then even with our findings, the Office of Special Counsel would have to go through and either adopt our findings or adopt separate findings. So that is one of the weak points. But we do from time to time conduct these investigations. As you said, they are very important. We need to protect our whistleblowers and we do the investigations.

Senator MCCASKILL. OK. Anything else? Mr. Ogden, on the hotline?

Mr. OGDEN. Yes. Thank you, Senator McCaskill. Just as part of the charge of the Council of Inspectors General on integrity efficiency, the Executive Council has adopted some goals and objectives as part of the strategic plan and one of the goals that has been identified, we do these cross-cutting issues and one of the first two goals that was identified is a hotline operations and whistleblower protection project, which was actually announced today.

The objective there is to develop best practices for OIGs in hotline operations and whistleblower protection for effective management and handling of whistleblower allegations, and so the purpose there is to really take a look at what the IG community is doing, help develop best practices, and then communicate that information broadly throughout the community so that we can fine-tune the operations in all agencies. So that will be one of the cross-cutting goals that we have identified and is launched currently.

Senator MCCASKILL. That is great, because I think that is one of the things that should be embraced, if we could get consistency and uniformity as much as possible on whistleblower protection and protocols for retaliation investigations, because that is what is scary to a whistleblower, and a lot of these contractors are working in many different agencies, as you all know. In fact, which is another hearing, the shopping around of contracts among agencies and buying off other people's contracts and all of that that is going on. I think the more that we have uniformity and the more that it is embraced systemwide in the IG community that whistleblowers are sacrosanct and need to be protected at all costs, I think it is really important.

I want to talk about the post-award audits, and I am trying to figure out, most people don't understand what that means, a post-award audit. It is a little bit like some of the other jargon. I have got to be careful in this Subcommittee, because I speak it and you

all speak it and many of the people who will testify in this Subcommittee speak it, but it is like a lot of things in the auditing world. Most people out in America don't know the language, and so when we talk about a post-award audit, I want to clarify what we are talking about is checking to make sure that we got the deal that we thought we got when we signed the contract.

Mr. MILLER. That is right, Madam Chairman. Thank you for bringing this up, too.

Senator MCCASKILL. I am trying to figure out, what is the rational for you not being allowed—because didn't you used to be able to check the price after we signed the contract to make sure we aren't getting ripped off?

Mr. MILLER. We did, up until 1997. The Veterans Affairs Office of Inspector General also conducts these audits. But for some reason, in 1997, I guess OMB decided that we would focus more on pre-award audits and catch the pricing problems up front and we would eliminate the post-award audit, so that after the contract is formed, we can look at a number of issues, but we can't look at price issues. Theoretically, we were supposed to look at those up front. But, of course, NAS contracting has grown exponentially and we only get to look at a few pre-award contracts, and over the last couple of years, there were attempts to cut those. So in 1997, it was GSA that actually cut the clause out of the contract that allowed us to look at prices, by the way. But in 1997, that was the rationale.

There was a hearing in 2005, just as I was appointed. I was confirmed, but I didn't have my commission, so I was having a Marbury moment, and there was a hearing on this very issue before a Subcommittee of this Committee, and the issue came up again. I think Senator Coburn was the Chairman at the time. They, again, looked at those issues and we testified and OMB testified again to the same rational, that we will increase pre-award audits so there is no need to bring back the authority to look at prices post-award. So that is the only rational that I have heard.

Senator MCCASKILL. And have the pre-award audits, in fact flourished?

Mr. MILLER. No, they have not.

Senator MCCASKILL. I had a feeling.

Mr. MILLER. In fact, there is an attempt to reduce those, as well, over the last couple of years.

Senator MCCASKILL. But this is a unilateral decision just made by GSA?

Mr. MILLER. GSA was the one making the decision. I am sure that OMB supported it. I think the other rationale that they would probably give would be somehow it was a burden on small companies, which I believe is a total red herring because we look at large companies that have a lot of Federal contracts. Typically, we don't even get to look at companies that have fewer than 50 million in government contracts.

Senator MCCASKILL. Well, first of all, that notion is insulting to risk assessment done by you as professionals. I mean, clearly, you are going to look where you think it is most likely that you are going to find problems. That doesn't mean you start with little-bitty contracts. You start with the big ones——

Mr. MILLER. Indeed.

Senator MCCASKILL [continuing]. Where you have the most likely chance of making a real difference, a real dent.

Well, I think this is something that—now is the moment——

Mr. MILLER. Yes.

Senator MCCASKILL [continuing]. To work on this issue because we have a new Administration and I believe we have a head of GSA who has not yet been confirmed?

Mr. MILLER. That is correct.

Senator MCCASKILL. Timing is everything.

Mr. MILLER. Indeed.

Senator MCCASKILL. So I think this is a very good issue for us to look at as we talk to the new GSA Administrator. Now, let us talk a little bit about the Safavian fix. Am I saying that guy's name right?

Mr. MILLER. Yes, you are, Madam Chairman.

Senator MCCASKILL. What is the fix for this? Is this a law that we have to do?

Mr. MILLER. Unfortunately, it is. I propose——

Senator MCCASKILL. We have to go in and say that when somebody from the government comes and asks you questions, a material omission or twisting is somehow OK?

Mr. MILLER. Well, no——

Senator MCCASKILL. That it is not OK?

Mr. MILLER. That it is not OK.

Senator MCCASKILL. Courts have said that we have to statutorily inform people of this?

Mr. MILLER. The D.C. Circuit held in the Safavian case that under the false statements statute, 18 U.S.C. 1001, that there was no duty on the part of the Federal employee, David Safavian, to tell the special agent the whole truth.

Senator MCCASKILL. So if you go to someone and ask them if they used a government contract to, instead of do reconnaissance work somewhere, they were doing a charter service of the boat for deep sea fishing and they said no, they would not be in trouble even if they used it for a party cruise where there were no fishing poles?

Mr. MILLER. Well, if they say an actual lie, then the D.C. Circuit would say that would count. The problem was that Mr. Safavian failed to state a very important fact. When he talked to our special agent, he failed to mention that he was actively giving assistance to Jack Abramoff in obtaining GSA business at the time, and so when he told our special agent that he——

Senator MCCASKILL. And your special agent was investigating Jack Abramoff?

Mr. MILLER. My special agent was investigating claims about David Safavian. The issue that came in, the allegation was that Mr. Safavian went on a golfing trip to St. Andrews golf course in Scotland at the expense of Jack Abramoff along with a number of other individuals and that Mr. Safavian did not pay for the trip entirely and that Mr. Abramoff was doing business with GSA.

What Mr. Safavian told our special agent was that he had paid for the trip himself, and he produced a check. And he did not—specifically what he concealed and what the Department of Justice

charged him with concealing was the fact that he was actively giving assistance to Jack Abramoff in GSA-related business.

Senator MCCASKILL. I see.

Mr. MILLER. The other part that he didn't tell the full truth about was he only partially paid. He paid about $3,100 for a week in Scotland and a weekend in London with Mr. Abramoff. So it was only a partial payment that he had paid. He didn't state that Mr. Abramoff did pay for the rest.

So what we propose are two potential fixes, one to the definitional section for 18 U.S.C. 1001, where we specify that for a Federal employee, they have a duty to tell all material facts when asked. The other potential fix is to a Sarbanes-Oxley statute, 18 U.S.C. 1519, and we would put a Subsection B that would clarify this particular point. So those would be the two legislative ideas to clarify that Federal employees have to tell the whole truth. They can't hide the truth with a deliberate intention of misleading the agent.

Senator MCCASKILL. I think that is why the phrase says, the truth, the whole truth, and nothing but the truth.

Mr. MILLER. I think it does.

Senator MCCASKILL. Finally, an area that I would like to talk about is the Excluded Parties List System (EPLS). This issue of Social Security numbers or taxpayer identification and also the idea that we could maybe expand it to include State and local—I know that you all surveyed on this, Mr. Ogden, and while you said there was significant opposition, I think 76 percent of your Inspectors General still agreed that we needed to do some kind of identifying information on the Excluded Parties List System——

Mr. OGDEN. Correct.

Senator MCCASKILL. I mean, believe me, for somebody in my line of work, 76 percent is a huge majority. [Laughter.]

Mr. OGDEN. Exactly. Let me clarify the opposition point, Senator McCaskill. The opposition was the use of the Social Security numbers, not the EPLS, OK.

Senator MCCASKILL. Right.

Mr. OGDEN. To the extent that there are problems with the EPLS and its administration, that was another issue. But the opposition that I referred to is specific to the use of the Social Security number because of identity theft issues.

Senator MCCASKILL. But don't we have an issue of not being able to identify people as to all the companies that have the same or similar names? Isn't that a real problem?

Mr. OGDEN. That is a problem. I know we encounter it at my agency. I know that it is a universal problem throughout the government. Again, the concern, I think, arises in the context of specifically the Social Security numbers. Whether or not there is another unique identifying number, whether or not there is an Employee Identification Number or another methodology or a means by which you can protect the data, specifically the SSN, if you have to use the SSN, is there a way to protect that data and ensure that it is not going to be publicly available?

Senator MCCASKILL. Right.

Mr. OGDEN. And that is in keeping with—Senator Feinstein has introduced, I believe, two bills at this point that are dealing with

breaches regarding SSNs and the OMB memorandum that I referred to earlier addresses this point. I know it is an issue within my agency right now, the whole protection of PII, sensitive personally identifiable information. So that is the only opposition that we really—otherwise, there was support for the proposition.

Senator MCCASKILL. Well, one of you earlier mentioned the self-certification issue as they could certify that none of the officers of the company had been convicted of any fraud. Could we expand that to include debarment, that no one had ever been subject to an act of debarment?

Mr. OGDEN. Yes. Clearly, that could be done, and I am not certain that it doesn't call for that right now. I know there is a time limitation of only 3 years currently for that certification, and the proposal, at least, I believe—and I will let Mr. Skinner address this and Mr. Miller address this more specifically since they worked on the Task Force on this issue, but it would be to expand the—to take away the time frame, to take away the time limit to ensure that the certification was without limitation.

Senator MCCASKILL. Mr. Skinner.

Mr. SKINNER. What I was referring to earlier was not necessarily people that had a criminal record per se, but when we were doing computer matching, or GAO was actually doing the computer matching for us to validate small businesses and disabled vet owned businesses to qualify for small business contracts after Hurricane Katrina. Without that information, without some type of an identifier, and in this case, we did have a VA identifier which they put on the form, but oftentimes there are no other identifiers.

Senator MCCASKILL. Right.

Mr. SKINNER. And until we can come up with some type of consistent identifier across government that we can use—and right now, the only thing we have available to us is the Social Security number. A lot of the procurement fraud that we are encountering or benefit fraud that we are encountering can be detected by just doing simple computer matches with the Social Security Administration.

Senator MCCASKILL. Right.

Mr. SKINNER. And if that is taken away from us, it is going to make our job even a lot harder.

Senator MCCASKILL. We did it all the time in the State Auditor's Office. I mean, matches were like the sun coming up in the morning. We couldn't have done our work without the computer matches.

Mr. SKINNER. I think we have an obligation to ensure that the information is protected.

Senator MCCASKILL. Right.

Mr. SKINNER. And as long as we can demonstrate that we are good stewards of that information and that we can protect and safeguard that information, I think we should be allowed to use it. These are resources, tools that are available to us that are just not being used right now.

Senator MCCASKILL. Well, let me say to all of you, there are other questions I have that we will direct to you. And any information, further information you want to add to the record, please feel free to do so. I have got our four performance measures now that

I know. We have got to work on, don't tip off the bad guy before we have to. We have got to do a better job on the computer matching. We have got to get more agents for DCIS. And we have got to deal with the subpoena authority.

Mr. SKINNER. That is for everyone, Madam Chairman.

Senator MCCASKILL. No, I know. I apply all four of these to all of you and to the entire IG community. But those are four things that could make a meaningful difference for taxpayers in terms of how easy it is for you to catch people who are ripping us off.

I thank you. Please tell all the people who work with you how much their work is appreciated. They are the kind of people that, frankly, never get much attention. There is no brass band for them. If their cases go to court, they generally plead. They are not even ever on the stand, like "Law and Order: Criminal Intent" or anything like that. There is no stardom in their work. But it is incredibly important. I know you all feel that, as leading the agencies you lead. But please convey to them on behalf of this Subcommittee how much we appreciate their work.

And if there is anything else that this Subcommittee can do in helping you catch people who are stealing from our government, let us know and we will get to work on our list of four that we have come out of this hearing with. Thank you very much.

The hearing is adjourned.

[Whereupon, at 3:54 p.m., the Subcommittee was adjourned.]

APPENDIX

STATEMENT OF HON. BRIAN D. MILLER

INSPECTOR GENERAL

GENERAL SERVICES ADMINISTRATION

TO

AD HOC SUBCOMMITTEE ON CONTRACTING OVERSIGHT

COMMITTEE ON HOMELAND SECURITY AND GOVERNMENTAL AFFAIRS

UNITED STATES SENATE

APRIL 21, 2009

MADAME CHAIR, RANKING MEMBER COLLINS, DISTINGUISHED MEMBERS, LADIES AND GENTLEMEN, THANK YOU FOR THE OPPORTUNITY TO TESTIFY, TODAY, ON IMPROVING THE ABILITY OF INSPECTORS GENERAL TO PREVENT AND UNCOVER CONTRACT FRAUD.

I WOULD LIKE TO THANK YOU, FIRST, FOR YOUR STRONG SUPPORT OF INSPECTORS GENERAL, AND ADD THAT I AM VERY ENCOURAGED BY CONGRESS HOLDING THIS HEARING, TODAY. INSPECTORS GENERAL SHARE YOUR STRONG COMMITMENT TO OVERSIGHT. SENATOR MCCASKILL, AS YOU HAVE NOTED RECENTLY, ACQUISITION OVERSIGHT IS LAGGING BEHIND GROWTH IN CONTRACTING. NOWHERE IS THAT MORE EVIDENT THAN AT GSA.

THE AMERICAN RECOVERY AND REINVESTMENT ACT BRINGS WITH IT A SHARP MANDATE TO MOVE QUICKLY IN ADDRESSING OUR NATION'S ECONOMIC PROBLEMS. DOING SO MEANS THAT TRADITIONAL OVERSIGHT METHODS MAY NEED TO BE MODIFIED, TO KEEP FROM UNDULY SLOWING DOWN THE WORK ENVISIONED BY THE RECOVERY ACT. SUGGESTIONS I WILL OFFER, TODAY, ARE MADE IN THE HOPE OF ENSURING PROPER OVERSIGHT, WHILE HELPING THE GOVERNMENT TO MOVE AHEAD AS QUICKLY AS POSSIBLE TO MEET THE NEEDS OF OUR CITIZENS.

AS VICE CHAIRMAN OF THE NATIONAL PROCUREMENT FRAUD TASK FORCE AND CO-CHAIR OF ITS LEGISLATION COMMITTEE, I WORKED WITH DHS IG RICK

SKINNER AND REPRESENTATIVES OF 18 OTHER IG'S TO FORMULATE AND COORDINATE THE TASK FORCE'S LEGISLATIVE WHITE PAPER. THE TASK FORCE STANDS AS AN EXCELLENT EXAMPLE OF IG COORDINATION. MORE RECENTLY, THE EFFORTS OF THE COUNCIL OF INSPECTORS GENERAL FOR INTEGRITY AND EFFICIENCY (CIGIE) AND THE RECOVERY AND TRANSPARENCY BOARD ARE AIMED, I BELIEVE, AT FURTHERING COORDINATION TO BRING THE OVERSIGHT COMMUNITY MORE CLOSELY TOGETHER AND BRING ADDITIONAL VALUE TO THE AMERICAN TAXPAYERS. I HAVE RECENTLY ASSIGNED ONE OF MY SENIOR STAFF TO THE RECOVERY AND TRANSPARENCY BOARD TO HELP COORDINATE INVESTIGATIONS AND LIAISON WITH THE U.S. DEPARTMENT OF JUSTICE.

AS YOU KNOW, SOME RECOMMENDATIONS FROM THE TASK FORCE'S WHITE PAPER HAVE ALREADY MADE IT INTO LEGISLATION, SUCH AS CONTRACTOR REPORTING REQUIREMENTS LEADING TO CHANGES IN THE FAR RULE, EXPANSION OF PFCRA, AND INCLUSION OF ELECTRONIC DATA IN IG SUBPOENAS. I THANK THE CONGRESS FOR SHOWING INTEREST IN HELPING IG'S IN THEIR IMPORANT TASKS. HOWEVER, OTHER RECOMMENDATIONS SHOULD STILL BE ADDRESSED. OTHERS ON TODAY'S AGENDA WILL ADDRESS SOME OF THOSE ISSUES.

I WOULD LIKE TO HIGHLIGHT FOUR NEW IDEAS THAT HAVE BEEN EVOLVING IN OUR DISCUSSIONS, AND WHICH I BELIEVE WILL HELP TO EXPEDITE OIG REVIEWS AND CONTROL FRAUD AND OTHER CRIMINAL ACTIVITY.

MY WRITTEN STATEMENT CONTAINS MORE DETAILED SUMMARIES AND PROPOSALS FOR ACCOMPLISHING EACH OF THESE CHANGES.

I CALL THE FIRST PROPOSAL "DON'T TIP OFF THE TARGET." BASIC INVESTIGATIVE TECHNIQUES INCLUDE NOT "TIPPING OFF" A SUBJECT ABOUT AN INVESTIGATION. PREMATURE DISCLOSURE CAN LEAD TO DESTRUCTION OF EVIDENCE, INTIMIDATION OF WITNESSES, OR FLIGHT. IT CAN ALSO PRECLUDE UNDERCOVER WORK AND PROVIDE AN OPPORTUNITY FOR THE SUBJECT TO MANIPULATE HIS FINANCES TO FRUSTRATE THE GOVERNMENT'S INTERESTS. AS AN ILLUSTRATION, TELLING SOMEONE LIKE BERNIE MADOFF THAT HE WAS UNDER INVESTIGATION WOULD ONLY GIVE HIM AN OPPORTUNITY TO HIDE OR TRANSFER ILL-GOTTEN GAINS BEFORE THE GOVERNMENT HAD AN OPPORTUNITY TO UNDERSTAND THE FULL EXTENT OF HIS CRIMES OR FREEZE HIS ASSETS.

CURRENTLY THE RIGHT TO FINANCIAL PRIVACY ACT REQUIRES INSPECTORS GENERAL (IG'S) TO NOTIFY SUBJECTS BEFORE THE IG CAN OBTAIN THE SUBJECT'S FINANCIAL RECORDS. THIS NOTICE REQUIREMENT CAN HARM THE INVESTIGATION AND CAUSE UNNECESSARY AND UNDUE DELAY. I ASK THAT

YOU TREAT INSPECTOR GENERAL SUBPOENAS THE SAME AS GRAND JURY SUBPOENAS, WHICH ARE EXEMPT FROM GIVING THE SUBJECT NOTICE.

SECOND, AS YOU KNOW, THE EXCLUDED PARTIES LIST SYSTEM (**EPLS**) MAINTAINED BY GSA IS A DATABASE OF SUSPENDED AND DEBARRED COMPANIES AND INDIVIDUALS. AS THE RECENT GAO REPORT ON **EPLS** HAS OUTLINED, PROBLEMS HAVE ARISEN WITH BOTH THE CONTENT AND USE OF **EPLS** DATA, LEADING TO POTENTIALLY LIFE-THREATENING RISKS, AS WHEN DEFECTIVE BULLETPROOF VESTS WERE PURCHASED BY THE GOVERNMENT FROM A COMPANY THAT WAS DEBARRED.

USA.SPENDING.GOV, MANAGED BY OMB AND HOSTED AT GSA, ALREADY CONTAINS A LISTING OF WHERE AND ON WHAT ENTITIES THE GOVERNMENT IS SPENDING ITS MONEY. ONE WOULD NOT EXPECT TO FIND THE SAME COMPANIES OR INDIVIDUALS ON BOTH ***USASPENDING.GOV*** AND **EPLS**. DISTURBINGLY, HOWEVER, THOSE INSTANCES WERE FOUND EASILY BY MY STAFF.

A SIMPLE ANNUAL OR PERIODIC REPORT TO CONGRESS ON THOSE INSTANCES IN WHICH ENTITIES APPEAR IN BOTH ***USASPENDING.GOV*** AND **EPLS** DATABASES WOULD HELP HIGHLIGHT THE CRITICAL NEED TO FULLY CHECK ON THE STATUS OF CONTRACTORS AND GRANTEES BEFORE THE GOVERNMENT DOES BUSINESS WITH THEM.

MY THIRD PROPOSAL IS IN RESPONSE TO THE DECISION BY THE U.S. COURT OF APPEALS FOR THE D.C. CIRCUIT IN *UNITED STATES V. SAFAVIAN.* THE D.C. CIRCUIT HELD THAT FEDERAL EMPLOYEES HAVE NO LEGAL DUTY TO DISCLOSE ALL MATERIAL FACTS WHEN THEY PROVIDE INFORMATION IN RESPONSE TO A DIRECT QUESTION FROM AN OIG SPECIAL AGENT. IN THE ABSENCE OF SUCH A LEGAL DUTY, SAFAVIAN COULD NOT BE CONVICTED CRIMINALLY OF CONCEALING INFORMATION WHEN HE PROVIDED HALF-TRUTHS TO A SPECIAL AGENT INTENDING TO MISLEAD THE SPECIAL AGENT.

MY FOURTH PROPOSAL IS TO RESTORE THE CONTRACT CLAUSE THAT ALLOWED GSA OIG TO DO DEFECTIVE PRICING REVIEWS WHEN THEY CONDUCT POST-AWARD AUDITS. PRIOR TO 1997, A GSA CONTRACT CLAUSE ALLOWED POST-AWARD AUDITS CONDUCTED AFTER A CONTRACT WAS AWARDED TO REVIEW WHETHER THE CONTRACTOR PROVIDED ACCURATE, CURRENT, AND COMPLETE PRICING INFORMATION TO OBTAIN THE CONTRACT. WHILE WE LOOK AT THE ACCURACY OF PRICING INFORMATION WHEN WE CONDUCT PRE-AWARD REVIEWS, WE DO NOT CONDUCT PRE-AWARD REVIEWS ON ALL CONTRACTS. ESSENTIALLY, THE REGULATIONS CURRENTLY PROVIDE THAT IF NO PRE-AWARD REVIEW IS DONE, THE CONTRACTOR GETS A FREE PASS AUDIT-WISE FROM ANY LOOK AT WHETHER THEIR PRICING INFORMATION WAS DEFECTIVE. THE QUI TAM LAWSUITS THAT HAVE BEEN BROUGHT SHOW THE CURRENT SCHEME IS NOT WORKING. FOR

EXAMPLE, A QUI TAM THAT SETTLED FOR $98.5 MILLION WAS BASED ON ALLEGATIONS OF DEFECTIVE PRICING. JUST RECENTLY, A $128 MILLION SETTLEMENT WITH A MAJOR INFORMATION TECHNOLOGY FIRM POINTS, AGAIN, TO THE NEED TO CONTROL PRICING ISSUES IN CONTRACTS. BOTH OF THOSE CASES INVOLVED CONDUCT THAT COULD NOT HAVE BEEN DISCOVERED IN A POST-AWARD AUDIT UNDER THE OIG'S CURRENT AUDIT AUTHORITY IN GSA'S CONTRACTS.

THANK YOU FOR YOUR ATTENTION. I ASK THAT MY STATEMENT AND WRITTEN MATERIALS BE MADE PART OF THE RECORD. I WOULD BE PLEASED TO RESPOND TO QUESTIONS FROM THE SUBCOMMITTEE.

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Statement of Hon. Brian D. Miller

Inspector General

General Services Administration

To

Ad Hoc Subcommittee on Contracting Oversight

Committee on Homeland Security and Governmental Affairs

United States Senate

April 21, 2009

Detailed Summaries and Legislative Proposals

1. "Don't Tip Off the Target" amendment to the Right to Financial Privacy Act (RFPA).

The RFPA currently requires Inspectors General to provide notice to the subject of an investigation when issuing a subpoena for that person's financial records, absent a court order delaying such notice for 90 days. Grand jury subpoenas, however, are exempt from this notice requirement. The requirement for notice to the subject prior to obtaining his financial records can be detrimental to an investigation in several ways.

- Providing notice to a target can provide him an opportunity to destroy or tamper with evidence, flee, or intimidate witnesses.

- Such premature disclosure also can prevent legitimate undercover work and make recovery of misspent funds more problematic. These financial transactions can be extremely complicated to trace and unravel, and advance notice can impede the government's forfeiture and civil remedies that are designed to ensure the minimization of unlawful losses of federal dollars.

- The notice requirements also can cause undue delay. As an initial matter, if the Government does not know all the names on the account, the Government must issue a subpoena to the bank to identify the account holders. Then, after obtaining the identities of the account holders, the Government must issue another subpoena and comply with the notice provisions for each account holder. There is an additional minimum 15 day delay between sending the notice to the customer and obtaining the records, or a potentially longer delay if the Department of Justice decides to seek a court order delaying notice for 90 days. If the Department of Justice seeks a delay or the customer files a challenge in court, the law enforcement agency cannot obtain the records until the court issues a decision, a process that could take a significant amount of time during which the subject would be free to move assets and try to hamper the investigation.

The RFPA also requires notification to the subject within 14 days when records obtained under the RFPA are transferred to another agency, which would apparently include from an Inspector General to the Department of Justice in furtherance of a criminal investigation. We are aware of no other law that requires notifying the subject when records are transferred to a prosecuting authority

Because the target's privacy interests are already protected by existing law, we suggest that Congress consider giving Inspectors General the same exemption that grand jury subpoenas currently have such that an Inspector General does not have to notify a target when a subpoena for his financial records is issued.

PROPOSED LANGUAGE FOR "DON'T TIP OFF THE TARGET"

Amend 12 U.S.C. 3413(i) and 3420 to read as follows:

Title 12. Banks and Banking

§ 3413(i) Disclosure pursuant to issuance of subpoena or court order respecting grand jury proceeding or law enforcement investigation
Nothing in this chapter (except sections 3415 and 3420 of this title) shall apply to any subpoena or court order issued in connection with (1) proceedings before a grand jury or (2) a law enforcement investigation by an Inspector General pursuant to the Inspector General Act of 1978, as amended, except that a court shall have authority to order a financial institution, on which a grand jury or Inspector General subpoena for customer records has been served, not to notify the customer of the existence of the subpoena or information that has been furnished to the grand jury or in response to the IG Subpoena, under the circumstances and for the period specified and pursuant to the procedures established in section 3409 of this title.

§ 3420. Grand jury information; notification of certain persons prohibited
(a) Financial records about a customer obtained from a financial institution pursuant to a subpoena issued under the authority of a Federal grand jury or by an Inspector General as part of a law enforcement investigation—

(1) in the case of a grand jury subpoena, shall be returned and actually presented to the grand jury unless the volume of such records makes such return and actual presentation impractical in which case the grand jury shall be provided with a description of the contents of the records;
(2) in the case of a grand jury subpoena, shall be used only for the purpose of considering whether to issue an indictment or presentment by that grand jury, or of prosecuting a crime for which that indictment or presentment is issued, or for a purpose authorized by rule 6(e) of the Federal Rules of Criminal Procedure, or for a purpose authorized by section 3412 (a) of this title;
(3) in the case of an Inspector General subpoena, shall be used only for a legitimate law enforcement purpose, and any subsequent disclosure or transfer of records obtained pursuant to that subpoena to the Department of Justice shall be exempt from the provisions of section 3412(a) and (b) of this title;
(4) shall be destroyed or returned to the financial institution if not used for one of the purposes specified in paragraphs (2) or (3); and
(5) shall not be maintained, or a description of the contents of such records shall not be maintained by any Government authority other than in the sealed records of the grand jury or by an Inspector General, unless such record has been used in the prosecution of a crime.

(b)(1) No officer, director, partner, employee, or shareholder of, or agent or attorney for, a financial institution shall, directly or indirectly, notify any person named in a grand jury or Inspector General subpoena served on such institution in connection with an investigation relating to a possible—

(A) crime against any financial institution or supervisory agency or crime involving a violation of the Controlled Substance Act [21 U.S.C. 801 et seq.], the Controlled Substances Import and Export Act [21 U.S.C. 951 et seq.], section 1956 or 1957 of title 18, sections 5313, 5316 and 5324 of title 31, or section 6050I of title 26; or
(B) conspiracy to commit such a crime,
about the existence or contents of such subpoena, or information that has been furnished to the grand jury or Inspector General in response to such subpoena.

(2) Section 1818 of this title and section 1786 (k)(2) of this title shall apply to any violation of this subsection.

2. Annual or Semiannual Reports from OMB re: crosstabs of USASpending.gov and EPLS.

Agencies seeking to award contracts should be able to reference reliable information about organizations and individuals who are suspended or debarred from receiving Federal funds. A major data system aimed at providing that reference, the EPLS, remains a weak link, as the recent GAO report shows (Excluded Parties List System, GAO-09-174 (Feb. 2009)). Companies that have been suspended or debarred

sometimes do not appear on EPLS, and sometimes companies that do appear end up receiving additional funds from the Government. GAO inspectors were even able to purchase items from some debarred companies! The EPLS search engine is a bit cumbersome, as well, and only sophisticated questioners are successful in getting useful information from it. That sort of *caveat lector* environment may be partly to blame for the fact that some contracting officers don't even consult the database.

The risks of Federal funds continuing to go out to entities and individuals who have committed crimes and are suspended or debarred can sometimes be very large and life threatening, as the examples in the GAO report made clear. Testimony from the House Oversight and Government Reform Committee's March 2009 hearing tended to support the notion that both accurate data and frequent checking are essential to ensure that significant mistakes do not continue to occur.

We have shared with the House Committee on Oversight and Government Reform a description of a relatively simple "fix" that could begin to address some of the inadequacies of EPLS. That fix would be to create a requirement for an annual or semiannual report to the Congress on matches between the USASpending.gov website and the EPLS. USASpending.gov, created as a result of legislation sponsored originally by Senators Obama and Coburn, provides as comprehensive a database as currently exists for Federal contracts and grants. USA Spending.gov is managed by OMB and housed at GSA. GSA also houses and manages EPLS. Comparing the two databases should produce a list of any entities receiving current Federal assistance (in the form of a contract or a grant) that also are suspended or debarred by a Federal agency. So far as we know, that type of comparison is not, now, required to be performed.

A Congressional requirement for OMB to report periodically on those "hits" that are on both databases would: (1) communicate to agencies the importance of accuracy and completeness in submission of data to both USA Spending.gov and to EPLS; (2) remind GSA of the need to keep EPLS up to date and enter data timely; (3) provide an opportunity for agencies to explain how they could be giving Federal money to entities that are not supposed to be receiving it; and (4) assure the public that someone is watching more closely over their dollars.

That fix would be to create a requirement for an annual or semiannual report to the Congress on matches between the USASpending.gov website and the EPLS.

PROPOSED LANGUAGE FOR EPLS/USASpending.gov REPORT

The Director, Office of Management and Budget, shall conduct an annual study to identify persons or entities listed on both (1) USASpending.gov as having a contract or grant during the previous calendar year and (2) the Excluded Parties List System as being suspended or debarred during the time period that such a contract or grant was in place. That study shall also address the circumstances surrounding any person or entity appearing on both data bases, including the amount of federal funds received while being listed on the Excluded Parties List System and the explanation for why those funds were expended. The Director shall submit a report containing the findings

from this study by January 31 of each calendar year, beginning in 2010, to the Senate Committee on Homeland Security and Governmental Affairs and the House Committee on Oversight and Government Reform.

3. Safavian "fix" – duty to disclose.

In *United States v. Safavian*, 528 F.3d 957 (D.C. Cir. 2008), the U.S. Court of Appeals for the D.C. Circuit held -- contrary to the position taken by the Department of Justice -- that federal employees have no duty to disclose all material facts when they provide information in response to questions from an OIG special agent. In the absence of such a duty, the failure to disclose is not a crime of concealment in violation of 18 U.S.C. § 1001(a)(1). Accordingly, the D.C. Circuit reversed Safavian's concealment convictions on the basis that "there must be a legal duty to disclose in order" to prove "a concealment offense in violation of § 1001(a)(1)." *Safavian*, 528 F.3d at 964. The *Safavian* court found that neither the ethics standards nor any other current federal requirement created a legal duty to disclose the whole truth to an OIG special agent sufficient for a prosecution under § 1001(a)(1).

Specifically, the jury found that Safavian "concealed his assistance to Mr. [Jack] Abramoff in GSA-related activities." *Safavian*, 528 F.3d at 962. Safavian also told half-truths to a GSA Special Agent in order to deceive him into believing that Safavian had fully reimbursed Jack Abramoff for a golf trip to Scotland, as well as a weekend visit to London, and that Abramoff was not doing business with GSA.

We support the position that federal employees who choose to provide information to OIG special agents must refrain from deliberately misleading OIG special agents by telling half-truths or from excluding information necessary to make that person's statement accurate. It is anomalous, to say the least, that those who are entrusted with ensuring that the resources of the American people are spent prudently and honestly are immune from criminal sanction if they selectively provide information in order to deliberately deceive special agents in OIGs charged with overseeing the conduct of government programs and the expenditure of government resources.

PROPOSED LANGUAGE FOR THE "SAFAVIAN FIX"

OPTION 1: Add a new section 18 U.S.C. § 1041:

A similar result could easily be achieved here by adding a new section 18 U.S.C. § 1041:

(a) For the purposes of this chapter, the term "falsifies, conceals, or covers up by any trick, scheme, or device" includes the withholding by a federal employee of information he knows to be material when he provides related information in response to a law enforcement inquiry or a request for information by a committee or subcommittee of the United States Senate or House of Representatives.

(b) For purposes of this section,

(1) "Federal employee" means an officer or employee of the executive branch of the United States Government, or of any independent agency of the United States, a Federal Reserve bank director, officer, or employee, or an officer or employee of the District of Columbia.

(2) Law enforcement officer shall have the meaning provided in 18 U.S.C. § 115(c)(1).

(c) Nothing in this section creates a duty for a federal employee to disclose self-incriminating information.

OPTION 2: Revise 18 U.S.C. § 1519:

(a) Whoever knowingly
(1) alters, destroys, mutilates, conceals, covers up, falsifies, or makes a false entry in any record, document, or tangible object with the intent to impede, obstruct, or influence the investigation or proper administration of any matter within the jurisdiction of any department or agency of the United States or any case filed under title 11, or in relation to or contemplation of any such matter or case;

(2) or, being an officer or employee of the executive branch of the United States Government, or of any independent agency of the United States, or of the District of Columbia, withholds material information when he provides related information in response to a law enforcement inquiry, with the intent to impede, obstruct, or influence that inquiry,

shall be fined under this title, imprisoned not more than 20 years, or both.

(b) Nothing in this section creates a duty for a federal employee to disclose self-incriminating information.

4. Reinstate audit rights for GSA OIG over negotiations with respect to pricing information in the GSA MAS Program.

We support the National Procurement Fraud Task Force recommendation to reinstate audit rights over pricing information in Multiple Awards Schedule post-award audits. Under the MAS program, GSA relies on vendor-supplied pricing information, rather than head-to-head competition, to achieve fair and reasonable pricing. The ability of GSA to negotiate prices commensurate with the Government's purchasing power is dependent on getting current, accurate and complete pricing data from vendors. Required contract provisions allow the government to recover funds when a contractor, in obtaining a contract, provides cost or pricing information that is not current, accurate, or complete ("defective pricing"). GSAR 552.215-72. This clause is based on the premise that the Government, to adequately protect its interests, is entitled to have the information it

needs to effectively negotiate a contract. However, in 1997 GSA removed from the contract clause the right to conduct post-award defective pricing audits. Defective pricing audits are allowed only with high-level approval and a finding of a likelihood of significant harm in the absence of such a review. GSAR 552.215-71.

Allowing post-award audits to look for defective pricing would significantly help protect the Government's interests, especially during these times of recovery. Prior to the 1997 change, the OIG could look for defective pricing as a normal step in post-award audits performed under the contract clause. In our view, the only truly adverse consequence to the contracting community was the discovery of numerous defective pricing incidents. In the three year period prior to the 1997 change, roughly 84% of post-award audits contained findings of defective pricing. Of these audits, only 15 percent with defective pricing findings were referred to the Department of Justice based on concerns regarding the fraudulent nondisclosure or misrepresentation of pricing information. The remaining post award audits were referred to GSA COs for administrative resolution.

The continued existence of defective pricing concerns is demonstrated by qui tam actions under the False Claims Act. For example, one qui tam lawsuit that led to a $98.5 million recovery in 2006 was based on allegations of defective pricing, which would be outside the scope of a post-award audit under the GSAR as currently written. While the OIG now does more pre-award reviews, which can identify potentially defective pricing, obviously the OIG cannot do pre-award reviews for all contracts, and contractors should not be given a free pass for defective pricing when they do not undergo a pre-award review. At this point, legislation may be the quickest way to fix this problem in time to allow effective oversight of Recovery Act expenditures.

PROPOSED LANGUAGE FOR AUDIT RIGHTS

The Administrator, General Services Administration, shall ensure that the Examination of Records by GSA (Multiple Award Schedule) clause contained at GSAR 552-215.71, which limits any examination to overbillings, billing errors, compliance with the Price Reduction clause and compliance with the Industrial Funding Fee and Sales Reporting clauses, shall be removed from the GSAR and not used in any future Multiple Award Schedule contract or modification to or extension of a current Multiple Award Schedule contract. Rather, effective immediately, the Administrator, General Services Administration, shall ensure that all future Multiple Award Schedule contracts, including modifications to or extensions of existing contracts, contain the current GSAR 552.215-70, Examination of Records by GSA, and not GSAR 552-215.71, so that all examinations can include both post-award and pre-award transactions related to the contract, if the Multiple Award Schedule contract exceeds the simplified acquisition threshold.

STATEMENT OF RICHARD L. SKINNER

INSPECTOR GENERAL

U.S. DEPARTMENT OF HOMELAND SECURITY

BEFORE THE

AD HOC SUBCOMMITTEE ON CONTRACTING OVERSIGHT

COMMITTEE ON HOMELAND SECURITY AND GOVERNMENTAL AFFAIRS

U.S. SENATE

April 21, 2009

Good afternoon Chairman McCaskill, Ranking Member Collins, and members of the subcommittee. Thank you for inviting me to testify today at this first hearing of the Ad Hoc Subcommittee on Contracting Oversight about statutory tools to enhance the critical oversight work of Inspectors General. For my testimony, I will draw on the work of the Legislation Committee of the National Procurement Fraud Task Force (Task Force), which I co-chair with my colleague, the Honorable Brian D. Miller, Inspector General of the General Services Administration and vice-chair of the Task Force.

First, let me express my appreciation to Senator McCaskill for her support of the Inspector General (IG) community and her efforts to ensure that we have the tools necessary to conduct meaningful oversight. I applaud the creation of this Subcommittee to oversee Government contracting. With Congress, the Administration, and the American taxpayer demanding unprecedented levels of transparency and accountability over Government spending, the work of this Subcommittee adds a critical perspective in assessing one aspect of that spending, the federal acquisition system.

Examining Federal Procurement Practices

Contractor performance has become essential to accomplishing almost every aspect of agency missions, including emergency preparedness, response, recovery, and mitigation. The federal government spends approximately $500 billion annually for a wide range of goods and services to meet mission needs. The federal procurement system consists of those processes, procedures, and personnel with the responsibility for the purchase of goods and services necessary to outfit the war fighter, protect our homeland, conduct medical research, control crime, and provide other essential services to the taxpayer.

During Fiscal Years 2000-2008, the value of procurement actions has grown significantly, from $208.3 billion to $517.8 billion. This year, the American Recovery and Reinvestment Act of 2009, Pub. L. 111-5 (Feb. 17, 2009) (Recovery Act) will pump an additional $787 billion into the economy, primarily through federal contracts, grants, and loans. The Department of Homeland Security (DHS) spends almost 40% of its annual budget through contracts. In the fiscal year 2009 annual cycle, Congress appropriated approximately $40 billion to DHS and DHS received another $3 billion for stimulus spending.

At the same time that funding spent through contracting increased considerably, federal agencies' ability to detect and prevent fraud has been diminished. A combination of rapidly increasing procurement activity and greater reliance on contractors to perform essential services, including assisting with acquisition planning, defining requirements, drafting statements of work, evaluating proposals, and source selection, inhibits management oversight of contractors. Contracting officers frequently lack relevant information, such as unreported conflicts of interest among contractor employees, to assess a company's responsibility and ability to successfully perform on time and within budget.

A high performing acquisition workforce is fundamental to DHS' ability to accomplish its missions. Commitment to human capital management, integration and alignment of human capital approaches with organizational goals, and investment in people are critical success factors. Changes in the federal acquisition environment have created significant challenges to building and sustaining the acquisition workforce across the federal government.

The department has identified acquisition workforce staffing levels, particularly those of contract specialists, as a serious challenge and has established an acquisition intern program to address the need, among other initiatives. As we reported in November 2008, in OIG-09-08 *Major Management Challenges Facing the Department of Homeland Security*, DHS has made modest progress in building and maintaining a skilled acquisition workforce. Previously, we reported that budget increases had allowed the department to fill many acquisition staff positions. However, there are still workforce challenges across the department. In addition to the department-wide intern program, some components have initiatives to develop and retain a workforce capable of managing complex acquisitions; in the interim, they must still rely on contractors to fill key positions in the acquisition process.

Just as agency procurement offices across the Government face a shortage of experienced staff so do OIGs. In order to be most effective in contracting oversight, we need a mix of auditors, inspectors, and investigators with acquisition experience. Unfortunately, we compete for these resources with the very same offices for which we have oversight responsibilities. As we continue to grow the DHS OIG, one area of focus is to add experienced acquisition professionals to our audit and inspection teams.
Madame Chairman, as you stated in your March 19th open letter to the acquisition community, "the growth in contracting has outpaced oversight," with problems occurring "at every stage of the contracting process . . .. The contracting workforce is no longer adequate to handle the volume and complexity of the . . . workload and the lack of oversight has been an invitation to waste, fraud, and abuse." These concerns are exacerbated by the desire to promptly spend the $787 billion made available through the Recovery Act.

Against this backdrop, the recommendations of the Task Force Legislation Committee discussed below take on added urgency.

National Procurement Fraud Task Force

In October 2006, the Deputy Attorney General formed the Task Force, a partnership among Federal agencies charged with investigating and prosecuting illegal acts in connection with Government contracting and grant activities. Task Force principals include the Federal law enforcement community, 35 Offices of Inspectors General (OIG), and the litigating arms of the United States Department of Justice (DOJ) and United States Attorneys offices. Chaired by DOJ's Acting Assistant Attorney General for the Criminal Division, the Task Force promotes the early detection, prevention, and prosecution of procurement and grant fraud, and associated corruption.

The Task Force has established the following objectives:

- Increase coordination and strengthen partnerships among OIGs, other law enforcement agencies, and DOJ to more effectively address procurement fraud;
- Assess existing efforts to combat procurement fraud and work with audit and contracting staff both inside and outside Government to detect and report fraud;
- Increase civil and criminal prosecutions and administrative actions to recover ill-gotten gains resulting from procurement fraud;
- Educate and inform the public about procurement fraud;
- Identify and remove barriers to preventing, detecting, and prosecuting procurement fraud;
- Encourage greater private-sector participation in the prevention and detection of procurement fraud; and
- Evaluate and measure the performance of the Task Force to ensure accountability.

Areas of focus include defective pricing or other irregularities in the pricing and formation of contracts, product substitution, misuse of classified and procurement sensitive information, false claims, grant fraud, labor mischarging, bid rigging, false testing, false statements, accounting fraud, contract fraud associated with overseas contingency operations, and ethics violations, particularly conflict of interest.

The Task Force has effectively bolstered the investigation of fraud, waste, and abuse in federal contracts by making significant progress toward its objectives. Coordination within the law enforcement community has multiplied. The Task Force has significantly increased training opportunities for OIG agents and auditors regarding the investigation and prosecution of procurement fraud cases. Since the creation of the Task Force, over 300 procurement fraud cases have resulted in criminal convictions. In addition, DOJ, with the assistance of OIGs, has recovered more than $362 million in civil settlements or judgments arising from procurement fraud matters since the start of the Task Force.

As a result of proposals from the Task Force, the Federal Acquisition Regulation (FAR) has been modified to require contractors to establish business ethics programs, maintain internal controls to prevent and detect improper business conduct, and notify the Government, including OIGs, of significant overpayments and credible evidence of certain criminal and civil violations of fraud statutes.

To achieve its objectives, the Task Force created nine working committees with representatives from multiple agencies to address common issues such as training,

intelligence and classified contracts, information sharing, private sector outreach, suspension and debarment, grant fraud, international procurement fraud, and legislation.

Task Force Legislation Committee

The Legislation Committee, which I co-chair with my colleague, Brian Miller, Inspector General at the General Services Administration, has considered an array of potential legislative and regulatory reforms to reduce the risk of procurement fraud in critical federal programs and activities and to enhance the Government's ability to detect, prevent, and prosecute procurement fraud. Three key areas of reform have been targeted:

- Improving ethics and internal controls among contractors;
- Improving the prosecution and adjudication of procurement fraud matters; and
- Improving the Government's ability to prevent and detect procurement fraud.

In June 2008, the Task Force Legislation Committee submitted a "White Paper" to the Acting Assistant Attorney General for the Criminal Division containing numerous legislative proposals and ideas to significantly aid in preventing, detecting, and prosecuting procurement fraud, thereby reducing its risk in the federal sector. I strongly endorse the White Paper to this committee's consideration. Several of the proposals have been enacted already, such as the clarification of OIG subpoena authority to include tangible things and electronic evidence (section 9 of the Inspector General Reform Act of 2008, Pub. L. No. 110-409 (Oct. 14, 2008)) and extension of the Program Fraud Civil Remedies Act to designated federal entities with OIGs (section 10 of the IG Reform Act). I personally thank Congress for its efforts in passing these needed reforms.
Several other proposals in the White Paper have been implemented through regulatory changes such as requiring contractors to notify the Government of significant overpayments.

Proposals for Reform

Contractor Ethics and Internal Controls

As discussed earlier, the Task Force successfully guided a change to the FAR requiring contractors to establish codes of business conduct for their employees and subcontractors performing work for the Government. The requirements include periodic compliance reviews; employee avenues for reporting suspicious conduct, such as posting of an applicable OIG hotline number; regular and recurring internal audits; disciplinary action for misconduct; mandatory reporting of certain violations and significant overpayments to the contracting officer and OIGs; and full cooperation with Government audits and investigations.

Going forward, we agree with the recommendations of the Office of Government Ethics (OGE), the Government Accountability Office (GAO), and others that service contractor employees who frequently work alongside Government employees should be subject to

the same conflict of interest rules as Government employees. Issues such as financial conflicts of interest, impartiality concerns, misuse of information, misuse of apparent or actual authority, and misuse of property are all areas of potential personal conflicts of interest for contractor employees that could result in harm to the integrity of Government operations. Section 871 of the Duncan Hunter National Defense Authorization Act for Fiscal Year 2009, Pub. L. 110-417 (Oct. 14, 2008) (Defense Authorization Act), is a step in the right direction. It requires the Administrator of the Office of Federal Procurement Policy (OFPP) to issue policy to prevent personal conflicts of interest by contractor employees performing acquisition functions closely associated with inherently governmental functions and requires a joint review by OGE and OFPP to identify other areas that raise similarly heightened concerns for potential personal conflicts of interest on the part of contractor employees.

Improvements in the Prosecution and Adjudication of Procurement and Grant Fraud Matters

The Legislation Committee identified proposals which, if implemented, would ensure more systematic decision-making in the handling of procurement and grant fraud cases. These include:

1) Amending federal sentencing guidelines to better define economic loss in procurement and grant fraud cases;

2) Expanding OIG authority to include access to contractor and grantee employees; and

3) Encouraging OIG counsel to be detailed to DOJ to assist in prosecuting procurement and grant fraud cases.

With respect to interviews of contractor and grantee employees, section 1515 of the Recovery Act provides OIGs access to interview any officer or employee of a contractor, grantee, subgrantee, or State or local agency regarding transactions funded with Recovery Act money. We note that section 902 provides similar authority to GAO and specifically grants GAO access to subcontractor employees. OIGs should have the same authority as GAO in this regard. The recently published change to the FAR implementing these Recovery Act sections states that OIGs do not have access to interview subcontractor employees, while GAO does. We urge a speedy amendment to ensure that OIGs are clearly authorized to interview subcontractor employees regarding transactions involving stimulus money. Moreover, we urge a change to authorize OIGs such access in the oversight of all agency programs and activities.

Under the Inspector General Act of 1978, as amended, (IG Act), IGs are tasked to conduct, supervise, and coordinate audits and investigations related to the programs and activities of federal agencies. Because many agencies now rely so heavily on contractors to carry out their programs and activities, the OIGs require more and greater access to contractor and subcontractor employees and records. Likewise, the amount of federal dollars awarded through grants has increased significantly since fiscal year 2000. Grant

spending averages almost 20 percent of total federal spending, slightly more than contract spending. Delays in responding, failures to provide complete responses, and refusals to respond to IG requests for contractor and grantee documents and for interviews of employees disrupt the work of the OIGs.

IG subpoenas issued pursuant to section 6(a)(4) of the IG Act and enforceable in United States district courts are the most commonly used and versatile tool in investigating civil fraud cases. They are limited to documentary or other tangible evidence. IGs have no authority to obtain interviews of contractor and grantee employees. Having the right to interview contractor and grantee employees or other witnesses during investigations, audits, and inspections, would be invaluable in detecting fraud, waste, and abuse. Further, section 871 of the Defense Authorization Act provides GAO authority to interview contractor and subcontractor employees with respect to all contracts awarded under other than sealed bid procedures. This provision was implemented by a change to the FAR, effective March 31, 2009. OIGs need this same authority.

In a report issued by my office, *Acquisition of the National Security Cutter, U.S. Coast Guard*, OIG-07-23, we describe the impediments experienced in obtaining access to contractor employees and records related to that particular audit. At one point, audit fieldwork was suspended until access issues could be resolved. Because of the burdensome procedures imposed by the contractors involved and the refusal of the contractors to allow DHS OIG unsupervised access to contractor employees most knowledgeable of the design and performance issues of the cutter, we were denied the benefit of those informed perspectives. These hurdles are unacceptable in light of the statutory mandates on IGs; the critical importance of federal programs and activities; and the expenditure of billions of taxpayer dollars that are invested with contractors to provide the Government needed goods and services and with grantees to achieve defined public purposes, such as economic stimulus and protecting the homeland.

OIGs need the same access rights and abilities as GAO to interview contractor and subcontractor employees with respect to transactions under Government contracts. We would use this authority recognizing the interviewees' rights against self incrimination and other constitutional protections.

Improvements in the Government's Ability to Prevent and Detect Procurement and Grant Fraud

The following proposals would enhance the capacity of OIGs and federal procurement officials to better identify opportunities to reduce risk and vulnerabilities:

1) Ensuring appropriate background checks for contractor personnel/principals responsible for federal contracts; and

2) Amending the Computer Matching and Privacy Protection Act of 1988, Pub. L. 100-503, codified at 5 U.S.C. § 552a (Computer Matching Act), so that OIGs are exempt.

I would like to focus my comments on amending the Computer Matching Act, which revised the Privacy Act to add procedural requirements that agencies must follow when matching electronic databases for the purpose of establishing federal benefit eligibility, verifying compliance with benefit program requirements, or recovering improper payments under a benefit program. The procedural requirements include formal matching agreements between agencies, notice in the Federal Register of the agreement before matching may occur, and review of the agreements by Data Integrity Boards at both agencies. While the Computer Matching Act provides certain exemptions including for statistical matches to produce data without personal identifiers, matches for research purposes, and law enforcement only if a specific target of an investigation has been identified, agency decision makers and data owners rarely consider OIG oversight work to fall under any of the exemptions. Moreover, GAO, as an arm of the Legislative Branch, is not subject to the Computer Matching Act.

The legislative history of the Computer Matching Act identifies IGs as among the earliest users of computer matching as an audit tool to detect fraud, error, or abuse in federal benefit programs. Interagency sharing of information about individuals can be an important tool in improving the integrity and efficiency of Government programs. By sharing data, agencies can often reduce errors, improve program efficiency, identify and prevent fraud, evaluate program performance, and reduce the information collection burden on the public by using information already within Government databases. Because many federally funded programs are administered at the State and local level, such as unemployment compensation, food and nutrition assistance, and public housing, the ability to match data with State and local governments is as important as the ability to match with other federal agencies. The Computer Matching Act governs computer matching between federal agencies and State or local governments.

The work of the IG community in identifying control weaknesses within agency procurement activities would be facilitated by expanding the current law enforcement exemption to permit IGs, as part of audits and inspections, not only targeted investigations, to match computer databases of contractor personnel, excluded parties (those ineligible to receive federal contracts and certain subcontracts), Government acquisition personnel, sole proprietorships, etc. Because OIGs rarely control the databases to be matched, valuable effort and time is lost persuading the agency system managers that matching is appropriate and necessary and to cooperate with the OIG to fulfill the Computer Matching Act administrative requirements. The OIG's dependency on the cooperation of the agencies to meet the Computer Matching Act requirements allows agencies to delay, and even obstruct, legitimate OIG oversight.

In the aftermath of Hurricane Katrina, the IGs at the Departments of Agriculture and Housing and Urban Development, and at the Small Business Administration, along with my office, pursued computer matching agreements to facilitate audits and investigations. However, only one agreement was executed. In June 2006, almost 10 months after Hurricane Katrina struck, the Department of Housing and Urban Development successfully executed a computer matching agreement with the Federal Emergency Management Agency (FEMA). The absence of computer matching agreements forced

the Hurricane Katrina Fraud Task Force to rely on manual record searches to detect improper payments and fraud. The authority to conduct data sharing would have greatly enhanced our ability to quickly begin reviews to detect internal control weaknesses early in the payment process.

Directly related to contracting oversight, OIGs could use computer matching to validate various certifications made by businesses to obtain Government contracts, such as being a service disabled veteran owned small business. Another use would be to validate the effectiveness of certain contractor services. For example, the Federal Emergency Management Agency (FEMA) contracts with a commercial data provider to verify certain eligibility data provided by disaster assistance applicants. One data element verified through a third party vendor is the applicant's Social Security Number. This additional authority would allow us to more easily validate the accuracy of the information obtained through the vendor with data already existing within Government databases.

A concern that motivated passage of the Computer Matching Act was failure in some early matching programs to provide due process protections. One example is a computer matching program conducted by Massachusetts in the early 1980s. Lists of welfare recipients were matched against bank records in order to identify individuals with assets in excess of program requirements. Over 1600 people so identified were immediately sent termination notices without any action on the part of the state to verify the results of the match. Appeals produced a rate of reversals six times that of the usual rate. This example makes clear the necessity of conducting follow up work to verify the accuracy of any results produced through computer matching. Both generally accepted Government auditing standards and the Office of Management and Budget's guidelines on matching programs recognize that referrals 1) to agency program officials for verification of results and 2) to investigative entities if fraud or other criminal activity is suspected, are expected outcomes of matching.

Creating an OIG exemption to the Computer Matching Act would not authorize greater access to records than IGs have under existing law. It would allow access in less time and with fewer administrative burdens.

Also, the Legislation Committee is examining ways to provide agencies with additional resources to pursue procurement fraud. General proposals under consideration include allowing recoveries to be credited back to current accounts of agencies that have experienced procurement fraud-related loss, regardless of when the loss occurred. These recoveries often are deposited in Treasury's miscellaneous receipts fund. A related proposal would establish a working capital fund available to OIGs for procurement fraud investigations and activities.

DHS OIG Contracting Oversight

Since the establishment of DHS OIG in 2003, our office has performed numerous audits and inspections of acquisition activities within DHS. Some of the audits have focused on

management issues such as organizational alignment and leadership; acquisition policies and procedures; the acquisition workforce; and the integration of acquisition-related information systems. Others have highlighted specific contracts. For example, reports on the Transportation Security Administration's screener recruitment contract, FEMA's Individual Assistance technical assistance contracts, and the Coast Guard's Deepwater acquisition process, have resulted in improvements in DHS' procurement functions.

Our long term recommendations can generally be summarized as:

- Developing strong program and procurement offices;
- Improving internal controls and effective monitoring of contracts;
- Clearly articulating program goals and defining program technical requirements, performance measures, and acceptance terms in contracts;
- Thoughtfully structuring contracts with input from all relevant offices;
- Establishing a process to share best practices among acquisition staff throughout the department; and
- Developing a streamlined, integrated information technology system to help manage the billions of dollars of goods and services acquired by the department.

Contingent upon the availability of resources, my office will continue a vigorous audit, inspection, and investigative program to identify acquisition vulnerabilities and recommend prompt, cost-effective improvements. Acquisition oversight is a priority of my office. Our future work will include crosscutting management issues such as corporate compliance, small and disadvantaged business utilization, use of personal services contracts, the department's suspension and debarment program, and performance by contract of inherently governmental functions, as well as review of significant individual projects, such as Custom and Border Protection's Secure Border Initiative, modernization of the Citizenship and Immigration Service's information technology, and the department's integrated financial management system.

Conclusion

The Task Force Legislation Committee continues to search for opportunities to strengthen efforts to fight procurement fraud and to improve Government procurement to ensure that taxpayer funds are spent wisely. In an era of significantly increased federal procurement spending and dwindling numbers of qualified acquisition personnel, we believe the changes discussed here today merit strong support. We appreciate your continued leadership on matters of concern to the IG community and look forward to working closely with the Subcommittee.

April 21, 2009

Expected Release
2:30 p.m.

Statement
of
Charles W. Beardall

Deputy Inspector General for Investigations
Department of Defense

before the

Senate Homeland Security
and Governmental Affairs Committee
Subcommittee on Contracting Oversight

on

"Improving the Ability of Inspectors General to Detect, Prevent, and Prosecute Contract Fraud"

Chairman McCaskill, Senator Collins, distinguished members of this subcommittee, thank you for inviting me to appear before you to discuss the fundamentally important issue of procurement fraud - its prevention, detection, investigation, and prosecution. I am here today on behalf of the Acting Inspector General of the Department of Defense (DoD), Gordon Heddell, and the women and men of the Office of the Inspector General, to include the Defense Criminal Investigative Service (DCIS).

DCIS, the law enforcement arm of the DoD IG, was established in 1981 in response to endemic defense contracting scandals which emerged during the 1970s and 1980s. Creation of the organization preceded the establishment of the DoD Inspector General. In 1983, DCIS was incorporated into the newly formed DoD Office of the Inspector General. From its modest start as an office of seven special agents, DCIS has grown to 366 agents. Initially, DCIS special agents focused almost exclusively on combating contract fraud and corruption. However, as the organization matured, its priorities expanded to support the Secretary of Defense and DoD. DCIS' current priorities include investigations of contract fraud, corruption, terrorism, illegal diversion and theft of critical DoD technology and weapon systems, and cyber crimes concentrating on protection of the Global Information Grid.

Although its mission has expanded significantly, DCIS has remained true to its roots in that the bulk of the organization's investigations continue to involve contract fraud and corruption. Despite the fact that DCIS performs many critical law enforcement missions, 61 percent (or 1,106) of our 1,801 active investigations involve DoD contracting. Typical investigations involve bribery, kickbacks, substituted and defective

products, cost mischarging, health care false billing and upcoding,[1] and other forms of contracting crime. DCIS has had a distinguished record of success. Since its inception in 1981, cases in which DCIS was the lead or a participating agency have recouped $14.67 billion for the U.S. Government. This figure does not include non-government restitution or suspended fines. And clearly relevant to today's discussion, $9.9 billion, almost 67 percent of total recoveries, have occurred within the last 10 years. DCIS has recovered $731 million in stolen or misappropriated government property. Our investigations have resulted in 2,776 arrests; 8,830 criminal charges; and 7,206 criminal convictions. Additionally, our investigations have contributed to the suspension of 3,167 contractors and 3,731 debarments.

Background

The DoD Inspector General has primary responsibility within the Department of Defense for providing oversight of Defense programs and operations. As the criminal investigative arm of the DoD Inspector General, DCIS is tasked with conducting criminal investigations in furtherance of the DoD Inspector General mission. DCIS accomplishes this task by partnering with other law enforcement agencies in an effort to protect the integrity of the entire DoD acquisition process – from research and development, to contract execution, to disposal of excess property. DCIS frequently works in close partnership with representatives from other Offices of Inspectors General, the U.S. Army Criminal Investigation Command, the Naval Criminal Investigative Service (NCIS), the U.S. Air Force Office of Special Investigations (AFOSI), the Federal Bureau of

[1] Medical providers use Government-required (Medicare, TRICARE, etc.) standardized numerical billing codes for patient services. Misuse of these standardized codes to obtain more money than allowed by law is commonly termed "upcoding" or "upcharging."

Investigation (FBI), and U.S. Immigration and Customs Enforcement (ICE). We also partner with major audit and contract administration organizations such as the Defense Contract Audit Agency (DCAA), military services audit agencies, and the Defense Contract Management Agency (DCMA).

Cooperation and Collaboration

DCIS is a key participant in various procurement fraud task forces and working groups, such as the DoD Procurement Fraud Working Group (DPFWG), the National Procurement Fraud Task Force (NPFTF), the International Contract Corruption Task Force (ICCTF), and the Defense Criminal Investigative Organizations Enterprise-Wide Working Group (DEW Group).

The DPFWG is an informal alliance of Defense contract management officials; investigative and audit professionals; and counsels from Federal organizations including the DoD IG, military service components, DCMA, DCAA, and Department of Justice (DoJ). This alliance provides a forum that promotes information exchange, recommends legislative and policy development, and offers continuing education opportunities related to DoD acquisition matters.

To enhance coordination with other Inspectors General and DoJ, the DoD IG is also a member of the NPFTF and is represented on each of its eight committees. As is evident from today's focus on the work of the NPFTF Legislation Committee, this multi-disciplinary and multi-agency coalition has been extremely effective in fostering communication and better coordination to combat procurement fraud.

The ICCTF, an offshoot of the NPFTF, was formed to target contract fraud and corruption relating to funding for overseas contingency operations, predominantly fraud involving Operation Enduring Freedom in Afghanistan and Operation Iraqi Freedom. The ICCTF created a Joint Operations Center to serve as the nerve center in furtherance of achieving maximum interagency cooperation. The primary goal of the ICCTF is to coordinate and de-conflict case information and to combine the resources of multiple investigative agencies to effectively and efficiently investigate and prosecute cases of contract fraud and corruption related to U.S. Government spending in Iraq, Kuwait, and Afghanistan. Participating agencies include DoJ DCIS, Army Criminal Investigation Command-Major Procurement Fraud Unit (Army CID-MPFU), FBI, Special Inspector General for Iraq Reconstruction, Department of State Office of Inspector General, U.S. Agency for International Development Office of Inspector General, NCIS, and AFOSI. To date, the ICCTF has functioned as a model for law enforcement cooperation. While collaboration and mutual support were evident during the early deployments of agents from separate law enforcement entities into Southwest Asia, formally establishing the Task Force has created the ideal fraud and corruption fighting federation to address GWOT cases in theater and in the United States.

DCIS is a charter member of the DEW Group, which consists of senior leaders from Army CID, AFOSI, NCIS, and DCIS. The group's goal is to enhance investigative support provided to the Office of the Secretary of Defense, the Military Departments, Joint Staff, Combatant Command, Defense Agencies, and DoD field activities. Associate members include the Defense Security Service, Defense Counterintelligence and Human

Intelligence Center, Defense Cyber Crime Center, U.S. Army Military Intelligence, and Coast Guard Investigative Service.

DCIS also participates in other task forces and working groups, such as DoJ's National Counter-Proliferation Initiative and Technology Protection Enforcement Group. DCIS has also assigned 40 agents full and part-time to Joint Terrorism Task Forces throughout the country.

DCIS Efforts

Implementation of critical initiatives relating to the GWOT and the theft, illegal export, and diversion of sensitive technologies and weapons are part of the ever-increasing DCIS workload. Nevertheless, our commitment to combat fraud remains steadfast.

During the past eight fiscal years, DoD contracting has increased more than 250 percent ($154 billion to $390 billion). During the past five fiscal years, DCIS investigations involving financial crimes (procurement, gratuities, pay and allowance, conflict of interest, and anti-trust) increased 35 percent, investigations involving kickbacks increased 66 percent, and investigations involving bribery increased an astounding 209 percent. Secretary Gates' recent announcements regarding scaling back DoD outsourcing and increasing DCAA's strength by 600 auditors is extremely encouraging. However, increasing contract oversight by contracting personnel and auditors could uncover more criminal activity and require increased investigative activity. Further, the requirement to conduct meaningful oversight concerning potential Recovery Act fraud is an additional demand.

Recent increases in contract fraud and corruption investigations are largely the result of overseas contingency operations. DCIS' presence in Southwest Asia, along with attendant investigative efforts in the United States, has identified significant losses of U.S. funds through contract fraud, corrupt business practices, and theft of critical military equipment. To date, DCIS has initiated 173 investigations relating to DoD operations in Iraq and Afghanistan. Of these investigations, 41 percent involve procurement fraud offenses; 42 percent involve corruption offenses; and 14 percent involve theft, technology protection, and terrorism. DCIS has 12 special agents in Iraq, Kuwait, and Afghanistan primarily investigating contract fraud and corruption allegations. Additionally, approximately 90 DCIS special agents in the United States and Germany are also conducting investigations related to the GWOT.

In addition to conducting criminal investigations, DCIS special agents provide mission briefings to Defense agencies and military commanders in an effort to increase awareness and promote the prevention and reporting of fraud, waste, abuse, and corruption. During these briefings, special agents emphasize employees' responsibilities with respect to prompt reporting of criminal activity involving the Department. DCIS has dramatically increased its efforts in this area by 281 percent during the past five fiscal years. DCIS special agents also notify Defense agencies and military commanders of internal management control deficiencies when discovered during the course of an investigation.

Proposed Legislative and Regulatory Reforms

The reforms proposed in the *Procurement Fraud: Legislative and Regulatory Reform Proposal* (the White Paper) published by the NPFTF Legislative Committee will significantly enhance the Government's ability to combat procurement fraud. The DoD Inspector General strongly supports improving internal controls and ethics programs of contractors to enhance the Government's ability to prevent and detect procurement fraud. Requiring contractors to implement internal compliance programs, including an ethics code and internal controls before a new contract is awarded, would help prevent fraud. Mandatory reporting provisions would enhance the integrity of the system by facilitating suspension, debarment, and, when necessary, prosecution.

In response to a recent amendment to the Federal Acquisition Regulations which imposes mandatory self-reporting requirements on certain Federal Government contractors (FAR Case 2007-006), the DoD IG has established the DoD a Contractor Disclosure Program to receive and process the disclosures affecting DoD. Since December 12, 2008, the effective date of the amendment, the DoD Contractor Disclosure Program has received 14 submissions. Although we are hopeful mandatory disclosure requirements will improve the Department's ability to oversee contracting, the program has not been in place long enough to draw definite conclusions.

The DoD IG supports the White Paper proposals to improve prosecution and adjudication of procurement crimes. The proposals to expand the authority of Inspectors General, to include expanded subpoena authority, will provide the IG community additional tools to conduct investigations and audits. Additionally, the detail of OIG

Counsel employees to the Department of Justice could result in the prosecution of procurement fraud cases that otherwise would have gone unaddressed by the justice system. Military services have in the past detailed judge advocates to serve as Special Assistant United States Attorneys, primarily in procurement fraud cases, with positive results.

The DoD IG also supports the White Paper proposals to improve the ability to prevent and detect procurement fraud. Establishing a national procurement fraud database to determine contractors' suspension or debarment history (the Procurement Inquiry Check System-PICS) would be a positive step. This could be accomplished by expanding the existing Excluded Parties List System (EPLS) to include State and local government data. Authorizing use of unique numbers to identify individuals in the EPLS would assist Federal agencies, including law enforcement organizations, to accurately and timely identify individuals barred from government contracting.

The DoD Inspector General also supports the White Paper recommendation extending criminal conflict of interest (18 U.S.C. § 208) provisions to contractors. There is a need to address contractor personal conflicts of interest.

While the White Paper has identified significant improvements designed to enhance the Government's ability to prevent, detect, and investigate contract fraud, we hope to work with the NPFTF Legislative Committee on even more improvements in the future. Two examples of proposals we hope to consider more fully in coordination with the other IGs arise from new FAR cases related to the recently enacted American Recovery and Reinvestment Act of 2009 (Recovery Act). One would expand

whistleblower protections to include subcontractors and the other would enhance contractor reporting requirements

Under FAR Case 2009-012, Recovery Act - Whistleblower Protections, the rule "prohibits non-Federal employers from discharging, demoting, or discriminating against an employee as a reprisal for disclosing information." Non-Federal employer is defined as, "any employer that receives Recovery Act funds, including a contractor, subcontractor, or other recipient of funds pursuant to a contract or other agreement awarded and administered in accordance with the FAR." Paradoxically, DoD subcontractor personnel working on Defense contracts not associated with the Recovery Act are not afforded whistleblower protections. Recently, a DCIS investigation was hampered when an employee discovered that she could not be provided whistleblower protections because she worked for a subcontractor versus a prime contractor. We look forward to addressing how best to provide whistleblower protections to subcontractor employees.

FAR Case 2009-009 requires Federal prime contractors awarded Recovery Act contracts to provide quarterly reports which detail use of funds. The reports must include contract award numbers, dollar amounts of invoices, details regarding supplies and services delivered, broad progress assessments, and first-tier subcontract information. First-tier subcontract information will include data which is extremely valuable to those charged with ensuring contractor accountability. Although this information will assist DoD investigators tasked with conducting Recovery Act investigations, DCIS and military criminal investigators are oftentimes unable to obtain information relating to subcontractors who perform work on DoD contracts not associated with the Act. We

recommend the FAR be amended to require all DoD prime contractors to provide information regarding first and second-tier contractors receiving awards in excess of $25,000. Reportable information should include: contract number, branch of service or DoD agency awarding the contract, subcontractor's name and physical address, subcontractor's parent company, DUNS[2] number, performance period, and subcontract amount. This information should be made publicly available in a central collection system.

Conclusion

The DoD Inspector General supports the efforts and recommendations of the National Procurement Fraud Task Force Legislation Committee and commends the committee's work. These measures can significantly reduce obstacles and facilitate the investigation and prosecution of contract fraud.

It is also important to remember that adequate numbers of investigators and auditors are indispensable, particularly in an era that has seen massive growth in contracting from traditional purchases of goods to service contracts for myriad administrative functions. According to the Federal Procurement Data System, the value of services contracts over the past ten years has more than tripled from $49 billion to $155 billion. DCIS is committed to the fight against terrorism, to protecting the Department from rising attacks against our information technology

[2] Dun & Bradstreet operates the world's largest commercial database containing over 100 million business records across 200 countries. The database uses the D&B D-U-N-S® Number, a nine-digit sequence, as a unique identifier of business entities worldwide.

infrastructure, and to preserving the advantage our warfighters have on the battlefield, while aggressively pursuing fraud and corruption.

I hope my testimony today has been helpful, and I look forward to your questions.

Council of the
INSPECTORS GENERAL
on INTEGRITY *and* EFFICIENCY

IMPROVING THE ABILITY OF INSPECTORS GENERAL TO DETECT, PREVENT, AND HELP PROSECUTE CONTRACTING FRAUD

April 21, 2008

Statement of

J. Anthony Ogden

Inspector General

U.S. Government Printing Office

Chairman of the Legislation Committee

Council of the Inspectors General on

Integrity and Efficiency

Before the

Subcommittee on Contracting Oversight

Committee on Homeland Security

and Governmental Affairs

U.S. Senate

Good afternoon, Madame Chair and Ranking Member Collins, and members of the Subcommittee. Thank you for inviting me to testify on the role of the Inspectors General in detecting, preventing, and helping prosecute contracting fraud. I am the Inspector General at the U.S. Government Printing Office but I am here today representing the Council of the Inspectors General on Integrity and Efficiency (CIGIE) in my capacity as the Acting Chairman of the Legislation Committee. On behalf of the CIGIE, I would like to express our appreciation of Senator McCaskill for her unwavering support of the Inspector General community and congratulate her on being the first Senator to lead this new Subcommittee on Contracting Oversight.

My testimony will focus on the general views of the Inspector General (IG) community regarding the major recommendations proposed by Legislative Committee of the National Procurement Fraud Task Force ("Task Force") outlined in a June 9, 2008, White Paper. The Task Force was formed by the Department of Justice's Criminal Division in October 2006 as a partnership among Federal agencies charged with the investigation and prosecution of illegal acts in connection with government contracting and grant activities, and includes many IGs as members.

Recommended Task Force Changes Already Enacted

We are happy to report that some significant recommendations proposed by the Task Force to aid in the prevention, detection, and prosecution of procurement fraud have already been enacted. For example, on November 12, 2008, the Federal Acquisition Regulation (FAR) Council issued a Final Rule, which became effective on December 12, 2008, that imposes a mandatory requirement on Federal government contractors to disclose to a relevant Office of

Inspector General whenever they have "credible evidence" of certain criminal violations and civil False Claims Act violations.

Furthermore, this Final Rule also requires contractors to disclose significant overpayments by the Government and for the majority of Federal contractors to establish an ethics and internal control program. Failure to disclose fraud violations and significant overpayments may result in suspension and debarment. We believe these changes will help the Inspector General community detect potential contractor fraud at an early stage.

The Inspector General Reform Act of 2008 (IG Reform Act), which became effective October 14, 2008, also included several changes recommended by the Task Force. For example, the IG subpoena authority language was amended to clarify that, apart from documentary evidence, its reach includes information and data in any medium (including electronically stored information, as well as any tangible things such as hard drives and computers). In addition, the IG Reform Act amended the Program Fraud Civil Remedies Act (PFCRA) of 1986 to allow IGs from Designated Federal Entities to use PFCRA authority.

Although these changes are encouraging, many other Task Force recommendations have not been acted upon. To gauge the support of the IG community for some of the remaining recommendations, the CIGIE, through its Legislation Committee, conducted an online survey of its 65 Inspectors General members.

Survey Results

Our survey covered three general Task Force recommendation areas:
1) Inspector General Subpoenas for Compelled Interviews; 2) Reform of the Program Fraud Civil Remedies Act; and 3) Other General Recommendations, including establishing a National

Procurement Fraud Database and allowing the use of Social Security numbers to identify individuals in the Excluded Parties List System.

A. Inspector General Subpoenas for Compelled Interviews

The White Paper proposed that the current IG subpoena authority include the authority to compel witnesses to appear at interviews in connection with OIG investigation, audits, and other reviews. This proposal is similar to the recent limited authority provided to IGs under Section 1515(a) of the American Recovery and Reinvestment Act of 2009 to "interview any officer or employee of the contractor, grantee, subgrantee, or agency regarding such [stimulus funds] transactions." The proposed subpoena authority would not include the power to compel witness testimony.

The survey results show overwhelming support for this enhanced IG subpoena authority.[1] Out of the 56 IGs that responded to this survey question, 95% supported the idea of expanding the IG subpoena authority to include compelled interviews, while 5% were opposed. Supporters cite the need to have access to contractor employees, ex-employees, or other third parties to discuss aspects of a civil or criminal investigation still in development.

In addition, this authority is necessary to be able to ask questions regarding voluminous records that companies serve in response to a subpoena that are not self-explanatory. Finally, supporters note that this authority would allow their offices to provide a more robust investigative record to Department of Justice (DOJ) prosecutors to make a decision of whether or not to proceed with a case, and if not, be better prepared for an administrative action.

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[1] Most respondents understood that the proposed IG subpoena authority would include the authority to compel testimony.

A small minority opposed the proposal because they believed it included the power to compel testimony, the need for which has not yet been adequately demonstrated. For example, they noted that, in criminal cases, IGs may work with a DOJ prosecutor who can issue a grand jury subpoena for testimony and that in civil cases a DOJ trial attorney can issue a civil investigative demand.

B. Reform of the Program Fraud Civil Remedies Act (PFCRA)

In 1986, Congress enacted the PFCRA to enable agencies to recover losses resulting from false claims and statements where the claims are $150,000 or less. Until recently, only Executive departments, the military, presidentially appointed IGs, and the United States Postal Service had PFCRA authority. IGs that were appointed by agency heads of Designated Federal Entities were not created until 1988 and therefore were not initially covered by the 1986 PFCRA law. On October 14, 2008, the Inspector General Reform Act of 2008 amended PFCRA to provide these IGs PFCRA authority, but did not extend the authority to Legislative Branch agencies.

Our survey focused on the major Task Force recommendations regarding the use of PFCRA authority, the increase of PFCRA jurisdictional and civil liability amounts, agency retention of PFCRA recoveries, and the revamping of PFCRA procedural requirements.

PFCRA Authority Use. To establish a baseline of PFCRA authority use by presidentially appointed IGs to date, we asked whether IGs had used the PFCRA authority and how many cases and recoveries they had tallied during the past five years. The survey results show that very limited PFCRA authority use has occurred, at least during the last five years. Eighteen presidentially appointed IGs answered that they had used PFCRA authority in the past and had

handled 5 or less cases in the past five years; 1 had handled more than 10 cases in the past 5 years. Sixteen reported recovering $100,000 or less in the past five years, 1 had recovered between $100,001 and $500,000, and 1 had recovered between $1 million and $5 million.

Some respondents said that they do not use the PFCRA authority because the procedural requirements are cumbersome and too resource intensive for cases of $150,000 or less. In addition, some IGs noted that agencies use better administrative remedies for monetary penalties available under their program oversight, such as authority under the Social Security Act under 42 U.S.C. §1320a-8 or the Civil Monetary Penalty Law under 42 U.S.C. § 1320a-7a that applies to Medicare and Medicaid. Finally, other respondents suggested that PFCRA authority should also be extended to Legislative Branch agencies.

PFCRA Jurisdictional and Civil Liability Limits. Our survey asked whether the PFCRA jurisdictional limit under 31 U.S.C. § 3803(c)(1) should be raised from the current $150,000 to $500,000. Thirty-five IGs responded and 80% supported the increase while 23% did not. In addition, 36 IGs responded to the question of whether the civil penalty limit under 31 U.S.C. § 3802(a)(1) should be increased from the current $5,500 to $15,000, with 78% in favor and 9% opposed. Two respondents suggested the amount should be increased in accordance with the view of DOJ's Commercial Litigation Branch, Fraud Section, that the PFCRA civil penalty amount should be the same as the maximum penalty under the False Claims Act, which is currently $11,000.

Retention of PFCRA Recoveries. The Task Force noted that "one obstacle for agencies in PFRCA actions is the non-reimbursable costs associated with pursuing a PFCRA action, including investigative fees, and costs of discovery and litigation." Out of the 36 IGs who responded to

whether the PFCRA should be amended to allow agencies to retain PFCRA recoveries to the extent necessary to make the agency whole, 92% supported this proposed amendment.

PFCRA Procedural Requirements. In its White Paper, the Task Force noted that PFCRA imposes burdensome procedural requirements that agencies do not consider worth the cost of pursuing. For example, currently, PFCRA limits the authority to refer allegations to DOJ of false claims or statements to an agency "reviewing official." This "reviewing official" is the only one who can refer allegations that have been investigated by IGs as the "investigating official" to DOJ to determine if the agency can go forward with an administrative PFCRA case.

The Task Force recommended amending the PFCRA to add a definition of "proposing official" to include the agency "reviewing official" as well as the "investigating official" to allow a much more efficient process by IGs: IGs investigate, refer allegations to DOJ, and, if approved, are then able to litigate the claims before agency "presiding officials." All 35 IGs who answered this question support this proposed PFCRA amendment.

In the same vein, the Task Force recommended amending the PFCRA definition of "presiding officer" because the statute requires that this official be an Administrative Law Judge (ALJ) or someone appointed in a manner similar to ALJs. Because some agencies don't have ALJs, the Task Force recommended amending the definition of "presiding officer" to include members of Agency Board of Contract Appeals or military judges in military organizations. Out of the 36 IGs who responded, 89% supported this proposal.

C. Other Recommendations

The Task Force also recommended three specific ideas to generally prevent and detect procurement fraud.

1. *National Procurement Fraud Database.* The Task Force recommended the creation of a national procurement fraud background check system, the "Procurement Inquiry Check System-PICS." PICS would be used by Federal, state, and local procurement officials prior to authorization of contract actions involving Federal funds. The database would be developed and maintained by the General Services Administration (GSA) and could be an expanded version of the Excluded Parties List System (EPLS), a Web-based database maintained by GSA of businesses or individuals that have been suspended or debarred by Federal agencies.[2] The PICS database would include information on debarred and suspended contractors from all participating Federal, state, and local government entities engaged in procurement and non-procurement activities using Federal funds.

Forty-two IGs answered this survey question and 93% supported the idea of a national procurement fraud database. Some respondents suggested that it would be more efficient and cost effective for PICS to be an expanded version of EPLS given that EPLS is a mandatory database and could be upgraded to include links to state and local government online databases on suspended/debarred contractors or individuals.

Some respondents commented, however, that the Government Accountability Office (GAO) had recently completed a report on the EPLS that found ineffective GSA management of the EPLS database and control weaknesses by agencies that provide the information that goes into the database. These shortcomings caused some excluded businesses and individuals to

[2] Under the FAR, Federal agencies are required to provide information about suspended or debarred companies or individuals to EPLS within five working days after exclusion becomes effective.

continue receiving federal contracts. Any consideration of PICS as an expanded EPLS should take the GAO recommendations into account when considering this proposal.[3]

2. *Allow Use of Social Security Numbers (SSN) to Identify Individuals in the EPLS.* The Task Force recommended that an exception be made to Section 7 of the Privacy Act of 1974, which provides that the Federal government may not deny any right, benefit, or privilege based on the refusal of an individual to provide his or her SSN, to enable agencies to properly identify individuals who have been debarred or suspended in the EPLS. Currently, the FAR requires agencies to provide information to the EPLS about excluded businesses or individuals, including name and address, and the contractor's DUNS number, a unique nine-digit identification number assigned by Dun & Bradstreet. If available and disclosure is authorized, agencies should also enter an employer identification number, other taxpayer identification number, or a SSN if excluding an individual.[4]

Of the 41 IGs that responded, 76% supported this proposal, while 24% opposed it. Some who opposed it cited privacy concerns concerning the use of SSNs. One respondent noted that a unique identifier other than the SSN should be considered given the requirements of Office of Management Memorandum M-07-16, which requires that agencies reduce the use

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[3] *See* GAO-09-174, February 25, 2009, accessible at http://www.gao.gov/new.items/d09174.pdf.

[4] It should be noted that the EPLS database can be searched by "Name" and "SSN." According to the EPLS Privacy Notice, the EPLS includes information such "as Social Security Numbers, Employer Identification numbers or other Taxpayer Identification Numbers, if available and deemed appropriate and permissible to publish by the agency taking the action." In addition, while the information available "on the public EPLS has been deemed publicly accessible. . .[t]he EPLS does not display SSNs or an excluded individual's residential information to public users." *See* https://www.epls.gov.

of SSN and explore alternatives for their use.[5] Another participant suggested that a Tax Identification Number for individuals other than an SSN, which is accessible from the Internal Revenue Service, should be required for individuals who do business as individuals with the Government.

3. Extending Criminal Conflict of Interest Provisions under 18 U.S.C. §208 to Contractors Who Perform Agency Acquisition Functions. The Task Force noted that the Government is increasingly outsourcing the acquisition process to contractors who may have financial conflicts of interest during the performance of their functions. Although some of these conflict issues may be addressed through contractual clauses with contractors, the Task Force believes that contractors who perform critical acquisition services similar to what other federal employees perform should be under the same criminal conflict of interest prohibition under 18 U.S.C. § 208. Therefore, the Task Force recommended amending the definitions in 18 U.S.C. § 202 to include contractors and consultants, and their employees, when they perform "key" acquisition functions for federal agencies. Ninety-five percent of the 42 IGs that responded supported this proposal.

4. *Appropriations for IG Attorney Details to DOJ.* The Task Force proposed funding to detail IG lawyers to DOJ's litigating components in order for those lawyers to prosecute or assist in prosecuting criminal or civil procurement fraud cases. The proposal is intended to provide some funds, at least in the first year, to facilitate details by reimbursing participating IGs.

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[5] This OMB memo is accessible at http://www.whitehouse.gov/omb/memoranda/fy2007/m07-16.pdf.

Currently, authority exists for details to DOJ for service under the Special Assistant United States Attorney program, and under other authorities.

Out of the 43 respondents, 56% supported appropriations for DOJ to fund and facilitate IG personnel details to DOJ to litigate procurement fraud cases; 9% supported providing appropriations directly to the IGs or another agency to act as a clearinghouse; 7% opposed the proposal; and 28% had no opinion.

Finally, some survey respondents suggested other recommendations to combat procurement fraud. I'd like to briefly address two of those recommendations.

First, some respondents noted that recent procurement fraud investigations have indicated that owners or individuals that control contractors or manage federal contracts may have criminal or civil fraud backgrounds that are not required to be disclosed under current FAR certification requirements. Currently, the FAR requires contractor certifications concerning criminal convictions or civil fraud judgments limited to three-years prior to the contract submission offer.

These respondents recommended requiring certification for all Federal contracts that the contractor has no knowledge of any convictions of civil or criminal fraud for owners, officers, or managers involved in the contract, with no time limit on the convictions or civil fraud judgments. Such certifications would provide a basis for criminal or administrative actions when individuals fail to disclose their criminal or civil fraud backgrounds and would allow agencies to prevent awarding contracts to contractors that are owned or managed by individuals with fraud backgrounds.

Second, survey respondents noted that the FAR does not apply to Legislative Branch agencies. Because Legislative Branch agencies operate under different acquisition regulations, they may be at a disadvantage in trying to prevent and detect procurement fraud, particularly if FAR changes related to the prevention and detection of procurement fraud are not reflected in the agency's acquisition regulations. These respondents recommended that consideration should be given to requiring Legislative Branch agencies to adopt FAR provisions related to the prevention and detection of procurement fraud in their acquisition regulations.

This concludes my testimony. I would be pleased to address any questions you may have. Thank you again for the opportunity to testify before the Subcommittee.

U.S. GENERAL SERVICES ADMINISTRATION
Office of Inspector General

June 9, 2009

Hon. Claire McCaskill
Chairwoman
Subcommittee on Contracting Oversight
Committee on Homeland Security and Governmental Affairs
613b Hart Senate Office Building
United States Senate
Washington, DC 20510

Dear Chairwoman McCaskill:

Thank you for the opportunity to testify before the Subcommittee on Contracting Oversight of the Senate Committee on Homeland Security and Governmental Affairs. Your leadership and dedication to identifying and ending abuses in federal contracting will help ensure that taxpayer dollars do not go to waste and that federal programs will be more effective. As an Inspector General and Vice Chair of the National Procurement Fraud Task Force (Task Force), I stand with you in this important endeavor.

Your office has forwarded post-hearing questions for the record based on the April 21, 2009, hearing of the Subcommittee. The forwarded questions included the following preamble:

The National Procurement Fraud Task Force has proposed that the federal government establish a national procurement fraud database that can be checked by federal, state, and local procurement officials to prevent contractors who have been suspended or debarred in one jurisdiction from concealing prior bad acts in another jurisdiction. According to the Task Force, contractors who have been suspended or debarred in one jurisdiction have been able to move from state to state, or among federal, state, and local governments, because contracting officials do not have access to information regarding the contractors' prior bad acts.

Under my leadership as Vice Chair of the Task Force and co-Chair (with Richard Skinner, Inspector General, Department of Homeland Security) of the Task Force Legislation Committee, we issued a "white paper" identifying the need for a national procurement fraud database. In addition, as part of our continuing interest in finding a practical solution, my office is studying ways for federal, state, and local agencies to address some of the problems posed by the parade of "bad" vendors from state to state.

There were a total of eight questions, six posed by you, and two by Senator Coburn. A copy of my letter answering Senator Coburn's questions is enclosed. My answers to each of your questions are presented below.

Question 1: ***Have you studied or documented instances where suspended or debarred contractors have obtained new contracts from different states or branches of government?***

Answer: Because of the lack of a national database of suspended/debarred individuals or comprehensive coverage through publicly accessible sites, it is impossible to determine the extent to which debarred individuals and companies may be receiving contracts in other jurisdictions. My staff reviewed the websites of all 50 states and found that less than half currently have publicly accessible websites that list suspended/debarred individuals and contractors, although some others apparently have such lists available for state employees. We note, however, that the GAO report, Excluded Parties System List, Suspended and Debarred Businesses and Individuals Improperly Receiving Federal Funds (GAO-09-174), shows that debarred federal contractors continue to receive federal contracts. We fully expect the result is the same for state governments, which do not even have a shared database.

Question 2: ***Please provide all relevant details regarding these instances.***

Answer: We offer one example that demonstrates the potential harm from not having a national debarment database that includes state actions. The example, which we found through work done by the Task Force Information Sharing Committee, which I chair, illustrates the need for a comprehensive source of information on individuals and contractors debarred by any jurisdiction or authority, in order to prevent misuse of federal funds passed through to state and local governments. We note, however, that it appears the contract awards in different jurisdictions in this example predated the original debarment.

Statewide Hi-Way Safety, Inc., and its owner (George Smith, Jr.) received contracts in at least three states – Delaware, New Jersey, and Pennsylvania. They were debarred and convicted of fraud in New Jersey and subsequently convicted of fraud in federal court in connection with work done in Pennsylvania. The company, which created a public safety risk by installing defective guard rails and barriers, was not listed as suspended in the Excluded Parties List System (EPLS) until 11 months after being convicted in federal court and nearly 2½ years after being debarred in New Jersey. A brief chronology follows.

June 16, 2005	The Delaware Department of Transportation awarded Statewide Hi-Way a contract for guardrail construction.
Nov. 29, 2005	The New Jersey Attorney General's office announced that Mr. Smith and Statewide Hi-Way had been indicted for (1) falsely certifying to the Department of Transportation that Statewide Hi-Way installed high-quality energy-absorbing crash cushions on

state highways when they had substituted inferior products and (2) theft by deception.

December 2005	The New Jersey Department of Transportation debarred Mr. Smith and Statewide Hi-Way due to the installation of defective guardrails and barriers and a failure to pay subcontractors from the funds they collected from the state during a number of construction projects awarded between 2001 and 2004.
June 2006	Statewide Hi-Way and Mr. Smith pled guilty in New Jersey state court.
Feb. 9, 2007	Mr. Smith was charged by the United States Attorney for the Eastern District of Pennsylvania with offenses associated with defrauding the Federal Highway Administration and the Pennsylvania Department of Transportation by using substandard construction materials in guardrails on federally funded highway projects.
April 2007	Mr. Smith pled guilty in a Philadelphia federal district court to defrauding the Pennsylvania Department of Transportation by installing deficient guardrails.
Sept. 10, 2007	The federal district court sentenced Mr. Smith to 27 months of imprisonment and ordered him to pay restitution of more than $630,000.
Sept. 14, 2007	The New Jersey state court sentenced Mr. Smith to a prison term of 36 months (to be served concurrently with the federal time) and a fine of $19,523; Statewide Hi-Way was fined $103,161.
March 4, 2008	Mr. Smith and Statewide Hi-Way were entered into the EPLS as suspended.

The risk to the public from the conduct of Mr. Smith and Statewide Hi-Way was explained well by the United States Attorney for the Eastern District of Pennsylvania and the New Jersey Attorney General. The United States Attorney stated, "Our main concern is the potential risk that substandard materials might pose to motorists. In this case, the defendant knowingly used substandard materials on projects designed to protect hundreds of thousands of motorists." Similarly, the New Jersey Attorney General noted, "This contractor didn't just cheat the State and its taxpayers financially; he put motorists at risk. We will vigorously prosecute contractors who engage in fraud and misconduct involving State contracts, particularly when they compromise public safety."

Question 3: ***Is recent allocation of stimulus funding to the states at increased risk of waste, fraud, or abuse as a result of this type of activity?***

Answer: Spending programs emphasizing a rapid commitment and use of federal funds during extraordinary times may be seen by unscrupulous persons or contractors as an opportunity to substitute lesser quality products or to circumvent procedures designed to ensure cost-effectiveness. We believe that risk is heightened by the lack of an effective system to ensure that all jurisdictions are aware of unscrupulous contractors that already have been debarred. The amount and timing of stimulus funding will pose challenges for administering and overseeing those expenditures. While we are taking steps to meet those challenges with the limited resources available to GSA OIG, a database of debarred contractors and individuals that extended across jurisdictions would help to reduce the risks.

Question 4: ***What difficulties are there in attempting to combine the different suspension and debarment systems now in use into one system?***

Answer: There are a number of potential difficulties in attempting to combine the different systems now in use into one system, but they are not insurmountable. These issues include the ease of non-participation, the use of similar names by debarred and legitimate contractors in different states, differing standards and criteria for debarment, conflicting privacy rules, and the diversity of current systems.

In the absence of incentives for participation – or disincentives for not participating – the press of other business may make it easy to ignore the issue of debarment. An effective system will need some type of reliable mechanism to ensure all data is entered timely and accurately. In that connection, many states may depend upon reporting by local authorities or others to ensure the currency of debarment listings, and staffing may be inadequate to maintain up-to-date status information on each individual or contractor.

A single system must also ensure that debarred individuals and companies are identified accurately and adequately, so that the debarred entity cannot simply change its name and legitimate contractors with similar names are able to continue to provide goods and services without interruption or aggravation. This may involve the use of social security or employer identification numbers, which may also raise privacy concerns. The listing of a contractor by one jurisdiction, however, will not necessarily result in debarment in another jurisdiction; it will merely provide the other jurisdiction with notice and an opportunity to investigate *before* awarding a contract.

Criteria for debarment used by one state also may be different from the standards used by another state or by the federal government. The usefulness of any combined system will depend to some degree on the level of disclosure of the criteria used and reasons for debarment. Similarly, states may have differing privacy rules, which could affect the amount of information that can be disclosed. As noted above, a combined system – regardless of the information provided or the different standards employed – will at least

provide other jurisdictions with notice and an opportunity to investigate a contractor's conduct in another jurisdiction *before* awarding a contract.

***Question 5:* Section 872 of the FY 09 National Defense Authorization Act (NDAA) requires creation of a database to track the integrity and performance of contractors. What are your views on the best way to utilize this new database?**

Answer: Congress took action through the NDAA to address the problems that result from the fact that there is no single database at the federal level. The mandated database and implementing regulations are still under development [FAR Case 2008-027], and must be implemented by October 14, 2009. One key issue in successful implementation will be the steps taken to ensure that all agencies timely and accurately input data and that those awarding contracts actually check the database before making an award. While the NDAA requires development of policies to ensure the timely and accurate input of information into the database, those policies are still under development. Similarly, the legislation requires documentation of the manner in which the information in the database was considered; another possibility would be to provide some direct consequences of not meeting that requirement. We believe that the best way to utilize the database is to make it available not only to federal acquisition officials, but also to state and local officials. We will review the rule, when it has been developed, and submit comments as appropriate.

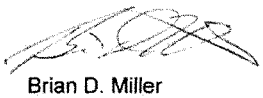
***Question 6:* Could this section of the NDAA be amended to accomplish the goal behind the National Procurement Fraud Task Force's proposal to create a national database to prevent contractors who have been suspended or debarred in one jurisdiction from avoiding detection in other jurisdictions?**

Answer: Yes. Section 872 of the NDAA provides a significant step toward creating such a database. When implemented, the data required to be included can serve as an excellent roadmap to determine contractor integrity at the federal level.

The Task Force proposed creating a Procurement Inquiry Check System that would include state participation. The NDAA provides that, to the maximum extent practical, the database should include information in connection with the award or performance of a contract or grant with a state government. We hope that steps will be taken to increase state participation in this database, and suggest these provisions might also be extended to include large local governments with contracting authority. For example, the Task Force suggested that all Federal grants or assistance programs be authorized to permit localities and units of government to set-aside up to 1 percent of program funds for the development and operation of contractor suspension and debarment programs and to facilitate national sharing of such performance information. We further suggest that the time frame for considering contractor integrity may be more effective at ten years, rather than five years as currently provided in section 872.

Thank you again for the opportunity to testify before the Subcommittee and for the opportunity to respond to these post-hearing questions. Again, it was a distinct privilege to be part of the first hearing of this Subcommittee on Contracting Oversight, and, as one of the authors of the Task Force Legislation Committee's White Paper, I was pleased that the White Paper was useful to you. Please feel free to contact me or my Special Assistant for Communications and Congressional Affairs, Dave Farley, at (202) 219-1062, if there is any additional information we can provide.

Sincerely,



Brian D. Miller
Inspector General
General Services Administration

Enclosure
cc: Hon. Susan Collins, Ranking Member

U.S. GENERAL SERVICES ADMINISTRATION
Office of Inspector General

Hon. Tom Coburn
Subcommittee on Contracting Oversight
Committee on Homeland Security and Governmental Affairs
613b Hart Senate Office Building
United States Senate
Washington, DC 20510

Dear Senator Coburn:

Your office has forwarded post-hearing questions for the record based on the April 21, 2009 hearing of the Subcommittee on Contracting Oversight of the Senate Committee on Homeland Security and Governmental Affairs. You posed two questions to the panelists on the important problem of non-competitive contracting.

Abusive no-bid contracts undermine the integrity of the contracting process and sap the life-blood from the competitive process. The competitive process ensures that the taxpayers get the best value for their hard-earned tax dollars. There is no end to the number of federal prosecutions and civil fraud cases against companies that have benefited improperly from collusion, fraud, kickbacks, and sole-source contracts. I am heartened by the President's commitment to ending these abuses and getting the best value for the American taxpayers. I also appreciate your efforts on behalf of taxpayers and the commitment of the Subcommittee on Contracting Oversight to the competitive process.

Your questions and my answers are listed below as follows:

Question 1: Do you believe that non-competitive contracting has led to significant waste, fraud, and abuse in federal contracting?

Answer: Yes. As past cases illustrate, a lack of competition can greatly increase the risks of fraud, waste, and abuse. In turn, where competition is present, the benefits include improved levels of service, market-tested prices, and best overall value. While there are controls that should limit improper sole source contracts, unfortunately history illustrates that those controls do not work consistently. The risks include giving contracts to friends or relatives, continually renewing contracts without seeking new competition, and giving contracts to known entities rather than looking for best value. While a contractor's successful track record is an appropriate consideration (FAR § 1.102(b)(1)(ii)), it is not the only consideration, and competition generally should result in both improved quality and lower costs.

As Vice Chair of the National Procurement Fraud Task Force (Task Force), I note that the Task Force has helped focus unified resources on prosecuting federal, white-collar crimes, including abusive no-bid contracts and the collateral offenses that frequently form a part of the scheme, such as bribery and kickbacks.

Several examples are summarized below.

- Edward Goldblatt, a former purchasing warehouse assistant at the New York Power Authority (NYPA), pled guilty in federal district court to conspiring to defraud the NYPA in a bribery scheme in which he accepted $167,000 in kickback payments from a vendor and defrauded the NYPA by causing it to pay approximately $86,000 in overcharges. He and another individual were ordered to pay $253,836 in restitution. As stated by Scott Hammond, Acting Assistant Attorney General in charge of the Antitrust Division, in a January 23, 2009, Department of Justice press release, "Today's sentencing should make clear that those who conspire to subvert the competitive bidding process will be held accountable. The Department of Justice will not hesitate to prosecute those who defraud their employers, both public and private, for personal gain by ignoring competition standards."

- Julian Jenkins, an architect, was charged with conspiracy, bribery, and obstruction of justice. According to the October 30, 2008, press release by the Department of Justice, Jenkins provided free architectural plans and fabricated fireplaces to Dr. Roy Johnson, a former Chancellor of Alabama's Department of Postsecondary Education, to influence and reward Johnson for ensuring future and existing "no bid" State contracts would be directed to Jenkin's architectural firm. As stated by U.S. Attorney Alice Martin, "Lucrative contracts with the State of Alabama and the Department of Postsecondary Education are no longer for sale in Alabama."

- Bonnie Murphy, while serving as a Defense Department employee deployed to Iraq, accepted jewelry worth approximately $9,000 from an Iraq contracting company that she recommended for several contracts, including a sole source award. She pled guilty to accepting compensation from the Iraq contractor in exchange for helping it obtain United States contracts.

- Kenneth Harvey was the chief of the Acquisition Logistics and Field Support Branch within the U.S. Army Intelligence and Security Command (INSCOM). Harvey recommended that INSCOM award a sole source contract to Program Contract Services, Inc., owned by Michael Kronstein. In exchange, Kronstein caused over $40,000 to be paid to Harvey's spouse and others for Harvey's benefit. Both Harvey and Kronstein were convicted of fraud-related charges.

Question 2: ***Last year, then-candidate Barack Obama stated "for too long, Washington politicians have wasted billions on no-bid contracts" and he promised to "end abusive no-bid contracts." As part of his "Blueprint for Change" Obama pledged to "ensure that federal contracts over $25,000 are competitively bid." Do you support President Obama's view on no-bid contracts?***

Answer: Yes, I fully support President Obama's effort to end abusive no-bid contracts. The underlying tenet, as stated by the President in his memorandum on Government Contracting of March 4, 2009, is that noncompetitive contracts should be used only in those circumstances where their use can be fully justified and where appropriate safeguards have been put in place to protect the taxpayer. I hope that the President's statement will lead to a renewed emphasis on the importance of competition. My office will continue to examine contracting actions for compliance with the requirements for full and open competition.

Thank you for the opportunity to testify before the Subcommittee and for the opportunity to respond to these post-hearing questions. Please feel free to contact me or my Special Assistant for Communications and Congressional Affairs, Dave Farley, at (202) 219-1062, if there is any additional information we can provide.

Sincerely,

Brian D. Miller
Inspector General
General Services Administration

cc: Hon. Claire McCaskill, Chair
Hon. Susan Collins, Ranking Member

Senator Tom Coburn
Questions for the Record to Skinner
Subcommittee on Contracting Oversight Hearing
"Improving the Ability of Inspectors General to Detect, Prevent, and Prosecute Contracting Fraud"
April 21, 2009

1. **Do you believe that non-competitive contracting has lead to significant waste, fraud, and abuse in federal contracting?**

As we have previously reported, the Department of Homeland Security (DHS) tends to focus its acquisition strategies on the urgency of meeting mission needs, rather than balancing urgency with good business practices. This excessive attention to expediency leaves DHS and taxpayers vulnerable to spending millions of dollars on unproductive homeland security investments. Common themes have emerged from our audits and inspections of individual contracts—poorly defined requirements and inadequate oversight contributing to ineffective or inefficient results and increased costs.

Programs developed under a sense of urgency sometimes overlook key issues during program planning and requirements development. An over emphasis on expedient contract awards also hinders competition, which frequently results in increased costs or improper sole source contracts. For example, Customs and Border Protection (CBP) did not comply with federal regulations when it awarded Chenega Technology Services Corporation a sole source cost-plus-award-fee contract under an incorrect industry classification code. Had CBP used the correct classification, the contractor would have been ineligible for the sole source award. This action prevented eligible small businesses from competing for a nearly $475 million contract and might not have provided the best value for the government. Through September 2007, CBP had paid the contractor more than $8 million in award fees. About 80% of the award fees paid related to compliance-based standards, rather than quality, and 20% did not relate to cost, schedule, or technical performance outcomes at all. (*Customs and Border Protection Award and Oversight of Alaska Native Corporation Contract for Enforcement Equipment Maintenance and Field Operations Support*, OIG-08-10, October 2007 and *Customs and Border Protection Award Fees for Enforcement Equipment Maintenance and Field Operations Support*, OIG-09-18, February 2009).

2. **Last year, then-candidate Barack Obama stated "for too long, Washington politicians have wasted billions on no-bid contracts" and he promised to "end abusive no-bid contracts." As part of his "Blueprint for Change" Obama pledged to "ensure that federal contracts over $25,000 are competitively bid." Do you support President Obama's view on no-bid contracts?**

Federal law and policy require contracting officers to promote and provide for full and open competition in soliciting offers and awarding Government contracts, with certain exceptions. This is a case where the exceptions have swallowed the rule. Exceptions to awards requiring full and open competition include: 1) only one responsible source that will satisfy agency requirements (sole source); 2) unusual and compelling urgency; 3) industrial mobilization, engineering, developmental or research capability, or expert services; 4) international agreements; 5) national security; 6) public interest; and 7) awards authorized or required by statute. Under the latter category, required sources include Federal Prison Industries; qualified nonprofit agencies for the blind or other severely disabled; government printing and binding; the 8(a) program; HUBZone small businesses; service disabled veteran owned small businesses; and other small businesses.

We reviewed the Transportation Security Administration's (TSA's) award of sole source contracts for fiscal year 2006 for compliance with the policy favoring full and open competition. While TSA generally complied with the policies, it did not always document market analysis, obtain necessary approvals, or describe actions to remove barriers to future competition. Consequently, TSA does not know whether its contract awards are in the best interest of, or provide the best value to, the government. We recommended internal control measures to increase the likelihood that any future sole source awards are appropriate. (*Transportation Security Administration Single Source (Noncompetitive) Procurements*, OIG-08-67, June 2008).

In another example, the Federal Emergency Management Agency (FEMA) was forced to act quickly to respond to the urgent need for housing following Hurricane Katrina. FEMA awarded noncompetitive technical assistance contracts to four companies to provide comprehensive project management services for temporary housing to include all phases of design, planning, budgeting, construction, destruction, and site restoration. While the initial noncompetitive awards may have been justified, the combination of weaknesses in acquisition planning and contract oversight led to waste of government funds, and we questioned costs of $45.9 million of the $3.2 billion contract obligation. The weaknesses in procurement practices and contract management correlated with uncontrolled growth in the amount of funds expended for the contracts. (*Hurricane Katrina Temporary Housing Technical Assistance Contracts*, OIG-08-88, August 2008).

Post-Hearing Questions for the Record
Submitted to Mr. Richard Skinner
From Senator McCaskill

"Improving the Ability of Inspectors General
To Detect, Prevent, and Prosecute Contracting Fraud"
Tuesday, April 21, 2009, 2:30 P.M.

United States Senate, Subcommittee on Contracting Oversight,
Committee on Homeland Security and Governmental Affairs

One of the three key areas you outlined in your written testimony was the need to improve ethics and internal controls among contractors. While federal employees are bound by criminal and civil rules regulating ethical obligations, most contractors performing the same functions as these federal employees are not.

1) Can you explain the differences between ethical requirements for federal employees and contractors?

There are numerous statutory and regulatory provisions applicable to federal employees that seek to protect against conflicts of interest and promote the integrity of the government's decision making process—e.g., the Ethics in Government Act; the Procurement Integrity Act; the criminal provisions in title 18, United States Code, relating to representational and post employment activities and financial conflicts; and the Standards of Ethical Conduct for Employees of the Executive Branch, 5 CFR Part 2635. Issues such as financial conflicts of interest, impartiality concerns, misuse of information, misuse of apparent or actual authority, and misuse of property are all areas that could result in harm to the public fisc and loss of public confidence in government. These areas of conduct are governed by law and regulation with respect to federal employees.

However, contractor employees are not subject to the same statutory and regulatory framework of ethics rules governing federal employees, even though they may be working side by side in the federal workplace. For example, most contractor employees are not required to disclose conflicting financial interests; they can purchase from businesses in which they or family members have an interest without any requirement to disclose this potential conflict. Most contractors have no prohibition on gifts to and from potential subcontractors. There are no clear standards on abuse of position or government equipment by contractor employees. The criminal prohibition on bribery, kickbacks, or other graft, 18 U.S.C. § 201, is one of the few ethics related laws that applies on both sides of the government contract.

In a more general sense, the Federal Sentencing Guidelines provide incentives for contractors to establish effective ethics programs, and for publicly traded companies, the Sarbanes-Oxley Act requires them to establish procedures for handling ethics concerns. However, there remain wide differences between ethics requirements for federal and contractor employees.

2) Are current contract provisions requiring ethics controls sufficient? If not, in what ways do they need to be strengthened?

When the government contracts for goods, there is no compelling need to require contractors to comply with federal ethics rules. However, with the growth of contracting for services, contractors are increasingly performing a wide array of work, including sensitive and critical work that closely supports inherently governmental functions, including policy and spending decisions (acquisition support, budget preparation, developing or interpreting regulations, engineering and technical services, and policy development). Service contracting does raise the question of whether contractor employees should be held to similar ethics standards as are federal employees.

Recent changes to the Federal Acquisition Regulation (FAR) require certain contractors to have written codes of ethics and business conduct, employee ethics training programs, internal control systems, a mechanism for employees to report instances of suspected improper conduct, and disciplinary codes for improper conduct. It also requires mandatory reporting to Inspectors General of credible evidence of violations of certain criminal laws involving fraud, conflict of interest, bribery, or gratuities, and the civil False Claims Act. These changes emphasize the importance of business integrity by companies competing to do business with the government. However, these rules do not address personal conflicts of interest or other safeguards to assure that employees of service contractors providing advice and assistance to government decision makers do so impartially.

The Director of the Office of Government Ethics, Robert Cusick, has stated that the lack of ethical obligations and enforcement mechanisms for government contractors who "can commit equally offensive and economically damaging" acts is a significant problem. The recent amendment to the Federal Acquisition Regulation (FAR) requiring government contractors to develop their own code of business ethics and compliance does not provide for enforcement of any such violations.

3) Do you agree with Mr. Cusick's assessment?

Yes. Increasingly, contractors support mission critical functions and have the potential to significantly influence government decisions. For example, at the front end of the acquisition process, contractor employees study alternative ways to acquire needed capabilities, help develop program requirements and financial plans, draft requests for proposals and evaluate responses, and provide advice on past performance. In the course of contract performance, contractor employees analyze other contractors' cost, schedule, and performance data, assist in award fee determinations, and research and reconcile payment discrepancies. All of these tasks are carried out without the government knowing what, if any, conflicting financial interests the contractor employees may have.

4) Does the FAR amendment sufficiently resolve the concerns raised by you and others in the Inspector General community?

The FAR changes are a step in the right direction. However, as the Acting Assistant Attorney General for the Criminal Division stated, on behalf of the National Procurement Fraud

Task Force, in his July 18, 2008, letter to the FAR Council, the FAR "is silent on conflicts of interest associated with contractor employees. As a result, the integrity of the government contracting process may be substantially compromised in situations where the government finds itself relying on contractor employees for conflict free advice and conduct." He urged a rule that would require service contractors to certify annually that they have 1) trained their employees on relevant responsibilities and restrictions while performing government work, and 2) collected from their employees the necessary financial information to identify employees with personal conflicts of interest and take corrective action.

5) Have you encountered activity on the part of contractor employees that, though currently unregulated, is potentially damaging to government interests?

We have two examples of such activity within DHS:

1) We have recently identified in *Improvements Needed in Federal Emergency Management Agency Monitoring of Grantees*, (*OIG-09-38)*, an example of contractor employees performing inherently governmental functions which demonstrates the need for financial disclosure by contractor employees. Specifically, in a FEMA grant program, we discovered contract staff approving grant payments and evaluating grantee status reports without review and approval by FEMA program personnel. Performance of these functions by contractor employees who are not required to disclose financial interests significantly raises the risk that their decisions, and thereby government decisions, are not objective and impartial.

2) In July 2007, an employee of the U.S. Virgin Islands government was sentenced to serve 6 months home confinement, 36 months supervised probation, make restitution of over $97,000, pay a fine of $1000, and a special assessment fee for conspiracy and fraud in connection with federal programs--the Home Protection Roofing Program administered by FEMA--for his part in directing contracts to a business partner. That partner owned another business with a third partner and the government employee directed federally funded contracts to that other business. Had the partner been required to disclose financial interests as a party to the government contract, the biased contracting may have been revealed much earlier and perhaps even prevented. It was only because of allegations by the third partner that the scheme was uncovered.

Additionally, the Acting Assistant Attorney General, in his letter referenced above, cited an example under a Department of Defense (DOD) contract of a service contractor employee who had been hired by a second contractor that also did business with DOD. The second contractor paid the employee for information to which the employee had access only by virtue of his work performed under the first contract. There is no requirement that the contract employee disclose his conflict of interest to either contractor, nor any requirement that either contractor, knowing of the conflict, disclose it to the government, even though the employee's actions may harm the government's interests.

6) Do you believe that contractor employees performing the same work as federal employees should be bound by the same ethical obligations as federal employees?

With the government's increasing use of service contractor employees to assist in performing functions closely associated with inherently governmental functions, it is essential that the government have a mechanism that ensures contractor employees are not biased and do not have personal conflicts of interest and that the same ethical principles which apply to Federal employees apply to service contractor employees. Several efforts are ongoing in this area.

In March 2008, the FAR Council solicited comments on how to address service contractor employees' personal conflicts of interest in the most effective and efficient way to promote ethical behavior. Section 841 of the Duncan Hunter National Defense Authorization Act for Fiscal Year 2009, Pub. L. 110-417 (Oct. 14, 2008), requires the Administrator of the Office of Federal Procurement Policy (OFPP) to issue policy to prevent personal conflicts of interest by contractor employees performing acquisition functions closely associated with inherently governmental functions on behalf of a federal agency, including a definition of the term "personal conflict of interest." The statute also requires a joint review by the Office of Government Ethics and OFPP to identify other areas that raise similarly heightened concerns for potential personal conflicts of interest on the part of contractor employees. A report on this review is due to Congress by March 1, 2010.

Post-Hearing Questions for the Record
Submitted to Mr. Charles W. Beardall
From Senator McCaskill

"Improving the Ability of Inspectors General
To Detect, Prevent, and Prosecute Contracting Fraud"
Tuesday, April 21, 2009, 2:30 P.M.

United States Senate, Subcommittee on Contracting Oversight,
Committee on Homeland Security and Governmental Affairs

In your written testimony, you stated that a recent DCIS investigation was hindered when an employee found out that, as a subcontractor, she would not receive whistleblower protection because such protection was only available for contracts awarded with stimulus funds. You also stated that 61% of DCIS investigations involve contracting.

1) What percentage of Defense Department contracting involves stimulus funds?

   The Department received approximately $12 billion in stimulus funds, which is about 3% of the dollar value ($390 billion) of DoD contracts awarded in FY 2008 (contracting data for FY 2009 is not available).

   It should be noted that stimulus funds allocated to support operations and maintenance and research and development are available for obligation through FY 2010. Funds related to military construction are available through FY 2013.

2) Of the 61% of DCIS investigations involving contracting, how many of those investigations also involve subcontracts?

   As of April 11, 2009, approximately 1,109 DCIS investigations involve contract fraud. Sixteen percent, or 174, of these investigations targeted subcontractors.

3) How has this limited subcontractor whistleblower protection impacted your ability to: (A) combat fraud, waste and abuse; and (B) protect potential whistleblowers?

   (a) If employees of subcontractors learn they may not be protected, they are likely to be hesitant to report allegations of fraud and corruption and assist in investigations. An example was cited during my testimony. An employee of a sub-contractor was very hesitant to provide DCIS special agents information once she learned she would not be afforded whistleblower protections. Although the employee eventually provided information, she would have been more willing to assist investigators had she been afforded protection against reprisal.

   The case cited is merely an example. It is impossible to ascertain the extent to which this issue impacts subcontractor employees' willingness to report fraud and corruption.

   (b) Subcontractor employees who wish to report allegations involving fraud, waste, and abuse are not currently afforded whistleblower protections.

4) Do you support a request to extend whistleblower protection to subcontractors for all federal contracts?

   I whole-heartedly support this request.

Senator Tom Coburn
Questions for the Record to Beardall
Subcommittee on Contracting Oversight Hearing
"Improving the Ability of Inspectors General to Detect, Prevent, and Prosecute Contracting Fraud"
April 21, 2009

1. **Do you believe that non-competitive contracting has lead to significant waste, fraud, and abuse in federal contracting?**

Although we have not identified circumstances whereby utilization of non-competitive contracting was the sole factor resulting in fraud, waste, and abuse, bypassing competitive processes certainly increases the potential for impropriety on the party of individuals willing to engage in unscrupulous activity.

2. **Last year, then-candidate Barack Obama stated "for too long, Washington politicians have wasted billions on no-bid contracts" and he promised to "end abusive no-bid contracts." As part of his "Blueprint for Change" Obama pledged to "ensure that federal contracts over $25,000 are competitively bid." Do you support President Obama's view on no-bid contracts?**

Use of competitive contracting normally ensures taxpayer funds are spent in an economical manner. When competitive processes are bypassed, the potential for fraud, waste, and abuse increase. We support utilization of competitive processes to the greatest extent practicable.

Senator Tom Coburn
Questions for the Record to Ogden
Subcommittee on Contracting Oversight Hearing
"Improving the Ability of Inspectors General to Detect, Prevent, and Prosecute Contracting Fraud"
April 21, 2009

1. Do you believe that non-competitive contracting has lead to significant waste, fraud, and abuse in federal contracting?

   The Council of Inspectors General on Integrity and Efficiency, which was created by the IG Reform Act of 2008, has not done any studies of this issue. I understand that Mr. Miller and Mr. Skinner, as Co-Chairs of National Procurement Task Force Legislation Committee, have answered this question in more detail and I would therefore defer to their response on this issue.

2. Last year, then-candidate Barack Obama stated "for too long, Washington politicians have wasted billions on no-bid contracts" and he promised to "end abusive no-bid contracts." As part of his "Blueprint for Change" Obama pledged to "ensure that federal contracts over $25,000 are competitively bid." Do you support President Obama's view on no-bid contracts?

   We fully support the President's view that competition is important and should result in better products and cost-savings for the Federal government and the taxpayers.

Post-Hearing Questions for the Record
Submitted to Mr. J. Anthony Ogden
From Senator McCaskill

"Improving the Ability of Inspectors General
To Detect, Prevent, and Prosecute Contracting Fraud"
Tuesday, April 21, 2009, 2:30 P.M.

United States Senate, Subcommittee on Contracting Oversight,
Committee on Homeland Security and Governmental Affairs

The National Procurement Fraud Task Force has recommended extending the criminal conflict of interest provisions currently applicable to federal employees to contractors performing "key" acquisition assistance functions. According to the Task Force, this remedy is needed to prevent potential financial or other conflicts that may arise from a contractor's prior business relationships. In your written testimony, you indicated that 95% of the IGs you surveyed supported this proposal.

1) Given this support, what is your response to those who argue that these conflicts should be resolved in contractual clauses or left to the businesses to decide?

   A: The National Procurement Task Force Legislation Committee (Task Force) has addressed this issue in its White Paper. Currently, the Federal Acquisition Regulation (FAR) has some coverage on organizational conflicts of interest at Part 9.5. The FAR addresses this issue through contractual clauses and restrictions on future work. However, the FAR places the burden on agency contracting officers to find and address organizational conflicts of interest. The Task Force believes it is appropriate to make contractors primarily responsible for screening for and preventing such conflicts. The extension of the criminal conflict of interest provision would more effectively deter contractors with conflicts from engaging in conduct that benefits a related entity or individual.

   Nevertheless, the Task Force is also considering a contractor self-certification requirement on conflicts of interest and is interested in the comments and findings of the March 26, 2008, advance notice of proposed rulemaking by the Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council on contractor personal and organizational conflicts of interest (73 Fed. Reg. 15961; 73 Fed. Reg. 15962).

The FY 09 National Defense Authorization Act (NDAA) directs the Administrator of the Office of Federal Procurement Policy to issue conflict of interest policy for contractor employees who provide acquisition support functions.

2) Does this provision address the Task Force's recommendations?

A: It would appear that the provision addresses the intent behind some of the recommendations. For example, section 841(a) of the NDAA requires the Administrator to develop a policy to "prevent personal conflicts of interest by contractor employees performing acquisitions functions closely associated with inherently governmental functions (including the development, award, and administration of Government contracts)." In addition, Section 841(b) requires the Administrator, in consultation with the Director of the Office of Government Ethics, to review the FAR and determine whether any revisions are necessary to address personal conflicts of interest by contractors and to prevent organizational conflicts of interest in Federal contracting. However, because my testimony and role was focused on the survey results of the IG community on the Task Force recommendations, I would defer to Messrs. Skinner and Miller as Co-Chairs of the Task Force for their response.

3) Neither the Task Force nor the NDAA have proposed that all contractor employees performing services in government agencies should be bound by the same conflict of interest rules that apply to government employees. Is this a logical next step?

A: We did not address this issue in the survey of the IG community which was the subject of my testimony, accordingly, I would respectfully defer to Messrs. Skinner and Miller as Co-Chairs of the Task Force for their response.

Section 872 of the NDAA requires creation of a database to track the integrity and performance of contractors.

4) What are your views on the best way to utilize this new database?

A: I understand this question has been addressed to the Task Force Co-Chairs. I would defer to their responses.

5) Could this section of the NDAA be amended to accomplish the goal behind the National Procurement Fraud Task Force's proposal to create a national database to prevent contractors who have been suspended or debarred in one jurisdiction from avoiding detection in other jurisdictions?

A: I understand this question has been addressed to the Task Force Co-Chairs. I would defer to their responses.

○