

The Joint Statement of  
Christopher Shays and Michael Thibault, Co-Chairs  
The Commission on Wartime Contracting in Iraq and Afghanistan

Hearing:

**‘Ensuring Contractor Accountability:  
Past Performance and  
Suspensions and Debarments’**

Room 216, Hart Senate Office Building, Washington, DC  
9:30 a.m., Monday, February 28, 2011

*[As prepared for delivery.]*

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Good morning. I am Christopher Shays, co-chairman of the Commission on Wartime Contracting in Iraq and Afghanistan.

This opening statement is made on behalf of Co-Chairman Michael Thibault, our fellow Commissioners, and myself. The other Commissioners at the dais are Grant Green, Robert Henke, Charles Tiefer, and Dov Zakheim. Commissioners Clark Kent Ervin and Katherine Schinasi 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 avoided.

The federal government has some powerful tools for holding contractors accountable for what they were 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 important.

If past-performance information isn't recorded in the federal database, then there's no shared, official record to consider 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 can climb.

To appreciate our concern, consider these points:

- Samplings of contingency-contract data in the Federal Procurement Data System suggest that 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 Risk?"

Correcting over-reliance on contractors in contingency operations," contains 32 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 at our website, [www.wartimecontracting.gov](http://www.wartimecontracting.gov).

The "At What Risk?" report contains six recommendations bearing on today's hearing. They are numbers 20 through 25 in our report:

20. Allow contractors to respond to, but not appeal, agency performance assessments.
21. Align past-performance assessments 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.
24. Increase use of suspensions and debarments.
25. Revise regulations to lower procedural 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 suspensions and debarments are used 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 1 has four witnesses:

- Rear Admiral Robert J. Gilbeau, U.S. Navy, Commander, Defense Contract Management Agency, International;
- Michael Carroll, Deputy Inspector General, U.S. Agency for International Development;
- Captain Timothy Harrington, U.S. Navy, Commanding Officer, Naval Sea Logistics Center; and
- Scott Amey, General Counsel, the Project on Government Oversight.

Panel 2 has six witnesses:

- Dan Gordon, Administrator, Office of Federal Procurement Policy;
- Richard T. Ginman, Deputy Director, Contingency Contracting and Acquisition Policy, Defense Procurement Acquisition Policy, Department of Defense;

- Corey Rindner, Procurement Executive, Department of State;
- Maureen Shauket, Chief Acquisition Officer, U.S. Agency for International Development;
- Dan Blalock, U.S. Navy Counsel, and Chair, Interagency Suspension and Debarment Committee; and
- Uldric L. Fiore, Director, Office of The Judge Advocate General, U.S. Army.

We have asked 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 today's witnesses for participating in what we believe will be a very important hearing. Now, if our witnesses will rise and raise their right hands, I will swear them in:

Do you solemnly swear or affirm that the testimony you will give in this hearing is the truth, the whole truth, and nothing but the truth?

Thank you. Let the record show that all the witnesses answered in the affirmative.

Admiral Gilbeau, please begin. # # #