

STATEMENT OF

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BEFORE THE
SUBCOMMITTEE ON READINESS
OF THE
HOUSE ARMED SERVICES COMMITTEE

March 11, 2008

Chairman Ortiz, Representative Forbes, distinguished members of the House Armed Services Subcommittee on Readiness, thank you for the opportunity to discuss the question of “inherently governmental” functions and the proper role of the government in providing services and fulfilling the Department of Defense core missions.

My name is Shay Assad and I serve as the Director, Defense Procurement, Acquisition Policy and Strategic Sourcing within the Office of the Under Secretary of Defense for Acquisition, Technology and Logistics. Before assuming this position in April 2006, I was the Assistant Deputy Commandant, Installations and Logistics (Contracts) for the Marine Corps and, as such, served as the senior civilian contracting official within the Marine Corps.

Prior to Government service, I spent 25 years in industry serving in a number of operational and senior contract management capacities, primarily with Raytheon Company. My experience includes serving as a Senior Vice President of Contracts, a President and Chief Operating Officer of one of Raytheon’s major subsidiaries and lastly, as an Executive Vice President at Raytheon and the Chairman and Chief Executive Officer of one of its major subsidiaries. I am a graduate of the United States Naval Academy. I then began my career as an officer in the United States Navy serving two tours on U.S. Navy destroyers and lastly as a Navy Procurement Officer at the Naval Sea Systems Command.

Thank you for the opportunity to appear before you to participate in today’s discussion. Today’s discussion goes to the heart of two questions; (1) what is the core

capability that the government must maintain if it is to continue to provide our warfighters the equipment and support services they require while ensuring that our taxpayers' money is spent wisely; and (2) what is the proper role of contractors that are supporting the Department of Defense in that effort. We must ensure that government personnel perform the inherently governmental functions associated with the acquisition and procurement of defense goods and services. The fact that contractors may be performing or appear to be performing some of these inherently governmental functions is a matter of concern.

I would like to focus initially on the role of industry versus government employees and military personnel, in the contracting and procurement mission within the Department of Defense. The Federal Acquisition Regulation, Subpart 7.503 identifies functions which are considered "inherently governmental." While it is an extensive list, it also notes that the list is not all inclusive.

My perspective centers around the Government's business decision making process. Specifically, the personnel and processes we use to contract for over \$300 billion dollars of goods and services.

My view is that the role of industry must be carefully and particularly scrutinized when contractors are involved in the pre-award phases of Government procurement and acquisition. Among the areas which should be carefully scrutinized are: the determination of an acquisition approach and business strategy, the selection of who will perform the work, and the negotiation of cost/price and contract terms. Except in those

cases where the technical expertise does not reside within the Department, what we do during the pre-award decision making process should not be performed by contractors. The role of contractors in procurement and contracting activities should be confined to administrative support areas whenever possible. Even in those areas, we need to ensure that anything that provides access to the decision-making process in the aforementioned areas must be carefully examined.

At the present time, approximately 5% of the total procurement/contracting workforce consist of contractors. In a number of instances, these contractors are providing appropriate administrative support. However, while not pervasive within the department, there are occasions when contractor personnel are performing contracting roles similar to those I have described previously.

I can assure you that I am working to change those instances where I believe contractors are performing functions which could be inherently governmental. It is essential that we in the government fully recognize that contracting personnel are entrusted with important responsibilities and must be accountable to the taxpayer. We should not outsource that responsibility.

A small number of contracting organizations have resorted to utilizing contractors. Among those reasons they do so are: 1) increased workload; 2) lack of billets; 3) lack of experienced personnel and 4) inability to recruit personnel effectively. In spite of the aforementioned, I believe that we must find a way to enable these organizations to staff

their operations with Government employees not contractors. Examples of solutions are: 1) increased billets where justified; 2) use of retired annuitants; and 3) use of interagency contracting resources. We cannot overlook the potential for conflicts of interest when contractors are working in a contracting environment. This is a concern that has been raised by the Government Accountability Office (GAO) and others and we are working to address those concerns.

Let me discuss some initiatives we have undertaken in the Department to address issues of integrity and the training and improvement of the contracting workforce.

Panel on Contracting Integrity: As you are aware, the Under Secretary of Defense (Acquisition, Technology & Logistics) (USD(AT&L)) established the Panel on Contracting Integrity in accordance with the requirements of section 813 of the John Warner National Defense Authorization Act for Fiscal Year 2007. Although the statute provides a sunset date of 2009 for the Panel, the Department intends to continue the Panel as a matter of policy. The Deputy Under Secretary of Defense (Acquisition Technology) (DUSD(A&T)) is the Panel Chairman, and I am the Executive Director for the Panel. As required by section 813, the Panel is conducting a review of the progress made by the DoD to eliminate areas of vulnerability that allow fraud, waste, and abuse to occur.

Our initial report to Congress noted that the Panel has established ten DOD-wide subcommittees focusing largely on areas of vulnerability identified by GAO. Each of these DoD-wide subcommittees is chaired by a senior procurement executive of one of

the military departments or a defense agency, including the Army, Navy, Air Force, Defense Logistics Agency, Defense Contract Audit Agency, or a senior leader from the Defense Acquisition University, the Defense Contract Management Agency, the DoD Inspector General and the Office of the General Counsel.

The focus areas of the subcommittees are: Current Structure of Contracting Integrity; Sustained Senior Leadership; Capable Contracting Workforce; Adequate Pricing; Appropriate Contracting Approaches and Techniques; Sufficient Contract Surveillance; Contracting Integrity in a Combat/Contingent Environment; Procurement Fraud Indicators; Contractor Employee Conflict of Interest; and Recommendations for Change. The Panel identified 21 initial actions for implementation in 2008, to include the following four focus areas:

- Reinforce functional independence of contracting personnel and promptly fill contracting leadership positions with qualified leaders of integrity to expect and enforce ethical behavior;
- Make recommendations to the Department Senior leadership regarding the appropriate size of the contracting workforce and ensure that it has the appropriate skills to effectively and efficiently price, award and manage more than \$300 billion in annual contracts;
- Develop a DoD-wide consistent contract policy execution review plan, strengthen contracting approaches, and re-invigorate contract surveillance techniques; and

- Improve planning and training for contracting in combat/contingency environments.

Two of the subcommittees, Procurement Fraud Indicators and Contractor Employee Conflicts of Interest, were recently formed in response to issues associated with contracting in a contingency/combat environment and the Department's increased reliance on contractor support. These subcommittees will be developing recommendations to reduce vulnerabilities in those areas. The Panel will meet six times this year. A rolling assessment and tasking process will facilitate efficient and effective implementation of the subcommittee recommendations and ensure currency and relevance of subsequent actions.

I would like to emphasize that the Department views procurement integrity as the fundamental underpinning of our acquisition system. We are taking a number of actions to ensure that we deal appropriately with any vulnerability in the contracting system to waste, fraud and abuse. We fully understand that integrity is the foundation of our ability to assure our taxpayers that we are being good stewards of their money when we acquire the supplies and services necessary to meet the needs of our warfighters.

Senior Contracting Leadership Offsites: On May 10, 2007 and again on December 12, 2007, we conducted 3 day conferences for senior contracting leaders of the defense contracting community. The purpose of these offsite meetings was to highlight and discuss current issues in contracting, contract management and the competency assessment for the contracting workforce and to ensure that the leadership of the DoD

Contracting Community is fully engaged in the activities of the Panel on Contracting Integrity. We have scheduled another offsite meeting for May to be held in conjunction with the DoD Procurement Conference. My intent is to hold these senior leadership meetings twice a year to ensure current contracting issues are being addressed.

Contracting Competency Model: As I have testified previously, improving the capability of our acquisition workforce is a matter of critical importance to the Department of Defense today. A key component of that improvement process is to understand the baseline capability of the workforce. I am working in conjunction with the Director, AT&L Human Capital Initiatives, and the Department's Senior Procurement Executives to conduct a workforce-wide assessment of the 22,000+ civilian and military contracting and procurement of professionals in the Department of Defense. The assessment results will be used to:

1. Define and validate the competencies required for the Contracting Community to deliver mission critical capabilities across six domains: a) Major Systems Acquisition; b) Logistics and Sustainment; c) Base Operations; d) Engineering and Construction; e) Research and Development; and f) Contracting in an Expeditionary and/or Combat Environment. The competency inventory for the Contracting Workforce will include analyses associated with mission area, career level, and job function.
2. Assess proficiency levels of competencies and capabilities resident in the Contracting Community and identify proficiency gaps.

3. Align/adjust personnel strategies to address competency gaps and provide opportunities for training and development.
4. Conduct an integrated assessment of competencies, workload and workforce demographics.

Several organizations, including the Defense Logistics Agency, the Army Corps of Engineers, a number of Air Force Commands, the Army's Life Cycle Management Center (LCMC) at Communications and Electronics Command (CECOM), and Army and US Marine Corps contracting workforce members working in a combat environment, have now completed competency assessments utilizing this model. To date – well over 4100 professionals have conducted the assessment. Participation is well over 90 percent.

Between now and June 2008, we will use the Contracting Competency Model to conduct an assessment of the remainder of the military and civilian members of the contracting workforce. A report addressing the results of the DoD-wide Contracting Competency Assessment will be published in October 2008. Our challenge does not end here. We must work with the contracting community to establish a continuous process to define and maintain the competencies required to deliver mission critical capabilities and to integrate competency assessment results and workforce analysis into ongoing component force structure and workforce planning efforts.

I would also like to take this opportunity to highlight for you what we are doing in overseeing and managing service contracts. In fiscal years 2006 and 2007, DoD obligated over \$300 billion on contracts for goods and services to become the largest

purchasing organization in the world. Over half of those procurements were for services. Given the magnitude of the dollar amounts involved, it is essential that these DoD acquisitions be handled efficiently, effectively, and with integrity.

We are in the second year of implementing section 812 of the National Defense Authorization Act for 2006, which established a review structure and process for the acquisition of services in the Department. Under this structure, senior leaders review the acquisition approach and business strategy on planned acquisitions of services as well as the oversight mechanisms for monitoring the contractor's performance in providing the required services. At USD(AT&L)'s direction, I personally review all proposed acquisitions of services over \$1 billion to ensure that the requirements are clear and well defined, the acquisition approach and business strategy are appropriate and that there are mechanisms in place to provide proper oversight of contractor performance.

I am also working with the senior contracting leadership in the Department to develop the guidance and detailed implementation instructions for periodic independent management reviews of contracts for services required by section 808 of the National Defense Authorization Act for Fiscal Year 2008. I fully support this type of review and believe the lessons learned from these independent reviews, which I refer to as "peer reviews", will contribute greatly to the development of best practices and lessons learned in contracting for services.

Finally, I believe the Department's approach to contracting for services will benefit from the work products of several of the subcommittees under the Panel on Contracting Integrity. For example, some of the recommendations and initiatives being developed under the Adequate Pricing; Appropriate Contracting Approaches and Techniques; Sufficient Contract Surveillance; Procurement Fraud Indicators and Contractor Employee Conflict of Interest Subcommittees will result in overall improvement in the processes and oversight procedures associated with contracting for and monitoring service contracts.

The Department's goal is to continuously strive for improvement in all that we do. We will not lose sight of the tenet that while we endeavor to provide our warfighters the very best, we must also ensure that we do so while being good stewards of taxpayer funds. Our warfighters deserve nothing less and our taxpayers, rightfully, should insist on nothing less.

Mr. Chairman, I thank you and the members of the committee for your interest in our efforts, and would be happy to address any questions that you may have for me. Thank you.