

STATEMENT OF
THE HONORABLE DANIEL I. GORDON
ADMINISTRATOR FOR FEDERAL PROCUREMENT POLICY
OFFICE OF MANAGEMENT AND BUDGET
BEFORE THE
COMMISSION ON WARTIME CONTRACTING

February 28, 2011

Chairman Thibault, Chairman Shays, and members of the Commission, I appreciate the opportunity to appear before you today to discuss how the federal government can achieve better contractor performance and accountability through the use of contractor past performance information and through the suspension and debarment process. The Administration shares your desire to ensure that federal agencies spend money wisely and eliminate waste and abuse of public resources. With approximately one out of every six dollars of federal government spending awarded to contractors, it is imperative that contract actions result in the best value for the taxpayer.

In March 2009, the President directed agencies to apply fiscally responsible acquisition practices in order to cut contracting costs and better protect taxpayers from cost overruns and poor performance. The President's mandate has instilled a new sense of accountability in agencies, and the results are clear: after a decade of dramatic contract cost growth that saw annual procurement budgets more than double, from \$200 billion to over \$500 billion, this Administration has turned the tide and reduced contract spending for the first time since 1997. These are real numbers, and real savings: FY 2010 spending was \$535 billion, which is \$15 billion less than the amount spent in the prior year. Across the Executive Branch, in military and

civilian agencies, we are achieving savings by buying less and buying smarter—ending unnecessary or unaffordable contracts and adopting better buying practices.

To sustain these results and rebuild confidence in our acquisition system, we must make every possible effort to do business with contractors that place a premium on performance and quality and not do business with firms who are proven bad actors. The two tools that are the subject of today's hearing – the use of past performance information and the suspension and debarment process – can help agencies meet these goals. The regular evaluation of contractor performance and the use of those evaluations in decisions for future awards motivate contractors to perform well, and help ensure that we avoid doing repeat business with firms that don't perform well. Suspending or debarring entities can help to protect taxpayers from the abuse of contractors who have been convicted of fraud or other criminal or civil offenses indicating a lack of business honesty or integrity, or who otherwise behave unethically, or engage in poor performance of government-funded work. The system works, however, only if we are willing and able to suspend or debar entities when we shouldn't be doing business with them, and if all agencies check to be sure they are not awarding a contract to an entity that has been suspended or debarred.

Over the past two years, the Administration has taken steps to strengthen both the way we use past performance information and the suspension and debarment process. These steps are being reinforced by an overall increased emphasis on acquisition planning and contract management. For too long, we have focused so much on contract awards that we have neglected what must come before and after contract awards – sound acquisition planning and consistent

contract management – if we are to make meaningful improvements to our procurement system. Now, after years of inattention, we are finally strengthening the acquisition workforce – restoring the capacity of contract specialists to plan effectively and negotiate aggressively, and building the capability of those responsible for contract management, including program and project managers and contracting officer’s technical representatives (COTRs), to ensure vendors meet their contractual promises.

While there is much work left to do, we are now on a path for achieving real and sustained improvement. Today, I would like to first briefly highlight some of the steps that have been taken to improve the way we collect and use information about contractors’ past performance, and then touch on some of our work to better protect the integrity of our acquisition system, including through the suspension and debarment process.

Improving the Collection and Use of Contractor Performance Information

For more than 15 years, our procurement statutes, implemented in the Federal Acquisition Regulation (FAR), have mandated use of contractor past performance information in most contract award decisions. Despite the obvious value of past performance information, turning good law into good practice has not been easy. Collection methodologies have been inadequate, inconsistent, or both: some agencies have used paper-based processes, while others have used computerized databases – but with systems inaccessible to other agencies. Even when we have collected information, it has too often been too sparse to be useful to contracting officials making subsequent contract award decisions. To remedy these problems, the FAR was amended in July 2009 to require that agencies submit electronic records of contractor

performance into a single, web-based government-wide repository – the Past Performance Information Retrieval System (PPIRS) – and identify agency officials responsible for preparing evaluations.

A number of best practices have emerged from initial efforts to implement the new FAR requirements. For example:

- The Department of Defense has developed a compliance tracking tool (that is, a tool to check that past performance has been entered into the database) that will soon be rolled out to civilian agencies to assist them with their compliance and oversight efforts.
- The Department of Homeland Security has developed a quality checklist to improve the information included in past performance evaluation reports.
- The Senior Procurement Executive (SPE) at the National Aeronautics and Space Administration receives a monthly delinquency report to monitor and manage compliance.
- The Environmental Protection Agency (EPA) holds an annual past performance “stand-down” day where its SPE discusses the status of compliance efforts with EPA program officials.
- The Department of Education has issued guidance delineating the roles and responsibilities of stakeholders in the contractor assessment process.
- The Department of Energy has issued guidance that includes examples of desirable and inappropriate past performance language.
- The Department of Health and Human Services, an early adopter in the use of past performance information, has issued internal guidance for its operating divisions that shares past performance practices that have been used successfully by other agencies.

Despite these promising steps, OFPP has found that overall agency progress in transitioning to PPIRS has been slow. As summarized in a recently issued report, we conducted a review that included looking at a sample of nearly 700 past performance reports from the 10 largest procuring agencies, and found that too often no information about a contractor’s

performance was entered into PPIRS, and the reports that were entered often included too little information to be useful to other contracting officers making award decisions. The report is included in OFPP's January 21, 2011 memorandum to Chief Acquisition Officers and Senior Procurement Executives, available at http://www.whitehouse.gov/sites/default/files/omb/procurement/contract_perf/PastPerformanceMemo-21-Jan-2011.pdf. Some of the deficiencies that we identified are probably due to lack of training on the new requirements, while others may be attributable to the need to acclimate to a central system, evolving requirements, and staff shortages.

We are taking a number of steps to improve both compliance (that is, ensure that information about a contractor's performance is entered in PPIRS) and the quality of information entered. The Contractor Performance Assessment Reporting System (CPARS) has been established as the government-wide input function for PPIRS, and an interface has been built to the Federal Procurement Data System so agencies can more easily determine the size and age of acquisitions to determine whether reporting requirements are triggered. A proposed FAR rule will soon be published to standardize evaluation factors and performance ratings. Further, the Federal Acquisition Institute will establish federal-wide training on how best to report on contractors' past performance.

For their part, agencies will strengthen their past performance reporting guidance and management controls by taking actions that include: (1) establishing clear roles and responsibilities for those responsible for preparing and reviewing the interim and final evaluations; (2) prioritizing assessment of high-risk or complex contracts and orders, and setting

compliance and quality targets; and (3) assigning an agency point of contact to be accountable for updating agency guidance, training the workforce, developing oversight mechanisms, and identifying system improvements.

OFPP will continue to emphasize the importance of regularly recording – and using – past performance information, and we will continue to work closely with agencies in their implementation efforts. Progress will be discussed with agencies in the spring during the Acquisition Status (“AcqStat”) meetings that OFPP is scheduling with agency senior leadership to assess accomplishments in achieving high-priority acquisition initiatives.

Better Protecting the Integrity of the Acquisition System

Just as the Administration is committed to reducing the chances of the government doing business with underperforming contractors, we are equally committed to an acquisition process with high standards of integrity as well as effective management controls to reduce fraud, waste, and abuse in contracting. This commitment begins before a contract is awarded and continues through the life of the contract.

With respect to pre-award actions, we have broadened access to the information our contracting officers need to more easily determine whether a company is playing by the rules and has the requisite integrity to do business with the government. Last spring, we unveiled the “Federal Awardee Performance and Integrity Information System” (FAPIIS) – a new one-stop source for a comprehensive range of data, such as information on suspensions and debarments, contract terminations, and contractor disclosure of adverse criminal, civil, and administrative

actions. Federal contracting officials must review the information in FAPIIS in connection with any pending contract award over the simplified acquisition threshold (\$150,000) for the purpose of determining if the contractor is presently responsible, and they must document the contract file to indicate what action was taken as a result of review of the information in FAPIIS and what role that information played in any responsibility determination. In addition, they must notify, prior to proceeding with award, the agency official responsible for initiating debarment or suspension, if information is identified in FAPIIS that appears appropriate for that official's consideration.

Suspension and debarment remain the government's most powerful tools to protect taxpayers from contractors who engage in dishonest or illegal conduct or are otherwise unable to satisfactorily perform government contracts. Subpart 9.4 of the FAR has, for many years, laid out policy and procedural considerations for applying debarment and suspension actions consistent with due process of law. The FAR's basic policies and procedures remain sound, including its caution that these actions are to be used only to protect the public's interest in safeguarding public funds, not to punish prior contractor misconduct.

That said, reports issued in recent years by agency Inspectors General, and others, serve as important reminders that management and resources devoted to these measures are inconsistent across agencies. In some cases, for example, suspension and debarment work has been treated as a collateral duty, resulting in unnecessary delays in processing cases. In other cases, lack of central monitoring and oversight has hampered the agency's ability to identify problems and take corrective action in a timely manner. These problems have been further

complicated by weaknesses in the use of the Excluded Parties List System (EPLS), the government-wide web-based system that is used both to report suspension and debarment actions and to serve as a key protection for agencies that might be considering award to a listed entity. As documented in a report by the Government Accountability Office, suspended and debarred businesses have sometimes received federal funds due to a variety of shortcomings: agency officials failing to search EPLS, businesses circumventing the terms of their exclusion by operating under different identifies, and late or inadequate reporting to EPLS. All of these findings confirm there is much room for improvement and work that needs to be done.

Some progress can already be seen. More agencies are establishing formal suspension and debarment programs, dedicating greater staff resources to handle referrals and manage cases, strengthening policies, providing training, and acting decisively to root out illegal behavior and irresponsible actors. Here are a few examples:

- The Agency for International Development has made concerted efforts to address flaws and constraints in its suspension and debarment process by establishing a “partner compliance and performance oversight” division, which maintains a dedicated staff to focus on suspension and debarment actions and refer cases to the agency’s Suspension and Debarment Official.
- The Small Business Administration has sent a strong signal that it will not tolerate waste, fraud, and abuse in small business government contracting. Pending full investigation by the Agency’s Office of Inspector General, it suspended a major government contractor and two small businesses based on evidence that they had knowingly violated small business contracting laws. These actions demonstrate that SBA is serious about ensuring that the benefits of small business contracting programs go to the intended communities.
- The Department of the Interior has implemented a proactive debarment program with dedicated positions in its Office of Inspector General and a full time debarment program manager in the Office of Acquisition and Property Management to assist the debarring official with debarment and suspension action issuance and resolutions.

These steps serve as a warning to would-be lawbreakers that we will no longer turn a blind eye to unscrupulous behavior and shady business practices.

Actions are also being taken to improve EPLS. The General Services Administration (GSA), which serves as the program manager for the EPLS system, has created an agency governance board to monitor and manage changes to the system. The board has already implemented a number of modifications to strengthen controls. For example, agencies must use standard contractor identification numbers for all actions entered into the system, which should help prevent companies from operating under different identities. In addition, agencies are required to periodically review their points of contact information to make sure it is up to date.

Individual agency efforts are supported by the Interagency Suspension and Debarment Committee (ISDC). This body provides an important support structure for coordinating actions and identifying a lead agency when two or more agencies have an interest in initiating suspension or debarment proceedings pertaining to the same contractor. It also provides a forum for agencies to share best practices and lessons learned and serves as a way for OMB to understand the needs of the suspension and debarment community. Working with the ISDC and the agencies, we will continue to build on these efforts, helping agencies that need greater support and considering where further refinement of current policies or practices might be beneficial.

Conclusion

As stewards of the public fisc, we are responsible for ensuring that agencies are achieving the best results possible from their contractors. We are helping to meet this responsibility by creating new tools and practices that agencies can use to reward contractors for good past performance, and paying closer attention to how we manage the debarment and suspension process to ensure agencies are positioned to apply these tools when necessary to protect taxpayers from bad actors. We appreciate the work of this Commission in helping to identify ways for achieving and sustaining better acquisition outcomes and improved government performance and look forward to reading your recommendations.

This concludes my prepared remarks. I am happy to answer any questions you may have.