

United States Air Force



Presentation

Before the House Committee on
Oversight and Government Reform,
Subcommittee on Technology,
Information Policy, Intergovernmental
Relations and Procurement Reform

Protecting Taxpayer Dollars: Are Federal Agencies Making Full Use of Suspension and Debarment Sanctions?

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Mr. Chairman, Ranking Member Connolly, and Members of this Honorable Subcommittee, it is a great pleasure to be called before you to testify concerning the recent Government Accountability Office (“GAO”) report entitled “Suspension and Debarment: Some Agency Programs Need Greater Attention, and Government wide Oversight Could be Improved,” and how the Air Force manages its Program.

The GAO report named three characteristics of “more active” suspension and debarment programs: a dedicated suspension and debarment program with full-time staff, detailed policies and procedures, and practices that encourage an active referral process. While I certainly agree that all of these features are important, I respectfully submit that, for purposes of the Air Force, they do not go far enough in making suspension and debarment programs as effective as they can be. Stated differently, the number of actions taken – which appears to be the focus of some people - is not the best metric to assess the effectiveness of a suspension and debarment program. I will add though that our numbers have always been high. This year we issued 367 suspension and debarment actions, and that is fairly consistent with each of the prior 14 years I have been the Air Force’s Suspending and Debarring Official.

But in my opinion - beyond what GAO recommends - the Air Force’s suspension and debarment program is effective because it has a full time, senior career Suspending and Debarring Official who is supported by a dedicated staff, is separate from the acquisition chain, and is empowered to do the right thing to protect the Government. This structure has allowed me in every instance to do what I believe is the right thing to protect the Government. I have never once felt political or acquisition-driven pressure to avoid taking action or to take action. On the contrary, I have been completely supported and empowered by senior Defense and Air Force

leadership to act as I deem necessary. Let me give you two very brief examples of what I mean. First, several years ago I suspended Boeing's three Launch Systems business units from Government contracting for nearly two years after some of its employees were found to have improperly taken significant, proprietary data from a competitor. That was a contractor of immense importance to the Air Force, but the unethical conduct called into question the business units' ability to deal fairly, honestly, and ethically with the U.S. Government. There was no question in my mind at the time that the Boeing business units should be suspended, and senior Air Force and Department of Defense leadership supported that view.

Second, and more recently, after receiving a referral from the U.S. Special Operations Command, the Air Force suspended L-3 Communications' Special Support Programs Division (which I understand had the company's largest Government contract at the time) when some of its employees were caught secretly segregating Government email for L-3's review. As with the Boeing case, L-3 was an important contractor which performed vital work for SOCOM's Bluegrass Station, Kentucky facility. Yet, the suspension received full support from SOCOM, Air Force, and DoD leadership.

I note that the Air Force's involvement with Boeing and L-3 did not stop with these suspensions. I terminated the suspensions when Boeing and L-3 entered into Administrative Agreements with the Air Force that committed the entire companies (not just the business units, but the entirety of these major, global defense contractors) to very specific undertakings to become best-in-class ethical business operations. These Agreements are available on my office's public web page, which can be found by searching "Air Force debarment."

I respectfully request the Subcommittee's indulgence as I provide one more example of a recent case that was neither a suspension nor a debarment, but resulted in significant ethical transformation of a large global defense contractor. This example, I believe, shows how independent, full-time, and fully empowered Suspending and Debarring Officials can protect the Government in unique, but vital ways that may not have been possible in other agencies.

We had been monitoring for some time news reports of allegations of corruption with respect to sales of military equipment by BAE Systems, plc, to foreign Governments. In late 2009, we received information from the U.S. Department of Justice ("DoJ") that raised the level of my concern. Because of the restricted nature of the information, we were not privy to certain documents from the investigation that would have afforded the Air Force sufficient basis to suspend or debar BAE. However, I sent BAE's CEO a "Show Cause Letter" which expressed the Air Force's concern about the allegations and offered the company a chance to respond. Not only did the company respond, but within weeks they reversed their reported history of non-cooperation with DoJ, pled guilty to a felony, and paid a \$400 million fine. And, over the next year, the company cooperated with me and my staff as we conducted a deep dive into BAE's processes, procedures and culture. BAE also accepted our recommendations for ethical change, company-wide. Documents relating to this review are also available on my office's public website.

I share this BAE case with you for two reasons. First, I want to make clear how important freedom to do the right thing is for Suspending and Debarring Officials. The Air Force's approach to the BAE case is unconventional when compared with many other programs in the Government that might wait for a final conviction or a final contract action like a

termination before acting – or not acting at all, because the misconduct did not relate to a US government contract. But, the freedom I have to do the right thing not only enabled me to engage early, but also to facilitate further ethical transformation throughout BAE that will benefit all U.S. Government contracts with the company in the future. And second, I raise this case because I want to highlight for the Subcommittee that we are not limited to taking action for misconduct only for conduct relating to U.S. Government contracts. None of us in this room would welcome a contractor into our home to do work for us when, on another project, they did shoddy work or engaged in unethical or illegal behavior. We should be, and the Air Force is, similarly concerned with misconduct committed by Air Force contractors – even if that misconduct is unrelated to an Air Force or any U.S. Government contract.

For full time, independent Suspending and Debarring Officials, this freedom to maneuver and craft creative and forward looking ways to protect the Government is of utmost importance. This freedom is based largely upon my ability to exercise discretion. Because I am free to either debar or not debar a contractor, I am able to both fashion creative remedies in response to misconduct, and to proactively influence contractors to prevent misconduct from happening in the first place.

Some have suggested that debarment should be mandatory—that is, that it should be imposed automatically following a triggering event such as an indictment or a conviction. I believe that such an approach would be ill-advised. Respectfully, Suspending and Debarring Officials already have all the tools we need to protect the Government and effect meaningful change. And many of the tools that I use (such as the show cause letter in the BAE case), derive their power to effect meaningful change in the cultures of our contractors from my discretion to

debar if I am unsatisfied with the contractor's answer. If debarments became mandatory (rather than permissive and subject to the Debarring Official's discretion), contractors would no longer have an incentive to work with me in proactive, creative ways to benefit the entire Government. Instead, they would have every incentive to stonewall, deny problems exist, and not make changes for fear of potential liability that would result in a mandatory debarment regardless of their willingness to change.

It has been a pleasure to testify before you today. I thank you for your time and attention and I would be happy to answer any questions.



BIOGRAPHY



UNITED STATES AIR FORCE

STEVEN A. SHAW

Steven A. Shaw, a member of the Senior Executive Service, is Deputy General Counsel for Contractor Responsibility, Office of the Air Force General Counsel, Washington, D.C. Mr. Shaw is the Air Force debarment and suspension official. He also manages the Air Force's Coordination of Fraud Remedies Program.

Mr. Shaw received his law degree from the Washington College of Law, American University. He has served in private law firms in Washington, D.C., and Texas; was an assistant state's attorney for Montgomery County, Md.; and Chief, Criminal Division, Office of the U.S. Attorney, Southern District of Texas. Mr. Shaw has also been Deputy Director of the Enforcement Division for the Federal Energy Regulatory Commission, and senior trial attorney for the Public Integrity Section, U.S. Department of Justice, where he prosecuted political corruption cases.

Prior to his current appointment, Mr. Shaw was a partner in a national law firm. He has engaged in a diverse litigation practice, specializing in civil fraud and white-collar criminal litigation.



EDUCATION

1969 Bachelor of Arts degree in government, Franklin and Marshall College
1973 Juris Doctor degree, Washington College of Law, American University

CAREER CHRONOLOGY

1. 1973 - 1977, assistant state's attorney, Montgomery County, Md.
2. 1977 - 1979, associate, Grossberg, Yochelson, Fox & Beyda, Washington, D.C.
3. 1979 - 1982, Deputy Director, Enforcement Division, Federal Energy Regulatory Commission, Washington, D.C.
4. 1982 - 1985, senior trial attorney, Public Integrity Section, U.S. Department of Justice, Washington, D.C.
5. 1985 - 1987, Chief, Criminal Division, Office of the U.S. Attorney, Southern District of Texas, Houston, Texas
6. 1987 - 1991, partner, Weil, Gotshal & Manges, Houston, Texas
7. 1991 - 1996, partner, Howrey & Simon, Washington, D.C.
8. 1996 - present, Deputy General Counsel for Contractor Responsibility, Office of the Air Force General Counsel, Washington, D.C.

AWARDS AND HONORS

1982 and 1983 U.S. Department of Justice Special Achievement Award
1984 Director, Federal Bureau of Investigation Commendation
1984 Attorney General's Special Commendation
2000 Exceptional Civilian Service Medal, Secretary of the Air Force
2002 Exemplary Civilian Service Medal

BAR ADMISSIONS

1973 Maryland
1977 District of Columbia
1986 Texas
1989 New York

(Current as of October 2008)