STATEMENT OF
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BEFORE THE
COMMITTEE ON HOMELAND SECURITY AND GOVERNMENTAL AFFAIRS
SUBCOMMITTEE ON FEDERAL FINANCIAL MANAGEMENT, GOVERNMENT INFORMATION, FEDERAL SERVICES, AND INTERNATIONAL SECURITY

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Chairman Carper, Ranking Member McCain, and Members of the Subcommittee, thank you for this opportunity to appear before you to discuss the Department of Homeland Security's (DHS) contracting program and, in particular, its use of award fee contracts. As the Acting Chief Procurement Officer for the DHS, I am the lead executive responsible for the management, administration and oversight of the Department's acquisition programs. In that capacity, I oversee and support ten procurement offices within DHS. The Office of the Chief Procurement Officer (OCPO) provides the infrastructure and establishes the acquisition policies, procedures, training and workforce initiatives that enable our acquisition professionals to support the DHS mission while also being good stewards of taxpayer dollars.

I came to DHS Headquarters in April 2008 as the Deputy Chief Procurement Officer and have been the Acting Chief Procurement Officer since January 2009. Previously, I served as the Transportation Security Administration's (TSA) Assistant Administrator for Acquisition and Chief Procurement Executive from November 2005 to April 2008, responsible for an annual $2 billion acquisition program. Before joining TSA in December 2002, I was a Contracting Officer for the Department of Defense's Naval Sea Systems Command, where I led contracting efforts associated with numerous major weapon systems acquisition programs.

DHS Acquisition Program Overview

Since it was established, the OCPO's mission, in conjunction with the respective contracting offices, has been to provide the needed products and services to meet the DHS mission, and to do so in a way that represents sound business and demonstrates that we are good stewards of the taxpayers' dollars. In order to achieve this mission, we have focused on our people and our processes. We recognize the need to have qualified professionals who are trained and certified to perform their respective duties in an increasingly complex regulatory and policy environment. We have made significant strides in creating an acquisition workforce program that is focused on recruiting, training, and retaining a cadre of acquisition professionals in multiple disciplines. We also recognized the need for sound business policy and published the Homeland Security Acquisition Regulation (HSAR) and Homeland Security Acquisition Manual (HSAM). We have instituted disciplined processes that have established internal controls for our investments through the creation of Acquisition Oversight and Governance programs. In addition to ensuring that DHS components comply with both Departmental and federal procurement policies and regulations, the OCPO issues a broad range of policy and guidance that define the contracting framework for the DHS contracting community.

As the Department has matured and defined its mission, the acquisition of products and services has been essential to successfully securing our nation. The requirements have been complex and diverse, including infrastructure needs, security equipment, aircraft and ships, facilities, and emerging technologies. The threats we face are variable, and as a result, the acquisition program must be able to adapt and identify a variety of solutions. Similarly, the contracting officers must assess each procurement requirement and determine the appropriate type of contract. Based on various factors, including the complexity of the required product or service, the contracting officer selects a contract type that recognizes the performance risk and motivates the contractor to successfully meet the contract's objectives. The objectives can vary depending on the program's needs, but may include cost, schedule, performance, or a combination of these factors.

Procurement Policy at DHS

One of the CPO's priorities is "Quality Contracting" which is focused on making sound business decisions and agreements that enable us to accomplish our critical mission. Within the OCPO, we are developing, implementing, and continuously refining a policy and oversight framework that will facilitate the Department's ability to achieve this objective. The Office of the Chief Procurement Officer includes a Policy and Legislation Branch, which is responsible for the development and establishment of procurement policy for the operational DHS contracting activities. This office originally published the Homeland Security Acquisition Regulation and the Homeland Security Acquisition Manual in 2003 and has continued to update these documents to reflect current statutory, regulatory, Office of Federal Procurement Policy (OFPP), and internal DHS mandates. These two documents provide the foundation for procurement policy that is adhered to by each of the ten contracting organizations. Additionally, this office issues guidance, templates, and advisories to support the operational contracting offices. The Policy and

Legislation Branch also participates in federal procurement policy making through its participation on various committees, including the Civilian Agency Acquisition Council (CAAC), and the Interagency Suspension & Debarment Committee, as well as two OFPP working groups directly addressing the subject of today's hearing, the Contract Type Working Group and the Incentive Contracting Working Group.

Based on this policy framework, DHS contracts are awarded in compliance with the Federal Acquisition Regulation (FAR), DHS's FAR supplement, the HSAR, and its companion for DHS internal guidance, the HSAM.

Developing and issuing policy is not effective unless the workforce is aware and understands the implementing guidance. We accomplish this through a multi-layer approach, including a policy working group, communications to the contracting community, and through discussions at Head of Contracting Activity (HCA) Council meetings. Policy is initially developed in coordination with representatives from the various contracting organizations and ultimately issued by the OCPO. To communicate new information prior to integration into the HSAR or HSAM as final policy, DHS utilizes Acquisition Alerts to notify the contracting community of current and upcoming topics, such as proposed rule making or OFPP memorandum. For changes to federal acquisition regulations, OCPO issues Acquisition Regulatory Advisories, which not only advise the workforce of the FAR changes, but also describe in detail the impact of the change on DHS's processes and procedures. Finally, at the monthly HCA Council meetings, policy issues are discussed among the Department's procurement leadership to ensure their further communication within their respective organizations. Additionally, training is provided on policy changes that are complex or are items of significant interest. Through these communications and education, the contracting workforce is prepared to execute contracts that are in compliance with federal regulation and policy.

Award Fee Contracting at DHS

DHS utilizes the full variety of contract types prescribed in the FAR in support of its diverse acquisition program. The preponderance of our awards is firm-fixed-price; this includes nearly 70% of the awarded actions and nearly 50% of the dollars. However, not all requirements are suited to a fixed-price contract. In situations where the desired outcomes or the ability to estimate the cost to complete the effort is unclear, the government will use a cost type contract. Under a cost-plus-fixed-fee contract, the contractor is provided a fixed-fee amount to recognize its best efforts in support of the program, but provides less incentive as costs increase. In situations where the government has areas of emphasis for the contractor to focus on, the contracting officer may select a cost-plus-award-fee contract. For example, in development efforts or in those instances where it is difficult to determine objective performance measures, award-fee contracts provide a business strategy that enables the government to identify areas of emphasis and establish an award fee pool that will motivate the contractor to succeed in meeting the government's requirements. In these situations, typically the contract includes an award fee structure that includes a base fee and an award fee portion that together comprise the total potential fee to be earned by the contractor. It is important to

recognize that the base fee is significantly lower than what the fixed-fee would have been had the contracting officer selected a different contract type. If the government's evaluation of the contractor's performance is positive, a percentage of the award fee pool will be awarded based on the criteria and respective weightings of the criteria as defined in the contract's award fee plan. As a result, under a properly structured award fee contract, a contractor that performs significantly above satisfactory may earn at least the same or perhaps more fee than it would have earned if the contract had only used a fixed fee structure. Conversely, a contractor that performs below satisfactory will earn only the base fee, which will be significantly less than what the contractor would have earned if the contract had a fixed fee structure. The award fee is both a positive and negative incentive, whereby the contractor may earn slightly more or substantially less than what a fixed fee contract would have paid if the procurement had lent itself to that type of business strategy. While less than 10% of the DHS obligated dollars are awarded using cost-plus-award-fee contracts, they have been used to effectively motivate the contractor to perform.

With respect to DHS policy on award fee contracts, current HSAR, HSAM, and guidance are effectively consistent with OFPP guidance. This includes an emphasis on criteria related to cost, schedule and performance, successful performance, and exception-only use of rollover. We continue our work with OFPP and the CAAC on all procurement policy matters, and are closely monitoring the pending FAR changes with respect to award fee. We will issue an Acquisition Regulatory Advisory and modify our policy and guidance, as appropriate once the FAR has been revised.

As I mentioned earlier, DHS is committed to awarding quality contracts that deliver mission capability and represent sound business judgment, including compliance with federal procurement regulations, policies, and guidance.

Thank you again Mr. Chairman for your interest in and continued support of the DHS Acquisition Program.

Thank you for the opportunity to testify before the Subcommittee about DHS's use of award fee contracts. I am glad to answer any questions you or the Members of the Subcommittee may have for me.