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STATEMENT OF  
NAVAL CRIMINAL INVESTIGATIVE SERVICE  
BEFORE THE  
HOUSE ARMED SERVICES COMMITTEE  
SEAPOWERS AND EXPEDITIONARY FORCES SUBCOMMITTEE  
ON  
CONTRACTING AND PROCUREMENT OF FLOATING SECURITY BARRIERS  
6 JUNE 2007

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Mr. Chairman, Ranking Member Bartlett, members of the subcommittee –

Thank you for the opportunity to appear before you today to address the subcommittee's concerns with regard to the Navy's procurement of boat barriers for antiterrorism/force protection purposes.

In your letter to Secretary Winter requesting this hearing, Mr. Chairman, you expressed concern that the procurement of the security barriers was not accomplished using standard contracting practices. You specifically asked that four areas be addressed. I intend to address each of these areas today, and of course will attempt to shed light on any other points about which the members may wish to inquire.

But first, Mr. Chairman, in addition to these areas of interest, I know you have also expressed a concern that “the Naval Criminal Investigative Service appears to have taken the unusual position of insisting that it lead the investigation into its own alleged wrongdoing.”

NCIS initiated its criminal investigation into the matters referenced in the *Post* article in June 2003, following both the receipt of allegations of improprieties that were reported to NCIS and indications from discussions with GSA that it was preparing an audit report that would be critical of the procurement procedures for boat barriers. NCIS initially tasked its Inspector General's office to look into these allegations and concerns. Upon determination that there may have been criminal involvement, the NCIS Inspector General's office requested that the NCIS field office in D.C. formally assume lead status. It is important to stress that, from the outset of this investigative activity, NCIS has included the Defense Criminal Investigative Service (DCIS) – the felony investigative arm of the Department of Defense Inspector General – in the totality of its investigative efforts. With only one exception, all interviews, interrogations, and polygraph examinations of former NCIS employees who were the focus of investigative activities in this case were conducted jointly with DCIS. NCIS provided DCIS, as well as the General Services

Administration's Office of the Inspector General (GSA OIG), which also has investigative equities in this matter, with every one of NCIS' 24 Reports of Investigation in this case, and importantly, DCIS generated its own investigative file in its case reporting system. Moreover, in March 2004, NCIS asked for and received assistance from the Defense Contract Audit Agency (DCAA) in the form of audit support to review task orders issued under the GSA contracts and related subcontracts in support of this investigation. There has been total, absolute transparency with our partner law enforcement agencies in this joint investigation in the interest of ensuring investigative integrity throughout its course.

That said, it is not unusual for law enforcement agencies to investigate allegations of wrongdoing by their own members. Internal investigations occur in law enforcement agencies every day in this country, whether because an officer discharges a weapon in the line of duty, or because specific allegations of wrongdoing are received. There are procedures that law enforcement agencies employ to safeguard the integrity of such investigations.

Additionally, NCIS has presented this case to the offices of three separate U.S. Attorneys for potential prosecution and civil action since April 2004. After the U.S. Attorney's Office (USAO) for the District of Maryland declined prosecution, NCIS pursued both criminal and civil action with the USAO for the Eastern District of Virginia. When that office recommended that NCIS consider other options, NCIS introduced this case to the USAO for the District of Columbia. NCIS was joined by DCIS in presenting this case for prosecution and civil action. NCIS has been diligent in pursuing prosecution and civil remedies.

Let me turn now to the four areas of interest you inquired about in your letter.

First, the requirement for these barriers was identified in the aftermath of the attack on USS COLE. On October 27, 2000, in response to that attack, Secretary of the Navy Danzig directed the establishment of a Department of the Navy Antiterrorism/Force Protection (AT/FP)

Task Force to review force protection procedures and identify further actions that could be taken to enhance the force protection posture of Naval forces worldwide. By early November 2000, each of the Fleet commanders had identified near-, medium-, and long-term steps to boost AT/FP measures. Several of the Fleets' responses identified the need for enhanced waterside security measures and systems, including boat barriers. These and other AT/FP recommendations were validated by the OPNAV staff, and some of these requirements – including those related to boat barriers – were provided to the NCIS Law Enforcement and Physical Security Department, at the time known as NCIS Code 24, for execution. Code 24 and contractor personnel conducted site surveys starting in late 2000 and worked to identify available options for boat barriers.

As part of this effort, Code 24 and OPNAV N34, which was the Navy's AT/FP element within the Office of the Deputy CNO for Plans, Policy and Operations at the time, tasked the Naval Facilities Engineering Service Center to perform operational testing of the Dunlop boat barrier, a commercial-off-the-shelf, or COTS, system. Full-scale tests of the Dunlop boat barrier system were conducted in south San Diego Bay on May 16, 2001. Though the Dunlop COTS solution, which was a British system already in use by the Royal Navy in Scotland, had limitations, it did demonstrate success against certain small boat threats and was ultimately adopted.

Of note, COTS procurement was not only deemed desirable in light of the urgency of meeting Fleet AT/FP requirements, but it also was in keeping with the prescriptions by the then-CNO, ADM Vern Clark, who in a message to Fleet and Systems Command commanders dated November 17, 2000, set forth as a basic tenet of the Navy's response to COLE the need to “[p]ursue appropriate [COTS] technology and aggressively utilize Naval research and experimentation resources to identify current and future non-lethal force protection technology solutions.” While a Navy developmental system that involved metal floats reportedly was also

evaluated at the time, it is my understanding that it was rejected due to cost, maintenance, and schedule considerations.

On a parallel track to these technology assessment efforts, Navy AT/FP policy was being re-crafted to address the post-COLE paradigm. A review of AT/FP guidance by the Navy ultimately resulted in the promulgation of Change 2 to OPNAV Instruction 5530.14C in May 2001. This revision spelled out new standards for the security of waterfront assets, including requirements for electronic waterside security systems and the “use of water barrier(s), where appropriate and/or practical,” especially for certain strategic assets.

With regard to the procurement of the boat barriers, NCIS estimates the overall cost was approximately \$32.8 million. Some of the documents needed to provide a more precise figure have been sequestered under Rule 6(e) of the Federal Rules of Criminal Procedure for possible presentation to a Grand Jury and are not available to the Navy at this time. We estimate that this \$32.8 million reflects a payment of roughly \$2.6 million to the two prime contractors and one subcontractor that would not have been paid had NCIS used Navy contracting officials. It is my understanding that the NCIS Code 24 personnel involved believed GSA would enable a more timely deployment. According to the Naval Facilities Engineering Command (NAVFAC), the barriers that were procured by Code 24 are currently in use at five CONUS and five OCONUS locations. Of the 667 barriers that were originally purchased, 535 remain deployed today, with a further 75 in useable condition in the Navy’s inventory – a total of roughly 91 percent.

Second, you requested a detailed list of all contractors, including subcontractors and consultants, who received payment for services associated with these procurements. There were two prime contractors, Northern NEF and RMES, and one subcontractor, P-CON, who were involved in these transactions. Dunlop was the vendor from which the boat barriers were purchased.

There were multiple irregularities with regard to execution of the boat barrier procurements. First, when the requirement for the boat barriers was received, Code 24 personnel asked GSA contracting officials whether a GSA Government-Wide Acquisition Contract (GWAC) could be used to effect these purchases. GWACs were established to provide GSA's government clients with easier access to information technology (IT). Code 24 had earlier used a GWAC involving a small business ("8(a)") set-aside contract vehicle for electronics-related work. GSA approved the use of this same contract vehicle to purchase the boat barriers, even though there was no significant IT connection to the boat barriers. Second, the boat barrier orders were deliberately structured so as not to exceed \$3 million each, as that funding level would have triggered competition requirements. Finally, the subcontractor who was involved in this arrangement, a single individual doing business as P-CON, was under contract to Code 24 as a security consultant to advise on the requirements for boat barriers. He also was employed as a subcontractor to the two prime contractors, in which capacity he served as a liaison between the vendor and the primes and received a fee for each task order he handled. In essence, he both helped specify requirements for affected installations and profited from the purchase of barriers slated for those installations.

Third, you inquired why NCIS was chosen as the lead organization for this large acquisition. Prior to the attack on COLE, NCIS Code 24 was responsible for program management of a number of DON physical security systems. This stemmed from additional CNO staff responsibilities held by the Director of NCIS as the Special Assistant to the CNO for Naval Investigative Matters and Security (N09N), and particularly, responsibility as Assistant for Law Enforcement and Physical Security (N09N3). Code 24 had responsibilities related to these physical security functions, which prior to the COLE bombing primarily involved design, assessment, and installation of locks, as well as of electronic security systems used at Naval

installations. With regard to boat barriers specifically, on August 17, 2001, OPNAV N34, the policy focal point for force protection within the Navy, issued a message identifying Code 24 as the Navy program manager for boat barriers.

Finally, you asked about methods that were, or should have been, in place for oversight of this project. In FY00 – the fiscal year that ended just days prior to the bombing of COLE – NCIS received \$4.4 million to execute these physical security responsibilities. The year before that, FY99, NCIS received \$844,000 to carry out these functions. In FY01, in the wake of the COLE attack, Code 24 received over \$17 million to execute physical security responsibilities – an almost four-fold increase over the preceding year’s total. Moreover, the expenditures were in investment areas that were generally different from the ones in which Code 24 had historically played a role.

In FY02, in the wake of both the attack on USS COLE and the 9/11 attacks, the dollar figure for physical security equipment that NCIS Code 24 was tasked to execute rose to nearly \$106 million – a dramatic increase over the FY00 amount. In FY03, it exceeded \$75 million.

In this environment of significantly increased budget responsibilities, unfortunately, some poor decisions were made. They were made by a handful of Code 24 personnel who are no longer with NCIS but were, for the most part, seeking the most expedient means of effecting the procurement and deployment of the boat barriers in order to meet urgent Fleet requirements, the expectations of Navy seniors, and the certainty of fiscal year deadlines.

Upon receiving significant additional funding to procure a host of other technologies, this same small number of Code 24 individuals sought to use GWACs to support non-IT acquisitions that were much larger than Code 24’s traditional acquisitions and that clearly should have been executed via other means. These activities should have triggered alarm bells – both within NCIS and with the GSA contracting officer.

Although NCIS is not the only organization that bears responsibility in this case, I accept that there were significant breakdowns in our acquisition process. It is fair to say that the means for ensuring effective oversight were simply not in place. And while I could describe hypotheticals that might have prevented these problems, I think the more productive course of action would be to describe what NCIS has actually done to correct this situation since these events first came to our attention in 2003.

NCIS has taken a number of measures to correct structural and process deficiencies revealed by these events. These include:

- The functional transfer of technology assessment, procurement, and installation responsibilities for Waterside Security Systems to NAVFAC;
- The disestablishment of Code 24;
- The creation of a new Acquisition and Logistics Department within NCIS, led by a GS-15 Supervisory Contract Specialist who serves as Deputy Assistant Director and staffed by professional contract specialists who are responsible for governing NCIS contracting initiatives;
- The implementation within the Acquisition and Logistics Department of a new Contracting Officer's Representative (COR), an expert who ensures the technical requirements are being met on the contract, this position requires formal training and certification once every three years);
- The implementation of policies and practices to ensure compliance with the Federal Acquisition Regulation (FAR), Defense Federal Acquisition Regulation Supplement (DFARS), and Navy Marine Corps Acquisition Regulation Supplement (NMCARS); and
- Compliance with the recently revised DOD/DON policy that requires the program office to consult both the Comptroller and the Contracting Officer at the DOD entity for all supplies and services over \$100,000 awarded by non-DOD entities.

Mr. Chairman, your questions referenced several critical concerns, but in closing, let me recap by touching on two. The first is whether there was organizational oversight to ensure that proper procedures were in place for the acquisition of boat barriers and, if not, what oversight should have been present. As we have described, when faced with an unprecedented requirement to rapidly provide a solution to protect U.S. Navy vessels from attack while in port, a small number of individuals seized upon a procurement program that



quickly delivered large numbers of boat barriers. Had there been adequate oversight of the project, the irregularities that occurred in the procurement of the boat barriers would not have occurred. Upon learning of the irregularities, NCIS took several remedial measures. It investigated the irregularities aggressively and persevered to the point of seeking prosecution and civil relief from three different U.S. Attorney's offices. In addition, NCIS realigned functions so that the program responsible for physical security of Naval vessels now resides in a major systems command that possesses both the engineering and procurement capabilities to successfully execute the program.

The second critical concern addresses whether the barriers that were procured were sufficient to satisfy the requirement for the physical security of U.S. Navy ships while in port. As detailed earlier, large numbers of barriers were installed in numerous ports for that purpose. The barriers have been in place for several years, and the majority of them are still in service. The purpose of the barriers was to deter and prevent small boat attacks similar to the attack on USS COLE. We do not know whether such attacks would have occurred if the barriers had not been installed, but the barriers undoubtedly have provided a deterrent.

With that let me conclude and defer to the subcommittee for questions.