



TESTIMONY OF  
DR. NICK NAYAK  
CHIEF PROCUREMENT OFFICER  
U.S. DEPARTMENT OF HOMELAND SECURITY

BEFORE THE  
THE OVERSIGHT AND GOVERNMENT REFORM SUBCOMMITTEE ON  
TECHNOLOGY, INFORMATION POLICY, INTERGOVERNMENTAL RELATIONS AND  
PROCUREMENT REFORM  
UNITED STATES HOUSE OF REPRESENTATIVES

October 6, 2011

Chairman Lankford, Ranking Member Connelly, and Members of the Committee, thank you for this opportunity to provide an update on the Department of Homeland Security's (DHS) Suspension and Debarment Program. I am the Chief Procurement Officer for DHS. I oversee the DHS procurement portfolio, including nine contracting activities that award more than fourteen billion dollars in contracts each year. Certain responsibilities for the suspension and debarment activities at the Department are delegated to my staff. It is vital that the Federal Government only do business with responsible contractors. Earlier this year, the Under Secretary for Management, Rafael Borrás, appointed the Department's Suspension and Debarment Official (SDO) as a direct-report within his office. The SDO works closely with my office on suspension and debarment issues. DHS is committed to good stewardship of the taxpayers' dollars and using suspension and debarment as appropriate tools to protect the government and taxpayers from contractors that engage in fraudulent, criminal or other seriously improper conduct.

In most cases, DHS contractors provide quality support to DHS's mission at a reasonable price. If a contractor fails to meet the terms of the contract, we take the appropriate action based on the specific circumstances and we work with the contractor to correct deficiencies. However, when a contractor cannot or will not perform, the contract is considered for termination for default.

### **Suspension and Debarment**

If a termination for default is appropriate, we also evaluate whether the contractor should be referred for suspension or debarment. Suspension and debarment are intended to protect the government from continuing to do business with non-responsible companies. The Federal

Acquisition Regulation (FAR) sets forth criteria that may result in suspension or debarment, including: fraud, bribery, falsification of records, as well as other indicators of dishonesty or lack of integrity. Further, a contractor's willful failure to perform, history of failure to perform, or unsatisfactory performance may warrant suspension or debarment. If a termination is associated with any of these criteria, the contracting officer, in consultation with the Office of General Counsel, determines if the contractor and any individuals working for the contractor should be referred for suspension and/or debarment. If referred, the Suspension and Debarment Official (SDO) reviews the facts and takes the appropriate action. When a firm or individual is suspended or debarred, the name and other information are placed in the Excluded Parties List System (EPLS) so that no government agency awards them a contract, grant, or provides them with other types of financial assistance.

In 2009, the DHS Office of Inspector General (OIG) reviewed the Department's suspension and debarment processes and found that we rarely took action against non-performing contractors. After review of the OIG report, the Deputy Secretary established a task force to correct this problem. As the task force was developing its recommendations to improve the suspension and debarment processes, the U.S. Government Accountability Office (GAO) undertook its government-wide review of suspension and debarment programs.

In November 2010, Secretary Napolitano created a centralized DHS Suspension and Debarment Program which led to the creation of the Departmental SDO. The DHS SDO is currently developing detailed DHS-wide policies and procedures built around best practices identified in the GAO report.

As the GAO report shows, there are specific qualities that are present in active, strong suspension and debarment programs. The report also found that DHS's U.S. Immigration and

Customs Enforcement had the qualities associated with a strong and active suspension and debarment program. Specifically:

- A dedicated staff
- Detailed suspension and debarment policies and procedures
- An active referral process and a relationship with the investigative organizations.

The report recommended that DHS use these qualities and establish a Department-wide program for suspension and debarment. DHS concurred with the recommendation as steps were already being taken to implement them.

As recommended by GAO, DHS is working to improve the Federal Emergency Management Agency's (FEMA) suspension and debarment process, a particularly important issue as FEMA awards approximately \$11 billion in grants and financial assistance each year. DHS is working to ensure that these awards are only provided to responsible individuals and organizations.

DHS is also committed to resolving the backlog of A-133 and OIG audits of its financial assistance awardees, and is taking steps to suspend and debar as appropriate. The DHS Suspension and Debarment Program includes a review of these audit findings and the SDO will take action when appropriate to protect the government from individuals and organizations that embezzle or defraud DHS or any of its Components.

The new Suspension and Debarment Program will significantly enhance the Department's suspension and debarment process. Components such as FEMA will allocate a dedicated team based on the number of referrals anticipated from their investigative organizations. Using new centralized procedures and processes, Components will have the tools to recommend action on most referrals very quickly. The SDO will monitor their progress and

the U.S Immigration and Customs Enforcement (ICE) suspension and debarment team will assist with processing actions and training new staff as needed.

As part of the new policy and procedures that are being developed, the DHS SDO will review all contract terminations for default or cause independently to ensure that all the contractors and facts involving the terminations are considered for possible suspension or debarment. Additionally, DHS is working collaboratively with the multiple investigative organizations as part of the new Suspension and Debarment Program, including the DHS OIG, ICE, the Department of Justice, and others. As indicated in the GAO report, this type of collaboration ensures that investigators know where to refer cases, and files are fully developed to facilitate a prompt and appropriate resolution that protects the government.

The DHS centralized Suspension and Debarment Program is still in transition, but has already achieved results. In FY 2011, DHS received more than 500 referrals for potential debarment, resulting in more than 400 suspensions, proposed debarments or debarments. DHS takes action on all referrals it receives to ensure that non responsible individuals and businesses are prevented from doing business with the government and cannot receive federal financial assistance for the term of the debarment.

For example, based on investigations done by ICE's Homeland Security Investigations (HSI), DHS has taken steps to debar individuals and companies involved in trafficking in persons. In one case, a woman tricked young girls into illegally entering the United States and exploited them for work in her company. She was caught, convicted of multiple felonies, and sent to prison. DHS debarred the woman, as well as all of her companies from receiving federal contracts, grants or financial assistance, even though she had never done business with the

Department. This action prevented any agency from providing financial assistance or awarding a grant or contract to this convicted felon.

### **Conclusion**

DHS is committed to doing business with responsible contractors. We will continue to hold our contractors accountable for their actions and the Department's new centralized Suspension and Debarment program will allow DHS to take appropriate action to protect the government's and taxpayers' interests. We have already increased the number of referrals for suspension and debarment and will implement all of the GAO's recommendations in order to create an active and strong suspension and debarment program. We are and will continue to suspend and or debar dishonest and non-responsible individuals and companies whenever it is appropriate to protect the government's interest.

Thank you for the opportunity to testify before the Committee. I look forward to any questions you may have.



## Nick Nayak Chief Procurement Officer



Nick Nayak has over 24 years of senior private, public and academic leadership experience. He has been a dynamic figure in the field of federal acquisition – helping to professionalize the federal acquisition workforce; implement methods to obtain acquisition savings; and recruit the next generation of acquisition professionals.

Nick served as Deputy Director for IRS Procurement responsible for support to the United States tax collection system. In this capacity, he managed operational procurement enabling IRS to collect nearly \$2.7 trillion annually, funding a significant portion of the federal government.

Prior to serving as Deputy Director, Nick served in several high-impact leadership positions, including Director, Strategic Acquisition Initiatives, Deputy Director, Office of Information Technology Acquisition, Assistant to Director, Information Technology Program Management Office, Project Executive for the IRS Commissioner’s Security Readiness Project and Director, Treasury Acquisition Institute (TAI).

Nick has served in virtually every acquisition workforce role in government including program manager, contracting officer, procurement analyst, contracting officer’s technical representative, technical evaluation chair, purchase card approving official and competition advocate, as well as, contracts administrator, cost estimator and proposal writer in the private sector.

Nick has a Ph.D. in Administration and Management, an M.S. in Management and a B.S. in Finance and Economics. He has served as an adjunct professor for several universities and taught over 45 undergraduate and graduate business courses.

Nick’s hobbies include playing tennis, where he has won more than 100 Washington metropolitan area amateur tennis tournaments and was rated as high as 5.0 on the United States Tennis Association’s rating system.