

Testimony of

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on

“Improving Transparency and Accountability of
Federal Contracting Databases”

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Oversight of the Senate
Homeland Security & Government Affairs
Committee

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Chairwoman McCaskill, Ranking Member Bennett and Members of the Subcommittee, I am Trey Hodgkins and I serve as Vice-President of National Security and Procurement Policy in the Public Sector Group at TechAmerica.¹ TechAmerica is the leading voice for the U.S. technology industry, which is the driving force behind productivity, growth and jobs creation in the United States, as well as the foundation of the global innovation economy. Representing approximately 1,500 member companies of all sizes, along with their millions of employees from the public and commercial sectors, TechAmerica is the industry's largest advocacy organization.

We are pleased to present to you today the technology and IT sector perspective on the various aspects of Federal contractor databases. TechAmerica shares with the panel Members here today the goal of improving contracting databases, and in particular the accountability and, with some qualification, the transparency and accessibility of those databases. In improving these databases, however, we feel that, as a preliminary matter, we must address the central question, "What is the data to be used for?" We believe the answer here is to inform acquisition workforce decisions regarding past performance and responsibility, to improve the efficacy of the acquisition process for the Federal government and the contractor community that serves the government's missions, and to help achieve best value for the taxpayer.

Among other things, my comments today will address questions posed by the Committee in preparation for this hearing, along with our concerns about certain aspects of various database proposals considered by Congress and the Administration, our experience with existing databases, and our recommendations for future efforts to improve the information available for contracting decisions.

Contractor Database Proposals

The prime fear in the minds of the contracting community about further development of government contractor databases is that information regarding the products or services companies may offer and how companies bring those products and services to market will be made public and that publication will cause them irreparable harm. Another equally important concern is that the databases will capture allegations, as opposed to final administrative or judicial determinations, of contractor wrongdoing

¹ TechAmerica is the leading voice for the U.S. technology industry, which is the driving force behind productivity growth and jobs creation in the United States and the foundation of the global innovation economy. Representing approximately 1,500 member companies of all sizes from the public and commercial sectors of the economy, it is the industry's largest advocacy organization and is dedicated to helping members' top and bottom lines. It is also the technology industry's only grassroots-to-global advocacy network, with offices in state capitals around the United States, Washington, D.C., Europe (Brussels) and Asia (Beijing). TechAmerica was formed by the merger of AeA (formerly the American Electronics Association), the Cyber Security Industry Alliance (CSIA), the Information Technology Association of America (ITAA) and the Government Electronics & Information Association (GEIA). Learn more at www.techamerica.org.

for application against contractors in the competitive procurement process. Legislative and Administrative proposals feed this fear by including a spectrum of options for the collection and dissemination of contractor information, up to and including publishing each contract on a public website and the collection and public disclosure of allegations of an administrative, civil, or criminal nature before they are finally adjudicated.

TechAmerica does not support most of these proposals and does not believe that any transparency initiatives that include unrestricted public disclosure of proprietary or sensitive contracting data meaningfully improves the acquisition process or informs the contracting workforce. Instead, such proposals risk a number of unintended and harmful consequences, including:

- The disclosure of source selection, intellectual property or proprietary data to global competitors and adversaries
- The direct or indirect exposure of national and homeland security information
- The use of information out of context in a way that negatively impacts the acquisition process and the competitive position of companies doing business in the public sector market.

The negative impact on the acquisition process includes a reduction in competition for government requirements, particularly for small businesses. This reduction would come either through exclusion of companies based on incomplete or inaccurate information or because companies choose not to enter or remain in the government market. Many companies offering the commercial or commercial-off-the-shelf (COTS) items that the government has so ubiquitously adopted would be unable or unwilling to accept such risks. Such a departure would reduce and limit government access to commercial market innovation that it currently enjoys.

It is worth noting that TechAmerica, and the contracting industry as a whole, did not oppose the amendment offered by the Chairwoman and adopted by the Senate last year as part of the FY09 National Defense Authorization Act. This amendment created a consolidated contractor database to be used to inform contracting decisions. We believed then, and continue to believe, that the final provision correctly struck a balance between sharing data, protecting proprietary information, and setting reasonable expectations about the use of such data by the contracting community.

I'd like to elaborate on our concerns about public disclosure and the collection and use of allegations in government contractor database. TechAmerica does not oppose public disclosure of contractor information or information about the acquisition process, as long as existing protections regarding such information remain in force and are used. These protections include those found in the Freedom of Information Act, the Trade Secrets Act, common law decisions regarding protection of sensitive information, privileges that would attach as part our judicial processes, and protections now afforded to proprietary, trade secret, and source selection

information. If these safeguards remain intact as we develop rules for the public disclosure aspect of transparency for contracting data, we believe that our concerns can be addressed. If such protections were to be waived, however, we believe that the Government would be harmed significantly.

For example, if disclosure included posting to a public website the unredacted contract, a number of critical elements would be exposed. Something as simple as identifying the location where work is to be performed could reveal the geographic location of crucial components of our National and Homeland Security apparatuses, thereby exposing them to attack, disruption or destruction. Similarly, if data about program capabilities were to be disclosed as part of the public disclosure of contracting actions, adversaries could evaluate the supply chain, identify critical production components and, by attacking that component, disrupt our security. Data aggregated from published contracting actions also would allow adversaries to discern and reverse-engineer our capabilities and identify our weaknesses.

From a corporate perspective, disclosure of data from a contracting action - particularly the publication of an unredacted contract - would expose intellectual property, corporate sensitive and technical data to industrial espionage and allow corporate competitors to aggregate data, such as pricing methods, and weaken the competitive posture of a company in the government and commercial markets.

On the issue of collection and use of allegations that are not finalized, a number of potential harmful and unintended consequences can occur. In addition to undercutting fundamental due process rights for contractors, such proposals contain the presumption that the contracting community would have complete knowledge of the situation to understand the legal and administrative issues in each allegation and to make an informed legal decision regarding the impact of those allegations on the contract offering at hand. There also would be the significant risk that negative decisions would be made based upon allegations that are later found to be without merit.

Existing Databases and Their Effectiveness

The government currently has an alphabet soup of databases capturing and tracking information about government contracting and the information in many of these databases support critical functions of government contracting like evaluating past performance and determining responsibility. These include the Past Performance Information Retrieval System (PPIRS), the Contractor Performance Assessment System (CPARS), the Contractor Performance System (CPS) at NIH, the Architect-Engineer Contract Administration Support System (ACASS), the Construction Contractor Appraisal Support System (CCASS), the Past Performance Database (PPDB) at NASA, as well as several of the agency contract-writing systems, to name a few. PPIRS serves as a warehouse for the data generated by these other systems

and, with the finalization of FAR Case 2006-022, its role as a primary source for contractor information was enhanced.

Generally speaking, contractors find that the existing databases are inconsistent in the data elements they capture and in the processes and rules that they employ, and that the databases too frequently contain outdated, incomplete, or inaccurate data. That perspective is not an indictment of an overwhelmed acquisition workforce responsible for the entry and maintenance of this data, but simply an observation of the reality that capturing this data competes with other high-priority functions and missions in different ways in different agencies.

A manifestation of this condition that our members are reporting is the recent uptick in report cards for periods of performance of more than one year ago. It appears that government workers are being required to go back and update data related to contracting actions that have long since passed. Contractors are concerned that they will not receive as accurate a report so long after the performance as they would at a time closer to contract performance, or even worse, this process will become merely a "check-the-box" exercise for the agency and/or a person with no knowledge of the contract performance will be assigned to complete the report card.

Unfortunately, the practical consequence of outdated, incomplete or inaccurate data is harm: Harm to the government from an unclear picture of bad actors in the contracting community, and harm to good contractors whose outstanding performance goes unnoticed in their evaluations for other government work.

Another concern expressed by companies about government contractor databases is that data is collected using inconsistent criteria, that the results are evaluated using inconsistent metrics, and that the scorecards use inconsistent measurements. Because of this inconsistency, it is not possible to compare data in one database on a contractor with data from another on the same contractor. The report card formats used in CPARS and CPS, and the instructional guidance material associated with each, are different so sufficiently as to preclude any presumption of a 'common' format or understanding of what and how contract specifics [*i.e.*, facts such as contract and task order numbers] and contract performance metrics are to be recorded and explained. The recent final rule on FAR Case 2006-022, published on July 1, 2009, requiring performance reports on task orders issued under the Federal Supply Schedule contracts or other IDIQ contract arrangements likely will increase further the disparities in how information is collected and reported.

Our perspective is that, because of these difficulties using the government contractor databases, many government agencies have abandoned their use for contracting actions, resorting instead to requirements that bidders pay for a past performance report from a third party commercial vendor. TechAmerica does not support this requirement and suggest to this Subcommittee that any effort to reform government contractor databases should include a prohibition on this practice.

Recommendations

TechAmerica commends current efforts to make information and tools for the government acquisition process more accessible and user friendly through the Integrated Acquisition Environment (IAE). The IAE outlines many of the same goals that contractors seek from government contractor databases, as well as the other tools and information sets that can inform the government acquisition process better than it is currently. One important goal is the consistency of data. IAE seeks to establish uniform standards for data that would allow greater interoperability of databases that exist currently. Another goal, evident by the array of resources available at the IAE website (www.acquisitions.gov), is the consolidation of data and data sources to create a central point of contact for data access and data entry.

A successful central point of contact, or dashboard, as the IT community would call it, however, will require greater emphasis on implementing applications and systems with the IAE standards. Processes and procedures also will need to be updated to find efficient ways for the workforce to keep the data current for the benefit of all users of the data, while preserving the contractors comment period to provide input regarding the past performance of a company.

Interoperability, consolidation, and uniformity of data are not technical problems, however, and the same challenges that exist in so many other government programs are inherent in the IAE effort, also. Those challenges are rooted in culture and policy and will require leadership and direction to incentivize change from the top down regarding the use of these and other acquisition tools, what the data will look like, how it is captured, and how it will be used.

Finally, we must ensure that in our effort to develop government contractor databases, we have a clear plan in mind about how to analyze and use the data we collect in a meaningful way. Just last week, before another HSGAC subcommittee, the Deputy Director of Management for the Office of Management and Budget noted that the government does not do a good job of using the data it already has by analyzing it to find ways to be more efficient and effective. We hope that as the Congress and the Administration deliberates this issue, any proposals will provide leadership and direction for data collection efforts that achieve the goal I identified at the beginning of my testimony: to inform the decisions that the acquisition workforce makes, improve the efficacy of the acquisition process for the Federal government and the contractor community, and to achieve best value for the taxpayer.

Thank you again for this opportunity to share our perspectives on government contracting databases.