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HOUSE OVERSIGHT AND GOVERNMENT REFORM
COMMITTEE

STATEMENT OF

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(ACQUISITION & LOGISTICS MANAGEMENT)

BEFORE THE

HOUSE OVERSIGHT AND GOVERNMENT REFORM COMMITTEE

ON

THE EXCLUDED PARTIES LIST SYSTEM

FEBRUARY 26, 2009

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Mr. Chairman, distinguished members of the committee, I am Mike Jaggard, Chief of Staff/Policy for the Deputy Assistant Secretary of the Navy for Acquisition and Logistics Management. Thank you for this opportunity to discuss the Department of the Navy's usage, regulations, guidance and training concerning the Government-wide Excluded Parties List System (EPLS).

The Navy and Marine Corps are absolutely committed to conducting our business dealings only with responsible, ethical business partners. The Federal Acquisition Regulation (FAR) requires that purchases and contracts be awarded only to "responsible" prospective contactors, and it prohibits making a purchase or awarding a contract unless the contracting officer makes an affirmative determination of responsibility. One of the explicit elements of being a responsible prospective contractor is having a satisfactory record of integrity and business ethics. The FAR goes on to say that contracting officers should use the EPLS in making the determination of responsibility. In addition, the FAR requires that after the opening of bids or receipt of proposals, the contracting officer shall review the EPLS. Any bids received from any listed companies in response to an invitation for bids shall be rejected, unless the agency head determines in writing that there is a compelling reason to consider the bid. Similarly, proposals, quotations or offers received from any listed contractor shall not be evaluated for award or included in the competitive range, nor shall discussions be conducted with the listed offeror during the period of ineligibility, unless the agency head determines, in writing, that there is a compelling reason to do so. Finally, the FAR requires that immediately prior to award, the contracting officer shall again review the EPLS to ensure that no award is made to a listed contractor.

Notwithstanding the requirement to review the EPLS prior to award, as a general rule, the FAR allows the continuation of contracts or subcontracts in existence at the time the contractor was debarred, suspended, or proposed for debarment, unless the agency head directs otherwise. However, for those contractors who are debarred, suspended, or proposed for debarment, unless the agency head makes a written determination of the compelling reasons for doing so, the FAR explicitly prohibits the placing of orders exceeding the guaranteed minimum under indefinite quantity contracts; placing of orders under Federal Supply Schedule contracts, blanket purchase agreements, or basic ordering agreements; or adding new work, exercising options, or otherwise extending the duration of current contracts or orders.

On May 22, 2008, in response to perceived concerns that some contracting officers may have been making awards without first verifying whether or not the prospective contractor was on the EPLS, the Department of the Navy's Acquisition Integrity Office (AIO), in conjunction with my office, issued a Fraud Alert titled, "Required EPLS Verification Prior to Contract Award". In that alert, we reiterated the regulatory requirement that listed parties are excluded from receiving contracts, and agencies shall not solicit offers from, award contracts to, or consent to subcontracts with these contractors, unless the agency head determines that there is a compelling reason for such action. In addition, as a "best practice", the Fraud Alert recommended that the EPLS computer screen, confirming that a prospective contractor is not listed on EPLS, be printed out and made part of the official contract file.

In order to address the general consensus that additional training is necessary to educate and periodically remind contracting personnel of the regulatory requirements and prohibitions associated with awarding contracts to contractors listed on EPLS, recently a training brief on EPLS was developed by one of our Department of the Navy contracting offices and disseminated to all of our Navy and Marine Corps contracting activities. The briefing contained a concise consolidation of the regulatory requirements regarding EPLS and is an invaluable reference tool for our contracting officers.

SUMMARY

Mr. Chairman, the GAO has clearly identified a few transactions that slipped through and were awarded to firms who should not have received them. I firmly believe this was due, in every Department of the Navy case, to administrative oversight on small dollar transactions and misunderstanding among some on which transactions require EPLS verification prior to award. Through our fraud alert issued last May and our targeted training initiatives, we believe these weaknesses have been effectively addressed.