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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.

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."

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 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, DUNS² number, performance period, and subcontract amount. This information should be made publicly available in a central collection system.

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.

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 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.