



STATEMENT OF

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BEFORE THE

U.S. HOUSE OF REPRESENTATIVES

COMMITTEE ON HOMELAND SECURITY

SUBCOMMITTEE ON MANAGEMENT, INVESTIGATIONS AND OVERSIGHT

“Waste, Abuse & Mismanagement: Calculating the Cost of DHS Failed Contracts”

SEPTEMBER 17, 2008

INTRODUCTION

Chairman Carney, Ranking Member Rogers and Members of the Committee, I thank you for giving the Homeland Security & Defense Business Council an opportunity to appear before you today. We want to express our appreciation to this Subcommittee and to the full Homeland Security Committee for its continued leadership on the full range of critical issues associated with government management and procurement, and, in particular, its leadership on initiatives to enhance the partnership between the government and the private sector when it comes to fulfilling our collective mission to keep our nation safer and more secure. That partnership is essential to our government's ability to deliver high quality services to citizens quickly and efficiently.

I am Marc Pearl, President and CEO of the Homeland Security & Defense Business Council, a non-partisan, non-profit association of the leading small, medium and large companies focused on the homeland security market. Our members are responsible for the operational component of a contract – providing the products, services and technologies for every program that encompasses the homeland security mission for our nation. The Council's members employ hundreds of thousands of Americans in all 50 states. We are honored and proud to be working alongside leaders from civilian and defense agencies supporting their strategic initiatives through our individual and collective expertise in technology, facility and networks design and construction, human capital, financial management, technology integration, and program management. I will be discussing lessons learned, best practices and recommendations for moving forward, and how the Council can serve as a resource to this Committee and the Department.

At the outset it is important to reiterate what many have said today and in previous hearings – that while the challenges of the contracting and procurement environment are complex, we must work toward finding practical solutions to these challenges. The Congress, the Department, and, indeed, our nation is facing a transition to a new administration that will lead the Department forward. We hope that this Committee will work proactively to provide helpful guidance to shape the relationships, the standards and the overall process of contracting and procurement. We also hope the Committee will work with the Department in the evaluation of both perceived, failed, and successful partnerships with contractors; and provide a forum in which useful recommendations can be shared that will benefit all of the stakeholders.

The Council supports the 'quality-control' of Congressional oversight and values your role in encouraging and prodding, if/when necessary to achieve these goals. It is our responsibility to develop with this Congress, and the Department, a functional, practical, effective process by which – when the decision is made to outsource a project – to know the specifics, adhere to oversight, and develop a management-contractor relationship that is based on realistic goals and expectations in order to achieve the most successful outcome for all the stakeholders. There are linkages between each phase of a large and complex program, and a third party providing advice and counsel is one critical link that ensures success and is often impossible to achieve if it missing.

We believe that the goal of establishing a 'culture of preparedness' that serves to prevent, detect, protect, respond and recover in the event of a catastrophic emergency – whether by a terrorist or natural disaster as we have witnessed many times in the past few weeks alone – is

best achieved when the stakeholders work together in a vibrant partnership. This partnership then provides our government with the ability to access the best solutions and capabilities to achieve mission success – a safer and more secure nation.

LESSONS LEARNED

Building a national security apparatus from scratch is one of the most formidable bureaucratic feats imaginable. The Department was given a very large, complex and important mission, and early on was short of adequate resources. The initial process of creating the Department and attempting to identify and meet the needs of our nation quickly meant that there would be more outsourcing than usual. Private contractors have been instrumental in supporting and in providing the substantive and procedural expertise to achieve our collective mission.

The Department of Homeland Security has been working feverously since its creation and continues to demonstrate its commitment to keep up with these forces for change. While we have seen many incremental successes even the leadership at DHS admits that much work remains to be done. For example, after 5 years, many of our members remain frustrated in some of their relationships, or even in attempting basic business dealings with DHS. DHS officials have told us that they recognize that there have been missed opportunities, burdensome procedures and complex challenges. We are also cognizant of the fact that a process of focusing on and promoting policies and programs that encourage the private sector to continue to invest in homeland security is taking shape, slowly but surely. It would be extremely detrimental to our nation for the private sector to walk away. That would only lead to failure for both DHS and our nation.

The private sector simply wishes that the government articulate its objectives and requirements in a clear and/or concise fashion. Articulating goals at the outset of any contract, and then having the terms and conditions flow from it, is the bedrock of good project management. It is inherently unfair and discouraging to companies that seek to provide their expertise and technologies in ways that could help the nation when there is no coherent foundation to begin with. If a procurement contract is vague in its requirements, the chance of failure increases, and everyone loses.

The key issue is whether lessons that have been learned from prior mistakes, burdensome procedures and unintended consequences will be incorporated into future contracting. After each contract experience our members learn and adapt their business procedures accordingly. Each of us wants the best possible outcome, but achieving it requires a team effort for successful project and program delivery on schedule and at, or below, cost.

This is the time and a perfect opportunity to step forward – recognizing the many positive achievements, evaluating why they were successful, and using the time to provide a blueprint that the next administration and its DHS leaders can use to be even more successful. We must learn from our past mistakes and not be defined by them.

THE FEDERAL PROCUREMENT SYSTEM

Mr. Chairman and members of this Committee, the federal government has the largest and most complex procurement system in the world by any measure, and the Department of Homeland Security is one of its largest components. Since public funds are involved, it is

imperative that the foundation upon which a successful federal procurement system is built must be underpinned by credibility, trust, and competence. As such, we share your commitment to ensuring that the federal government in general, and the Department of Homeland Security specifically, only do business with responsible, ethical parties. Every one of our members who enters into contracts with the federal government is fully aware that this is a privilege – not a right. Our members have just as much desire for positive outcomes as the government wants them to have.

We in the homeland security federal contracting space recognize the important role we play in achieving the special mission our country took on seven years ago last week. In fiscal year 2006, the Department of Homeland Security spent more than \$15 billion on nearly 67,000 individual contract transactions – \$5 billion of which was spent on management and professional support services – awarded to almost 16,000 contractors. It is also important to point out that, to its credit, more than \$4.5 billion of the DHS prime-contracting dollars went to small business.

It is notable that, even with its size and complexity, the federal acquisition system actually works with and serves the public quite well. Clearly, it is also a system that faces many challenges and has areas where improvements are needed. Real fraud and abuse, while deeply troubling whenever uncovered, is actually relatively rare, and the government has in place a wide array of generally effective statutes and standards that apply to entities seeking to do business with it.

When there are mistakes, our members have a deep and abiding interest in seeking to correct them as much as, or more than, does the government. Our members will not win future contracts based on poor performance; they will win contracts because they can deliver the products and services, and provide world-class experts and practitioners to the effort.

The federal procurement system is a complete life cycle – from requirements development to solicitation, award, performance and contract closeout. Each phase of the process is dependent on the other, and on multiple parallel processes. The federal procurement rules are complex and provide many opportunities for honest mistakes. Intentional misconduct, however, is rare and should be fully prosecuted, but we realize that even these allegations undermined the trust and confidence in the performance of the acquisition process. There must be urgent attention paid to the federal acquisition workforce and to the relationships between agency mission needs and acquisition outcomes. Problems must be thoroughly and factually analyzed to ensure that root causes are properly identified and their effects on the federal procurement life cycle understood.

We all understand – as the title of this hearing indicates – that waste and mismanagement is a very serious issue. Taxpayers demand solutions. I am here today to be part of the solution.

- If there are lenient controls or processes – the contracting industry wants to work with government to tighten them.

- If there is a need for better oversight of the private sector's work – the contracting industry will aggressively work with the government to ensure that occurs, as we believe we do today.
- If there is a dearth of contracting expertise at DHS – the contracting industry will partner with government to address the need for greater education and training.

When properly outlined at its beginning, appropriately managed, and adequately overseen during its delivery, federal contracts can, and most often do, generate desirable and substantial benefits for our nation. If the contract is specific, has taken into account economic reasonability and technological feasibility, and effectively balances the substantial risk incurred by the performing contractor with appropriate rewards – everyone wins.

The Council and its members have worked closely and successfully with the senior procurement executives at DHS to ensure that the system and the process work for all parties concerned. We are all passionately dedicated to the successful realization of the agency's mission.

A NEW CENTURY, A DIFFERENT WORLD, A NEW ADMINISTRATION, A DIFFERENT OUTLOOK

In the post-9/11 world, government simply has no choice but to be agile and have systems in place that are as flexible as those who seek to cause harm. Government must also be instantly responsive to sudden events – be they man made or natural – that disrupt our communities and the national economy.

The challenges of this new environment are daunting. Whether it is helping to create a new agency that must seamlessly coordinate different cultures, secure over 100,000 miles of land surrounding our borders, ensure that every container entering our ports is safe, search every piece of luggage boarding an aircraft, we are all dependent on the rapid adoption and successful implementation of the most effective technologies and expert human capital to accomplish each new mission without significant interruption.

In rising to this challenge, government's historic approach to development of programs, implementation of project management, and oversight of the process are realistically being put to the test. Traditional hierarchical approaches are facing the speed, complexity, and diversity in today's economy and we need to have homeland security solutions in place as soon as possible. Long reporting chains, overlapping management and operations, narrow work restrictions, insufficiently trained managers, and compartmentalized operating units are no longer acceptable if we are to achieve the mission.

Procurement time frames are unnecessarily lengthy, often making the best technologies obsolete and wasting human capital and resources between the time a *Request For Proposals* is issued and a purchasing decision is made. Detailed procedural requirements, prolonged budget processes, multiple decision-making layers, and detailed design directives impede success when today's homeland security needs demand flexibility and adaptability.

This is by no means a challenge specific to government alone. Neither the public nor private sectors are immune to change. Many organizations are revamping the old organizational

charts of closed boxes sealed off into distinct columns. In their place, they are shaping a dynamic web in which participants connect and cooperate on an ongoing, networked basis.

QUALITY CONTROLS, PROCESSES AND RESOURCES

The Council and its members support a process that mirrors this new environment and urges that the Department embrace these priorities as it moves forward in revitalizing its procurement process:

1. Quality contracting;
2. Quality acquisition management; and
3. Quality people.

The unique mission and newness of the Department requires a constructive dialogue and expert input to build the internal agency infrastructure and make the changes essential to having a strong, effective contracting process.

Many of your colleagues on both sides of the aisle and both sides of the Hill, the GAO, academics, and other outside organizations, have identified many of the elements necessary for a strong contracting process: a performance work statement, measurable performance standards, and a quality assurance plan.

The Council supports the May 2008 statement of the bipartisan group of Senate Homeland Security & Government Affairs Committee members that, together with Chairman Thompson, called for more explicit requirements and performance standards in major contracts to ensure successful outcomes.

Successful missions need due diligence, specificity of terms and outcomes, and thoughtful expert oversight. The Council's members support making certain that the contractor knows, specifically what is needed in order to achieve success. Additionally, we want and need processes in place that provides expert oversight officials with the least burdensome and highly dynamic ability to accurately measure performance.

The challenge is to find a balance between the need to strengthen oversight, including applying aggressive controls and the need – particularly as it relates to homeland security – to maintain flexibility to adjust to rapidly changing conditions on the ground and ensure a successful mission/project. Private industry welcomes expert contracting management and oversight officers. We do our best work when specific feedback is part of the process.

A new administration working with a new Congress now has the opportunity to further improve on procurement with sound program management, client-side support, and the improvement of the acquisition workforce by focusing on the recruiting and training of more talented contracting officials. There should be integrated project teams, led by the government, but with operational involvement of contractors. We urge that the Department continue to develop acquisition workforce tools to forecast needs and develop certification requirements.

The largest contracting office within DHS, the Office of Procurement Operations, had three people on board in 2003. Today, there are 200. Without these individuals, DHS can't procure the goods and services they need to secure the homeland. It cannot, however, be

just about numbers, but also the securing of contract specialists with the requisite skills – on-the-ground experts who understand the mission and objectives of the project at the beginning – so that there are as few ‘surprises’ as possible and a shared understanding as to timely delivery and specific and realistic expectations. A highly skilled workforce that can conceptualize, monitor and administer the highly complex programs and contracts will minimize failures.

The Council cannot emphasize enough the need to increase the number of procurement officers with expertise in technology, engineering and management to accomplish the complex operational aspects of oversight and review. While we recognize that there is a shortage throughout the government of expert contracting officers, the efforts of the Chief Procurement Officer at DHS should be commended and supported. For example, in addition to a number of other significant initiatives she has announced the establishment of an important *Acquisition Intern Program* that should strengthen the acquisition workforce by attracting, hiring and training exceptional new talent, and developing a pipeline for future acquisition leaders.

PARTNERSHIP, SKILLS AND A CULTURE OF CHANGE

Nowhere is the need for a close partnership between the public and private sectors more evident than when our nation needs to prepare, deter and, if necessary, respond to catastrophic emergencies within our borders. The extraordinary efforts that our public servants and private sector leaders have engaged in since September 11, 2001, are evidence for necessary and mutually beneficial partnerships.

We must, however, move even more rapidly towards responsible and appropriate ways of fostering greater cooperation, collaboration and communication.

Government needs to seek out new approaches to work together with the private sector, with greater predictability and cost-effectiveness. When working with the private sector, it is best to introduce a partnership approach early on – and build on it. New restrictions on government contracting won’t make our borders safer – greater innovation will.

Government must continue to build the internal skills necessary to match the capabilities sought from the private sector – including the capacity to manage complex relationships. It is important to invest in developing program, project and procurement management capabilities within the civil service. The complex and unique nature of the projects essential to our homeland security require contracting officers who possess an adequate understanding and are given the resources to carry out their responsibilities with integrity and transparency.

When there are large and complex contracts there inevitably will be issues – but they can’t weaken longstanding relationships or the realization that we’re all in this together. Government must take the lead in shaping a new kind of supplier partnership to ensure greater accountability – by aligning incentives, sharing risks, and measuring performance.

For example, the Homeland Security & Defense Business Council, more than three years ago, offered DHS help with the challenge of increasing the number of certified project managers by offering to help fund a new certification program through the Project

Management Institute. Our new relationship with Georgetown University's Public Policy Institute, which offers a certificate in Homeland Security Studies, will provide input and aid in developing the curriculum for the first generation of students who will be employed throughout the private and public sectors. These and other programs can help create a new generation of public sector managers that are both disciplined and agile enough to work expertly in government, and closely with industry, to achieve a new level of performance.

DHS needs not only the expertise but also the full cooperation of the private sector to succeed in homeland security. The private sector often has the capabilities and technologies that DHS needs to operationalize its mission. In other words, DHS establishes the priorities based on risk but they often don't have the inherent capabilities to make those programs successful – they must often rely on the private sector to develop the programs – including the technology – and to make the programs work.

THE PROCUREMENT PROCESS AS PART OF A LIFECYCLE

The Council believes that the acquisition process is part of a lifecycle that must begin earlier than contracting activity itself. Before the 'blueprint' is drawn, experts on the ground and practitioners in the field need to be assembled and questioned. A successful process also requires equipping the entire team with an understanding of the challenges and risks in place during the entire lifecycle of the project to ensure success. Quadrennials, which provide a strategic view of priorities/budgets, operational requirements, and programmatic alignments, guarantee cost efficiencies and mission achievement.

This will provide an opportunity for government to include the private sector in the Department's long-range priorities and long-term needs to improve understanding and direct R&D efforts. The Quadrennial also provides the private sector with an opportunity to educate the government about gaps in technology or capabilities, and to set reasonable expectations about timeliness and cost of delivery.

THE CHANGING DYNAMICS OF THE "NEW WORLD" – BEING FLEXIBLE AND PLANNING FOR CONTINGENCIES

The culture of challenging assumptions of the past depends on flexibility and decentralization – not a rigid adherence to checking off boxes. We must recognize that priorities change and plans will sometimes require adjustment to account for changing circumstances. Given the importance of maintaining public support and achieving overall mission success, flexibility is a crucial element of any program – specifically the ability to deploy innovative technologies and human capital – sometimes more nimbly than the government's existing workforce and capital resources would permit.

Similarly, it's important to plan for appropriate contingencies. It's rare that expected developments cause problems. Flexibility, however, must be coupled with a rigorous commitment to execution.

This approach is not at all about cost savings, but rather about an effective response to our nation's clarion call to have a system in place that can efficiently and effectively provide mechanisms to secure our homeland and respond to catastrophic incidents.

The private sector and government will always need to respond quickly to emerging threats,

but to the extent that we can think in tandem and more strategically, it helps us in the private sector better serve the government need by permitting discussions earlier in the process – away from the actual contracting activity – to allow robust exchange of ideas without compromising the integrity of the process.

MOVING AWAY FROM BEING “BELTWAY-CENTRIC”

It is crucial to go “beyond the Beltway” to assemble teams and solicit input from those who are operational experts – those who best understand the needs and issues and in the end must implement the project/program to its successful conclusion. The federal government and the American people are entitled to access and consultation with the best professional talent and technology – both in the private and public sectors – that can be utilized to ensure success of mission.

EMPHASIZE THE RESULT – NOT THE PROCESS

Perhaps as a consequence of its unique mandate and nature, the focus within government too often tends to be on the process rather than the result. Missing the forest for the trees is an occupational hazard in both public and private sectors, but the impact in government agencies can be especially debilitating. The plan is a means – the mission is the end.

ESTABLISH CLEAR LINES OF ACCOUNTABILITY

When responsibility for a project is parceled out in unconnected pieces, it is difficult to pin down who is accountable when expectations fall short. Large-scale programs may be complex, but the lines of responsibility must be clear. Rather than rely on process standardization, it is vital to introduce the principles that characterize the 21st century organization, including its dependence on partners to achieve its results.

CONCLUSION

Rather than rehashing history, the Council would like to recommend the building of a path towards the future so we can move this process forward. We must learn from the past, not be defined by it.

Once the mission and goals of a project are known, the focus needs to be on keeping the project on track and most importantly, to keep as many of the best people on the project as possible.

The Council is offering to work with the Committee as a neutral, but very interested actor, to be a conduit between the public and private sector to achieve these goals of reform – to identify and find real world solutions to contracting challenges and work toward better accountability, diversity in the homeland security community and, most importantly, to ensure a sound, fair and responsible contracting process.

Government and its partners share the same goal. We want to see projects completed on-time and on-target. We want to see programs that meet their objectives. We understand sometimes there are roadblocks. Our challenge is to find the most appropriate, effective, efficient routes to overcome them quickly and with the least disruption to the mission. We can do this by working together in meeting the goals of our common mission.

The public and private sectors – working from previous recommendations and developing

new ones if necessary – must be able to work from the same strategy. In the GAO Report cited by the House and Senate leadership from earlier this spring, it was found that “contracts with well-defined requirements linked to measurable performance standards delivered results within budget and provided quality service.”

To be successful, this will include:

- Greater support for the recruitment, development, and retention of a corps of modern managers skilled in the complex – and essential – task of meeting the mission by building links and reaching out beyond the public sector to whomever can serve the interests of the nation.
- The ability of public and private sector managers to be equipped and able to speak out if there are newer technologies or better solutions.
- A better and more specific planning throughout the lifecycle of the project with more focused, proactive oversight.

This approach will get our nation where it needs to go – where this Committee, the next administration, the Department, the private sector providers of services and technology want us to go – and will ensure that we get there together.

As another GAO Report from April pointed out the Department has to undertake these critical missions while also working to transform itself into a fully functioning cabinet department – “a difficult undertaking for any organization and one that can take, at a minimum, 5 to 7 years to complete even under less daunting circumstances.”

In the face of a transition, and a strong desire of all the stakeholders to move forward in achieving of our common mission, this is certainly the time to evaluate, question and develop a foundation of support for the agency tasked with securing our homeland.

On behalf of the Homeland Security & Defense Business Council, I appreciate the opportunity to provide our comments on the important issues before the Subcommittee. The Council desires to provide this Committee and DHS with the support, expertise and input you need to ensure that sufficient resources are afforded and appropriate processes are in place to achieve success. We look forward to working with the Subcommittee as it continues its deliberations.

DISCLOSURE REQUIREMENT
Required by House Rule XI, clause 2(g)

1. Name: **Marc A. Pearl, President and CEO**
 2. Business Address: **1225 I Street, NW – Suite 400, Washington, DC 20006**
 3. Organization Representing: Homeland Security & Defense Business Council
 4. Any federal grants or contracts which **you, personally**, have received since October 1, 2006, from Federal Agencies under the purview of the hearing, the source and the amount of each grant or contract: **None**
 5. Any federal grants or contracts which were received since October 1, 2006, from Federal Agencies under the purview of the hearing by the **organization(s) which you represent** at this hearing, including the source and the amount of each grant or contract: **None**
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Marc Pearl has served as the President and CEO of the Homeland Security & Defense Business Council, a non-profit non-partisan organization representing the leading companies that provide homeland security solutions to our nation since March 2008. Previously, he was the Principal and Chairman of IT Policy Solutions, which he founded in 2003. Marc also recently served as executive director of the Consumer Electronic Retailers Coalition (CERC) a public policy alliance of the leading consumer electronics and general retailers and their principal trade associations.

Before founding ITPS, Marc was partner at and led the international law firm, Shaw Pittman's eCommerce policy practice group, and before that was general counsel and SVP of government affairs at the Information Technology Association of America. Marc's professional career includes government and community service, including serving as Chief of Staff and Legislative Counsel for two senior Members of the U.S. Congress. Pearl has lived and worked in DC for close to three decades.

Pearl has led numerous legislative and public policy industry outreach efforts and coalitions, including one that is addressing the upcoming DTV Transition. Over the past several years, he has helped form alliances that dealt with the Y2K millennium bug liability and safe harbor protections, and electronic commerce transaction jurisdiction issues. Pearl has represented the private sector on U.S. government delegations at the World Trade Organization, the World Intellectual Property Organization, and The Hague Conference on Private International Law.

Marc has served as a faculty member or keynote speaker at numerous national/international conferences on eCommerce and the Internet, including Beijing University and the China Law Society's *Comparative Media Law and Policy*, *WTO and China* program on the public policy obstacles and opportunities facing China in the digital economy; the Salzburg Seminar on *Transnational Perspectives on Intellectual Property and Communications Law*; and Harvard University/Swiss Re's Rüschnikon Center's Global Dialogue.

Pearl received his law degree from Emory University and his Bachelor of Arts with honors from Case Western Reserve University. He has been married for more than 30 years to Gwen Enfield Pearl, a psychotherapist in private practice in Washington, DC. They have two grown sons.