



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

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

UNITED STATES HOUSE OF REPRESENTATIVES

March 18, 2010

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

Contractor Performance

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

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

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

Suspension and Debarment

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

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

New Policies and Procedures

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

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

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

Conclusion

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