

Written Statement of

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**Before the
U.S. House of Representatives**

Committee on Transportation and Infrastructure

**Subcommittee on Economic Development, Public Buildings,
and Emergency Management**

Regarding

**“The Responsibility of the Department of Homeland Security and the
Federal Protective Service to Ensure Contract Guards Protect Federal
Employees and Their Workplaces”**

**Thursday, June 21, 2007
10:00 a.m.**

**Rayburn House Office Building, Room 2253
Washington, D.C.**

INTRODUCTION

Chairwoman Norton, Ranking Member Graves, and Distinguished Members of the Committee. Thank you for the opportunity to provide testimony on the protection of Federal employees and their workplaces.

I began my career as a contract guard on the first of February, 1990. For the next sixteen years, I was part of a team that protected the National Emergency Training Center, a Level IV federal facility that was brought under the umbrella of the Department of Homeland Security when that agency was formed. Eventually, I was promoted to Project Manager, attaining the rank of Major.

Over the course of those sixteen years, I worked for a total of five contract companies. Our site was inspected by corporate quality insurance personnel once. We were never inspected by, nor had any other contact with, the Federal Protective Services.

In October 2005, STARTECH was replaced by another company through the procurement process. I elected to remain with the company, and was moved to corporate headquarters as an administrative assistant. At the time of my resignation twenty months later, I was Chief Operating Officer and General Manager. Although my dealings with the FPS were limited to the last few months of my tenure with STARTECH, my experience in the contract security industry is extensive. Please take that into consideration when determining the value of my testimony.

BACKGROUND

STARTECH was incorporated in the District of Columbia on April 25, 1989. Over the next twenty-five years, the company grew to more than five hundred employees, with annual revenue of approximately twenty-seven million dollars. Under the leadership of Mr. Marion Pinckney (then President) and Mr. Randall Ford (Founder and then Vice President) the company enjoyed prosperity without compromising integrity. Both Mr. Pinckney and Mr. Ford insisted on professionalism at all times from all employees; there

was an atmosphere of mutual respect and consideration expected from, and given to, all. STARTECH had a stellar reputation initiated and maintained by them.

Mr. Pinckney and Mr. Ford both became near incapacitated by illness. Mr. Pinckney died in 2004, and Mr. Ford began a semi-retirement; a portion of the company was put up for sale. Weldon Waites was then the company insurance man, and had been assisting with the management of the company in some capacity. Mr. Waites appreciated the opportunity presented, and purchased seventy-five percent of the STARTECH stock in May of 2005.

The prosperity of the company continued, for a while. A key element in that continued prosperity was the unblemished relationship with the Department of Homeland Security. According to Form 1099-MISC, STARTECH's five security contracts with the DHS generated \$13,182,357.70 in tax year 2006, a figure that equates to roughly half of the company's annual revenue. (Exhibit 1)

And yet there was not enough money to fund payroll, on more than one occasion.

A LIKELY STORY

It is highly likely that there will be some form of testimony in which the demise of STARTECH resulting from the failure to make payroll is, at least in part, due to the failure of DHS to pay valid invoices in a timely manner. That is a theory I have heard ad nauseum over the past several months, and although there may have been some truth to it a year ago, I do not believe it is the case now, and hasn't been since the first of this fiscal year.

This theory has recently been used to initiate a Congressional Inquiry of its own, resulting in strained relations between company and clients due to what I believe are unfounded allegations. The letters referenced as "Exhibit 2" generated multiple phone

calls from several clients who were understandably confused, as was I when my research failed to reveal any supporting documentation. In fact, the evidence I had supported just the opposite. There are some occasional, relatively minor, delays in payment that result in the government paying interest for a few days, but certainly nothing that would jeopardize an otherwise viable company.

DHS INVOICING AND PAYMENT HISTORY (recent)

Generally speaking, there has been a noticeable improvement in the timely payment of accurate, valid invoices since approximately September 2006. I specifically noted “accurate and valid” because contractor errors in invoice submission (format, information, calculations, etc.) cause many of the delays STARTECH has historically attributed to untimely payments from DHS. The invoices and confirmations of receipt of payments provided in “Exhibit 3” verify that most payments are received fairly quickly, certainly within reasonable time periods, and especially when compared with payments prior to approximately May 2006. There are a few payments that were received later than anyone would have liked, however, many of those were for invoices that were aged six months or more, for “Temporary Additional Services”, that required additional research on the part of newly assigned Contract Officers.

All provided payment notices reflect days and amounts of any interest paid. Specific examples of unusual invoice and payment situations are detailed immediately below.

Example 1

In July 2006, several invoices for DHS contract HSHQ-CEMP-05-F-000164 were identified by STARTECH as under-billed. The under-billing occurred due to a material change in monthly billing rates associated with a contract modification. Seven invoices were prepared, all of which were paid on October 18. Although thirty-four days of interest were paid, these particular invoices would have required additional research by the government to verify validity, as invoices for those services had already been submitted and paid. A delay of thirty-four days is, in my opinion, certainly reasonable

considering the circumstances. The delay generated an additional \$1,082.52 in interest income; this unanticipated additional revenue did not generate any complaint from STARTECH. (Exhibit 4)

Example 2

In August 2006, the DHS Contract Officer identified several STARTECH invoices that had not been paid and were seriously overdue. The Contract Officer requested STARTECH file a claim under the Contract Disputes Act. When I advised the Contract Officer I was not familiar with the process, she provided all the guidance and assistance needed to file the claims. The probability of these claims being filed correctly, or paid quickly, would have been significantly reduced without the assistance of the Contract Officer. (Exhibit 5)

There were thirteen separate claims filed under DHS Contract GS-11-P-00-MQC-0012. These claim letters were sent to the Contract Officer via e-mail at 9:22 p.m. on September 14. The Contract Officer's response, in favor of STARTECH, was received by close of business on September 15. (Exhibit 6)

There were ten separate claims filed under DHS Contract GS-11-P-00-MQC-0012. These claim letters were sent to the Contract Officer via e-mail at 10:07 p.m. on September 14. The Contract Officer's response, in favor of STARTECH, was received by close of business on September 15. (Exhibit 7)

Example 3

A Contract Specialist under this same Contract Officer identified several "Temporary Additional Services" orders that were performed by STARTECH yet never billed. Six invoices were submitted, and were paid very quickly; three invoices on-time, and three invoices with only one day interest each. The actions of the Contract Specialist, under the guidance of the Contract Officer, resulted in expedited payment for invoices that most likely would have remained unbilled, attributable solely to the inadequate business practices of STARTECH. (Exhibit 8)

FINANCIAL IMPROPRIETY, Part 1

My theory of the demise of STARTECH is in stark contrast to any attempt to blame late payments from DHS or anyone else. It is my considered opinion that STARTECH committed suicide, dying at the hands of its controlling owner, Mr. Weldon Waites.

DCAA Audit, 09/29/05

On September 29, 2005, the Defense Contract Audit Agency (DCAA) prepared Audit Report No. 06331-2005A17740012 (Exhibit 9). In that report, “nine significant deficiencies in the contractor’s accounting system” were identified. Those deficiencies resulted in a comment in the Executive Summary that “The contractor’s design of the accounting system is not acceptable for the award of a prospective contract.” Further, in the section headed “Results of Audit”, the report states in part “The accounting system is non-existent for Government contract accounting purposes...”

Each deficiency was described, and a recommendation for correction was provided. STARTECH responded to each deficiency with promises to correct the problems. The auditor offered, in writing, to return upon request “after the policies and procedures have been in practice for a sufficient amount of time” to reevaluate. Nearly two years later, I could find no evidence of any progress on the correction of any deficiency noted in the audit report.

Bank of America Forbearance and Standstill, 06/14/06

When Mr. Waites purchased controlling interest of STARTECH in May 2005, the company’s financial institution either was or immediately became the Bank of America. On or about June 14, 2006, the Bank of America issued a default notice to STARTECH (Exhibit 10). In addition to several areas of non-compliance with terms and conditions of the loan agreement, the default notice was caused by Mr. Waites’ failure to report a prior criminal history. Mr. Waites reported this directly to me, stating that he had served some time at a “camp”, due to a misunderstanding. He stated he hadn’t felt it necessary to report that event, as it had occurred well in the past and was a minor issue.

Since that time, I have learned that the “minor” issue he reported to me was actually an indictment for “29 counts of conspiracy, bank fraud, false statements, and money laundering”. Mr. Waites pled guilty, and was sentenced to eighty months in federal prison (actual release date April 17, 1997). An appeal for a reduction in sentence was argued June 5, 1992, and decided against Mr. Waites July 31, 1992. (Exhibit 11)

First Horizon Default and Demand, December 2006

The next financial institution used by STARTECH was First Horizon, beginning on or about July 2006. On December 15 of the same year, First Horizon issued STARTECH a notice of default for, among other things, “The failure of the financial statements to be complete and correct in all material respects...” This notice of default was followed by a “Demand for Payment” on December 22, 2006. That letter demanded payment in full of over \$4.5 million on or before January 31, 2007 (Exhibit 12).

Mr. Waites began the search for alternative financing, making it clear that the institution who offered the most money would “win” STARTECH’s business. As First Horizon tightened the purse strings, a shift in priorities was made to “whoever puts the money on the table first wins”. At one point, there were five or six financial institutions in the running, with daily (sometimes hourly) announcements from Mr. Waites as to who was “priority” at that particular time. Eventually, Marquette Commercial Finance was declared the “winner”.

Unlike Bank of America and First Horizon, Marquette was not a bank but a “factoring” company. With Marquette, there would be no borrowing base availability, loan or revolving line of credit; invoices less than ninety days old would be sold outright, with ninety percent of the proceeds immediately available to STARTECH in the form of cash. The deal was finalized on or about March 6, 2007.

Marquette Reconciliation, March 2007

On or about March 19, Marquette identified a problem with several (DHS) invoices that had been “factored”, with the proceeds paid to STARTECH. (Exhibit 13) The problem was that DHS had already paid STARTECH directly for the invoices in question. (Exhibit 14) In essence, STARTECH was paid for the same invoices twice.

On March 30, 2007, Marquette sent written notice of intent to terminate the relationship thirty days from the date of the letter, citing in part “MCF has now learned that such representations were false and that invoices totaling \$1,896,663.71 had already been paid by the account debtor.” (Exhibit 15)

Marquette remained with STARTECH at least through my departure on June 6, 2007, as alternative funding had not yet been acquired. The relationship was strained at best, due to the circumstances of the initial financial agreement as well as STARTECH’s continuing failure to cooperate fully with Marquette or their delegates. Between the continuous unfilled promises of closing with alternative funding companies and the directives to discontinue work on any and all requests made by Marquette, the strain was increased by Mr. Waites on a regular basis.

As evidence of this, I offer the following: on May 29, Mr. Waites and Mr. Reginald Ebo (STARTECH CFO February-May 2007) were copied on an e-mail notification of a payment received by First Horizon in the amount of \$323,201.57. The author was requesting confirmation of ownership of the proceeds of the invoice and instructions to wire to Marquette upon verification of ownership. Mr. Ebo received a directive from Mr. Waites’ personal e-mail account advising him “Do not reply to this e-mail until further notice. Sharon and WW”. Understandably concerned, Mr. Ebo forwarded that e-mail to me, and I sent it back to Mr. Waites with the message “This payment belongs to Marquette. It was factored.” Mr. Waites’ response to me was “OK....I surrender. Just thought I would use it as leverage. WW” (Exhibit 16)

FINANCIAL IMPROPRIETY, Part 2

The search for finances to replace Marquette coincided with the default notice of March 30, and continued to my departure from STARTECH on June 6.

Multiple companies were contacted, multiple financial “consultants” were retained or continued, and multiple “Accounts Receivables” reports were identified.

Of particular note, on May 16, I was copied on an e-mail that had an “AR” report attached. That “AR” report, dated May 2, showed a total amount receivable of \$12,215,905.83. I also noted that the only account showing invoices in excess of ninety days was account number 15: Frontier/Pentagon. This left in excess of nine million dollars in the “eligible” status for lenders, as they were less than ninety days old. The detailed portion of the “AR” report showed multiple invoices which had had the date changed to May 3 to make them current. (Exhibit 17)

In contrast, a different “AR” report was generated on May 9, one week after the one in question. The May 9 report indicated a total of \$5.2 million in receivables, with approximately \$3 million “eligible” (less than ninety days aged). The May 9 report definitely presents a more accurate financial picture of STARTECH at the time (Exhibit 18), however, was not being provided to the financial institutions. Instead, the May 2 report was provided, presenting an artificially overstated availability of collectable invoices.

In simplified terms, STARTECH was in desperate need of money, and lots of it. An “AR” report showing \$12 million in outstanding invoices due and payable results in \$7 million in additional availability of funds versus the \$5 million report.

Needless to say, any financier who conducted a due diligence audit of STARTECH finances realized the true financial state of the company, and withdrew offers of finance.

FINANCIAL IMPROPRIETY, Part 3

STARTECH's "Accounts Payable" presented another challenge. The May 15 "AP" report shows nearly \$700,000.00 in STARTECH's unpaid bills, including \$391,578.36 in bills over ninety days old. (Exhibit 19) Since January 2007, STARTECH paid very little of their considerable expenses. Mr. Waites' personal expenses, however, were paid on a regular basis.

Cases in point, reference entries on the May 15 report:

- Avista CCO, Inc. is related to a condominium in Myrtle Beach, South Carolina
- B.S.I. Properties refers to Benefits Solutions, Inc., a company Mr. Waites owns. Payments here are for storage, reportedly for Mr. Waites' yacht
- Chase Home Finance, LLC is the mortgage for the Myrtle Beach condominium (also, NBSC check number 92 was written on January 13, 2007 to the "Synovus Mortgage Company" for the "coastal office complex", Exhibit 20)
- Countrywide is another Waites mortgage, for a condominium in Washington, D.C. (also, NBSC check number 93 was written on January 13, 2007 to the "First Savings Mortgage Corp" for "D.C. living allowance", Exhibit 20)

Additionally, the following information was found:

- NBSC check number 97 was written on January 15, 2007 (Exhibit 20), payable to "Kawliga". Mr. Waites signed a commercial lease agreement between STARTECH and Kawliga for "Gamecock Pavilion Lot B-3 and Lot B-4", two parking spaces at the University of South Carolina (Mr. Waites alma mater). (Exhibit 21)
- On August 1, 2006, Mr. Waites signed a promissory note in the amount of \$50,000.00, to be "repaid in full 1 month from the execution of this Note." The note was repaid on August 9, 2006, with STARTECH check number 16068. This was not a loan to STARTECH. (Exhibit 22)
- In the Bank of America Forbearance and Standstill Agreement of June 14, 2006 (Exhibit 10 previously cited), under the covenants (page 8 section 11), the agreement specifically states the following: "That except for a monthly distribution to Weldon D. Waites in the amount of \$10,00.00 on the first day of

each month during the Forbearance Period, the Borrower hereby agrees that neither Weldon D. Waits, Sharon F. Waites nor any Person affiliated or related to either of them by blood, marriage or otherwise shall receive from the Borrower, or any source or Person related to or affiliated with the Borrower, any monies or remuneration of any kind, whether in salary, bonus, distribution or otherwise, through the term of the Forbearance Period..." Mr. Waites received his July "monthly distribution" in the form of check number 15995, written on July 10, 2006 reference "Allotment". Mr. Waites continued to receive his normal salary in addition to the "monthly distribution", in spite of the Covenants of the Forbearance notice. (Exhibit 23)

THE END

Fruitless efforts to procure financing continued. Mr. Waites repeatedly assured all who would listen that bridge and/or permanent finance was imminent. Specific to payroll, Mr. Waites gave numerous accounts of how that financing was being accomplished (wire transfers, cashier's checks, private funding, etc.)

Payroll due to employees on May 4 was late, due to lack of funds. Funds were deposited in STARTECH's account on or about May 8, however, because the account was in South Carolina at a state level bank, employees did not have access to funds until after successful completion of a five to seven day hold (by their personal banks) for verification of funds.

May 18 paychecks were issued without third party verification of available funds. Contrary to Mr. Waites' assertions that funding was "in the bank", over two thirds of that payroll was returned due to insufficient funds. Mr. Waites continued to claim the funding was there and available, stating he had watched the wire go through, was in line at the bank with a million dollar cashier's check to deposit, and that he had secured a home equity line of credit that would cover all checks.

Payroll for a non-DHS contract was due on May 24. Mr. Waites had assured the Project Manager, Contract Officer Technical Representative, union representation, and me in

separate conversations that the money for the May 24 payroll, as well as the May 18 payroll, would be in the bank and available by noon on May 24. The funds never arrived.

I notified all corporate and management staff of the situation via e-mail on May 25, asking the information be disseminated to all field personnel “by any means necessary”. At that time, Mr. Waites was assuring everyone that the money would be in the bank by 3 p.m. on Tuesday, May 29 (Memorial Day Weekend interfered with earlier availability). (Exhibit 24) The funds never arrived. (Exhibit 25)

June 1 was the next pay date. I saw no hope of funding. On May 31, I received a notice of post vacancies for contracts HSHQ-CEMP-05-F-000164 and HSHQ-CEMP-05-F-000155 in the morning (Exhibit 26), and a “Show Cause” notice for all DHS contracts in the afternoon (Exhibit 27).

That evening, I held a meeting with all available Project Managers, Supervisors and Union Shop Stewards to provide information and answer any questions I could. Everyone present who was associated with a DHS contract pledged continuing support and loyalty to STARTECH, including remaining on post, unpaid, until the situation was rectified.

On June 1, I responded to the “Show Cause” notice. Part of that response included the line “It is in the best interest of the federal government to revoke all STARTECH contracts, and to immediately issue them to another, reliable contractor.” (Exhibit 28)

All DHS contracts were formally terminated “for cause” on June 3. (Exhibit 29)

IMPACT ON STARTECH EMPLOYEES

Exhibit 30 lists all 533 employees who have not been paid.

In addition to not being paid, payroll deductions were made for employee benefits including health insurance, 401k/pension and union dues. STARTECH has not forwarded these payroll deductions on to the providers of the benefits. (Exhibit 31)

Exhibit 32 documents the unpaid pensions.

Exhibit 33 was received on May 23, and documents employee sentiments towards STARTECH with regard to payroll and benefits.

CONCLUSION

When I left the NETC in favor of remaining with STARTECH, it was primarily because I wanted to be a part of a company I could be proud of associating my name with. It was my intent to do everything I could to help STARTECH become the premier Security company and “the benchmark by which all others are measured”. Obviously, my plans have changed.

The stated purpose of this hearing is “The Responsibility of the Department of Homeland Security and the Federal Protective Service to Ensure Contract Guards Protect Federal Employees and Their Workplaces”. I respectfully submit to you that:

- The Federal Protective Service does not protect all federal buildings, as evidenced by my sixteen years at the NETC
- The Federal Protective Service cannot possibly protect 8900 federal buildings with a staff of 1200
- The people who are actually protecting you are contract guards, 15,000 strong
- In order to protect to effectively, the guards need
 - Realistic training
 - Equipment that is functional
 - Support, from both employers and clients
 - Paid, on time and in the full amount (including benefits)
 - Establishment of national standards

- Communication
- Trust

A little respect wouldn't hurt either.

Thank you for this wonderful opportunity. It is an experience I will never forget.