

ENSURING CONTRACTOR ACCOUNTABILITY: PAST PERFORMANCE AND
SUSPENSION & DEBARMENT

MONDAY, FEBRUARY 28, 2011

Commission on Wartime Contracting

Washington, D.C.

The Committee met, pursuant to notice, at 9:30 a.m., in Room 216, Hart Senate Office Building, Hon. Christopher Shays, Co-Chairman of the Commission, presiding.

Present: Commissioners Thibault, Tiefer, Green, Henke, Zakheim

SHAYS:

I'm Christopher Shays, co-chairman of the Commission on Wartime Contracting in Iraq and Afghanistan.

This opening statement is made on behalf Co-chairman Michael Thibault, our fellow commissioners, and myself. The other commissioners at the dais today are Grant Green, Robert Henke, Charles Tiefer and Dov Zakheim. Commissioners Katherine Schinasi and Clark Kent Ervin could not be with us today.

Today's hearing is about holding people accountable for their actions, both good and bad. For the 200,000 people employed by contractors to provide support and capability in Iraq and Afghanistan, accountability is too often absent, diluted, delayed, or even avoided.

The federal government has some powerful tools for holding contractors accountable for what they are obligated to do. These tools include the ones we are discussing today—information on contractors' past performance and the processes to suspend or debar irresponsible firms from contracting with the government.

Our concerns are that past-performance data is often not being properly recorded or explained, and that barriers exist to the effective use of suspensions and debarments.

Those concerns may sound like bureaucratic quibbles, but they're very important. If past-performance information isn't recorded in the federal database, then there is no shared official record to consider it in awarding new contracts. And if suspensions and debarments are impeded by bureaucratic decisions or inertia, then companies that have committed fraud may continue receiving taxpayer funds.

In either case, untrustworthy contractors can continue profiting from government work. Responsible businesses may be denied opportunities. And costs to taxpayers climb.

To appreciate our concern, consider these points: Samplings of contingency-contract data in the federal procurement data system suggests that more than 90 percent—not 9 percent—more than 90 percent of contracts have not had required past-performance data entered.

The Office of Federal Procurement Policy has found that more than 75 percent of past-performance reports that were made still lack adequate narratives on contractors' cost-control efforts.

According to the Project on Government Oversight, from 2007 through 2009, more than 200 Department of Defense contractors who incurred judgments or made settlements for fraud charges were awarded \$280 billion in DoD contracts.

The commission has discussed its concern in our second interim report to Congress, released last Thursday. That report, titled "At what cost: Correcting over-reliance on contractors in contingency operations," contains 32 what we consider timely recommendations for legislative and policy reforms to improve contingency contracting now and in the future.

We encourage you to examine the report, which is posted on our website, www.wartimecontracting.gov.

The "At risk" report contains six recommendations bearing on today's hearing. They are numbers 20 through 25 in our report. Recommendation 20: "Allow contractors to respond to but not appeal agency performance assessments." Recommendation 21: "Align past-performance assessments with contractor proposals." Recommendation 22: "Require agencies to certify use of the past-performance database." Recommendation 23: "Require a written rationale for not pursuing a proposed suspension or debarment." Recommendation 24: "Increase use of suspensions and debarments." And, finally, recommendation 25: "Revise regulations to lower procurement barriers to contingency suspensions and debarments."

These recommendations, discussed more fully in our report, are intended to ensure that past-performance data are entered and used, and that suspension and debarments take place more effectively, and that suspensions are applied automatically if a government contractor is indicted for procurement-related crimes.

These are important matters. Tools are no good if they aren't used. And behaviors won't change if consequences never appear.

Today's hearing will add to our stock of information on these matters, which will continue to receive commission attention as we work toward our final report to Congress in July.

We have two panels of well-informed witnesses to help us. Panel one has four witnesses: Rear Admiral Robert J. Gilbeau, U.S. Navy Commander, Defense Contract Management Agency-International (DCMA-I); Michael Carroll, deputy inspector general, U.S. Agency for International Development, referred to as USAID; Captain Timothy Harrington, U.S. Navy, Commanding Officer, Naval Sea Logistics Center; and Scott Amey, general counsel for Project on Government Oversight.

Panel two has six witnesses: Dan Gordon, administrator, Office of Federal Procurement Policy (OFPP); Richard Ginman, deputy director, contingency contracting and acquisition policy,

Defense Procurement and Acquisition Policy, Department of Defense; Corey Rindner, procurement executive, Department of State; Maureen Shauket, chief acquisition officer, U.S. Agency for International Development; Willard Blalock, U.S. Navy Counsel and chair, Interagency Suspension and Debarment Committee; and Uldric Fiore, director, Office of the Judge Advocate General, U.S. Army.

We have asked our witnesses to offer five-minute summaries of their testimony. The full text of their written statements will be entered into the hearing record and posted on the commission's website. We also ask that witnesses provide within 15 business days responses to any questions for the record and any additional information they may offer to provide.

On behalf of the commission, we thank all of our witnesses today for participating in what we believe will be a very important hearing.

So now, if I could, I'd ask you to rise, and we'll swear you in, as we do all our witnesses.

Raising your right hand, do you solemnly swear or affirm that the testimony you will give before this commission will be the truth, the whole truth and nothing but the truth?

Note for the record all our witnesses have responded in the affirmative.

And let me just thank you for your service to our country, both in the public and private sector. Thank you, gentlemen.

Admiral, we'll start with you.

GILBEAU:

Thank you, sir.

Good morning, Chairman Thibault, Chairman Shays, and commissioners. My name is Rear Admiral Robert J. Gilbeau, and I am the commander of International Directorate for the Defense Contract Management Agency, or DCMA.

Thank you for the opportunity to participate in today's hearings regarding contractor past performance and the suspension and debarment process. I would like to say I too think accountability is very important, and I take it to heart as a Navy Supply Corps officer.

In our contract administration role, the DCMA conducts contractor systems reviews, cost-allowability determinations and past-performance information for field-level contract operations to activities such as the U.S. Central Command Joint Theater Support Contracting Command and the Army Contracting Command at Rock Island.

We also provide comprehensive contract administration services for the Army's Logistics Civil Augmentation Program, or LOGCAP, and Air Force Contract Augmentation Program, or AFCAP, as well as other delegated contracts throughout a contingency AOR (area of responsibility).

Program offices and procurement contracting offices, or PCOs, in turn can use our input to assess contractor performance and make responsibility determinations.

If requested by the procuring contracting officer, our DCMA contingency CMOs, contract management offices, can input data into the DoD Contractor Performance Assessment Reporting System, or CPARS, and the Joint Contingency Contracting System, or JCCS.

Our inputs rely on cost-performance reports, customer comments, quality product examinations, process reviews, technical interchange meetings, production management reviews, contract operations reviews and functional performance evaluations. CPARS is used for U.S.-based contractors, whereas JCCS is used for non-U.S. contractors.

When requested, we uploaded these according to PCO input requirements, typically every 12 months for contracts with performance in excess of one year and at the end of every contract.

In support of LOGCAP, DCMA-Afghanistan began inputting data into CPARS for LOGCAP IV as of January 2011. Contingency CMOs also provide bimonthly performance-evaluation board (PEB) reports based on monthly audits, focusing on award-fee evaluation criteria, technical costs and management, for the LOGCAP III contract and the LOGCAP IV contract in Afghanistan and Kuwait.

These audits use inputs from DCMA quality-assurance representatives and appointed contracting officer representatives, DCMA corrective action requests, administrative contracting officers, customers, usually the camp mayors, and the contractor's self-assessment.

The PEBs are compiled into an award-fee evaluation board every six months and briefed to the PCO and in-theater LOGCAP PM (Program Manager) representatives.

DCMA also provides a weekly report on CARs (Corrective Action Requests) issued the previous 90 days to the LOGCAP program office and we participate in quarterly LOGCAP days where we brief the program office and PCO on performance trends for the preceding 90 days.

DCMA Houston provides support to the PCOs at the contractor corporate level for LOGCAP, DIACAP (DoD Information Assurance Certification and Accreditation Process), and Kuwait reach-back contracts on matters such as contractor-system reviews, cost-allowability determinations and past-performance information.

They also provide PCOs with past-performance data associated with the contractors' centralized systems, such as current business system status, cost-accounting-standard non-compliances, financial capability, and AFEB (Award Fee Evaluation Board) PEB summarized or targeted information.

In regards to suspension and debarment, our mission is contract administration. As such, these functions are handled by the suspension debarment officers of the procuring contracting activities, though we provide information to the military services and defense agencies that may support suspension and/or debarment proceedings by SDOs (suspension and debarment officials).

Now, having said that, DCMA employees are required to report any instance of possible fraud or other irregularity by a contractor. DCMA employees are provided fraud awareness training, and the DCMA legal team works with our contracting staff, DoD criminal investigators, federal prosecutors, and contracting offices supporting appropriate judicial or administrative sanctions against contractors.

In closing, I would like the commission to know that DCMA understands the value of contractor past performance and the role of suspension and debarment and takes seriously its mission within that context. We remain committed to our war-fighters, civilian employees, contractors, and the American taxpayer to provide quality products and services, delivered at a fair and reasonable price, where and when they are needed.

I welcome your questions, sirs.

SHAYS:

Thank you, Admiral.

Mr. Carroll?

CARROLL:

Good morning. Chairman Shays, Chairman Thibault, distinguished members of the panel, commission, thank you very much for the opportunity to appear here today to discuss the USAID OIG's views and opinions on the current state of USAID's suspension and debarment program. And I think the best way to do that would be to go back to our audit, the audit we conducted in 2009 on the agency's suspension and debarment program and process. That audit covered the five-year period of 2003-2007.

And if I could summarize the findings, and basically four major ones, we first found that the agency really didn't have a systematic process for considering suspension and debarment actions, they didn't have a dedicated staff. It was a rather ad hoc process. Documentation—when they did take procurement, suspension, and debarment actions—the process was a bit ad hoc as far as documenting the process.

And the use of the contractor- performance databases, like EPLS (Excluded Parties List System), was marginally effective, both in inputting timely and accurate data, and also extracting data when making procurement decisions for the future.

And so you wouldn't be surprised that, based on those findings, between 2003 and 2007, the agency only took—I say only—that's our point of view—only took 17 suspension and debarment actions over that five-year period.

Well, that was then, and this is now. The audit made 12 recommendations to improve the process. We reached management decision and final action on all 12.

And I'm happy to say that the agency really has embraced the audit as a way to move forward and improve the process. And to demonstrate that, just quantitatively, from 2008, post-audit, through today, currently, they have taken 37.

So more than double the amount they took in the five years, they've taken in the last two years basically. And of those 37, within the last year they have taken 28 suspension and debarment actions.

So I think that really reflects a renewed commitment and interest in contractor accountability. So I think we give the agency credit for that.

In reference to what they have done to address our recommendations, I think one of the major steps they have taken is to create what they call the Compliance and Oversight of Partner Performance Division within OAA, the Office of Acquisition and Assistance. It's going to have eight FTE (full-time employees) and it's to be dedicated solely to considering contractor accountability and suspension/ debarment actions. So I think that's a major step that the agency has taken.

The processes are improving dramatically. They are supported very well by the Office of General Counsel within AID. And we've even changed our philosophy and the way we operate. We share information, investigative findings much more quickly, in real-time, so the agency can make informed decisions if they need to prior to any kind of referral for prosecution to the Department of Justice.

And I think you may have heard in speeches that the administrator has given that there is a renewed emphasis on contractor accountability. And I'd like to just give one example, if I could, in the time I have left, of a success story that we feel is a success story, the agency feels is a success story, that maybe Ms. Shauket will talk about later on. And that's the recent suspension of the Academy for Educational Development, AED.

We opened a case on them in Pakistan, in late 2009, based on the evidence we had on the case. The contracting officer in Pakistan canceled the contract for cause based on our evidence locally in Afghanistan and Pakistan. And then when we expanded the investigation to include the corporate entity, we found enough there, and we were sharing this all with Ms. Shauket and the agency, and they moved to suspend AED.

Now, that decision has major implications for the agency. They're a huge implementing partner, both in Afghanistan and Pakistan and around the world. So for the agency to take that step was huge, but they felt the evidence supported that decision and they took that decision.

So I would consider that sort of an example of how the agency has moved forward from the audit period that we looked at in early 2000s to where we are today.

Now, to conclude, you know, I work in an OIG, we're inherently skeptical, and it's early days yet, but at least from what we've seen and the steps that the agency has taken post our audit, we're relatively confident that they're moving in the right direction.

That concludes my remarks, and I'd be happy to answer any questions the commission might have.

SHAYS:

Thank you, Mr. Carroll.

Captain Harrington?

HARRINGTON:

Good morning, Chairman Thibault, Chairman Shays and distinguished members of the commission, I'm Captain Tim Harrington, I'm the commanding officer of the Naval Sea Logistics Center.

I want to thank you for the opportunity to speak about contractor past performance, information systems, and specifically the Contractor Performance Assessments Reporting System, the Past Performance Information Retrieval System and the Federal Awardees Performance Integrity Information System—CPARS, PPIRS, and FAPIIS.

Under my command stewardship, both CPARS and PPIRS have migrated from being a Navy and DoD solution and repository solution to being a solution used currently by all federal agencies.

For these systems, my command is responsible for maintenance and availability, enhancements and updates, help-desk support, and user training.

While my command is trusted with their management, we are not responsible for past-performance policy, nor do we enforce FAR compliance for the use of these systems.

Like Admiral Gilbeau, my employees take what they do very seriously and are dedicated to its management.

Having served on board five ships and twice been stationed overseas, I have appreciation for the work the commission is doing to support our mission overseas and my fellow service members in theater.

Mr. Co-chairmen, I am honored to be here. Thank you for interest in CPARS, PPIRS, and FAPIIS. And I can take any questions.

SHAYS:

Thank you, Captain Harrington. We'll have question. And appreciate that.

Mr. Amey?

AMEY:

I want to thank the commission for asking the Project on Government Oversight, also known as POGO, to testify about the issues of contractor accountability and how past-performance information and the suspension and debarment system can be used in contingency operation.

The government has estimated that \$177 billion has been spent on contracts and grants to support U.S. operations in Afghanistan and Iraq since 2001. According to a search of USAspending, there were nearly 50,000 contract transactions for \$21 billion in fiscal year 2010.

I cannot overstate how important contractor-accountability issues are in allowing the government to operate and accomplish its mission. It is important to remember that contractor-accountability responsibilities are not isolated. They are shared between acquisition, contracting, program, oversight, and enforcement officers, and inside agencies, the IGs, and the Department of Justice.

Federal contracting laws state that contracts are only supposed to be awarded to responsible contractors.

No purchase or award shall be made unless the contracting officer makes an affirmative determination of responsibility and contractors shall have a satisfactory performance record and a satisfactory record of integrity and business ethics.

In an effort to place a spotlight on contractor-accountability issues, POGO created the federal contractor-misconduct database (FCMD) in 2002. We have over 1,000 civil, criminal, and administrative instances involving the 150 top contractors. The instances cited in the FCMD have resulted in \$38.2 billion in fines, penalties, settlements, and restitution paid since 1999.

Those include allegations of fraud, bribery, overcharging, poor performance, and contracts terminated for default or cause. The lack of contractor-accountability data was the subject of a January report of the Department of Defense entitled "Report to Congress on Contracting Fraud," which examined the extent to which the Pentagon awarded contracts to companies that have defrauded the government.

The report found from 2007 to 2009, DoD awarded almost \$270 billion in contracts to 91 contractors that were found liable in civil fraud cases; \$682 million to 30 contractors convicted of criminal fraud. It also found that companies prohibited from federal contracts continued to receive millions in taxpayer dollars.

That said, I think that the system is likely to improve in the near future. Last year, the government unveiled the federal-awardee performance and integrity-information system, also known as FAPIIS. It is modeled after POGO's misconduct database. FAPIIS compiles a narrow set of information that helps government officials determine if contractors or grantees are responsible or risky. Up until that point, that information wasn't readily in the hands of contracting officers pre-award.

Today, you might hear about FAPIIS, PPIRS, CPARS, EPLS, but I would counter with names like GTSI, Agility, Bechtel, Xe (formerly known as Blackwater), DynCorp, Fluor, G4S/Wackenhut, Halliburton, and KBR. Many of those companies are familiar contractors to this commission and three of them hold all or a piece of LOGCAP III and LOGCAP IV.

The government's inability to hold contractors accountable begs the question: Is the government so reliant on large contractors that bad actors are necessary evils? This might be the contracting version of too-big-to-fail. The answers to some contractor-accountability questions were supposed to be answered by the Interagency Suspension and Debarment Committee. Pursuant to law, the ISDC is required to submit to Congress an annual report on the progress of the suspension and debarment system.

Despite multiple requests to the ISDC Chair Willard Blalock in 2010, POGO hasn't seen any annual report or received a reply from the ISDC as to its status. This is extremely troubling, considering the sharp decline in suspension and debarments through the years, and a congressional inquiry into DOJ's possible interference into suspension and debarment proceedings.

Even when suspension and debarment has been used through the years, it hasn't been used very effectively, especially against large contractors. Boeing received three waivers when it was suspended. We've also seen IBM and GTSI suspended for a matter of days. WorldCom-MCI's suspension was lifted only days prior to the next long-distance telecommunications contract being awarded.

And we've also seen other questionable contracts and activities in order to promote competition. And I think that's what you'll probably most likely hear in a lot of your Q&A with this panel and with the second panel is there's a problem with the reliance on contractors and therefore if you do suspend and debar a contractor at that point, are you eliminating effective competition, and that's a real problem.

But the real problem I think for this is the fact that the government is not promoting an accountability agenda in normal government operations, and therefore how will it do it in a contingency operation when time and mission accomplishment are critical.

I thank you for inviting me to testify today and I look forward to working with the commission to further explore how the government can hold contractors accountable.

Thank you.

SHAYS:

Thank you, Mr. Amey.

And thank all of you for your testimony and for staying within the five-minute rule. I appreciate that.

And we're going to have questions. We each have eight minutes and it will be first Co-chair, Mr. Thibault.

THIBAULT:

Thank you, Mr. Co-chairman.

Thank you, gentlemen, for being up here.

I have to thank the audience because as I'm sitting here thinking about this, when you say FAPIIS, PPIRS, CPARS and all of that, it's a whole new world that it continues.

SHAYS:

It was kind of scary because some people were actually nodding their heads.

THIBAUT:

Yes, they were being polite, maybe.

Before I start my questions, I want to acknowledge a couple of things.

Admiral Gilbeau, thank you for being here. I thank all of you. But whenever I have an acquisition executive with a purple heart, I, you know, in the simplest sense it means spilled blood in service to the country. I thank you for that, but I think the point to be made is that in a war today where everybody is integrated so closely, acquisition officials, in your case Iraq, put their lives in jeopardy, too. And I think it's an important part both for the government and the contractors, because I think there are sacrifices being made.

I need to acknowledge something that occurred yesterday that has nothing to do with this hearing, but the contractors' program manager for the Pentagon parking lot project—everybody knows about it because traffic's been redirected—is a personal friend. His name is David Pier and he had a heart attack last night and died. He was 51 years old.

I used to call him every morning, not on business because he had nothing to do with the work I was doing, but I'd call him because I knew he had to get up and get to the Pentagon by, like, five o'clock because of the way they do the arrangements to try to flow traffic. And he was one of the most selfless—you know, when you say he's a friend of mine, he's one of the three or four people that I consider personal friends, the most personal friends. I've kind of grown up with them and I want to acknowledge his selfless contribution.

The last thing I have to say, and then I'll get on with it; I'll take it from a serious mode to a lighter mode. I want to acknowledge Mr. Amey's magna cum laude at the University of Baltimore Law School. I think you all understand, the staff understands. They do a lottery, they each put in a buck or something together and they try to predict how long it will be before Professor Tiefer mentions the University of Baltimore Law School.

So whoever had the shortest tenure on that lottery is the winner, but we now have two distinguished alumni from there, or participants with the school.

Admiral Gilbeau, I found your statement very helpful in certain areas. You lay out that you began using CPARS, I want to say a couple of weeks ago, but January 2011, four or five weeks

ago, 30 days, and is currently completing inputs for two LOGCAP task orders for the period of performance for July '09 to July 2010.

You took the initiative, but then you went on and there was a question about why did it take so long. And I'm going to ask that question, and I realize someone maybe should have come to you and you took the initiative. But then you say, "We've not been requested to input CPARS for LOGCAP III or IV contractors," and that's essentially the way it's arranged now. It's very heavy KBR there and Dyn and Fluor, where you are doing this in Afghanistan and you have not been requested to input CPARS for those two large programs.

And you continue to support the PCO's request as you come out, but, you know, when you talk about Army Sustainment Command or what we refer to as Rock Island, if it's not part of the management process and if they're not asking you, per your testimony, my question is: Why not?

What's going on here that you had to finally take the initiative and they can say, and it's an important point, they can say, "Well, you know, we do get input on the award fee." And I could say, "Fine, you get input on award fee, but that's not the process."

So can you help us understand, and I'm a fan of DCMA totally, but, you know, my sense is it's wrong you were asked at this late date or you had to take the initiative. Why aren't you being asked?

GILBEAU:

Yes, sir.

First and foremost, it's not just me that made this finally happen. My team was working on it and in this particular case, I did provide a little bit of perhaps forcing function to get it working.

I just had a meeting, actually the LOGCAP day was held on Wednesday of this last week. And I sat down with the program office. And without question, we all agree that my organization should be putting in the performance reviews, performance information into CPARS for LOGCAP IV.

Now, LOGCAP III, the issue is there's a little bit of a dual responsibility within DCMA with our Houston group and with my group. And we are working very closely with the Houston group to ensure that we properly document past performance for even LOGCAP III as it's currently being executed.

In Iraq, we are starting to input data as well. I want to say probably about 50 percent of the data that we've been asked now to . . .

THIBAULT:

OK. Let me stop you there. I absolutely commend the current initiatives, and indirectly you have answered a question and I'm going to move on, which is, you're taking the initiative. It just seems

to me wrong that we're in 2011 and we're doing what we should do, but, you know, some simple math says we've been going on in different locations for 10 years, and, you know, who's watching?

And then, who's holding them accountable?

Commissioner Shays always gives you a few minutes at the end, and you may want to add to that, but I'd like to focus with Mr. Carroll.

Mr. Carroll, you're kind of stuck in the middle, and you said you were inherently skeptical. And there's a reason—you're not stuck in the middle, you're set off beside, you're IG.

And then you said, you used words like, "well, they're marginally effective" and "they embrace the audit..

And yet your report, which is the most current thing out there, said, like you used this Excluded Parties List System, EPLS, and you said two-thirds of the cases, they didn't put in the data. And I guess they found religion, and you say they hadn't consistently used available information.

And it kind of fits the same theme that I'm trying to explore with Admiral Gilbeau: What the heck took so long?

I mean, really, you know, this is about accountability, and the IGs doing their job and looking at it and bringing things, and the best you can say, and I understand why you say it, is "they embrace the audit."

That means they've told you everything's going to be OK. And then you say, "Well, we're inherently skeptical."

Can you tell me what took so long for USAID to step to the plate and start asking the question, where are our contractors that aren't presently responsible?

CARROLL:

I can only speculate, based on what we've seen over the years. But I would say that they might describe the problem as staffing. As Iraq and Afghanistan were getting off the ground the tremendous responsibility that AID had for implementing programs, and they weren't getting the adequate resources that were tracking as far as personnel and contracting officers and things like that. I would think they felt like that.

I'm going to take a little bit, just a little bit of responsibility ourselves in that historically on our investigations we were reticent about sharing information with ongoing investigations until such time as it was complete and it was referred to the Department of Justice for prosecution. Then simultaneously the agency would get it and be able to make a decision on suspension and debarment.

And we've changed that philosophy now, and you know, I think that resulted in the AED case.

So I would say I'm inherently skeptical because I work in the IG, and I was trying to say that we're sort of pleased with what the agency's doing going forward.

THIBAULT:

I understand.

CARROLL:

The decision to do the audit, actually, was based on our frustration with some referrals we made to the agency for suspension and debarment that they didn't act on. And rather than continue to, you know, grind our teeth on that, we decided to find out what the problem was and then the audit found our why. . .

THIBAULT:

OK. My time is up, but maybe I'll explore it a little more later.

Commissioner?

SHAYS:

Thank you. We'd like to know sometime if you ever got responses as to why your recommendations were not made.

And at this time, we'll go to Mr. Green, Commissioner Green.

GREEN:

Thank you.

Again, let me welcome all of you and thank you for your service. I'd like to follow up just very briefly, Mr. Carroll, with the line of questioning that Commissioner Thibault was following before he stopped.

I, like you, am skeptical. I have watched AID's management for a number of years, and I think in the one recommendation or the one finding, and I commend the audit report and I commend your boss's testimony a year or so later. I think it aired a lot of dirty linen that needed to be aired.

But when we say USAID's decision-making process for suspension, debarment actions contains flaws and constraints that prevent it from operating effectively, to me that is senior management.

And my question to you, very quickly: AID's leadership and others have now said "We're going to fix this problem, don't worry about it." You're skeptical, I'm skeptical.

What are you going to do, what is the IG office going to do to ensure follow-up?

CARROLL:

Well, what we're going to do in 2012 is do a follow-up audit on the process to see where they've come from then to now. And, in addition to that, in just working with them on a regular basis between our investigators and our auditors and the Office of Acquisition and Assistance, we'll just get inherently a sense of how they're moving forward.

And, you know, to say again, I really do think under Administrator Shah there has seemed to be a cultural shift in contractor accountability.

GREEN:

I hope so. Thank you.

All of you in one way or another in your opening statements talked about accountability, the fact it's important, that past performance is important, you take it seriously.

But a fairly recent 2009 GAO report indicated that 60 percent of contracting officers, they called it contracting personnel, don't factor in past performance in the selection process.

We all understand reasons for that. I mean, it can go back to the focus for a shorthanded contracting community is getting the next contract out, it's not necessarily closing out the old ones to include follow-up and indicating past performance.

There are objective factors that they feel are more important. Sometimes they're reluctant to upset the apple cart with a contractor, particularly when there are few contractors that might be able to perform that mission. There's fear of protest and, very frankly, sometimes it's hard to separate the contract's fault from the government's fault.

Now, all that being said, is past performance important, and how do we fix it?

Admiral Gilbeau?

GILBEAU:

Yes, sir. I'd like to say that I think we've come a long way in fixing it, and I think it is extremely important. And virtually everybody I've talked to over the last six months since I've been in this job understand the criticality of documenting and getting good past-performance information.

I believe continuing our efforts in improving the database, improving accessibility and improving the input is going to take us a long way in achieving the results that we all want, which is giving the PCO access to unfettered information that will show the true performance of contracts, whether it's in a contingency environment or not. Thank you.

GREEN:

Mr. Carroll, any comment?

CARROLL:

From an IG perspective, we think it's huge. But that perspective comes from a real accountability perspective. We don't take into account that the agency still has to get the work done.

And I'm not saying that's the reason why you should overlook contractor past performance; you absolutely shouldn't overlook contractor past performance.

But I would say that the past and the present could be two different things. And if these organizations based on our audits, investigations, or whatever corrective action the agency has taken to improve process, if their current situation reflects a change in attitude, a change in focus, change in performance, then I wouldn't see why you wouldn't use a contractor going forward if they have made changes in their processes for accountability.

GREEN:

I guess one of the things that bothers me, and I have difficulty coming to grips with, is that if you hired somebody to paint the inside of your house, and they tracked paint all over your carpet, you probably wouldn't hire 'em again. And you might even negotiate a price with them less than what you originally had agreed to.

But that's money coming out of your pocket. One thing I'm concerned with is the fact that we may see this as just free money. It's coming out of some big Treasury pot that doesn't really impact us. And so we don't treat these contractors the same way you would treat a contractor doing work in your house, for example.

Mr. Amey?

AMEY:

Yes, and I agree with that. We're better consumers and shoppers in our personal lives than I think the overall federal government is.

To answer your questions, yes, it is very important. I'm going to add one that hopefully will answer both commissioners' question on why now. It's because the DoD IG came out with a report criticizing the past-performance databases back in 2008. GAO followed it up with another report in 2009. It's a topic of discussion now, and it wasn't before.

How to fix it? I would say we need genuine evaluations. I've heard too many stories about grade inflation where you give the lowest possible grade that avoids a protest or a complaint from a contractor; and timeliness and accuracy in that data, that it provides a genuine tool for a contracting officer, suspension/debarment official, whoever it may be, the IGs, to, you know, have a genuine grade in front of them or at least factors in front of them that make them make better decisions pre-award.

GREEN:

Thank you.

One last point, not a question. Another of my major concerns as we have gone through various hearings and written our reports is, how do we maintain this? How do we maintain this interest that exists today, to whatever level it exists, how do we maintain that interest when we're no longer in Iraq, we're no longer in Afghanistan, we've disappeared? How do we do that?

I don't want an answer, I just want you to think about it, and I may come back in the second round and solicit your ideas. Thank you.

SHAYS:

Thank you, Mr. Green.

Mr. Tiefer?

TIEFER:

Thank you, Mr. Chairman. I just want to mention, I've pointed out before that in the 2000s our co-chair, Mr. Thibault, was part of a lonely group of leading auditors in the government who were trying to keep contractors like KBR accountable against major headwinds.

I don't think I fully understood what an uphill task that was until our preparation for today's hearing when I found that the past-performance systems were closed—not just virtually closed, literally closed to entries of bad ratings for KBR performance.

It was like you were banging on a locked door, Mr. Chairman. And I congratulate you for your work. Although I'm shocked to discover that gambling is going on in this place about my mentioning of the University of Baltimore Law School.

ZAKHEIM:

Now we all agree you'll mention it quickly.

TIEFER:

Mr. Amey, you're the custodian of enormous database, the unique database about contractor misconduct, and I want to try to flesh out. We've heard the anonymous but gigantic figure of \$280 billion in new contracts given out to contractors who have criminal convictions or civil judgments for things like fraud.

And I want to ask you about what I would call the flagrant five, the five contractors I would ask you to draw on your database for because your database is about all the contractors of the government, and we're interested in the ones that do wartime work in Iraq and Afghanistan.

The first would naturally be KBR, which you mentioned in your testimony. I don't want to use my whole time up just on them, but they have been sole-sourced billions of dollars of contracts in Iraq in recent years. What's their record?

AMEY:

We have approximately 23 instances of misconduct. I think it's actually 24, because I think there was a DOJ intervention in a civil False Claims Act last week which includes six government contract cases and eight guilty pleas.

TIEFER:

OK.

Another contractor that you mentioned in your testimony is Agility, which is renamed, used to be called Public Warehouse Company. Now, they did get suspended. Was that the end of their getting new contracts?

AMEY:

No. That's the only instance that we have in our Federal Contractor Misconduct Database, but they have received two extensions that I'm aware of that currently go until August of 2011. So once again, despite the government holding them accountable, there's been, you know, an exception to the rule that they have been able to stay on the contract for another eight or 10 months.

TIEFER:

I'm beginning to get the picture that bad performance can be good business.

Let's go on to Louis Berger or Berger. It's pronounced differently, which I think is a subject that Mr. Carroll can tell us about. But I want to stay with you.

I know that this broke just this past December. There is a criminal conviction of their chief financial officer, a criminal conviction of their comptroller. The company, not just individuals somewhere down in the ranks, but the company was falsifying its cost-plus contracting, which strikes at the very heart of what we employ these contractors in theater to do.

What do you have on them?

AMEY:

Nothing. Unfortunately, they are not one of the top 100 government contractors. And through the years we've expanded that because people have jumped in and out of the top 100, so we have about 150, and they're not in our list.

TIEFER:

Well, let me ask, the noteworthy feature is they were not suspended because they did a guilty plea, technically called a deferred-prosecution agreement. What do you think about a company which basically pleads guilty to felony-level charges not getting suspended?

AMEY:

Well, they would be in our database if they met our criteria. The deferred prosecution is a problem because you're weighing the Department of Justice and what they're doing to punish a company against what a suspension and debarment officer may do to protect the taxpayers from awarding future contracts to that contractor.

So they're supposed to be different animals, but the problem is in that case I would say somebody that entered a deferred prosecution, I think some length of a suspension to make sure that they have all their systems in place, have improved their management and their culture, is needed.

TIEFER:

Indeed.

A fourth company, Tamimi, is familiar to the commission. We actually had a hearing which somewhat concerned it, and it was a witness at that hearing.

As we went into at that time, they had a manager who was convicted, felony level, for kickback-related offenses in Kuwait and Iraq. Their witness was still not cooperating with us, Tamimi, or the DCAA. The company's still not cooperating with us.

They still will not provide the records for us to find out whether the company was paying for the kickbacks or the manager was just doing it out of the company spirit from his own resources. Although you can understand why one would have been interested in looking at the company books.

What do you think about a contractor like that Tamimi who has gone on to receive lucrative contracts?

AMEY:

Again, it's not in our database.

Kickbacks is a problem. It's often excused with the "one bad apple" theory, but at that point you need to still look at overall corporate culture.

I'm probably more concerned by the latter part of your comment, and that is that they aren't cooperating with DCAA or this commission in providing information. That as a government contractor, then I would probably consider them non-responsible, and at that point they shouldn't be eligible for contracts, whether it's a suspension, debarment, or a de facto suspension in the fact that that should be something that's taken a look at during an award decision.

TIEFER:

I remember our frustration when they wouldn't give us the records.

The fifth on my flagrant-five list is the First Kuwaiti Company, a construction company which became famous or infamous for its work on the new embassy for the United States in Baghdad. Does it ring any bells with you?

AMEY:

Well, it does. Again, they're not in POGO's Federal Contractor Misconduct Database.

But I have seen government reports that have been critical of First Kuwaiti's performance, some issues at the embassy. And, therefore, that would be something that would get entered into our database, if they if they met the criteria, because we do include investigative findings in trying to present a full, complete track record of the companies that are doing business with the government.

TIEFER:

Well, you mentioned the inspector general report at the State Department who found that they owe the United States \$132 million for their embassy work, that's how bad it was. Yet they are still receiving new construction work. They were in the news receiving something for us in Saudi Arabia. Do you think that should be made difficult for them?

AMEY:

I would say so, yes. That and being delinquent on your taxes, with the budget shortfalls we're having. If people owe the federal government money, I would think that the government would think twice before they do business with them.

TIEFER:

Thank you.

SHAYS:

Thank you, Mr. Tiefer, Commissioner Tiefer.

Commissioner Henke?

HENKE:

Thank you, Mr. Chairman.

Thank all of our witnesses for being here today.

You know, Mr. Amey, I'm looking at your statement, and I think it's probably one of the clearest statements I've seen in a long time, and I thank you for that.

There are some points I want to highlight in this statement, while the staff puts up a board here that I'll talk about later.

Your statement says, it makes a very clear accusation, I guess, that "the federal government," quoting, "the federal government is shirking its responsibility to protect its constituents."

And later in your statement you say, "The suspension and debarment system is riddled with problems and, as a result, speed and convenience frequently trump accountability and oversight." Those are all from your statement, Mr. Amey?

AMEY:

Yes, sir.

HENKE:

Of course, you still stand by them?

AMEY:

Yes, sir.

HENKE:

Another quote, on page five of your testimony, is this: "Government officials who are making a decision about contracting are at a disadvantage because they do not have the time to sufficiently assess a contractor's history of performance and responsibility."

They do not have the time to sufficiently assess a contractor's responsibility? I would make the observation if they don't have the time to do it, they don't have the time to make that contract.

Would you react to that?

AMEY:

I would agree. Unfortunately, the workforce has been stretched thin, you know. If you had a list of the amount in contract dollars that have been awarded through the years and the level of the acquisition workforce through the years, you know there's a big difference between those two lines on the chart.

HENKE:

Dramatic difference.

AMEY:

A dramatic difference. You have, you know, two wars going on, so at that point speed, you know, who wants to be the person that slows down the process and is blamed for that?

HENKE:

Right. Right.

AMEY:

So those two things go hand in hand, you know? The government needed things yesterday.

HENKE:

Right.

AMEY:

And at that point, you don't want to be the one, "Well, hold on, let me do all the check-the-boxes and give a true, genuine assessment of responsibility," because at that point, you know, some service or good is needed in the field.

HENKE:

I'd like to ask each of the witnesses: It seems to me that accountability mechanisms, that past-performance tools, rigorous performance evaluations, active suspension/debarments, active oversight by both the contracting community and the IG community is important in peacetime, but it's doubly important in wartime.

We're moving faster, we're spending money faster, we're trying to get things done more quickly. There's a lot more risk.

Just a quick yes or no from each of you, would you agree that these accountability tools are more important or less important in wartime?

Admiral Gilbeau?

GILBEAU:

I think it's important in wartime and in peacetime because . . .

HENKE:

Is it more important in wartime, when you're on cost-plus contracts and you're trying to spend billions of dollars quickly?

GILBEAU:

Yes.

HENKE:

Mr. Carroll?

CARROLL:

I'd say the same, yes.

HENKE:

Captain Harrington?

HARRINGTON:

Yes, I would.

HENKE:

Mr. Amey?

AMEY:

Yes, and there's one caveat. I'll say not only because of mission accomplishment, but also lives are at risk right now. Like, if you're buying defective weapons or, you know, there's a product-substitution case, you know, you could be putting U.S. men and women at risk.

HENKE:

Now, it seems to me with regards to past performance you need three things: You need to have the reports in the system, you've got to have them input, they've got to be well-written, they have to be quality reports, and then later on someone has to use them.

The point isn't to collect the information and put it in a file, the point is to use it later to make better decisions. Would you all agree with that?

I think the witnesses are indicating they agree with that.

So the point is to use this information, but first you have to have it in the system. Second, it has to be good information that you can act on. And number three, you have to use it going forward as a discriminator on whether you use that contractor again.

We created this chart, working with the Defense Department and Captain Harrington's office at NAVSEA. We took a look at just 2009 and just three agencies.

From our analysis, we can tell that the middle column, those are the number of contract actions cut by that agency in 2009—1,485 for DoD, 93 for State and 81 for USAID.

And the contracting-data system automatically sends something over to the past-performance system to know it's out there. We could not find any performance reports for State Department or USAID. Zero. And we found less than 10 percent compliance at DoD.

So we're cutting 1,485 contracts, and we put it back in '09 to give it some distance. By now, those should have had at least one evaluation cycle. And we found fewer than 10 percent of those contracts had a report in the past-performance database.

So I would make the statement here that with these kind of results, everyone is convinced it's important. Everyone says it's important, we have to do better, we have to—and, Mr. Amey, I get it about the workforce. They're some of the most overworked people out there. I get it. They need to be a larger, more deployable workforce.

But until we start having meaningful outcomes, there's no point in doing it. We can have meetings, we can set up committees, we can set up task forces, and write FAR cases, but until we start moving the meter on having useful reports—and I'm not even talking about quality reports here or using the reports, I'm just talking about step number one, which is put reports in the database. OK?

Can you react to this chart, Admiral Gilbeau, each of you, please?

GILBEAU:

Yes, sir. Obviously, I can't substantiate the numbers or anything there, but I agree with what you just said in that you have to be able to use the information before there will be a self-impetus to put it in, not just a driven requirement to put it in.

HENKE:

Right.

GILBEAU:

And I think we've come a long way to getting that repository accessible and usable. We've got a long way to go. But the key is having a capability to deliver a finished product at the end . . .

HENKE:

OK.

GILBEAU:

. . . so that the time we invest will be worthwhile.

HENKE:

Mr. Carroll?

CARROLL:

We didn't specifically look at the paper system on our 2009 audit.

HENKE:

Right.

CARROLL:

But based on this information we will, clearly, include it in the audit we do on the follow-up.

HENKE:

OK.

Mr. Harrington? Or, Captain Harrington, excuse me.

HARRINGTON:

Yes. My office did compile this data. It was taken from FPDS (Federal Procurement Data System), and we used it, and we provided that information.

I would tell you that from the system administration side and what we do, since 2008 over 16,000 people have been trained on CPARS, PPIRS and FAPIIS (Federal Awardee Performance and Integrity Information System).

HENKE:

OK.

Mr. Amey?

AMEY:

Two words: Mission failure. Less than 10 percent, they're not performing their mission.

THIBAULT:

Commissioner, can I . . .

HENKE:

Sure.

THIBAULT:

I have a question, Captain Harrington, right on that line, which is you said you provided that information. Now, it shows gaps, and we all acknowledge an issue.

Who did you provide it to, and when you say provided it, and when you say provided it, who do you provide it to?

HARRINGTON:

Sir, we provided that information to OSD/AT&L (Office of the Undersecretary of Defense for Acquisition). And I do not conduct any analysis on it. We just provided the information. We did the data mining.

THIBAULT:

So you're not aware of how they've used this data in the present mode?

HARRINGTON:

No, sir.

THIBAULT:

OK.

HENKE:

Captain Harrington, what I think we're getting at here is that your system allows the users, DoD, the agencies, contracting offices to do this analysis themselves. Is that accurate? They could, they could look at this and say, "I've got 20 things in FDPS, and I've got zero things in CPARS."

HARRINGTON:

Currently, upon request from each agency we will provide this data to them.

HENKE:

Yes. Yes.

HARRINGTON:

In the future, there's an initiative out there, come April 15th, they'll be able to pull this off the database, off the website.

HENKE:

And, in fact, when your staff in working up this hearing, you told us you pre-populate the database. You take the contracting database, and you send it into the performance database, and you open up reports, which is why we can get this kind of data. So you're making it pretty easy for the users to do this, and you're providing a lot of training.

HARRINGTON:

Yes, sir.

HENKE:

OK.

Mr. Amey, you put it well. You said, "mission failure." We're not doing it. We're don't take it seriously.

Would you react to this characterization: There's no real accountability and it's business as usual.

AMEY:

I would agree. I'm hoping that based on these reports and attention like today's hearing provides the issue, that it will improve, but I'm skeptical. You know, why has it taken this long? We were at \$200 billion in contracts 10 years ago. Now, we're over \$500 billion.

HENKE:

Thank you. I'm out of time.

SHAYS:

Thank you, Commissioner Henke.

Commissioner—Dr. Zakheim?

ZAKHEIM:

Thanks very much, Mr. Co-chairman.

First of all to the folks in the government, thank you for your service.

And to Mr. Amey, thank you for yours, too. And if you're associated with my colleague here to my left, so much the better for you.

I'm also concerned with implementation and with measuring implementation. I haven't heard very much about measuring implementation, maybe because there isn't much implementation to begin with, as Commissioner Henke just said.

It reminds me of the agencies that gave their SES-ers (Senior Executive Service personnel) 90 percent better than average—90 percent of their SES-ers were better than average. Think about that for a second. So you have grade inflation when you enter grades at all, and nobody seems to pay attention to the grades anyway.

I'm struck, Admiral Gilbeau, could you clarify for me, you guys in DCMA have the ability to furnish information for CPARS. Correct?

GILBEAU:

In some instances, yes sir.

ZAKHEIM:

Do you provide that information 100 percent of the time where you do have the information?

GILBEAU:

We would provide it 100; we were supposed to provide it 100 percent of the time when asked to do it.

ZAKHEIM:

Why don't you? I mean, I was in government on both sides of the river, actually. People take the initiative. After 10 years in Afghanistan, why do you not see the need, given that you have the information, to provide it as a matter of course all the time?

GILBEAU:

Again, it's not a matter of my personal opinion not thinking that we . . .

ZAKHEIM:

No, no, no. I'm asking you as director, in your capacity, DCMA has the information.

GILBEAU:

Yes, sir.

ZAKHEIM:

Why wait, given what you've heard, and this isn't exactly new news. I mean, after all is said and done, there have been GAO reports. There have been IG reports. POGO's been driving the government crazy. Why, after all these years, you do not feel the absolute imperative to provide every ounce of information available to you, whether it was requested or not?

GILBEAU:

Yes, sir. I would respond by saying I do feel that imperative. However, there is policy that exists that we are actually currently reviewing to see if we can change, that limits our ability to input that data.

ZAKHEIM:

What kind of policy? Would you specify, please? And who made the policy and when was it made?

GILBEAU:

I don't know when it was made and I believe it is a local policy, i.e. either DCMA or perhaps DoD, and I'm not positive there.

ZAKHEIM:

You mean, you're a senior official of DCMA and you don't know if you've made policy? Is that what you're telling me?

GILBEAU:

No, sir. I would know if I made policy.

ZAKHEIM:

No, I know if you made policy personally, but you wouldn't know who made your organization's policy, whether it was you or OSD or the deputy secretary or whoever, on something as important as this where lives and taxpayer dollars are both at stake?

GILBEAU:

At this point, yes sir. Caveat to say, the policy exists. I have a DCMA policy on it. And we're researching it to ensure we can follow the string to make sure we can make appropriate changes to put the proper emphasis on filling.

ZAKHEIM:

I don't get it. When I was in government and if my shop had made a policy and I wanted to change the policy, the policy was changed. It was as simple as that. That's what senior government positions are all about. I mean this is the classic passive verb form. You know, mistakes were made. Who made them? God knows. Maybe God made them. But that is just to me a totally unsatisfactory answer, with respect.

Let me ask you something else, and I'd like to ask Mr. Amey as well. The contingency-contracting handbook says that CPARS is too complex and too time consuming for contingencies. Now, I've been a contractor about half my professional life. The other half I was in government. I'm no longer either.

And I've seen CPARS. They're no more nor less complex than any other government document. They're no more complex than an OER, for example. So why is it too time consuming? Why isn't it mandatory, even in contingency environments? What's the logic behind this?

Admiral Gilbeau?

GILBEAU:

Yes, sir. As of two months ago, again when, per the policy that we were just discussing, when we are asked to do it, it is required that my folks put it in.

Now, I can tell you that because of bandwidth issues and sometimes connectivity issues, it is difficult and we are working to try to figure mechanisms, whether it's just inputting on a spread sheet and pouring a spread sheet somewhere that we can get access. We're working those issues, but there are some technological problems that we're trying to overcome.

ZAKHEIM:

Well, and by the way, I'm not picking on you because you're you. I mean, whoever was sitting there would get this from me. I mean, it comes with the territory, as I learned to my regret when I used to have to testify.

But I've got to ask you, you say "connectivity problems"? I mean, come on, let's be specific. What is the problem? How long has it been? Why hasn't it been rectified? Give me some details, please.

GILBEAU:

I can't tell you how long the problem's been going on. I'd assume it's been going on the whole time we've been in this contingency environment. Example would be if you're sitting on FOB (Forward Operating Base) Fenty and you don't have a good signal to connect and you're trying to put in the data, you're not going to put it in.

And in some cases, if you're sitting in Kabul, it is easy and we are doing it. But I can't tell you that my organization can do it 100 percent of the time in 100 percent of the locations because of issues like that.

ZAKHEIM:

And would you say that when it has been easy, you've done it 100 percent of the time?

GILBEAU:

I can tell you since January, we've done it 100 percent of the time, period, in Afghanistan, and 50 percent of the time in Iraq.

ZAKHEIM:

And when can we expect to see it 100 percent of the time in Iraq, sir?

GILBEAU:

I don't have an exact answer, but as soon as humanly possible, I can tell you that.

ZAKHEIM:

OK.

Mr. Amey, I'd like your comments on my minor outburst here.

AMEY:

Well, I think it boils down to this type of work has been considered red tape. This is the kind of, you know, it's been a procedural burden and that's kind of the reputation it has. And at that point, this is the kind of work that's being gutted out of the system both from a pre-award side of things, a contract-administration and oversight side of things that has been gutted from the system that makes it a lot more difficult to hold contractors accountable and also agencies accountable.

ZAKHEIM:

OK, thank you.

Mr. Carroll, I have a very special sympathy for IGs. They worked very closely with me when I was in government. You mentioned in your testimony that there were four entities omitted from the excluded parties list. Who were they? Let me ask you since your team is checking on this, who were they? Did they get new contracts? Are they still contractors? And what was done as follow-up?

And maybe if you don't have that now, perhaps you can get back to me on the second round on that one, whatever is easier for you.

CARROLL:

Probably on the second round.

ZAKHEIM:

OK.

Then one last question. You say that there have been 28 suspensions and debarment actions over the past year with AID. Now, AID in particular strikes me, given that it's been an organization that's relied heavily on contracting for at least a decade, the improvement is late, to put it mildly.

But just as here, you see up there, how many actions are we talking about? Twenty-eight suspensions and debarments out of how many cases? Could you tell me that, please?

CARROLL: Out of how many cases as in investigative . . .

ZAKHEIM:

As in number of contracts? Is the number there the 81 that's up on that chart? Or what? What's the base when you say "28"—28 out of how many?

CARROLL:

I couldn't say specifically. I'll get you the information, but the point I was trying to make was the improvement. And just because there's a contractor or a number of contractors, doesn't mean that they're poorly performing or there's fraud or criminality.

ZAKHEIM:

Oh, absolutely. I couldn't agree more, but there's no way of knowing that if you don't complete a report. As Commissioner Henke said, you know, you've got to start at stage one, and it just seems to me that to say we're doing better or that we're doing anything at all is very difficult when you don't have reports completed.

And I think part of the difficulty that at least I find with so much of the testimony I'm hearing and that I've read is that everything's about process and very little is about outcome. And government is great at process. In fact, government is best at defending whatever it does or doesn't do, as opposed to actually dealing with what the outcomes ought to be.

Thank you.

SHAYS:

Thank you, Dr. Zakheim.

Sometimes when something is so outrageous, it has less impact, because it's hard to get your mind around it.

So, admittedly, it's just a sampling, but in our statement, our joint statement, and, by the way, Republicans and Democrats up here, we hardly remember who's who, and sometimes our biggest disagreements are with staff and not among ourselves.

And it's a healthy disagreement. We have a lot of practitioners who sometimes say, "Yes, but, you know, we're in the system, we know how it works." The whole reason why it's good we're not in the system is we can look at it from the outside.

So if you were the general public and you were aware that samplings of contingency-contracting data in the federal procurement data system suggests that more than 90 percent of contracts have not had required past-performance data entered, and then you're in the general public and say, "Well, if 90 percent haven't been entered, how in the heck can you judge them on past performance?"

And then, admittedly, it's a different sample base, but the Office of Federal Procurement Policy has found more than 75 percent of past-performance reports that were made still lack adequate narratives on contractor cost-control efforts.

So is it because you're in the system and you all make excuses and you understand, well, people are overworked? What is it that's going on in government that accepts this for, literally, decades and doesn't do anything about it?

Admiral, explain to me why this is happening, because to the outside and to us it's really outrageous.

GILBEAU:

Yes, sir. And I can see where, especially given some of the testimony here, it can seem outrageous.

One of the problems that I think we are well on our way to fixing is, again, in my environment as DCMA I provide that past-performance data, and I do this routinely, not just the CPARS piece, to the procurement contracting officers, to the PCOs and to the program offices.

The way our policy that I was discussing currently lays out, the PCOs are the ones that are responsible to put in that performance data. In some instances I'm probably the closest, my organization is the closest to observing and surveying the contract performance, and that's why we've changed recently to have us put directly into CPARS.

So I think some of it is the way the system was developed, and I believe the people that developed the system previous to us did a good job putting something out there, but we need to make it better.

SHAYS:

Well, what it describes, the fact even you used the word "seem" is distressing, though, because it doesn't seem outrageous, it is outrageous. That's the bottom line, that's the whole point.

Mr. Carroll? The question is, this is so outrageous, what do you hear within the system that kind of justifies the fact that this can exist as outrageous as it is?

CARROLL:

Well, from our point of view, Chairman Shays, we don't accept it, and while we did the audit and we're going to continue . . .

SHAYS:

What kind of excuses do you hear? Give me one or two of the top two excuses why this didn't happen.

CARROLL:

Well, it's going to be staff.

SHAYS:

Captain?

HARRINGTON:

Sir, in my environment I provide the data, and we provide that user training.

SHAYS:

When you provide the data, the data, do you begin to think, like, what's the point? Because you've been providing the data and nothing's been happening.

HARRINGTON:

Well, the programs—CPARS has been a program, federal program since October. I don't do any analysis of it, no.

SHAYS:

OK.

Mr. Amey?

AMEY:

I think this is why your 23rd recommendation in your report you released last week that talks about a written rationale for not pursuing proposed suspension and debarment is vital. You know, we've seen multiple instances in just using contingency operations. KBR had over a billion dollars of unsupported costs.

Now, I'm not claiming all that was waste, fraud, or abuse, but they couldn't support them, so we're not sure how money was spent. Well, you know, the DCA wanted to take some moves, wanted to initiate a withhold, and they backed down from the Department of Defense.

We have seen it with BP as a contractor. Everybody, obviously, knows their record in the Gulf Coast, but they, obviously, supply a lot of petroleum to the Air Force.

SHAYS:

One of the challenges that we have is that since so many people have their finger on it, nobody's ultimately held accountable, so no one gets blamed.

IBM has this wonderful system that even once someone's retired, they look at a successful program, and if it's successful, they go back to the retiree and give them a bonus of hundreds of thousands of dollars for a decision they made. There's this sense of accountability even that follows you once you've retired.

Recommendation one: "Allow contractor to respond but not appeal agency performance assessment." Do you gentlemen understand why we made this recommendation? Can one of the four of you explain what the logic is behind this?

It's pretty logical. I'm just curious if you think about it. It's one of the things that we encountered. "Allow contractors to respond to but not appeal agency performance assessments." What's the problem with the appeal?

AMEY:

Well, I'll jump in. Did the response alter the appeal? You know, the decision should come from a government agent, not from discussion with the government or with a contractor.

SHAYS:

And the appeal can take months, maybe a year, and you're held in limbo, and yet you're in a contingency environment? We relate this to contingency environment. You have to have a decision made soon enough.

"Align past-performance assessment with contractor proposals." We want to make sure that a contractor isn't claiming that they did something well when, in fact, they didn't, and there's no record to counteract it.

"Require agencies to certify use of past-performance database." What's the sense of this? Why would we want to suggest this? Could any of you tell us why? Do you think about it?

Admiral?

GILBEAU:

Yes, sir. I just think it makes common sense, and I agree with that recommendation.

SHAYS:

And thank you. And it holds people accountable. Just let me go through the few others.

"Require a written rationale for not pursuing a proposed suggestion or debarment." This was a question that I wanted hanging for you, Mr. Carroll. I don't understand how we could see an agency—we don't, the commission—without a justification for not agreeing to a recommendation of being disbarred or suspended.

CARROLL:

Well, we present the evidence to the agency to make a suspension and debarment decision. Sometimes that's in parallel with the referral to Department of Justice.

SHAYS:

And DCAA sometimes does the same, and . . .

CARROLL:

Yeah.

SHAYS:

And then they still get the award, and there's nothing written that explains why, the recommendation notwithstanding, was still decided.

CARROLL:

True.

SHAYS:

Do you agree with that recommendation?

CARROLL:

Wholeheartedly.

SHAYS:

Captain Harrington, can you speak to this recommendation and whether you agree to it or not or think it makes sense?

HARRINGTON:

If I could ask you to repeat the question, sir.

SHAYS:

Our recommendation 23 is, "Require a written rationale for not pursuing a proposed suspension or debarment when it's been recommended by an inspector general or recommended by DCAA or a senior employee of that organization."

HARRINGTON:

Sir, in my capacity I think that if there are programming changes or inputs or things that need to be changed to the system, I will be able to provide that. Our . . .

SHAYS:

I hear you, Captain.

Admiral, could you speak to that recommendation? Whether there should be some kind of written—not some kind, a written rationale for not pursuing a proposed suspension or debarment when it's recommended.

GILBEAU:

Yes, sir. My interaction with suspension and debarment is extremely limited. From what I do know, personally, my own opinion is I think it's a good recommendation. I think it's something that should be taken forward. But, again, I am not in the suspension- or debarment-officer realm.

SHAYS:

OK.

Well, let me just say I'll read the other two, and my time is up.

But we want to increase use of suspension and debarments. We think if you're not going to be suspended or debarred, there's no accountability. What's the point of even recording past performance if you don't act on it?

And revise regulations to lower procedural barriers to contingency suspensions and debarment.

We just think that the process in a wartime environment is absurd if the process can take literally years. Then what's the point? And, you know, we waste money, we get bad performance, and we put our men and women who are on the front line in danger.

So we really want you all to go back and look at these recommendations because we think this is an important, essential part of what needs to take place in the reforms.

And we're going to start the next order, and we'll go to you for five minutes, Commissioner Thibault.

THIBAULT:

Thank you, Commissioner Shays.

I want to explore something that Commissioner Shays read very briefly and just get a yes or a no.

There's a recommendation, I think, we're popping numbers, number 22 that says "require agencies to certify the use of past-performance database"—"require agencies to certify the use."

Does anyone on, up there think that that's without merit?

All right. Well, it seems to me, then, that the next part of that is the accountability that Commissioner Shays brought up, which is, if you do that—right now, it's a whole lot of "and we're doing it," it's in the testimony, "Well, we're doing this to improve it"—but there's none of this, here's where the failure occurred or senior management accountability.

Well, if you require the agencies to certify that they're effectively using it consistent with the requirements and the regulations, then at least you can evaluate the process that they're using.

But if, as you see in the chart there, you get all those zeros or less than 10 percent, you've got nothing to evaluate.

So it would seem to me if you implemented that, then you could turn to the head of agencies in forums like this and say, "What's going on?"

And it seems to me then there would be a scrambling on the side of the government to get this done the way that we all would like to.

Is anybody up there disagreeing with what I've said so far?

OK, now let me get to a point that's sort of near and dear to me, that I wanted to bring up, which is the cost of these corrective action plans and the suspension and debarment work too.

Many of these contractors that we bring up—I like Professor Tiefer's flagrant five—I found that a good way to reinforce it, but many of them that we bring up are valued providers of certain goods and services.

So people in a government make a decision, you know, and we can criticize it in some cases, and are, and we need to continue their support.

But it seems to me that the question that hasn't been asked is, so, who's going to pay for this?

Or who should pay for this? In a second, I'm going to ask you all, I'm going to start with Mr. Amey and work my way down, but in the most egregious example, clearest-understood example, where there was life lost in this electrical problem, where we were wiring living quarters and other quarters inappropriately.

Well, in that particular case we, the government, devised all sorts of project-safety-type situations where it was all fixed. It's a cost-type contract. If it was a fixed-price contract and a contractor agreed to perform against a certain standard and didn't, and you put a cost-improvement program, the corrective-action plan, together and they had to do it, guess who pays for it? The company pays for it if government's been doing their job and documenting.

In a cost type, you know, we have been out in the field and gone through a lot of these in these semi-remote you know, the Shanks and the Airbornes (Forward Operating Bases in Afghanistan) of the world, you know, we've been to them. And there, they have a corrective-action plan and a responsible contractor will fix it.

But if it's egregious, and they didn't build a building, so it couldn't be inhabited, then the real question is why, in that environment, do we continue? Should we be changing the regulation that if it's worthy of a level-three corrective-action plan or whatever we're referring to it today, who should pay for this?

And it goes back to, we're changing the regulation on business systems, saying you take a withholding until they get it done. And I'd go a step further and ask the question, you take this withholding, it's that important on a corrective-action plan also. And then the question is who pays for it?

Mr. Amey, who, you know, when you get right down to the business world that we're try to be like, who should pay for that?

AMEY:

Obviously, it should be the contractors to either provide the goods or services that were promised to an adequate level based on the requirements of the contract. But, unfortunately, most of the time, I think the taxpayer pays for it.

THIBAULT:

OK.

Captain Harrington, do you have anything different?

HARRINGTON:

From where I sit, for funding, I look at the system, and I am funded . . .

THIBAULT:

So you're a user of the system, and it's not really down your lane.

Mr. Carroll, you've got a USAID contractor that's failed. You've got a bunch of money being spent. It's a reimbursable contract. Right now, we're paying for it.

Should we be considering a change in either the regulation or the law that requires that where it's egregious—you know, they're going to continue to do business; they've made all these fixes, but who's going to pay for a fix?

CARROLL:

I agree with you 100 percent on what you're proposing.

And I would just say two things. For the agency, for example, to fix that, they're going to put eight FTE into a new unit, so you've got to give them credit for that.

Secondly, I know Mr. Tiefer is a fan of LBG, but they are paying for their corrective actions, you know, civil settlement, they're paying for an oversight . . .

THIBAULT:

Part of their Justice settlement in all of the corrective-action plans?

CARROLL:

Yes, exactly.

THIBAUT:

And Justice can do that, and they have done it.

CARROLL:

Um-hum.

THIBAUT:

It's kind of rare, but they've done it. You know, all the way back to my history of Sundstrand Data, which makes me older than all of you, Justice effectively does that sometimes. They don't always do it in this case.

CARROLL:

Right. And in addition to that, when we find egregious instances where contractors didn't perform, we'll make a recommendation to the agency that they can't sustain that cost and to recover the cost, and that's happened in the past, too. So it's the contractor, clearly.

THIBAUT:

Admiral?

GILBEAU:

Yes, sir. I would simply say contractors have equitable-adjustment capability against the government. I would love to see a law that would allow us to have equitable adjustments.

THIBAUT:

Well, I think that my instant reaction is to agree, but I would say that would be contradictory and very difficult.

But the concept of simply saying in the regulation that if a corrective-action plan at a certain level, the contracting officer has the authority with the advice of his or her advisers to say to the company, "that's one you're paying for."

Because I think then the company will be more attentive, and I think the government will be more attentive as long as you have agencies certifying the proper use of past-performance

database. Because then the head of the agency is going to have to put his reputation or her reputation on the line.

Mr. Amey, you have a quick comment?

SHAYS:

And then we need to move on.

AMEY:

Yes, sir. If I may, I have just one point that's kind of gets us into the weeds, but it may also be on the competition side is that you need a competitive multi-award IDIQ, so at that point, if that contractor isn't performing well, then you can turn somewhere else, someone has already been preapproved, so at that point you could bring them in, and there's that threat you could lose that contract. That may be a remedy.

THIBAULT:

Good point. Good point.

SHAYS:

Thank you, my co-chair.

And we'll now go to Mr. Green.

GREEN:

Thank you. Not really the focus specifically of this hearing, but my closing comment in the first round, now that you've all had time to think about it, and I like to take advantage whenever we get some smart folks up here to sort of pick their brain.

You know, commissions like ours just come and go. And some do good work, some don't do terribly useful work. I hope that some of the things that we have done over the past couple years before we close out will prove to be useful. Unfortunately, many of the recommendations just die a slow death.

So back to my earlier comment: The war's over, the troops come home, they're focusing on training, they're focusing on maintenance, they're focusing on exercises. Senior OSD leadership

goes away. Joint staff turns over. Senior service leadership goes away. SIGAR goes away, SIGIR goes away, we go away, you guys maybe all go away, except IGs survive forever.

What would you do if you were king to ensure that the progress that I think we've made, and I think you all agree there's been progress made, what do we do to ensure that that lives? Anybody?

GILBEAU:

Sir, I'll take it first.

GREEN:

I think I asked all of you.

GILBEAU:

Yes, sir. I think I would say that you'd have to ensure that we institutionalize the operationalization of these sorts of things, and we need to drive it just into our culture, and we also need to make sure there's a proper metric that is agreed to and driven into the process.

It will be difficult to keep track of these things. I'm sure that there were the same instances of this in the Vietnam era, and we're looking at it again now.

So the key is how do we institutionalize it? And that's something that we have to take a focus on.

GREEN:

In your area, do you see it being institutionalized, whatever that means?

GILBEAU:

Yes, sir. I do. We are writing SOPs (standard operating procedures), we are measuring, we are ensuring that it gets into our culture.

GREEN:

Mr. Carroll?

CARROLL:

Well, I would say it's incumbent upon the IGs, as you stated, to maintain the momentum and to continue holding the agencies accountable for contractor performance.

And I think that's, you know, even when the special IGs go away, you still have the statutory IGs for Defense Department, State, and AID to be able to carry the torch forward.

So I would say from my point of view, we're fully prepared to continue doing what we do to make sure the agency holds contractors accountable.

GREEN:

Well, I think the pressure will come on the IGs, and I hope that when the special IGs go away, if they do, and whatever form follows them, if any, they will also have certain responsibilities.

But short of that and short of really taking that seriously, I am skeptical, as all of you have seen recommendations, studies just collect dust. And I think that some important work has been done here and I think we're moving in the right direction, but we've got to stick with it.

Captain Harrington?

HARRINGTON:

Sir, as a training provider for these systems, like I said earlier, we've had 16,000 people train and we have seen an increase in the training and we'll continue to provide that training and will continue to stress what those important functions are. We talked about narratives and things like that.

I think our training provides the users the right—putting the right tools in the toolbox for them.

GREEN:

Unfortunately, with the way that the economy is and the way the defense budget seems to be going, you're going to have your work cut out for you in continuing to be able to provide this training and the numbers of people necessary to accomplish the job.

Mr. Amey?

AMEY:

Well, unfortunately or fortunately, administrations and policymakers go away as well. So I think you need to codify this, you know, get Congress to pass legislation that will enhance what's currently in the Federal Acquisition Regulation (FAR), as well as the DFARS (Defense

Acquisition Regulations System). You know, I wouldn't expect it just to come from the management side of thing with policy memos.

GREEN:

Thank you.

My time is up.

SHAYS:

Thank you, Commissioner Green.

Mr. Tiefer?

TIEFER:

Thank you, Mr. Chairman.

I'm going to go back to a couple of my favorites among the flagrant five, and ask Admiral Gilbeau, I know that you carefully said in your statement that as far as LOGCAP III and IV, the enormous logistical contracts in Iraq and Afghanistan, there had not been entries made by DCMA.

I'm not talking about currently; I'm going back until the recent past—had not been made by DCMA. I want to take it one step further and ask about that. Our staff looked to see whether somebody else made entries and found that there had been no entries for KBR in LOGCAP III or LOGCAP IV, which means that the extensive history described by Mr. Amey that you can find on the POGO database doesn't have anything corresponding in the government database.

And I want to ask, how could this have been true? Or why would this have been true in what I think is the most famous incident of KBR wrongdoing, which were the electrocutions in Iraq, the electrocutions of soldiers and others because of faulty work on the wiring?

And I think you at DCMA did yeoman's work. You established a thing called a level-three corrective-action request, which is a very serious sanction. Why didn't that get into the database?

GILBEAU:

And again, this would just be speculation, but my guess is because of that handoff from the DCMA activity to the procuring contracting organization to give all that information in seven volumes, seven big volumes of information. And then the oversight trail, from my perspective, is severed once I hand that over to the PCO.

TIEFER:

Thank you.

I have a question about what I believe is a major game that the contractors with bad performance have succeeded at, and that we have a recommendation. And that is, number one, isn't it the case now that even if there's no entry for a contract in the database, there's no past-performance entry, that a contractor may cite that work on that contract as past experience in seeking to be evaluated favorably for a new contract where best value, 30 percent is often what they've done before?

And if we recommended that that should not be the case, that contractors could only take credit for performance that has been rated, would that lead to a better rating system?

GILBEAU:

I'm not sure. At the onset, I think it sounds like a positive idea. However, I'd have to look at, you know, what kind of experience was being built. What kind of experience did they have? When would they actually execute a contract and then be competing for another contract?

TIEFER:

But it is the case that now a contractor who does not have past-performance ratings and who therefore may have given a poor or even unsatisfactory performance, may cite as past experience their work on a contract.

GILBEAU:

Yes, sir. I can't give qualified information as to the current case because I don't have PCOs. I can tell you when I did manage PCOs back in Iraq in the 2007-2008 timeframe, you're absolutely right.

TIEFER:

OK. Thank you.

Mr. Carroll, your statement explained that you had built the case, that AID IG had built the case on Louis Berger and which they later pled guilty. And I have no criticism and only praise for the case that you built. It's an impressive accomplishment.

I want to know, could earlier on, not at the end when Louis Berger had taken a lot of measures and was looking to make a good plea agreement, but earlier on, could you have made a recommendation for AID to consider suspension and debarment?

CARROLL:

I'm not sure that we could have because the fraud was so complex and so difficult to prove. It took us an extraordinarily long time to conduct the investigation and then to write the affidavit that led to the indictment that led to the civil settlement. So in retrospect, it wasn't nearly as easy as it was with AED, where we had clear fraud early on and we presented that to the agency.

So would we have liked to have seen something more punitive with LBG? You know, from a law-enforcement perspective, I think I could probably say inherently yes. But . . .

TIEFER:

Mr. Carroll, my time's expired, but that's a good . . .

SHAYS:

I thank you, Commissioner Tiefer.

Commissioner Henke?

HENKE:

Thank you, Mr. Chairman.

Captain Harrington, your office is responsible for providing past-performance training on the systems you manage. Right?

HARRINGTON:

Yes, sir.

HENKE:

And you provide, you said, 16,000 users different levels of training? You provide that training. I guess you do site visits. You do VTCs, video-talk conference?

HARRINGTON:

Sir, we do online training. You can register online if you're a registered user. You can go online and register for that. We do site and we do go to—for instance, a perfect example is next month we're going to be in Huntsville, Alabama.

HENKE:

Right.

HARRINGTON:

We expect to train up to 500 people.

HENKE:

OK. You also hold past-performance conferences. We sent some of our staff to your conference last year. They said it was pretty good.

HARRINGTON:

Yes, sir.

HENKE:

My question to you is you do a lot of training. You seem to produce a lot of steps, a lot of access to training. So with all that training going on, to what do you attribute these kind of results to? People are trained, but not using the system. What's missing?

HARRINGTON:

We've taken and we've listened to the users.

HENKE:

Yes.

HARRINGTON:

And we've tailored our training to that. And we've provided in our training those tools, like I said earlier, the tools in the toolbox to the users, that, you know, or a good example would be the narratives. We stress that to say hey, you should do that all the way through the whole contract period.

HENKE:

So to what do you attribute the kind of results that we're looking at here with 10 percent are completed or zero are completed? What's missing? Is it a will to use the system?

HARRINGTON:

I'll be honest, sir. In my capacity, I don't analyze that data. I provide it.

HENKE:

Is it frustrating to you to provide that training and see these kind of results?

HARRINGTON:

Yes, sir.

HENKE:

OK.

Mr. Amey, in your statement, you mentioned the Interagency Suspension and Debarment Committee (ISDC). And if I understand it simply, they're an interagency group of about 50 departments and agencies. They've been around by executive order since 1985, '86, whatever.

There was a piece of law passed two years ago that requires them to report to Congress. It was passed in the end of 2008, October 14th, to be exact. Have you seen their 2009 report?

AMEY:

I haven't seen any of their reports.

HENKE:

Have you seen their 2010 report?

AMEY:

No, sir.

HENKE:

To your knowledge, have they reported as they're required to do by law to Congress?

AMEY:

I do not know that. I don't know the answer to that question.

HENKE:

Have you written them? Have you asked them? What have they said?

AMEY:

I have written. I sent two letters, multiple e-mails and multiple voice mails, and have received no response.

Oh, actually, I take that back. I did receive one response from someone that was the former vice chair, and she said she was no longer on the ISDC, and, therefore, I had to take it up with Mr. Blalock.

HENKE:

OK. But then you contacted him?

AMEY:

I did, but I've never actually have spoken with them, but I have contacted him and I've never heard back from him.

HENKE:

OK. He's here today. He's on our second panel, as you know. If you would make a point to meet with Mr. Blalock after hearing . . .

AMEY:

Yes, sir.

HENKE:

. . . and to open up that dialogue, I'd like to introduce the two of you.

AMEY:

Yes, sir. Thank you.

HENKE:

Mr. Carroll, you used the word on suspension/debarment deferrals that the IG's make to the procurement house, procurement side of the organization, you said you were frankly, quote, "frustrated" that you were making referrals, but the agency wasn't acting on them.

What happened to them? Did they go into a black hole? Was there ever a resolution on them?

CARROLL:

Well, to use your term, into the black hole, if we're not going to get a criminal prosecution, then it comes back administratively, we refer to the agency. The agency will take some particular action. When they take that action they get back to us and we close the case. So it's not . . .

HENKE:

And that action may be as . . .

CARROLL:

It could be they chose not to act. That could be one of the actions they took.

HENKE:

And literally can they just say, "We chose not to act"? Or do they have to document for you their reasons, their rationale? What's the . . .

CARROLL:

No. It's fairly informal like that. They really don't have to give us a rationale for why they chose not to act.

HENKE:

OK.

CARROLL:

So your recommendation to force them to do that would, I think, would be outstanding.

HENKE:

And actually the recommendation is that it would be approved by the agency head. So if you say this contractor is a bad actor, you should suspend them or debar them, if they disagree they got to run it up to the administrator or the secretary to get that level of visibility into it and then document it and put it in the database.

CARROLL:

I think it's an outstanding idea.

HENKE:

Admiral Gilbeau, you said something that I'm interested in pursuing a little bit. You said you're not in the suspension/debarment realm. And I'm curious about that because DCMA is the DoD's lead agency on contract administration.

GILBEAU:

Yes, sir. We provide input to, again, the PCO.

HENKE:

OK.

GILBEAU:

But I don't have any authorities to suspend or debar. I do provide input, I do provide surveillance, and I provide . . .

HENKE:

Right.

GILBEAU:

. . . you know, some sort of oversight.

HENKE:

OK. Thank you.

SHAYS:

Thank you, Commissioner Henke.

And now we'll go to Dr. Zakheim.

ZAKHEIM:

Thank you, Mr. Chairman.

First of all, Mr. Carroll, you were going to get me some answers on those four entities that were left out and whether they got any new contracts and whether they're still contractors.

CARROLL:

The four entities were related to one company, and I can't definitively answer whether they got any follow-up contracts, but I will get back to for sure when we get back to the office.

ZAKHEIM:

And which company was that?

CARROLL:

It was called Dannix, D-A-N-N-I-X, Corporation.

ZAKHEIM:

OK. I'd appreciate that.

CARROLL:

Sure.

ZAKHEIM:

Thank you.

Captain Harrington, you have twice now said you don't analyze the data. Now, this is what you said about what your office does. You manage, you oversee, you do proper database management, configuration management, customer support and training.

But if you don't analyze the outcome how do you know what you're supposed to be doing? Could you tell me, please?

HARRINGTON:

Sir, we have an MOA (memorandum of agreement) through DLA (Defense Logistics Agency) and OSD AT&L. And we adhere to that MOA.

ZAKHEIM:

What does that mean?

HARRINGTON:

The memorandum of agreement . . .

ZAKHEIM:

Oh, I know what that means. But what does that mean . . .

HARRINGTON:

Yes, sir, the memorandum of agreement we have. My folks take that very seriously. And they provide . . .

ZAKHEIM:

Tell me, but you have a memorandum of agreement, but do you get specifics on the outcome of your training, on whether you've configured these, whether these systems are properly configured? Do you get numbers? Do you get outcomes?

HARRINGTON:

We compile monthly metrics about the system, yes, sir.

ZAKHEIM:

You do. So you have numbers and outcomes on all these systems, on all the training, you're able to evaluate how well you have trained people?

I mean, somebody takes a course in university, they're going to take a test. They'll pass, they'll fail, they'll get grades.

When somebody takes one of your training courses how do you know that they weren't watching TV at the same time?

HARRINGTON:

Do we have a formalized feedback system?

ZAKHEIM:

Yeah.

HARRINGTON:

No, we do not.

ZAKHEIM:

So if, you know, if I was taking a course and if it's a typical computer-based course, what happens is, if you get the question wrong, you try the question again and you can keep trying till you get it right. So I could be watching, I don't know, the Super Bowl and taking your course and finishing. How long do these courses last, by the way? I mean, each section of it. Is it a day, an hour, a month?

HARRINGTON:

One day.

ZAKHEIM:

One day.

HARRINGTON:

One day, yes, sir.

ZAKHEIM:

OK. And how long does it take? Is it an eight-hour course?

HARRINGTON:

It's approximate eight hours, yes, sir.

ZAKHEIM:

OK. So I could be doing something else and taking your course at the same time and you have no way of knowing whether I've absorbed any of this, correct? Correct?

HARRINGTON:

Yes, sir.

ZAKHEIM:

OK. Are you comfortable with that?

HARRINGTON:

Sir, I think that there's areas in my capacity that we're exploring to make the system better for customer feedback. I think that's an important aspect of it, and we are exploring that.

ZAKHEIM:

Can you give me details? I mean, we've been doing this, we've been at war and contingency now for 10 years. We may have other contingencies.

Give me some examples of what you're actually doing, and also when you expect to have them done. Because one of the things I notice in government is all you guys, it's "we're working the problem." But nobody ever says when the problem's going to worked.

So give me examples of what you're doing and give me a timetable of when you're going to complete whatever it is you're trying to do.

HARRINGTON:

Sir, I think for that question I'd like to take that for the record.

ZAKHEIM:

That's fine. I'll accept that.

Mr. Amey, I want to point out a couple of things. First, this is more generally just an observation. This "bad apples" excuse whenever a contractor does something wrong, you say, well, it was some individual that did it. But I can tell you that when you get a bad CPARS rating, having

been a contractor, everybody makes sure that whoever messed it up is probably going to be kicked out pretty quickly.

And so, the absence of a CPARS rating is, frankly, and I think you heard it from all my colleagues, I think the word my co-chairman used was "outrageous." That's probably an understatement.

But let me ask you, Mr. Amey, have you or POGO generally looked at or have any sense of the fact that possibly those who rate for CPARS, because some of the input comes from what's called in the business the client, might then go over to work for the very contractor they rate?

AMEY:

In essence you're describing the revolving door?

ZAKHEIM:

That's one way to put it.

AMEY:

We have, not in this context. A few years ago POGO did publish a report on the revolving door. We took a look at senior government officials that worked for the top 20, or that were former senior government officials, went to work for the top . . .

ZAKHEIM:

This is very different, because the trouble, every focus is on the senior government officials. But here we're talking about the GS-12, 13, or 04, 05 rater who is going to inflate the CPARS, retire, and then go to work for the very company that they have inflated.

Have you looked at that? And if not, I recommend you do.

AMEY:

I wish I could. I have not, and the reason being is we don't have the capability. There is a DoD kind of revolving-door database that has been created but it's not publicly available and it does track certain contracting officials that move to the private sector. But we don't have access to that data.

ZAKHEIM:

OK. Who would? Does anybody on the panel know who's in charge of that so we could find out why there's no access? Anybody on the panel know? Thank you.

SHAYS:

I have one question before we allow you all to make a final statement without our responding to it. But I may have more than one question depending on your answer.

I'd like to know what would be your number-one recommendation, each of you, what would be your number-one recommendation to make the past-performance and contingency-reporting system work more effectively?

And so, what would be your number-one recommendation? It could be the ones we've made, it could be another one. But what is your number-one recommendation to make this system work better in a contingency environment?

Admiral, let's start with you.

GILBEAU:

Yes, sir.

I think my top recommendation would be to ensure there is a separation of reporting from the program office and in my case, DCMA, the contract-management administrators.

And I think ensuring that we are appropriately resourced, whether it's IT resource or personnel resource, to input the performance data directly would be a good thing.

SHAYS:

Thank you, Admiral.

Mr. Carroll?

CARROLL:

For me it's a tie between the certification of the use of the systems and in providing a written rationale for decisions made for suspension and debarment, yea or nay.

SHAYS:

Thank you.

Captain?

HARRINGTON:

Sir, as the systems evolve, my office is, and my command is standing by to make those changes to keep it going forward and . . .

SHAYS:

Let me just say, you are too integrally involved in this not have an opinion of the best way to improve this system. And what I'm asking is for you to give us your best judgment. That's a request that people around you would expect you to answer.

HARRINGTON:

I know that, through the JCCS (Joint Contingency Contracting System) that they're working to make it a little bit easier for the person in the field.

SHAYS:

To record?

HARRINGTON:

Yes, sir.

SHAYS:

So that would be your number-one recommendation?

HARRINGTON:

Yes, sir.

SHAYS:

OK. Mr. Amey?

AMEY:

I'll defer to the other panelists. I think that they pointed out, you know, the top three or four issues as far as the performance data goes.

SHAYS:

I would think that one of the most important things is to have senior leaders focus on this as something that they want done. What I've noticed in my observation of the military in particular is, when the senior folks want it done, it gets done. And if they have other priorities—so I would think, frankly, that one of your answers might have been that it be given a priority over other things.

This is the bottom line, and let me just now make a comment. In our "At what risk," our first report was "At what cost."

We have it in five sections. "Contractors become the default option." The section two is "Agencies do not treat contingency contracting as a core function." The third is "Interagency organizational structures do not support contingency operations." The fourth is "Policies and practices hamper contingency competition." And the last one, section five, is "Enforcement policy and controls failed to ensure contractor accountability."

All of us would stand by these headings and then the recommendations within it.

So three of our recommendations came under: "Policy and practices hamper contingency competition" as it relates to this issue. And then we had three in the "Enforcement policies and controls failed to ensure contractor accountability."

So, the bottom line for me is and I think my colleagues is that 90 percent of past performance are basically ignored, give or take. Maybe more are ignored, maybe a little less.

The second is contractors can claim good performance and there's nothing to dispute it because 90 percent isn't recorded.

The third point is we focus on the 10 percent where performance is recorded, and even then we don't use it to ultimately suspend or debar or just simply not move forward with that contractor, at least not give them as many points.

Maybe they should still be allowed to compete but they're not going to score as well. Isn't it about 30 percent is past performance?

AMEY:

Yes.

SHAYS:

What a joke. Thirty percent is past performance. The contractor says, "I'm doing great," so they get scored well. And we have no way to counter it.

And then so we often renew contracts when performance is bad. We give new contracts to former bad performers. That's what happens. And we rarely use suspension or debarment. And it's not a punishment. It's just we don't want them to do the work for existing or new contracts. We basically ignore this important tool.

That's the bottom line to this hearing. And, Admiral, I just want to say to you that, if—and you know this, but I just want to say it to you as, frankly, someone in your position. If this isn't the highest priority or one of the highest priorities, this is going to just continue.

And we really would respectfully ask that you all take a good look at this report. We spent frankly two years trying to sort this out, and these are our conclusions. And, frankly, they're very important conclusions.

So I got to make the last statement on this side. You each get to make whatever statement you want without any intervention from any of us. And we'll let you, Admiral, go last to get the last word, and we'll start with Mr. Amey.

AMEY:

Well, thank you very much. And I appreciate you holding this hearing because I do think it's critical to making government operations work better.

My final statement would be just three basic recommendations. One is transparency. When I include transparency, I include government sharing. Unfortunately I've been told by one suspension and debarment official that, if he would have known that a contractor had entered into multiple administrative agreements with other agencies, he wouldn't have been the next.

Expanding FAPIIS to include items that aren't related to contracts and grants, for example, most of what we're talking about may not be entered into those databases and therefore isn't going to give us the push that we need when it comes to better contractor-accountability measures and also the increased use of suspension and debarment.

We could have, in the case of BP you know, I thought that the EPA should have suspended BP. However, the Air Force came back and said, no, no, wait a second; we need them to participate. And the question is there: grant them a waiver, but let's hold them accountable; let's improve processes and, you know, let's shine some light on what their track record is so therefore we can help them improve and help the federal government.

Thank you.

SHAYS:

Thank you, Mr. Amey. Captain Harrington?

HARRINGTON:

Mr. Chairman, thank you very much for providing me the opportunity to testify today. I do appreciate it. My command, as we have, stands ready to, as we discussed, provide the training, put those tools in the toolbox for our users of these systems and standing by to evolve these systems to make it better for each and every one of us.

Thank you.

SHAYS:

Thank you, Captain. Mr. Carroll?

CARROLL:

I appreciate everything the commission is doing and has done over the years. We're both in the oversight business, and whatever you can do to promote accountability helps us. Many of your recommendations are going to help us do our job, help us keep the agency accountable. So we appreciate everything and we support everything you're doing going forward.

SHAYS:

Thank you, Mr. Carroll. Admiral?

GILBEAU:

Thank you, Commissioners. I would start to say that I believe this is on leadership's desk, at the very top of the things to do to improve oversight.

I can tell you it's very important to my boss, Mr. Williams. I can tell you I've had a lot of interaction with the folks at DoD. It is important. It's certainly very high on my list.

I really thank the committee for focusing on this, and it does allow us to give some direct answers to an issue that I think we need to get better on.

I'll tell you right now, four months ago I couldn't give you a statistic on where my folks in Afghanistan and Iraq are with respect to how many contracts are requested to have data put in. Today we are. We are measuring that.

I can tell you, in Iraq and Afghanistan this month, 100 percent will be properly annotated into the right system. So we are effectively managing from the senior leadership in DCMA, and I think things will improve.

I will say I do think we have a ways to go to institutionalize it, and I would also like to say that I was very impressed at this LOGCAP day that I went to last week, where Major General Fontaine, the ASC (Army Sustainment Command) commander, and Mr. Tommy Marks, the new LOGCAP program manager, we had some very frank and quite honestly good discussion as to how we can all work together to improve this process of ensuring prior past performance is properly taken into consideration for the future.

Thank you, sir.

SHAYS:

Thank you, Admiral, very much.

We thank all four of you for your testimony and your cooperation with this committee, and also, frankly, that we didn't hear any complaints about having a nongovernment person be on the same dais with government. It helps us have a better dialogue, and that's helpful to us. So we're very grateful to all four of you. Thank you very much.

And we're going to not recess. We're going to go right into the next panel right now. Thank you.

Now that you're all comfortably seated, I'm going to ask you to stand up, and we'll swear you in.

By the way, thank you for waiting through the first pass for our first panel.

Raising your right hand, do you solemnly swear or affirm that the testimony you will give before this commission is the truth, the whole truth and nothing but the truth?

Note for the record, all our witnesses responded in the affirmative.

And we are going to start, just go right down the line, Mr. Gordon, and we're going to ask you to stay within your five minutes. I'll kind of let you know if you're coming over a little long. Just we have a lot of panelists. So we thank you for that, and we thank you for being here.

Mr. Gordon, you may testify.

GORDON:

Chairman Shays, Chairman Thibault, other members of the commission, I'm honored that you invited me to testify today, the second time I've appeared before this distinguished panel.

I've read with great interest the commission's second interim report which you issued late last week.

And while all of us will need to study and reflect on the recommendations in that interim report more carefully than time has allowed so far, I thought it might be useful to offer a few initial thoughts.

First, I commend the commission on producing a thought-provoking report on extremely important topics. The report gives us much to consider as we move forward with our acquisition-improvement efforts. Your focus on over reliance on contractors in particular, including in sensitive areas, such as acquisition and security, resonates with the President's and the administration's concern about over dependence on contractors, especially in critical functions.

Second, I particularly appreciated the report's call for strengthening the federal acquisition workforce and increasing the attention paid to acquisition planning and contract management.

We have been calling for this from the beginning of this administration, and it has been my watchword since I became the administrator for federal procurement policy in November 2009.

That said, let me turn to the narrower and more operational topics that are the subject of today's hearing. As we work to protect the half-a-trillion dollars of taxpayer money that we spend on goods and services each year, we must work harder to do business with contractors that place a premium on performance and quality, and not do business with those whose track record indicates that they cannot be trusted with public funds.

The two tools that are the subject of today's hearing, the use of past-performance information, and the suspension and debarment process, can both help agencies meet these goals.

Over the past two years, as outlined in my written statement and as you have heard from some of the witnesses in your first panel and you'll be hearing from my colleagues on this panel shortly, 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 who gets the contract that we've neglected what must come before and after the signing of a contract—sound acquisition planning and consistent contract management.

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, contracting officer's representatives, or COTRs, as they're called in many civilian agencies, to ensure that contractors meet their contractual promises.

I'll leave discussion of specifics to our question and answer, and to my colleagues on the panel who can offer their hands-on experience from their work at agencies heavily engaged in contingency contracting.

But before I conclude my brief oral statement, I thought I would offer a couple of notes of caution to the commission in terms of the recommendation in the second interim report with respect to the two topics today.

First, unlike the broad area of over-reliance on contractors and the need to build up agencies' organic capacity, the two topics of today's hearing are largely nuts-and-bolts operational areas, where we must think very carefully about the burden and effectiveness of one-size-fits-all recommendations.

Real-life concerns in different contexts, including in the contingency environment, might weigh in favor of alternative approaches.

Second, both topics in front of you today are areas where there has been substantial change over the past two years, which I hope the commission will take into careful consideration before you issue your final report this summer.

That said, let me close by again expressing appreciation for the commission's important work. We look forward to seeing your final report as we in the administration work to strengthen the federal acquisition workforce, reinforce fiscal responsibility in our acquisitions, and ensure that contractors are used only when appropriate and not as the default option, to use the language of your interim report, which I quite liked, and that federal employees always conduct consistent, meaningful oversight so that taxpayers' interests are protected.

I am happy to answer any questions the commission may have. Thank you.

SHAYS:

Thank you, Mr. Gordon.

Mr. Ginman.

GINMAN:

Chairman Shays, Chairman Thibault, distinguished members of the commission, good morning.

SHAYS:

Good morning.

GINMAN:

I'm Dick Ginman, and I serve as the deputy director, defense procurement and acquisition policy. One of my areas of responsibility is contingency contracting.

I'd just like to take a minute and thank the commission for your support of our troops and all that you have done to help with their mission. And also to thank the men and the women who serve this great nation, not only our military, but the civil servants, the coalition forces and the industry partners as well. None of us could get the job done without all of us together.

You asked me to discuss past performance and suspension and debarment today. I have prepared a statement, and rather than repeat or summarize it, I simply ask that it be included for the record.

And I am ready to answer questions.

SHAYS:

Thank you, sir.

Do I pronounce your name Rindner or—yes, I've got it right.

Mr. Rindner, thank you for being here.

RINDNER:

Thank you.

Members of the commission, I appreciate the opportunity to provide testimony before you today. I'm Corey Rindner and I serve as the procurement executive at Department of State. I've been there for seven years and was previously at Department of Treasury.

I'm pleased to speak with you today about ensuring contractor accountability, past performance, and suspension and debarments as this relates to the Department of State.

As procurement executive, I'm responsible for training, policy, and oversight of the procurement function and I also serve as the suspension and debarment official for the department on procurement matters. Department of State procurement operations are mostly centralized in the Office of Acquisition Management, a Washington-based office, and two regional procurement support offices that support procurement overseas.

Until recently, Department of State contracting personnel assessed and reported in the NIH (National Institutes of Health) contractor-performance system, and we're now using CPARS (Contractor Performance Assessment Reporting System). The department enters contractor past-performance information into CPARS. Past performance is checked in PPIRS (Past Performance Information Retrieval System), and we have FAPIIS (Federal Awardee Performance and Integrity Information System) as a module within PPIRS with events such as contract terminations for default or non-responsibility terminations recorded by contracting officers in FAPIIS as they occur.

AQM (Office of Acquisition Management), our main acquisition office, has been training personnel on CPARS and PPIRS. We have had the Navy Development Group make

presentations both in person and via videoconference. We're in the process of tailoring the Navy CPARS manual to fit Department of State needs. And we're very appreciative of NAVSEA's (Naval Sea Systems Command) effort in this regard.

The department is also anxious to train its workforce in FAPIIS and we look forward to FAI (Federal Acquisition Institute) training in that regard.

The Department of State continually strives to improve its contractor oversight, including feedback from other agency reviews. OFPP (Office of Federal Procurement Policy) samples some performance assessments in CPARS from 10 agencies and I see you have the results up there. Suffice it to say that the Department of State acknowledges it needs to improve and we will take actions to improve our reporting of past performance.

Department of State contracting officers review the PPIRS database to determine if a proposed contractor is on the excluded-parties list. As the department and suspension official, I rely on the Office of the Inspector General and front-line contracting officers to identify and refer potential candidates for debarment and suspension. My office has no independent investigative capability.

In the past year, I've suspended three entities in Afghanistan pending Department of Justice investigations. I find our OIG referrals to be thorough and well documented. We have a collaborative relationship that works well on debarment and suspension.

The present system of debarment and suspension provides a separation of duty between investigation, contract administration, and adjudication. This provides due process and a fresh review of investigative evidence.

In conclusion, the Department of State uses the DoD past-performance system and will improve our documentation and use of that system. We will continue to use debarment and suspension as necessary to protect the interests of the Department of State and the rest of government by preventing the award of contracts to contractors who do not possess the requisite business integrity or responsibility to perform.

Thank you for this opportunity to appear before you.

SHAYS:

Thank you, Mr. Rindner.

Ms. Shauket?

SHAUKET:

Thank you, Chairman Shays, Chairman Thibault, and members of the commission for the opportunity to appear before you today to discuss contractor accountability, past performance, suspension, and debarment.

I'm Maureen Shauket, the chief acquisition officer and suspension and debarment official for USAID.

USAID's mission is an important one. Our humanitarian and development work serves as a pillar for national security by building stronger economies and more stable democracies. We are committed to investing U.S. taxpayer funds wisely at each phase of the procurement process to yield sustainable long-term results. We have realized this commitment through USAID Forward and our reforms to improve the way we do business.

We are holding ourselves more accountable and we expect the same from our contractors and our grantees. We expect our contractors to be good stewards of taxpayer funds. We expect contractors to act with integrity, and we are holding them accountable when they fall short.

We are on the right track, but I will say frankly USAID needs to do better, especially as it relates to past-performance reporting. On the positive side, USAID consistently uses past performance as an evaluation factor in our new procurements. For awards over \$25 million, our contract review board ensures compliance with this mandate.

When it comes to completing past-performance reports, however, we have not been as successful. We estimate a 10 percent completion rate. Clearly, this is unacceptable.

Investing in skilled contract administrators is critical for us to turn the situation around. For this reason, we have dramatically increased the number of contracting officers in Afghanistan from three in 2007 to nine in 2010. The past-performance rate for Afghanistan is 38 percent currently.

During my most recent trip to Afghanistan, we established eight new positions, administrative contracting officer positions. These officers will focus their attention exclusively on post-award administration and monitoring contractor performance.

I am happy to report a better success story on suspension and debarment. When I took this job in late 2007, the challenges we faced in suspension and debarment were evident, as indicated by Mike Carroll in his testimony prior to this. One of the key recommendations to come from the IG report was to dedicate full-time staff to suspension and debarment, and we agreed.

By the time the report was issued in October of 2009, we had already made great strides forward. And in the past two months alone, we have taken suspension or debarment actions against 31 individuals or entities. This is due mainly to our newly established Compliance and Oversight of Partner Performance Division, a unit devoted to accountability of our contractors and our grantees.

This unit manages suspension and debarment and past performance. I'm excited to tell you this unit will be watching for performance trends contractor by contractor. This unit will also collaborate closely with USAID's IG and the general counsel's office, for we attribute much of our recent success to close coordination with these teams.

We have made great progress, but there is more to be done to improve our accountability and oversight. I believe we can get there. We have expert contract professionals worldwide, especially in Afghanistan and Iraq, who are dedicated to the strong stewardship of taxpayer funds. We depend on these COs and COTRs to manage multimillion-dollar contracts under some

of the most trying conditions. I am extremely proud of their dedication and the sacrifices they are making.

As a USAID foreign service officer myself, I have spent over 15 years of my career in Asia, Africa, and Eastern Europe. A highlight of my career was building the capacity of two local women's organizations that were pioneers in the fight against trafficking of women and children in Bangladesh. As a development professional, I feel a deep responsibility to carry out our programs efficiently and effectively and with integrity.

I take fraud, mismanagement, and waste of our funds as a serious affront to the mission of our agency and the trust of the U.S. taxpayer and the beneficiaries of our programs.

I thank the commission for your attention to these important issues. I appreciate the opportunity to appear before you today, and I'm happy to answer any questions you may have.

SHAYS:

Thank you, Ms. Shauket.

And Mr. Blalock?

BLALOCK:

Good morning, commissioners, and thank you again for the opportunity to respond to your questions about the role of the Interagency Suspension and Debarment Committee (ISDC) in ensuring contractor accountability through the executive branch suspension and debarment system.

As indicated in my written statement previously submitted, the ISDC believes that the current suspension and debarment authorities and regulations are adequate to ensure contractor responsibility and accountability if utilized.

The ISDC has observed improved and increased activity by a number of member agencies. I outlined some of those examples in my written statement. Each executive-branch agency manages its responsibilities for suspension and debarment differently, based on its own statutory and functional responsibilities.

Some agencies, like those most active within the Department of Defense, have a centralized system with a single suspending-debarring official (SDO). Others like Department of Homeland Security, Department of Transportation, Department of Agriculture have multiple SDOs, usually the head of the contracting activity for each of those major components.

Department of Homeland Security has nine SDOs. Department of Transportation has 16 SDOs. Department of Agriculture has 16 SDOs. Some agencies have SDOs who are dedicated full-time to the agency's suspension/debarment system, but many agencies have senior leaders for whom

the SDO responsibility is a collateral duty. Each agency makes its own decision on the approach and structure of its own suspension/debarment system.

As noted previously, the suspension/debarment system only works if it is used. It only functions to protect the agency from conducting business transactions with contractors who lack present responsibility. If agency personnel are willing and able to suspend and debar firms that are demonstrated, they are not responsible.

Fortunately, many ISDC member agencies, like the Department of Army, have the will in spades to utilize the system and to create innovative approaches to holding contractors responsible.

The Army's done this with many actions arising in Iraq and Afghanistan where it is increasingly using fact-based actions because there is essentially no functioning judicial system in either contingency environment.

Other member agencies continue to institute improvements to their suspension/debarment practices. For instance, the Department of Homeland Security, as a result of its 2009 OIG report, formed the suspension/debarment assessment committee to review existing suspension/debarment procedures within other agencies and to recommend improvements.

That committee visited numerous other agencies to learn about best practices, and in May of 2010 the committee recommended that the suspension and debarment process be centralized into a single Department of Homeland Security SDO and to establish a full-time suspension and debarment division to process cases. That recommendation has been approved within the agency and is being implemented this year.

The ISDC understands there are improvements could be made to the existing system to ensure contractor responsibility. We agree with many of the National Procurement Fraud Task Force recommendations on suspension/debarment. We're awaiting publication of the Council on Inspector Generals on Integrity and Efficiency (CIGIE) survey on suspension/debarment.

The CIGIE co-chairs of the committee conducting that survey, Allison Lerner and Steve Linick, briefed the ISDC at its February meeting on the status of their survey. The system would undoubtedly be more effective if each agency had a dedicated full-time suspension/debarment staff to process cases. However, each ISDC-member agency has to have the discretion to structure its own system because each member agency is in the best position to know what will work for it.

The fact is that the level of acquisition fraud will be different at the Department of Defense than it is at the Pension Benefit Guarantee Corporation or the Institute for Museum and Library Services, both of which are members of the ISDC. Because of those differences, the ISDC position is that each executive-branch agency must have the discretion to establish a suspension/debarment process appropriate for its particular agency.

I'm happy to respond to any questions you may have.

SHAYS:

Thank you, Mr. Blalock.

Mr. Fiore?

And then we'll take questions.

FIORE:

Chairman Shays, Chairman Thibault, distinguished members of the commission, thank you for the opportunity to provide testimony before you here today on this important issue of contractor accountability.

I serve as the director of soldier-and-family legal services in the Office of the Judge Advocate General, Department of the Army. Since October of 2008, I also serve as the Department of the Army suspension and debarment official.

The Army follows suspension/debarment regulatory processes set forth in the Federal Acquisition Regulation, Subpart 9.4. Pursuant to that regulation, an agency may suspend, debar, or otherwise declare ineligible certain contractors in order to protect the interests of the government on behalf of the public.

Suspension and debarment are prospective remedies in which past misconduct or unsatisfactory performance provides the context and an insight to the contractor's present and future responsibility. Contractors suspended, proposed for debarment, and debarred are excluded from receiving contracts from the government.

Further, agencies may not solicit offers from, award contracts to, or consent to subcontracts with contractors who are debarred, suspended, or proposed for debarment.

Debarment and suspension are discretionary actions taken to ensure agencies contract only with responsible contractors, and they are not for the purpose of punishment.

Discretion in suspension and debarment decisions is not unfettered, however, and may be challenged in U.S. district courts under the Administrative Procedure Act standard for abuse of discretion if they are deemed arbitrary, capricious, or contrary to law.

For suspension, the evidentiary burden is adequate evidence, which is similar to probable cause. For debarment, the standard is a preponderance of the evidence.

A contractor can be suspended when there is an indictment and proposed for debarment and debarred when there is a criminal conviction or civil judgment for fraud or a similarly serious offense.

In these judicially based actions, the underlying judicial action, the indictment, conviction, or civil judgment, is deemed sufficient to meet the evidentiary standard, but is also subject to rebuttal by the contractor with evidence of present responsibility.

A contractor also can be suspended or proposed for debarment for serious misconduct that affects the contractor's present responsibility that is not addressed in a judicial action, including willful failure to perform or a history of unsatisfactory performance.

These fact-based actions do not have the presumptive sufficiency of judicially based actions and are more complex and more resource-intensive to investigate, develop, and prepare.

An agency also can enter into an administrative agreement as an alternative to suspending and debarment a contractor when the contractor can demonstrate that, notwithstanding the potential basis for suspension and debarment, the contractor is presently responsible or can be presently responsible.

An administrative agreement usually involves remedial measures to address personal, organizational, or systemic failures, prospective measures such as ethical codes and training to inculcate an ethical culture, and oversight by the government or an independent monitor to scrutinize ongoing operations.

The goal of an administrative agreement is to cultivate corporate ethics and integrity within the contractor's operation to ensure a responsible contractor.

Suspension/debarment is vested in the agency head and may be delegated, as it has in the Army, to a suspension/debarment official. I am the decision authority for all Army suspension and debarment cases, including those cases arising in Afghanistan and Iraq.

In Europe and the Republic of Korea, because of long-term Army stationing and to take advantage of expertise and host nation law and languages, the Army further delegates overseas suspension-and-debarment authority to officers in those geographical areas for contracts in those areas.

As the Army suspension/debarment official, I am an independent decision-maker. I report directly to the judge advocate general. I do not supervise the attorneys in the Procurement Fraud Branch, who are the program attorneys who monitor and develop procurement fraud, waste, and abuse cases, and prepare and present suspension and debarment cases for my decision. I receive their recommendations, provide them guidance, and I render decisions on the disposition of cases.

Earlier in my career I served as a litigation attorney in the Procurement Fraud Branch, so I am conversant in that operation as well.

For the past several years the Army has been at or near the top of the Department of Defense in the number of suspension/debarment actions. In fiscal year '10, we took over 400 actions; 390 in '09; 301 in '08; and, again, 350 in '07.

Since 2005, we've taken over 350 actions in cases arising in the contingency theaters. With a current case load of over 1,000, 270 of those cases arise in the contingency theaters.

I thank you for the opportunity to appear before you today, and I look forward to the opportunity to answer any of your questions.

SHAYS:

Thank you very much, Mr. Fiore.

I'm going to recognize Mr. Thibault, but I just want to say, Mr. Gordon, you started off commenting on our report. And I would just like to say for the record, one, thank you.

But number two, the recommendations that are there in a sense aren't our recommendations in that we did a lot of listening, and we listened to you and others. So there's been input from a lot of sources. And we thank you for that.

Mr. Thibault, you have eight minutes.

THIBAULT:

Thank you, Commissioner.

Mr. Gordon, I want to commend you, well, I want to commend you for complimenting us, but I want to commend you for your recent memorandum because I think for us it's very useful as a baseline to have discussions, and I want to share one point of it, though, that I disagree with and we can talk about.

But if I'm right, that's the busy chart as I see through that, and that's your chart, and that's the \$550 billion that you analyzed. And I commend you for that also.

Those of you in the audience just need to understand that they have broken it out in terms of adequacy of explanations and narratives to support it.

Now, what you have here that Commissioner Henke talked about earlier is working with the departments, those three departments. You have a contingency Iraq/Afghanistan chart for the reporting. And then we've had presentations and testimony, yours and other organizations, that say that we're really going to see improvement and we've really set a foundation and so on.

And, frankly, I'm not here to say anything more on that, other than in 2008 and early 2009, you know, we could have shared testimony the same thing. We're right on the cusp of doing things.

So now we're on the cusp of doing things, and you know, sometimes actions are better portrayed rather than actions to identify what we're going to do.

Now, with that as the lead-in, Mr. Gordon, you say at the bottom of it, and I'll just read two simple parts, you say that "an informal comparison," where you align the FPDS, the Federal Procurement Data System, and the PPIRS—and I just love these acronyms—"have been completed only for a small percentage of awards."

And in the body, I'm turning the page now, but in the body you go on to lay out that, in my words, 70 percent of these can be improved in some way, shape, or form.

Now, then the statement that in a contingent environment, the chart over here with just the three agencies that kind of disagree with you, where you say while the fact of compliance with

reporting requirements is important, I agree, the quality of the report submitted is what really matters. That's over on this chart.

On that chart, if they ain't providing it and you've got 90 percent that are absent and then you have of the remaining 10 percent, 70 percent can be improved, you know, being an accountant by education, that leaves 3 percent that are knocking our socks off—3 out of 100.

And so you have to think contingency, I think, to really understand it.

And my point that I'll share with you and ask for your comment is simply that in a contingent—you know, I like that analysis. I think this analysis shows that in a contingent environment, right now you could say, rather than a while, right now the fact of compliance with reporting requirements is most important, and you could put it in parens because it ain't being done, and in the future the quality can be improved, too.

Mr. Gordon?

GORDON:

Chairman Thibault, I'm in the happy situation of being able to agree with what you said. Even with what you couched as criticism or disagreement, I think I agree with you.

You can't even get started and begin to focus on quality unless you have a report. Could I step back and say a couple more words about this, including the discussion on the . . .

THIBAULT:

I'm going to give you about 45 seconds to say a couple more words. Is that fair?

GORDON:

I'll do my best. Yes, sir.

I do think that there were things said in the first panel discussion that were somewhat problematic, assuming that these reports would solve all sorts of problems and in the absence of these reports we have nothing happening. Both are problematic.

The reports, first of all, wouldn't lead to suspension or debarment. These are past-performance issues. Not things that are like termination or termination for default.

And, secondly, past-performance assessments take place all the time. They're required. We may not have the very good database we're trying to put together, but when I talk to people on the front line, they tell me that, yes, they do the past-performance assessments. They're required to. They do it by contacting agency points of contact.

I could talk much more, but I'm . . .

THIBAULT:

Let me stop you there. Because I'm glad you brought that up.

I don't know what the front lines are, but I've been out far enough to be at places like Delaram and whatnot, and they won't let us go any further. And when we talk to the CCC (Joint Contracting Command)—it used to be JCC-I/A (Joint Contracting Command-Iraq/Afghanistan), CENTCOM contracting command, and it's regionalized very effectively, I think, as far as the organization, we'd say, OK, past performance. Yeah, we do it. OK, put it on the table.

Put your policies and procedures on the table and—you know, we had a hearing about a year ago, and I said, could somebody get them? "Yeah, we'll get them for you." I haven't seen them. I have not seen the policies and procedures for doing it.

So you say they're doing it. The best I got out of a lieutenant colonel who—she got very irritated with me when I was pressing—was that well, we have it; it's kind of informal. We do talk to people.

And I said, "Great, go get that and put it in, even if it's an index binder or something."

It wasn't forthcoming. What it was, was, "I have to ask my general officer if I can give it to you," and all of a sudden, we left, as we do and never got it.

So I say that you know, my personal experience is that that's a different environment.

But I wanted to bring that out because I think right now—and I absolutely agree with you that you have to use past performance in the context in which it gives you information. But absent it, you can't use it.

And I'm going to tell you and it was said before by I think the IG and a couple others that resources drive it. Well, resources drive it, but it was set up here that what's it take to document that and then to consider it as an automatic item?

Mr. Ginman? Admiral Ginman?

SHAYS:

Would the gentleman yield just a second?

THIBAULT:

Sure.

SHAYS:

Mr. Gordon, I'm unclear about something. Are you saying there's an informal process that we use that augments the required reporting and so on? And then, legally, are you allowed to use it, if it's informal?

GORDON:

Sir, it's not informal. We're required both by the statute and the FAR to use past performance as an evaluation criteria. And what happens is—and, by the way, the front line is what we call the front-line forum—contracting officers who come in and meet with me once every three months, and we discuss these issues. We discuss past performance because it is such a high priority for us.

THIBAULT:

But the same way . . .

SHAYS:

Let me just say, this is going to come off my time.

THIBAULT:

No, go ahead, no, just . . .

SHAYS:

But I'm really unclear. You've got reporting requirements, most of the time it's not being done. It's supposed to protect, in a sense, the contractor. They have a right to know what's being said. In fact, they even can, if our recommendation goes into effect, they can protest and stretch it out for months if not a year plus.

And then you're saying, notwithstanding that, we do it differently, informally in the field.

GORDON:

It's not informal, sir. The requirement that past performance be a mandatory evaluation criterion in every contract value above the simplified acquisition threshold for negotiated procurements has been in place for more than a decade.

SHAYS:

That's a law . . .

GORDON:

Right and it's . . .

SHAYS:

But that's not happening.

GORDON:

It is, sir. It is in every single case. I would be astonished if you found a case where there was a mandatory evaluation criterion that was ignored.

What they do, though, is they don't use the database. When I ask the contracting officer...

SHAYS:

So wait a sec. It's not they don't use the database. They go around the database?

GORDON:

They don't need the database. It didn't exist, sir. We had the requirement before we had the database. What the contractors are required to identify relevant contracts that are supposedly similar. They give a government point of contact. The contracting officer contacts the point of contact in the other agency and she or he makes an assessment of the contractor's performance.

But it's . . .

THIBAULT:

Before we start the clock . . .

SHAYS:

No, I'm going to take this off my time.

THIBAULT:

Well, no. Let me confirm the information you're getting in this little quorum is not complete and accurate. I can use USAID and DoD in an actual case where there was a failed Ghazi-school project by a contractor that was part of the contractor, and in the [Pul-e-Charkhi](#) prison, again, where there was a failed, I don't know if it's Basarat or whoever it is, contractor.

And I personally, in both cases, said, "Have you considered it in past performance?" And well, "we probably wouldn't do business."

And I say well, fine, are you aware of other locations?

"Well, yeah, the Corps of Engineers is using them and so-and-so is using them."

And I say, "But they say they never called and asked."

So I'm, you know, "Well, why didn't you call them?"

"Well, I don't know."

So I'm just telling you, the information you're getting sometimes is—the good news rolls uphill. Sometimes bad news doesn't roll uphill.

I will take a point of gathering some of my data, sir, and sharing it with you, just so that we're not contentious on the point of the importance.

We disagree on the point of is it really being done? Because I'm telling you, it's not really being done in theater. And I've been to those outlying bases, because that's one of the first things, and I just don't go out there for their cameo. We spend a couple days. We go overnight. Sleep in tents and things like that.

So I'm telling you that you've got some people that are rolling policy uphill is what they're doing, and it ain't being done that way.

GORDON:

Sir, there are hundreds of GAO bid-protest decisions that discuss assessments of past performance without the use of CPARS. Hundreds and hundreds of decisions. I've worked on them.

SHAYS:

Are you talking contingency or are you talking outside of contingency?

GORDON:

I'm sure most of them are not in contingency environment...

SHAYS:

With all due respect, there's a big difference between what happens in a contingency environment, what doesn't happen.

THIBAUT:

As part of this continuing discussion that's not part of what we're doing, Dick's jumping up and down.

(LAUGHTER)

Admiral Ginman, can you provide a little light on this topic?

GINMAN:

Sir, let me try if from several perspectives.

First, I laid the effort within the department for the peer-review process. And, you know, when it's over a billion dollars and we go out, what Mr. Gordon said is absolutely correct.

If we were doing an infinitely better job collecting CPARS data and having it, it would be the principal source.

When we asked for relevant and recent contracts, the first thing we do is go to PPIRS and pull that data. If we don't get sufficient data, then you do exactly as Mr. Gordon said. You go to the program manager of those contracts.

We also look to see, well, maybe there's a contract there that they decided they didn't want to tell us about. You go into FPDS and see, are there other recent contracts with that contractor and look to see, should they be evaluated as well, whether the company gave it to us or not?

So at least from that perspective . . .

THIBAUT:

All right. Let me . . .

GINMAN:

Well, now, let me try the contingency.

THIBAULT:

You're going to get a little bit of time on your own, so you're not working on my time.

GINMAN:

I'm fine.

So contingency, the theater uses extensively low-priced, technically acceptable (LPTA), where past performance is, in fact, evaluated, as opposed to trying to do a comparative analysis but to determine it is adequate.

In the earlier discussion, I think the question that Commissioner Shays asked last was, what would you do?

My answer, in addition to his thought on oversight, would have been simplicity in language. The reason that there's a new past-performance system being put in theater through JCCS is that, one, we have bandwidth issues, being able to get back to stateside; two, more importantly, the local vendors, by and large, do not speak English. CPARS has not been a friendly process for local Arabic-speaking . . .

THIBAULT:

I'm going to cut you off there by also saying we've had hearings. Your people have been here.

GINMAN:

Yes.

THIBAULT:

LPTA is not working as you just described. In addition, we have had cases in the security world, lives at stake, where people did not satisfy the requirement and we said, why have you awarded them another six or seven contracts?

And they came here and they said they were LPTA, and you said, but what about your past performance? And they sat there and, kind of, scratched the table. So you know, the point you want to make is well, it's working. Well, it's not.

GINMAN:

I'm not saying it's working.

THIBAULT:

OK.

SHAYS:

We'll end with that note.

THIBAULT:

Now, I have one other point that I want to make. I didn't get to the point, but I'll make two statements. And you can respond at your leisure.

SHAYS:

Let me just make this point. You will not be here for the second round of questions, so we'll just let you go on a little longer.

THIBAULT:

All right. The point to be made on what I brought up earlier—and I noticed you were in there, Admiral, was that, should we be paying, in our cost-type environment? And I'm not talking about the LPTA/Afghan First program, and people don't need to tell me about that.

But do we need, should we be paying, when there's an egregious corrective-action plan that's agreed to, that is really egregious, and under a cost-type environment, will we pay for it?

We can call it rework or anything you want. Right now, under the regulations, I think it's an allowable cost. If you want to tell me there's a mechanism for contracting officers to go in there and say, no, I can hold you accountable and therefore should there be a mechanism where contracting officers in the field have that kind of decision-making authority to say that this corrective action plan is so egregious it's on you, and introduce that into the process?

GINMAN:

So I think it is a question that I don't think I have looked at before . . .

THIBAULT:

Could you take an action?

GINMAN:

. . . since 8:00 this morning when asked that question.

(LAUGHTER)

THIBAULT:

Yes. Could you take an action . . .

GINMAN:

Yes, sir.

THIBAULT:

. . . Admiral, because . . .

GINMAN:

But I do agree.

THIBAULT:

. . . you all have done yeoman work on the business systems with the withholds and things.

GINMAN:

Yes. Yes.

THIBAULT:

Now, in this area, you know, I don't think it's been on the table. But I really think that what motivates companies and there are some good companies. This isn't about that. What motivates companies is money.

I asked a CFO at General Dynamics once, what are your top three priorities? And he said "Cash flow, cash flow, and cash flow."

OK, I've got 50 seconds on my interpretation.

Mr. Blalock, I'm going to make an observation and other people can explore it. I'm disappointed in your representation that all is well but we need a will to use it. I have a word that no one says is a word called "pablomistic." I believe many of your statements are: you know, we've got a really good system and they're effective, but you've got to have a will to use it.

Everything we've been shared has been shared with us on these charts, "will to use it right," with narrative, "will to use it at all in the contingency environment." Discussion, best discussion, and that's not a system is, well, we have other ways, and we go out there and look at the other ways; well, we really consider it and all that and we find major gaps. So I just make that statement. I think other people will explore it.

I've got to leave on a personal matter. But I want to thank all six of you because the job you're doing, Mr. Gordon, is exceptional. And I really like this dialogue. And I've never had the admiral be bashful, so we'll get back to both of you.

GORDON:

Thank you, sir.

THIBAULT:

Thank you both.

SHAYS:

Thank you.

Mr. Tiefer, co-chair?

And, Mr. Green, you have the floor.

GREEN:

Thank you.

Mr. Blalock, following up on Commissioner Thibault's comment, it came out in the panel this morning—I don't think it's any surprise that you guys are supposed to be providing some reports to Congress. You haven't done it. Why?

What are you doing? What do you do?

BLALOCK:

Thank you for the opportunity to explain that. You know, there's a risk when the government relies upon volunteers to do important government functions. For many years, from its inception in 1986 up until the spring of 2008, the ISDC was privileged to have a very fine senior leader at the Environmental Protection Agency as the chair of the ISDC.

Because of his position, he could spend as much time as he needed to on ISDC business. He had several staff members he could draw upon. And he had a vice chair who handled all admin and logistic matters for him.

OMB wisely, when that individual announced his retirement, required applicants to replace him to provide an assurance that their agency would provide them with sufficient time to do the ISDC business if they were selected.

At the time, the Navy SDO, who I worked for, did that, provided an assurance. Well, unfortunately, then the world changed. That individual changed, in May of 2009 that individual left and went to another position within OGC. I became the acting head of the Acquisition Integrity Office, and my responsibilities there for managing the office and attending a number of meetings that I didn't used to have to attend as the mere deputy took a great deal of my time in 2009.

In May of 2009, the Navy got a new secretary. That secretary, because of his prior experience . . .

GREEN:

I don't want to spend a career on this. Just . . .

BLALOCK:

The fact of the matter is, let me cut to the chase. My responsibilities at the Navy have been increased by an order of magnitude, and I have simply not had the opportunity to finish the report.

If I may finish, sir, I finished the fiscal year '09 report in around September of 2010. We decided to submit the draft report to the ISDC members because it is a collegial body that tries to get

everybody to agree on something before the ISDC takes a position. That draft report was submitted to the ISDC members in November of 2010, the draft report for fiscal year '09.

Comments that came back were, we were already so late, why don't we combine the fiscal year '10 report with the fiscal year '09 report? That is what we are doing? In order to meet the requirements of Section 873, addressing active participation by the members, we send out a survey. We did it . . .

GREEN:

OK. OK, that's enough.

Who appoints you? Who selects you? Who's your boss—not your Navy boss. Who's your boss under the ISDC?

BLALOCK:

The ISDC, OMB selects the ISDC chair.

GREEN:

OK. Do they have oversight over your activities? Do they monitor you guys? Do they care what you do?

Obviously, nobody cares what you do.

BLALOCK:

There are two representatives from OMB who are considered liaisons to the ISDC, one from OFPP (Office of Federal Procurement Policy) and one from the Office of Federal Financial Management. One of those individuals usually attends the ISDC meetings. She is available when I have questions on policy matters or something like that and usually responds to them.

GREEN:

But who says, "Damn it, you're supposed to report to the Congress; you haven't done squat"?

Who cares?

BLALOCK:

I don't have an answer for that.

GREEN:

OK. That's enough.

Mr. Gordon, I'm having difficulty understanding. I understand that, you know, we got some stuff in CPARS, contracting officers talk to each other out there and compare notes and all that kind of stuff. And I don't disagree with that much of that goes on, but sometimes, as Commissioner Thibault said, it doesn't go on.

Anyway, how does that square, and what good does it do when 60 percent of contracting officers say, whether they're in CPARS or talking to their buddy, when 60 percent of them say they don't use past performance in contract decisions. How does that square? So what good does it do to have this stuff if they're not using it?

GORDON:

Mr. Green, let me say, first of all, that despite my explanations, I want to make clear we very much agree with the bottom line here, which is that we need to improve entry on the chart on the left and the quality of the chart on the right.

I'm not sure what the people were referring to when they said they didn't use past performance. Obviously, you could have a situation where past performance wasn't the discriminator. I don't know if that's what they mean.

If they mean they violated the law and did not include past performance as an evaluation criterion, I'd be very, very surprised. But I don't know what the statistics are.

GREEN:

Well, it was in an '09 GAO report. So . . .

GORDON:

And I was at GAO then, but I don't recall what the context was. I'm happy to look that up, sir.

GREEN:

OK, thank you.

Any of you: in a contingency operation we got a lot of money coming in, the tempo is very high, many opportunities, despite the examples that we've used with Boeing and Northrop and others, many opportunities for fraud and waste.

Should we have a different system within special wartime sanctions, if you will, in a contingency operation so that those contractors, who some of you have referred to are too big to fail so that special sanctions can be levied against them?

GORDON:

You're asking my opinion, sir?

GREEN:

Yes.

GORDON:

I understand that the contingency environment creates special needs. And there could be appeal in having either a streamlined process, a different approach.

If we went down that road, first of all, I'd want to reflect on it and hear people's views, but if we went down that road it might also make sense to limit the suspension or debarment to that very environment. That is to say, in Afghanistan, for example.

GREEN:

Well, maybe it doesn't even involve suspension/debarment. Maybe it involves, you know, monetary penalties of some expanded nature, if you will.

GORDON:

As with many of the recommendations I saw in the interim report, it is an idea worth exploring. I'm just uncomfortable giving an off-the-cuff response to what could be a very good idea.

GREEN:

OK. Thank you.

Anybody else?

My time's up.

SHAYS:

Thank you.

We'll go to Mr. Tiefer.

Thank you, Mr. Green.

TIEFER:

Thank you, Mr. Chairman.

Mr. Gordon, I'm going to draw on both of your two hats. You're both the head of OFPP and you're one of the most distinguished scholars on procurement law.

As OFPP head, you produced the report that shows the incredibly low percentage of solid combinations for past-performance ratings and narrative.

But drawing also on your knowledge of procurement, isn't it possible today for contractors to take advantage of this situation of the absence of ratings by taking contracts which they have performed poorly on but no one put into the system a rating or a narrative, and citing those contracts when they're trying to show that they have the past experience, say past experience in theater, in wartime to get the contract?

GORDON:

Professor Tiefer, thank you, first of all, for the kind words, which I fear may be undeserved, and you may agree by the time I finish my answer.

I understand the point. Issue number one, I want to agree with Chairman Shays, the way to address these problems is senior agency leadership, and they're the ones that we meet with in what we call AQSTATS, acquisition status meetings. We say they must improve the recording of past performance.

TIEFER:

Mr. Gordon, before we go on, on how to treat the problem, do we agree that there is a large problem that contractors who should have been rated for bad performance aren't citing their contracts as experience.

GORDON:

Sir, I don't have data, and you know my GAO background makes me reluctant to answer without data. But if a company says, "We worked on contract A, B, C and we should get credit for that," the contracting officer, before she or he gives credit under the past-performance criterion, which, as you know sir, is usually mandatory, the contracting officer needs to check with that government agency and say, "How was their performance?" And the answer that it isn't in CPARS is completely irrelevant.

TIEFER:

I understand. I think we agree that it's prevalent.

Ms. Shauket, and the tenor of my questions has to do with agency policy, your own record is distinguished, I honor you for how you've taken these posts around the world that I don't even want to visit those countries and I'm impressed that you're working for us there.

But I do want to ask about Louis Berger. I notice your statement has a discussion of suspension and debarment, but it doesn't mention Louis Berger, which for AID is sort of like discussing the Titanic sinking without mentioning icebergs.

The description that we got from Mr. Fiore of the suspension/debarment system says about administrative agreements, and you had one with Louis Berger, that this is entered, an agency also can enter into an administrative agreement, et cetera, et cetera, when the contractor can demonstrate that notwithstanding the potential basis for suspension or debarment, so forth and so on.

My question is, did AID have a potential basis for suspension or debarment of Louis Berger?

SHAUKET:

Well, thank you very much for the opportunity to address Louis Berger and the issues.

I understand the outrage that you must have behind your questions and I just want to assure you that I, too, share that outrage when I heard what Louis Berger had been doing for a period of years through the falsification of the indirect cost rates.

By the time I became aware of this—and I will say, quite frankly, that our relationship with our inspector general's office and the timely information has been much improved since that time—however, by the time that I became aware of the issues, through the Department of Justice, when we met with Louis Berger, they had already taken substantial remedies.

TIEFER:

Could I recur to the particular question I was asking?

SHAUKET:

Yes, sir. If . . .

TIEFER:

And I'm taking Mr. Fiore's language so it's not a question of my—I think he knows what he's talking about here—that to enter into an administrative agreement you would have had a potential basis for suspension or debarment.

Did you, in his words, have a potential basis for suspension or debarment of Louis Berger?

SHAUKET:

In my opinion no, not at that time.

TIEFER:

You entered into an administrative agreement without a potential basis for suspension or debarment, is that what you're telling me?

SHAUKET:

At the time that we entered into the administrative agreement, if you recall in the last panel, Mr. Amey said that he would recommend suspension while we verified that they had internal control systems in place.

Prior to entering into that administrative agreement we did just that. We met with the internal controllers and the officials . . .

TIEFER:

I know. They fixed things up later, after the horses had left the barn they fixed the door up real well.

Is it the case that Louis Berger has a prospect of seeking literally billions of dollars in the years ahead in AID? I cite as an example, because we had a full discussion of this at a hearing, that the northern and southern electrical grids of Afghanistan will probably be an AID goal to link them up, and that the pieces that are being putting in place now in Kabul and Kandahar are with the

idea of eventually linking them up, and surely Louis Berger would be one of the ones seeking this.

So wouldn't you expect they will be seeking literally billions of dollars of AID money?

SHAUKET:

I cannot speak for what Louis Berger will be doing. But I can tell you that our policy is to compete programs, and if they are competed, we will be looking at their past performance as part of the evaluation criteria.

TIEFER:

And the CPARS system has a write-up of Louis Berger's activity?

SHAUKET:

Well, actually I'd like an opportunity, if I may, to address the chart.

TIEFER:

I have to go on to somebody else, Ms. Shauket.

SHAYS:

I'll give you that opportunity.

SHAUKET:

OK. Thank you, because we actually question it. In preparation . . .

SHAYS:

I'm sorry. When it's my time, I'll give you the . . .

SHAUKET:

OK. All right. Thank you.

TIEFER:

Mr. Rindner, First Kuwaiti, one of the flagrant five, your State Department IG says they owe you \$132 million. But if I understand the numbers that we had up showing that during the relevant periods of time, State Department was putting zero into the computerized database, isn't it the case that First Kuwaiti was able to successfully go on and compete for State Department business building embassies elsewhere, without a CPARS entry saying that they had poor performance?

RINDNER:

I don't know specifically if First Kuwaiti is entered into CPARS or not, sir.

TIEFER:

OK. Do you know whether they've gone on to show poor performance on later jobs they've done for State?

RINDNER:

I do not know that, sir.

TIEFER:

Well, if you did a Lexis search of First Kuwaiti, it would jump out and sock you in the eye.

And my time is expired.

SHAYS:

Thank you.

Mr. Henke?

HENKE:

Mr. Rindner, you have a career in acquisition. Correct?

RINDNER:

Yes, sir.

HENKE:

How many years have you been working in acquisition?

RINDNER:

About 37.

HENKE:

And most of that time was at Treasury or other agencies?

RINDNER:

At Treasury, at Navy, at Department of State.

HENKE:

You said you've been at State now seven years?

RINDNER:

Yes, sir.

HENKE:

And you're the senior procurement executive. Is that a statutory title or a regulatory title?

RINDNER:

I don't know if it's statutory or regulatory. CAO (Chief Administrative Officer) is statutory.

HENKE:

Right. But you're the senior procurement executive.

How many people are in your immediate office?

RINDNER:

About 22.

HENKE:

OK. I understand you do not have operational contracting under your purview. That's a separate office. In other words, you don't cut contracts.

RINDNER:

That's correct.

HENKE:

Your statement says you're responsible for workforce training, policy, oversight. I think you do some form of acquisition assessments.

RINDNER:

Yes, sir.

HENKE:

OK. What is, for past performance, what is State's, how much did State spend in 2009 on contracts?

RINDNER:

In 2009?

HENKE:

Yes.

RINDNER:

I would have to get that figure for you, sir.

HENKE:

I mean, it doesn't have to be exact. Roughly, what is it?

RINDNER:

About \$7, \$8 billion.

HENKE:

OK, yes, you're right. I happen to have the data. It's \$7.5 billion in 2009. What is in that same year, 2009, what is your compliance rate for past performance reporting? That is, how many reports are in the database? Ms. Shauket estimated at AID it's 10 percent, maybe 38 percent in Afghanistan. She has an estimate. What's your figure?

RINDNER:

I don't have that figure, sir.

HENKE:

You . . .

RINDNER:

I've had to look it up.

HENKE:

You don't have a figure?

RINDNER:

Sir, I would have to look it up.

HENKE:

Oh, you didn't bring it today?

RINDNER:

No, sir.

HENKE:

OK. I think if I . . .

SHAYS:

Could I ask the gentleman, could you explain you wouldn't be prepared to answer that question, given this is a hearing on this very issue?

RINDNER:

I did not look up that data, sir.

SHAYS:

OK. Are you not answering because it's extremely low?

RINDNER:

I'm answering because I do not know the figure, sir.

SHAYS:

OK.

HENKE:

Does someone in your office have it?

RINDNER:

I think the information would be available, but it would have to be looked up.

HENKE:

Would you ask? We'll be here for another hour or so. Would you ask someone in your staff here to reach back to your office to get it for the hearing—the compliance rate in '08, sorry, '09 and 2010? What percent of the reports are in the database?

ZAKHEIM:

Could you yield for a sec?

HENKE:

Yes.

ZAKHEIM:

You're in charge of this effort, aren't you, at State. Correct? You're in charge of procurement at State?

RINDNER:

I'm in charge of procurement policy at State, sir.

ZAKHEIM:

OK, OK. Isn't this the kind of thing that someone who's in charge ought to have on the tip of their tongue? Who's really in charge, if not you?

Thank you.

HENKE:

Can I get your reaction, Mr. Rindner, to what I'll call the quantity chart, zero assessments done out of 93 contracts? Now, those are just contingency contracts. That's our ball, that's our game here is Iraq and Afghanistan. We counted 93 actions from State in Iraq and Afghanistan, but no reports, no assessment reports. What's your reaction to that?

RINDNER:

My reaction would be if the information is correct that we need to seriously improve.

HENKE:

Does your gut say it's right or wrong?

RINDNER:

Again, I would have to look at the information, sir.

HENKE:

OK. Now, if that's correct or if it's a little bit better. Maybe it's half the reports, let's say. Let's be generous, which would be a pretty high bar. What's your reaction to this quality chart? This is, as my co-chair explained, this is the number of reports—for reports that were done, these are the ones that were done well. Nobody gets a really great grade here. Everyone struggles with it. You see a lot of red and yellow on the chart. What's your reaction to the quality of the reports when they're done?

RINDNER:

Again, my reaction to both quality and quantity is that improvements need to be made.

HENKE:

OK. Your statement says—I was really left a little bit disappointed by your statement. There's not a lot of quantity in it. It's a lot of generally good thoughts. You know, the Department of State continuously strives to improve its contractor oversight. It's probably a true statement. I hope it is, but it's very lackluster.

You say you're in the process of tailoring the Navy's CPARS manual to fit State. When will that be done?

RINDNER:

I would have to get that information from our operational office, sir.

HENKE:

OK. Is it your responsibility?

RINDNER:

No, that's in the operational contracting office, sir.

HENKE:

OK, would you get that for the record, please? Yes?

RINDNER:

Yes.

HENKE:

OK. You say in your statement the department uses past performance as an evaluation factor to select our contractors. And I take Mr. Gordon's point that the data may be out there, even if it's not in the system. But the fact that it's in someone's drawer in their desk doesn't really mean it's out there.

Can you react to that statement?

RINDNER:

My experience is that the contracting officers will contact references and get information.

HENKE:

Will contact references?

RINDNER:

Yes.

HENKE:

OK. Those are references that are provided by a contractor, right?

RINDNER:

Correct.

HENKE:

OK. Let's talk about that. A contractor puts a proposal in and they say, "I have reference A, B, and C. Here you go." The contractor's probably going to turn in good references. Nobody would do otherwise, right, generally? So they're going to give you ones that are good.

Our recommendation number 21 in our report, can you react to that?

RINDNER:

What is that recommendation, sir?

HENKE:

Have you read our report, Mr. Rindner?

RINDNER:

I have just seen an executive summary.

HENKE:

Have you read our report?

RINDNER:

I've seen an executive summary.

HENKE:

Have you read our report?

RINDNER:

I've seen an executive summary, sir.

HENKE:

Mr. Rindner, This is not a difficult question. Have you read our report?

RINDNER:

I've read the executive summary, sir.

HENKE:

Our executive summary—or prepared by your staff?

RINDNER:

I believe it's your executive summary.

HENKE:

OK, so you read the executive summary in our report. OK. I understand.

Our recommendation number 21, it is that when a contractor provides references—in my example, here's reference A, B, and C—they can only do that when those contracts are recorded in the database. It seems we're required to assess contracts. Right, Mr. Gordon?

GORDON:

Yes.

HENKE:

Law and regulation policy, we're required to put it in the database. Right, Mr. Gordon?

GORDON:

Yes, sir.

HENKE:

So if we're required to do all that, what about this idea of making sure that only references that are in the database can be used.

Mr. Rindner?

RINDNER:

I would have to study it a little bit more, sir.

HENKE:

Can you give us—you've been a procurement executive for seven years and you've got 30-plus years. Can you give us your reaction to it right here?

RINDNER:

I think the information in the past-performance database would be very valuable to have. I think any incentives to input that information into the past-performance database would be good. I think you're switching the incentive to the contractor.

HENKE:

Right.

RINDNER:

I think we need the incentive on the government's part.

HENKE:

What is the incentive on the government's part? We couldn't find one, frankly. So we thought, let's bring another party. Let's bring the contractors, give them equity in putting past-performance in the system. What about that?

RINDNER:

I'm not sure how the contractor would then leverage back to the government, sir.

HENKE:

Well, I guess that would be a problem if they're trying to get later awards. Wouldn't it? So that may get the government's interest and the contractor's interest.

Just a couple more data points Mr. Rindner. On the issue of suspension and debarments, how many referrals did you receive from the OIG for suspension and debarment in 2009?

RINDNER:

In 2009, I believe that was three, sir.

HENKE:

You received three referrals? How many in 2010?

RINDNER:

I would have to get that information; 2010, I believe it was three; 2009, I'm not quite sure.

HENKE:

Oh, so you're not sure about 2009? OK. OK. You're the sole SCO (Senior Contracting Official)? You're the . . .

RINDNER:

That's correct.

HENKE:

So we heard from Mr. Blalock, there are agencies who have 16 SCOs. I believe. Right? Transportation and others. You're the sole guy at State, \$7.5 billion. How many referrals, how many S&D referrals did you get from your IG in 2009?

RINDNER:

I believe it was two, sir.

HENKE:

You believe it was two.

How many in 2010?

RINDNER:

2010? Two cases that resulted in several actions.

HENKE:

OK. So two in 2009 and two in 2010? Right?

RINDNER:

I guess I need to define referrals.

HENKE:

A referral is recommended . . .

RINDNER:

A referral is for a specific . . .

HENKE:

Right.

RINDNER:

. . . incident that may involve more than one party. So in 2009, I believe it was one resulting in two actions. And in 2010 it was two resulting in three—six actions.

HENKE:

Six actions. OK, so you've got one referral and two in '09 and two in 2010. In the past year, you suspended three entities, I'm assuming, this is your testimony. In 2010, you suspended three entities in Afghanistan. Is that an accurate number?

And I'm over time. I have to stop.

RINDNER:

Correct.

HENKE:

OK. Thank you.

SHAYS:

Thank you.

Dr. Zakheim?

ZAKHEIM:

Ms. Shauket, you heard what my colleague, Professor Tiefer, asked about Louis Berger. How long has Louis Berger been working in Afghanistan?

SHAUKET:

I believe for quite some time, sir.

ZAKHEIM:

Let me tell you exactly: virtually from the beginning. Now, Louis Berger cuts a deal with the government, but the record is there that they didn't perform and worse than that. As you yourself said, they did some pretty outrageous things, correct?

SHAUKET:

Yes, sir.

ZAKHEIM:

Let me add, that when I was just in Afghanistan, Ashraf Ghani—do you know who he is?

SHAUKET:

Yes, sir.

ZAKHEIM:

OK. Well, for everybody else, Ashraf Ghani is the former minister of finance who's also the top adviser to President Karzai on the transition. Ashraf Ghani was once again outspoken about just one company, Louis Berger. And he has been publicly as well as privately for years.

At what point do you decide that Louis Berger is part of the problem in Afghanistan and not part of the solution?

SHAUKET:

Well, sir, we do have the administrative agreement in SFAPS (Solicitations for Financial Assistance Proposals), which is part of the contractor-performance record. So anyone that's looking at their past performance will see that that is in there and will learn the terms of their previous wrongdoing.

As far as it relates to their performance, I am hesitant, because I don't want my comments to appear in any way to be defending Louis Berger. Clearly, we have had problems with them in the past. I recognize that previously the Ghazni-Khost road had been identified where they did receive a fair rating.

I'm also aware on the program that over 18 people were killed and 35 were wounded on that program. It's a tough environment.

In 2009, our mission in Afghanistan really took a hard look at what was happening on our programs and did an internal assessment and an assessment of our contractors.

As a result of that, we changed a lot of the way we do business. We've brought in more engineers, more oversight. And we have also sat down and talked very sternly to our implementing partners about the problems that we've had.

I believe that the past-performance record shows that both Black & Veatch and Louis Berger have taken these comments to heart, and their most recent past-performance reports indicate higher ratings. So I believe that they are addressing our concerns.

ZAKHEIM:

OK. You've set up a new office, compliance and oversight?

SHAUKET:

Yes, sir.

ZAKHEIM:

And you've got a whole list of things that it's going to do. Could you give us a timetable, when they're going to actually be up and running and doing the various things you've listed?

SHAUKET:

Well, I recently hired the director for that division. And as soon as he came on board, his first mandate was to conduct interviews, because we had already gone ahead with the recruitment for other individuals.

I believe we're bringing on three more in the middle of March and we hope to have the entire office staffed up by the beginning of April.

ZAKHEIM:

OK, thank you.

Mr. Gordon, in your verbal statement starting off this panel, you criticized the notion of one size fits all. You said there are alternative approaches. Such as?

GORDON:

Thank you for the question, Dr. Zakheim.

I had some concern when I looked at the recommendations that you would be going down the row and asking us, do you agree with this, do you not agree with that?

And I had concern that it could be that an approach that works in one environment might not work in another.

To give you one example, the certification requirement that you have in with respect to CPARS, I had some concern that the certification requirement might not get where we need to go in terms of getting senior agency leadership. And I just wanted to flag, for the commission's consideration, the possibility that there may be alternative approaches.

ZAKHEIM:

Well, again, give me one. You know, if you're a senior official—you are, I've been—if a senior official isn't flagged, the senior official doesn't know. And if the senior official doesn't know, he's not going to do anything and or she's not going to do anything. And if they don't do anything, then the people down the chain are not going to do anything.

So give me an alternative.

GORDON:

We set out, actually, in the January 21st memo, a series of things that we think need to happen, including OMB meeting with senior agency officials to see how they're doing.

We want to be data driven. We want to see what's actually happening. We want to make the picture improve. And the certification itself strikes me as something that might be useful but might not be the most effective way.

ZAKHEIM:

OK, fair enough. So you're head of OFPP. You're OMB. OMB, you know, says jump. Agencies say how high?

Have you had a meeting yet with senior officials? And how frequently are you going to have them? And how are you going to measure whether they're complying?

GORDON:

Yes, sir. We just finished a couple of months ago our first round of these AQSTAT sessions in which we check to see how they're doing, by the way, not only with respect to past performance but other areas that the commission has rightly flagged, like dependence on contractors rebuilding their acquisition workforce.

We have them run through how they're doing against the criteria to get a sense of whether they're making progress and if not, what they're going to do to address the problem. Absolutely, sir.

ZAKHEIM:

. . . report on that publicly?

GORDON:

The AQSTAT summaries are not reported at this point, but I would like the opportunity to get more transparency into this, and I'd welcome the chance to explore that.

ZAKHEIM:

And since you're in charge, presumably you can decide that it should be public, right? It's not classified?

GORDON:

It's not classified, sir. But it also goes to the question of past-performance information, to pick one example, where there's some back and forth. It seems to me people are rightly divided on whether it's useful for past-performance information to be open to the public.

ZAKHEIM:

But that's only in the case of a specific contract or contractor.

If you're aggregating the numbers, there's no reason why we can't get aggregate numbers.

So can I get your undertaking that you will make the aggregate numbers public?

GORDON:

I would certainly. You have my undertaking that we will look and see if we can get these AQSTAT summaries available, because I do think that it will be helpful for everyone to see how agencies are doing against all of the goals that we're pushing.

ZAKHEIM:

OK. One other point: You said there's been substantial change in the last couple of years. Certainly, the chart for fiscal '09 doesn't show substantial change, at least for the agencies that concern us in this hearing.

Has there been substantial change in fiscal '10? Do you have numbers that are more updated than the ones on that chart?

GORDON:

I don't have updated numbers here, sir. We'd have to get them for you. But I will tell you that, to give you one example that, again, I think should resonate with the commission's interim report, we are working with FAI, the Federal Acquisitions Institute, to get training for the workforce, how to prepare these reports and to do them well, so we have both quantity and quality.

But also, as you know, sir, with respect to suspension and debarment, there have been some high-profile cases, including by the SBA, as well as colleagues on this table, that I think have gotten people's attention that there is a change in our attitude to contract management.

ZAKHEIM:

Mr. Fiore, I was struck by the initial part of your statement. You had a very long paragraph about soldier-family legal services, and you had a short sentence about your suspension and debarment role.

What's the proportion of time you spend on those two different roles?

How much time do you spend on the role that involved the big paragraph and how much time do you spend on the role that involved the short sentence?

FIORE:

Sir, I think it depends on any given week.

ZAKHEIM:

Give me a sense. You have a sense.

FIORE:

My sense would be about 60-40. Because I do not have the direct supervision responsibility for that office, I perform the suspension and debarment portion of that responsibility as well as the soldier-and-family legal services.

ZAKHEIM:

Do you think it makes sense—and I know my time has run out—for something as important as suspension and debarment not to have somebody focusing on it full time?

FIORE:

I focus on it as much as is required as the adjudicator. That is, the Army has always had an independent adjudicator for that role. In the other services, the suspension and debarment official also serves as the supervisor of the program office, which has more time and other duties attendant to it.

But, as time is required I devote as much time to it as is needed.

ZAKHEIM:

How big is your staff for this job?

FIORE:

The Army staff is five full-time attorneys in the program office. I do not have a staff. I essentially am the adjudicator. They prepare documents that I need to have prepared.

ZAKHEIM:

So you're a one-man operation 40 percent of the time?

FIORE:

Well, for that particular role.

ZAKHEIM:

Versus suspension and debarment, which I think we all agree is very important.

Thank you.

SHAYS:

Thank you.

Ms. Shauket, I said you could give an answer. I'd like you to be brief because it's on my time, but I'd like to make sure you get the answer.

SHAUKET:

Thank you very much.

SHAYS:

And you're answering what question?

SHAUKET:

I'm responding to the chart itself.

SHAYS:

OK. Go for it.

SHAUKET:

OK. In preparation for this hearing, we went into PPIRS (Past Performance Information Retrieval System) and we were surprised that we couldn't locate many of the past-performance reports we knew had been done. We contacted the system administrators and they recognized that there was a problem when the transfer took place.

And so, according to our records, we have at least 24 reports that were done for 2009 in Afghanistan in our . . .

SHAYS:

Twenty-four out of?

SHAUKET:

Out of the 81.

SHAYS:

OK.

SHAUKET:

So . . .

SHAYS:

OK, thank you.

SHAUKET:

Thank you.

SHAYS:

Mr. Gordon, I have to tell you, I really enjoyed your previous testimony. I like your testimony because I think you're willing to give clear testimony and say something that's important, but I am troubled by the fact that you seem to be on two sides here.

You say the entry is bad, the quality is bad, but in essence we look at past performance in spite of this. So I need you to explain to me why do you we need the database if there's another way?

And, you know, give me your eloquent and short answer.

GORDON:

Very short, sir. The database will be much more complete if it's done properly. That's the short answer, sir.

SHAYS:

OK.

GORDON:

We will be following up, including in a public report to show progress.

SHAYS:

Let me give you three reasons why I think you need a database, in addition. It's transparent. It's fair to all parties, government and contractors, and it's good governance. Would you agree with that?

GORDON:

Agree with all three, sir.

SHAYS:

OK. You don't like to call the past process informal, but it is informal in one sense. It's not prescribed in law. You are not giving contractors the right to see it because it's not transparent, which is—for the first time, I have some sympathy for contractors. So it's like, if we made it

transparent, they could respond. But if we don't make it transparent, they don't know what we're saying, which I found really surprising.

GORDON:

Sir, it is transparent. It's actually and it's required by law. Contractors have the right to respond to negative past-performance, guaranteed by law.

SHAYS:

Wait, how do they see it, if it's not . . .

GORDON:

If negative, adverse past-performance information is going to be taken into account in source selection and they have not yet had a chance to respond, they are required by law and regulation.

SHAYS:

That's the law. That's the law. Is it happening?

GORDON:

Yes, sir.

If they lose the contract and it's because of adverse past-performance information to which they have not had a chance to respond, they file a protest. They will win that protest if that's what made the difference.

SHAYS:

So your testimony under oath is that you look at all past performance and contractors see all past performance? And your testimony under oath is that it's very transparent?

Is that your testimony?

GORDON:

Sir, the current system is very, very flawed and incomplete. I did not testify that we look at all past-performance information. We should, and we do not yet do that. We need to do that.

SHAYS:

You started to give the impression with your emphatic statement, and that's the reason why I just want to clarify.

Mr. Blalock, I was pained beyond measure at your response to Mr. Green's question to you. I've been around and on this side often, and I was pained.

And I want to just be clear about—the NDAA '09 was passed in '08, and it required progress efforts to improve suspension/debarment systems. You're supposed to report on that, how you're progressing. It's supposed to—the member agencies—you are looking at what 50 member agencies are doing as it relates to that. And you're to recommend to OMB changes to suspension and debarment system and its rules.

You are the ISDC chairman, correct?

BLALOCK:

That is correct, sir.

SHAYS:

OK, that's what the law is. You used the term "volunteer." And I was thinking—volunteers, I didn't know the government had volunteers.

What a misnomer. These are government-paid employees that come together to assist in this effort, but it's under your responsibility. I would have thought the answer to it was, "It's my responsibility. I didn't give it the highest priority. I depended on other agencies, and I didn't get them together the way I needed to." And that would have been the answer.

And I would have said, OK, everybody screws up, but you tried to pass the buck on. I was looking at Mr. Gordon, and maybe I'm unfair here, but, Mr. Gordon, I would have been pained with that answer. And I want to know, were you satisfied with the answer that you heard from Mr. Blalock?

GORDON:

We do have a role at OMB in the ISDC, and I think we need to work, I take it as a commitment that we need to work to get that report in, sir.

SHAYS:

With Mr. Rindner's response and Mr. Blalock's response, did you get a sense that maybe you guys need to get together a little and work out responsibilities?

Because the sense I have is that neither Mr. Rindner nor Mr. Blalock feel like it's their responsibility. And the question I'm asking is, has there been some helpful information here that will enable you to, kind of, sort this problem out for us?

And I'll give you the analogy. When we had the hearing with DCAA and DCMA, we realized that we were ships passing in the night. That's what I feel is happening right here. Do you have a sense that some of this is occurring?

GORDON:

You're asking me, sir?

SHAYS:

Yes, sir.

GORDON:

Chairman Shays, I will tell you that I think that the ISDC provides a very valuable opportunity for us not to be ships passing in the night. I've been in the meetings. They were a very valuable place to exchange information. That's a separate question from whether we need to get that report in. And the answer to that is, yes, we need to get the report into Congress.

SHAYS:

The '09 report and the 2010 report?

GORDON:

Yes, sir.

SHAYS:

Both of them?

Yes. And do you understand, Mr. Gordon, why Congress requested it?

GORDON:

Yes, sir.

SHAYS:

Mr. Blalock, do you understand why they requested you to do this?

BLALOCK:

I do, sir.

SHAYS:

OK.

I said I'd yield back some of my time since I've already used up more time when my co-chairman was asking questions. So we're going to go right to Mr. Green.

GREEN:

Thank you.

Mr. Zakheim asked you very briefly about the new office that you've established for compliance and oversight. What prompted that? And why did it take so long?

SHAUKET:

Well, what prompted it was the 2009 IG report which recommended it. Prior to that, it was other duties as assigned by my staff. We had requested additional staff and had not been able to receive the funding for that additional staff. So we were very thankful for the IG report to give management attention to this issue. We . . .

GREEN:

Does it always take an IG report to get people to focus on important stuff?

SHAUKET:

I would like to think not. And actually, in our administrator, Dr. Shah, his leadership has really helped this. We had . . .

GREEN:

What about previous leadership?

SHAUKET:

They were not as focused on the debarment/suspension compliance issues as Dr. Shah has been. And under his leadership, what was fledging through the bureaucratic channels was expedited so that we could staff up this office.

GREEN:

OK, fine.

AID, in trips into theater, has always not covered themselves in glory with respect to oversight of contractors.

And complicating matters is the fact that well, first of all, you've got a limited number of folks to get out, security is a problem, and so forth. But complicating matters is the fairly significant number of large subcontractors that are used.

Are there plans to measure their past performance? I know that AID says, "We don't get involved with subcontractors, we look at the implementing partner. They're responsible."

But I contend that if something happens bad with one of your subcontractors over there, they're not going to look at the Little Sisters of Charity, they're going to look at you, AID.

So how do you measure past performance, or how do you plan to measure past performance of those large subcontractors?

SHAUKET:

Well, thank you.

We do hold the prime contractors responsible, as I'm sure you're aware. But also within the past-performance reports there's a section called "other," and what we're looking at when we're going

to be establishing our new policy is that we use that "other" section for specifically our larger subcontractors.

We're also looking to limit the number of tiers that we have within our contracts. We have an initiative going on right now called A3. It's Accountability in Our Assistance for Afghanistan, which is in draft right now. It's going to be recommending that we limit the number of tiers that we have on our contracts so that we can perform better oversight.

GREEN:

OK.

SHAUKET:

I would also like to say that the agency has established a new monitoring and evaluation policy for the agency which we think will also help facilitate that.

GREEN:

Do you have any contractors that are too big to fail?

SHAUKET:

In my opinion, no.

GREEN:

Admiral Ginman, over the past three-year period, '07 to '09, hundreds of contractors have been found to have committed fraud in connection with DoD contracts. This apparently didn't affect DoD's contracting behavior, however. During the same period, three-year period, DoD awarded almost \$300 billion to contractors, to these same companies.

Despite this, DoD stated in a report to Congress in January of 2011 that, quote, "believes that existing remedies with respect to contractor wrongdoing are sufficient." I don't follow that.

GINMAN:

I need to be careful, Commissioner Green. I think the report that you're referencing has not been submitted by the Department of Defense. And there has not yet been a final department position

issued, if, in fact, you're referring to the report that was posted on Senator Sanders' website. Is that the report you're referring to?

GREEN:

Yeah, yes. Well, if that language is being considered, somebody ought to look at it pretty carefully.

GINMAN:

Yes, sir. I would agree. Absolutely.

GREEN:

OK. Thank you. My time is up.

SHAYS:

Thank you, Mr. Green.

Mr. Tiefer?

TIEFER:

Thank you, Mr. Chairman.

Admiral Ginman, we were struck by the figure of \$280 billion, if I'm correct, roughly, of contracts that have gone to contractors with fraud judgments or settlements. So I want to ask a little bit about that.

SHAYS:

And could we just clarify, that's beyond just contingency, correct?

GINMAN:

But, again, I believe that the number you're referencing again is in a report that has not finished by the department, that we continue in discussions with both Justice and Treasury to determine whether the numbers are accurate in how they are portrayed.

TIEFER:

I . . .

GINMAN:

So I'm very uncomfortable . . .

TIEFER:

I won't ask you I promise you, if you don't like the question that follows, just stop the question.

I did see the comment that it was for judgments or settlements of a million dollars or higher. And I just want to make the common-sense—well, whatever. I want to make the common-sense observation, but I do want to know, that the way one gets up to very big figures is not that there are tens of thousands of convicted little contractors, but that the figure gets high because there's a relatively smaller number of big contractors who get such contracts. Yeah?

GINMAN:

So the figure can become large if you look at the figure for a three-year period of time in the numerator and then put into, I'm sorry, I said that incorrectly. The figure can become very large if I look at the entire three-year period and the suspension of that particular company or the subsidiary of a particular company was for a one-week, a two-week, maybe a one-year period so that the . . .

TIEFER:

I'm with you. They're big contractors.

GINMAN:

So, I mean, it's just . . .

TIEFER:

What I want to ask you about is, we've been discussing—I mentioned them to the first panel as the flagrant five—some big contractors today. Louis Berger, which pled to felony-level fraud.

KBR, which has been charged with civil false-claims action for \$600 million for armed subcontractors. Agility, which has actually been suspended but it's getting exceptions.

And I want to know, because we've asked this often, isn't the reason that we have the contractors who are swelling this figure up to very high levels, that these are contractors who are not only big but they are what we call in theater, in wartime contracting, too big to fail, that the government is too dependent on them to want to do to other than to keep them going, keep them playing with us, give them some more chances to play with us, yes?

GINMAN:

So, first, I would agree with Ms. Shauket, I don't believe there's a contractor that is too big to fail and that we'll find alternatives to replace them if need be.

There are certainly situations where if the contractor is currently performing and I need to continue that service for the warfighter, I may be forced to use them until I can run another competition and put one in place.

I'm uncomfortable with the concept that the numbers are only from the large contractors. I have not personally seen the actual data.

TIEFER:

Could you supply for the record some reason, if you come to some reason that you think we got to \$280 billion without that; the curve is such that we've gotten there by thousands of little contractors?

Let me go on to . . .

GINMAN:

Well, so, if I may, what I will commit to is, when we submit the report and it's signed out, that day we will submit it to the commission.

TIEFER:

Mr. Gordon, you said, and I wouldn't change a word of it, that suspension is, quote, "one of the government's most powerful tools," quote/unquote. And I agree with you. I don't think it's original with me to agree on that point.

When you see what was done with Louis Berger, the use of a deferred-prosecution agreement, and an administrative agreement so as not to suspend, aren't we seeing the rise of a new way that we will not be using one of the government's most powerful tools?

And I put it to you this way. I haven't seen much in theater of this kind of deferred-prosecution and administrative-agreement thing. That's one of the reasons why we have it as a recommendation. We have not seen it. I believe there have been many of them in the Foreign Corrupt Practices Act area, but not in contracting in theater.

Will we see more of these since it seems very advantageous to the contractor?

GORDON:

Professor Tiefer, I'm not in a position to predict what's going to be happening in the contingency environment.

I certainly believe that suspension and debarment are tools which we need to be somewhat more willing to use than we have in the past. I will tell you that I have concern when I hear people talk about automatic suspension or automatic proposal for debarment.

And I should say that I think Mr. Blalock has helped in the ISDC in strengthening exchange of views about these practices across the agencies.

TIEFER:

You're unwilling to say that there'll be more use of this? There hasn't been use of it in the past. I think I saw you nodding, but that didn't go in the record. Am I right there hasn't been use in in-theater contracting of this approach in the past?

GORDON:

Yeah, I didn't want to mislead by any nodding that I did. I was understanding what you were saying. I'm not aware of the statistics in theater nor can I predict the future there.

TIEFER:

Thank you. My time has more than expired.

SHAYS:

Thank you.

Mr. Henke?

HENKE:

Thank you, Mr. Co-Chair.

We heard this morning some frustration on the first panel that POGO, the outside group, has made some attempts to contact the ISDC and they haven't back from you.

Mr. Blalock, will you commit to talking with POGO and Mr. Amey by the end of the day?

BLALOCK:

I will, sir.

HENKE:

Thank you.

Number two, I get your point, Ms. Shauket, other duties as assigned, and that was one of the fixes that you implemented in response to the IG report was, "OK, we've got a problem; Let's put some resources, people on it full-time and have them do it."

Now, Mr. Blalock, you've been around—your organization has been around, and I assume you as well, from at least since 1986. Right? Fifty agencies, and do you have any full-time staff on ISDC?

BLALOCK:

No, sir.

HENKE:

So you all do it out of pocket, other duties as assigned, right, in addition to your day job?

BLALOCK:

That is correct, sir.

HENKE:

Would you, Mr. Blalock and Mr. Gordon, take on for us, would you commit to looking at the idea of some small number of permanent staff on the ISDC to staff it up? I'm not talking about

more than a handful of people to run the thing administratively and support the members of the ISDC. Would you look at that and give us your response in 30 days?

GORDON:

Sir, I'm happy to look into it. We are, as you know, in a very difficult environment. I was somewhat concerned that Mr. Blalock was being heavily criticized. He has put a lot of effort into the ISDC. But yes, I will be happy to get you an answer within 30 days.

HENKE:

OK. Because, I mean, we're talking about \$500 billion, \$600 billion a year in procurement. I think we could find some resources to staff up full-time for the ISDC. That's just my opening suggestion.

My third question is: Would you, Mr. Blalock and Mr. Gordon, would you commit to submitting that required report for 2009 and 2010 by March 31 of 2011?

BLALOCK:

Let me take the responsibility for that. I will commit to that.

HENKE:

OK. Thank you.

Ms. Shauket, this idea of—if I understand right, you're funding, your office, the procurement-function cost analyst, procurement analyst, are funded out of what they call the operating expenses account, operating side.

SHAUKET:

That's correct.

HENKE:

And then on the other side, AID has program funds, larger funds to do things with. And of course, everyone looks at the ORAD accounts, the operating accounts. What is an idea out there to remedy that situation?

What I'm saying is you probably have a hard time hiring a cost and price analyst, at the same time you're putting out billion-dollar contracts to do things. What's an idea to solve that?

SHAUKET:

That's correct. In the past, our operating expense funds have not kept pace with the proportional increase in our program funds, which have risen 45 percent since I took over as the chief acquisition officer.

Through the QDDR process and USAID Forward, we are recommending the establishment of a working-capital fund that will basically receive one percent of the program funds . . .

HENKE:

Right.

SHAUKET:

. . . to administer proper oversight of our programs.

HENKE:

Just a one percent on top of what's grown by 45 percent program money to do foreign assistance programs. You would take one percent and it would be scalable.

SHAUKET:

That's right, exactly.

HENKE:

Right? If the program grows, oversight has to grow and contracting officers have to keep pace with it.

SHAUKET:

Exactly, because we're currently about the same number of staff that we had in the late '90s, despite the increase. So this would be a way of tying that . . .

HENKE:

Is that right?

SHAUKET:

. . . so we would have real time.

HENKE:

I don't know why we've all seen the graphs of procurement spending going up and acquisition workforce going down.

SHAUKET:

Exactly.

HENKE:

And Mr. Gordon, to his credit, has taken that on very significantly. Your challenge is: How do I pay for it?

SHAUKET:

Yes.

HENKE:

And I think you've got a good idea.

SHAUKET:

Oh, thank you. And I'd also like to thank Mr. Gordon for the acquisition-workforce initiative, which actually funded our compliance division. So thank you.

HENKE:

OK. That's not section 852. That's DoD money, right?

GORDON:

Eight-hundred-fifty-two is DoD money.

HENKE:

Right. OK.

Mr. Rindner, any updates on numbers and compliance rates for me?

RINDNER:

What we have is 24 entered in 2009; six in 2010.

HENKE:

Twenty-four entered—you're talking past performance, 24 percent?

RINDNER:

Twenty-four entries.

HENKE:

In 2009.

RINDNER:

Correct.

HENKE:

How many contractor actions?

RINDNER:

I don't have that information. We can get that.

HENKE:

Twenty-four entries in 2009 in all of the performance-reporting database?

RINDNER:

Correct.

HENKE:

That's not just Iraq and Afghanistan, right? That's total.

RINDNER:

Total. Correct.

HENKE:

OK. Twenty-four entries in '09 and six in 2010. Is that right? That's the data you have right now?

RINDNER:

Correct.

HENKE:

And you're a \$7.6 billion operation?

RINDNER:

Correct.

HENKE:

Roughly, how many contract actions did you do in 2009, just roughly?

RINDNER:

I don't have that figure off the top of my head.

HENKE:

You don't.

RINDNER:

It would be thousands.

HENKE:

Thousands of them. OK.

Now, what about the suspension and debarment side? You said you had one referral in '09 and you took two actions. What were they?

RINDNER:

In 2009, we had a debarment of a contractor in Venezuela.

HENKE:

And you said there were two actions?

RINDNER:

There's two actions, two parties involved in that transaction.

HENKE:

OK, so you got one referral in '09 which resulted in one debarment.

RINDNER:

Correct.

HENKE:

OK. What about 2010?

RINDNER:

In 2010, we had three suspensions and we had a debarment that resulted from a referral.

HENKE:

OK. Thank you, Mr. Rindner.

I'm out of time.

SHAYS:

Dr. Zakheim?

ZAKHEIM:

Mr. Rindner, in your testimony, you gave some percentages that OFPP came up with regarding various narratives. It looks like less than half of the entries affected quality. There were insufficient narratives for schedule control in more than 60 percent of the entries. They were insufficient. You gave sufficient, but I'm giving you the insufficient narratives for cost control in more than 70 percent of the entries and insufficient narrative for business relations, again, in more than 50 percent of the entries.

At least you admit, and I'm quoting here, "It is clear we must improve our documentation." No kidding. And then you list a bunch of things you're going to do.

So I'd like to know when exactly will you start reviewing past-performance evaluations? You said you're going to do it. When?

RINDNER:

Right. We're going to be scheduling a special-topics review to look at impediments to reporting into the past-performance database.

ZAKHEIM:

And when is that going to happen?

RINDNER:

That's going to be kicked off in May, sir.

ZAKHEIM:

And how long will it take?

RINDNER:

I would estimate three months.

ZAKHEIM:

OK. You also say you look forward to using a civilian-agency tracking tool based on that developed by DoD. When are you going to start using that?

RINDNER:

My understanding is that tool will be available in April, sir.

ZAKHEIM:

OK. And finally, you say you find it beneficial to solicit references on similar programs. How often do you solicit similar references? And what do you mean by "beneficial" in this case?

RINDNER:

I don't have a statistic, sir, but that's what Mr. Gordon was referring to about we get a reference on a particular solicitation and the contracting officer follow up with that reference.

ZAKHEIM:

Would you give me for the record how often you've done that?

RINDNER:

I'm sorry, sir?

ZAKHEIM:

I'd like to know how often you've done it, go outside the CPARS with other references? Is it 10 percent of the time, 100, 90 percent of the time? If you could give that to me for the record please.

RINDNER:

I don't know how to get that particular statistic, sir.

ZAKHEIM:

Well, then how do you know it's beneficial? You're making an assertion that it's beneficial, but you don't even know how often it's being done. Well, you're in charge. Tell me. Don't stare at me, please.

RINDNER:

I don't know how often it's being done, sir.

ZAKHEIM:

So, how do you know it's beneficial?

RINDNER:

I know that it's beneficial for the contracting officer to get information on past performance from the references, sir.

ZAKHEIM:

Based on what the contracting officers tell you?

RINDNER:

Based on the feedback I get from the operational office, yes, sir.

ZAKHEIM:

But again, how often is that?

RINDNER:

I don't know, sir.

ZAKHEIM:

OK. I think my point's been made.

Admiral Ginman, on page seven of your testimony, you say the commitment to counterinsurgency contracting leads to a more moderate approach. What do you mean by a "moderate approach"?

GINMAN:

In particular, I'll start with Afghanistan. It will work in either Iraq or Afghanistan, but when I'm attempting to develop industries within Afghanistan, and I am looking at past performance with a company that is being developed, I may not expect their past performance to be as great as I would like, and can I work with them so that I can develop that company or develop that particular industry within Afghanistan to create the jobs in the theater.

So it's a recognition that could I perhaps buy clothing outside of Afghanistan. Yes, I could. Do I want to do that? It meets an objective to develop that capability inside the theater to create the jobs.

ZAKHEIM:

OK, fair enough. So this is part of Afghan First.

GINMAN:

Yes, sir.

ZAKHEIM:

Have those standards been set yet?

GINMAN:

Have the . . .

ZAKHEIM:

You're buying, in other words, you're buying from Afghans now. You say there has to be a more moderate approach. Well, the approach presumably involves setting some sort of standards or some new methodology. Have you set it yet?

In other words . . .

GINMAN:

No, no, sir. I think I understand the question. I do not know the answer to that that question.

ZAKHEIM:

Could you please let me know?

GINMAN:

Yes, I will.

ZAKHEIM:

How much money are you spending on Afghan First-type of contracts? You don't know that either?

GINMAN:

I don't know the amount on Afghan First off the top of my head.

ZAKHEIM:

Gee, I think our taxpayers would really like to know that.

GINMAN:

We will, we will . . .

ZAKHEIM:

They would like to know that, and they'd also like to know exactly how you set those standards.

GINMAN:

So the standards for the clothing are set in specification within the contract.

ZAKHEIM:

Yeah, but, obviously, you feel that the kind of past-performance issues that we've been talking about don't exactly apply in the Afghan case. But, clearly, something needs to . . .

GINMAN:

I think you've taken that out of context.

ZAKHEIM:

OK, give me the context.

GINMAN:

So I think the context that it was made in is if I have an opportunity to buy it in Kabul or I have an opportunity to do it in Kandahar, and where I need it is in Kandahar, do I want to consider the better past-performance in Kabul, not award in Kandahar?

Now, if, in fact, what I need to do is to create those jobs and capabilities in Kandahar, then I will do it there.

ZAKHEIM:

Regardless of standards?

GINMAN:

I need to be able to meet whatever the threshold requirement is for the specification . . .

ZAKHEIM:

OK, so basically . . .

GINMAN:

. . . and I need to work with the company to ensure that they can meet that specification.

ZAKHEIM:

So have you laid out those—are those guidelines written out?

GINMAN:

Well, the requirement is laid out in each individual contract for, this is what the clothing needs to meet; this is what the boot needs to meet; this is what the concrete—whatever the product is that we're buying, there is a specification that we're going to expect to be met.

ZAKHEIM:

Of course.

GINMAN:

And then working with that company to meet it.

ZAKHEIM:

That's the part I'm asking you about. Working with the company, because presumably if past performance isn't what you want it to be, but you want to work with the company, have you laid out rules so that people know how to work with the company?

I mean, you're trying to do something different, fine. You say you're doing it different. Are there some rules? Or does everybody just salute . . .

GINMAN:

Does everybody do it?

ZAKHEIM:

Yes.

You can . . .

GINMAN:

I'll take it for the record. I'm struggling a little bit with how we develop a company, period.

ZAKHEIM:

Well, but you're the one that's mentioned it, not me. You said . . .

GINMAN:

Well, no, I mean, you're asking for a standard.

ZAKHEIM:

Yes.

GINMAN:

I mean, so I'm trying to . . .

ZAKHEIM:

There must be some minimal standard.

GINMAN:

I'm trying to think through when I went to business school was I trained that there was some level of standard in the United States, that this is what you've got to do when you work with a company, and I'm not sure . . .

ZAKHEIM:

Will you get back with an answer?

GINMAN:

We will, we will get back to you.

ZAKHEIM:

OK, thank you.

SHAYS:

Sometimes when a hearing is over, I look back and say, you know, how fair is it for us on this side to be talking to you folks on that side? You all are dedicated government employees. I want to put that on the record.

And, Mr. Blalock, I've been the toughest on you, but thank you for your service.

What sometimes happens in a hearing, though, things come up that just illustrate that this is not a priority yet.

And for you, Mr. Blalock, you are a U.S. Navy counsel. That's your job. But you've been given this, I think, incredible opportunity to chair the Interagency Suspension and Debarment Committee.

I view it as significant, because you, Mr. Gordon, have pointed out, \$500 billion. So, you know, we're talking about a half a trillion dollars. What a hell of an opportunity.

So I'm struck with, if you can't draw on the people in your office, and the other folks who come together for this interagency can't draw on their people, then you need to request people.

I need to know, have you ever requested full-time staff for this responsibility?

BLALOCK:

I have not.

SHAYS:

OK.

BLALOCK:

There was a full-time staff member for the prior chair. She continued over for about six months.

SHAYS:

Let me just tell you, I get the gist. And the bottom line is, though, you know you can't do your job in a sense, because it hasn't been done in '09 and '10.

So it would seem logical to me that you would at the very least request this, because it is important, as I think Mr. Gordon and all of you realize. And I think that's where, you know, Mr. Henke was coming in.

But at least let people know, because it's such a huge issue.

I want to read the recommendations that we've made. I want you to tell me which one you agree with the most—I'm going to ask each of you—and which one you agree with the least.

And so I'll read them. Recommendation 20: "Allow contractors to respond to but not appeal agency-performance assessments." That could take a year. "Align past-performance assessment with contractor proposals." 22: "Require agencies to certify use of the past-performance database." 23: "Require a written rationale for not pursuing a proposed suspension or debarment." "Increase use of suspensions and debarments." And 25, recommendation 25: "Revise regulations to lower procedural barriers to continue in suspension and debarment."

Now, if one or two you don't precisely understand them. just put that as a neutral. Of the ones you heard and you understand, which do you agree which the most and which do you agree the least? Cause this conversation is going to continue.

Mr. Gordon?

GORDON:

I'll be very brief. I think I could say a lot.

SHAYS:

When people say when they're very brief, they aren't. So just . . .

GORDON:

I promise you this time. 20 would be the one that I agree with.

SHAYS:

"Allow contractors to respond to but not appeal."

GORDON:

I was trying to be brief.

And 24, with the reference to automatic suspension, I'm most concerned about.

SHAYS:

OK. Thank you.

Mr. Ginman?

GINMAN:

I'm sorry. I think the one that bothers me the most is . . .

SHAYS:

Start with the positive. Let's start with the positive.

GINMAN:

Well, start with the positive. The "Allow contractors to respond and not appeal to agencies."

SHAYS:

I'm going to assume that you like them all and you had trouble picking out . . .

GINMAN:

No actually, no, I was struggling which one did I like best.

(LAUGHTER)

SHAYS:

OK. Now, which one is obviously you don't like as much?

GINMAN:

Well, so far as 21. I mean, I'm not as good at suspension and debarment, since I don't deal with it day in and day out, but just with past performance.

The one that bothers me the most is the past performance. Because our performance is abysmal, for lack of a better word, in filling the CPARS out and having that data, removing from me the ability to go get additional data and go to the program managers and go to the contractors . . .

SHAYS:

I get the gist.

GINMAN:

. . . from my standpoint is very problematic.

SHAYS:

Mr. Rindner?

RINDNER:

I would say I like most the idea of the contractors being able to respond to past performance but not dispute it.

SHAYS:

Right.

RINDNER:

And the certification, the contractors' inability to use past performance that's not in the database, again, I think we need more responsibility on the side of the government, and I don't know that putting it on the contractor would do that.

SHAYS:

Let me just quickly respond to get to that.

RINDNER:

Sorry, sir?

SHAYS:

The bottom line is, right now we need the government to start to put this in, and right now there's no incentive for the contractor to do it because they'd just as soon put their documents in without having anything else.

RINDNER:

OK.

SHAYS:

So it seems to me what we're doing is we're going to have the contractors nag you. That's the reason.

RINDNER:

Oh, OK.

SHAYS:

Ms. Shauket.

SHAUKET:

Well, I agree with my colleagues with recommendation 20. I think that's a great idea.

I'm torn in choosing my second one between 21 and 23.

SHAYS:

OK.

SHAUKET:

And I would welcome a real detailed conversation.

SHAYS:

Which one do you dislike?

SHAUKET:

Well, I'm torn between 21 and 23, which ones I dislike. My . . .

SHAYS:

OK. Require a written rationale for not pursuing a proposed suspension or debarment? You don't think that makes sense?

SHAUKET:

Well, I do think it makes sense if it's a recommendation from the inspector general's office. But we've also been encouraged to look outside of just of the IG referrals.

SHAYS:

OK. Thank you.

Yes, ma'am?

SHAUKET:

And I would just like to comment on 21, I agree with the recommendation, but only if we fix both of these first because if we don't, everyone will be getting a neutral rating and that's not in anyone's interest.

SHAYS:

Fair enough. Thank you.

Mr. Blalock?

BLALOCK:

I hope it's a no-brainer that the chair of the ISDC would agree most strongly with the increased use of suspension/debarment recommendations.

With respect to disagree, it's a tossup for me between 21 and 24. I am strongly opposed to automatic exclusions because I believe the SDO needs to have the discretion to judge each case on its own facts and circumstances.

I also don't think that the recommendation for a written rationale for declination—in my view that is a solution looking for a problem. I do not think there is a problem with major declinations.

SHAYS:

Thank you.

Mr. Fiore?

FIORE:

Sir, I defer to OFPP and DoD on the past-performance issues. That's outside of my purview.

On the suspension and debarment issues, I have real concern with lowering the standards in the contingency operation. We haven't had any trouble applying the current standards in Afghanistan and Iraq.

SHAYS:

Well, I let you start with the negative first. What's the positive?

FIORE:

I really don't have a positive one in suspension and debarment because I think that the Army has already increased its use of suspension and debarment.

I don't have a problem with a written record of why a suspension and debarment action isn't taken, depending on how you define a referral.

SHAYS:

Fair enough.

FIORE:

Some agencies get a complete packet referred to them and they want feedback. In the Army all we get, often, is a very slim investigative report, and we do all the work at the headquarters level, and it isn't referred until the very end, and then there is a record already.

SHAYS:

Got you. Thank you. Thank you all.

We'll start with you, Mr. Fiore. We'll go down the line that way. Any closing comments that you would like to make without comment from us?

FIORE:

I appreciate the opportunity to be here. And I appreciate the oversight and the transparency you're giving to the suspension and debarment process by having these hearings.

SHAYS:

Thank you.

BLALOCK:

I apologize to the commission if my explanation for the delay in filing the reports was taken as an excuse. I'm trying to explain a few facts of life with respect to life in the government now. I have committed and I will get the combined fiscal year '09 and fiscal year '10 ISDC 873 report in by the end of March.

SHAYS:

Thank you, sir, very much.

SHAUKET:

I'd like to thank the commission for their report, and I would welcome a detailed discussion about each of your recommendations so we can be sure that we can implement them.

It's clear that for past performance we all need to do better. And we need to all work together to enhance the systems. We've got a good start there.

But I would like make a plea, since this is contingency contracting. It's very difficult for our contracting officers in Afghanistan and Iraq to currently take the training because it's only open during business hours in Washington, D.C.

(LAUGHTER)

So I'd like that to be expanded. I think that would help a long way in training. Thank you.

SHAYS:

Thank you. Mr. Rindner?

RINDNER:

OK. I appreciate the opportunity to appear before the commission. I appreciate your work. And I look forward to Department of State improving on past-performance reporting.

SHAYS:

Thank you, sir.

Mr. Gilman, Ginman. I'm sorry. I have a great friend named Gilman, so Mr. Ginman. Not that you're not . . .

GINMAN:

It rhymes with martini.

(LAUGHTER)

Thank you for the opportunity to be here today. What it is that we're doing in Iraq and Afghanistan and the troops in support of troops is important. Ensuring that we get contractors that, in fact, have a solid record of past performance is important.

As these two charts so clearly articulate, we have not done that well yet. And you have a commitment from the department, from a leadership perspective, to work to ensure that we improve the statistics on both of these charts.

SHAYS:

Thank you, Mr. Ginman. Mr. Gordon?

GORDON:

Mr. Chairman, I . . .

SHAYS:

. . . be brief?

(LAUGHTER)

GORDON:

I also want to thank you for the opportunity to be here.

I would urge the commission, as you're finalizing your report and thinking about past performance in suspension and debarment, to keep them in the context of the overall report, which is very much resonant with our priorities in the administration, strengthen the acquisition work force; demonstrate fiscal responsibility; rebalance our relationship with contractors so contracting is not a default option; and when we do use contractors, the federal government maintains control of those contractors and does contract management.

Thank you.

SHAYS:

Thank you. Mr. Gordon, you probably would have been brief and it would have been the first time, and so at least now I don't have to revise my view.

I would say to all of you again, thank you for your service. I would also say that we have found the administration incredibly cooperative and all the agencies.

So, Mr. Gordon, we realize up here it's not a partisan issue. And it's not one from the commission working with the administration or with Congress.

So, kind of, we're all in this together. Thank you for allowing us to expose what we think can be helpful. And we realize that it's easier to expose than to solve, and we want to be part of the solving as well.

So thank you very much. And this hearing is ended.