



U.S. House of Representatives
Committee on Transportation and Infrastructure

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SUMMARY OF SUBJECT MATTER

TO: Members of the Subcommittee on Economic Development, Public Buildings, and Emergency Management

FROM: Committee on Transportation and Infrastructure, Oversight and Investigations Staff

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

PURPOSE OF THE HEARING

The purpose of this hearing is to identify what appear to be weaknesses in FPS’ oversight of its contract guard program. While it has made improvements in the timeliness of contractor invoice processing and payments in the past year, FPS has not established protocols or processes to ensure that contractors are initially “capable, responsible, and ethical,” as required in the Federal Acquisition Regulations, and that they remain so throughout the life of the contract.

To illustrate the need for these protocols, the hearing will showcase one recent contract with STARTECH Security International (STARTECH) where the Firm’s Chief Operating Officer (COO) alleges that the company owner, Weldon Waites, ran the company into the ground – either through financial mismanagement, criminal intent, or some combination of the two.

On or about May 27, 2007, Committee staff became aware that STARTECH, a large private security guard firm under contract to the Federal Protective Service, had not paid their guards since May 10 – a delay of nearly 3 weeks. The guards had continued to show up for work during that period. Over the Memorial Day weekend, with strong Congressional “encouragement,” DHS was able to terminate the contracts, re-award them, and reassign the existing guards to a new, performing, contract with Frontier Systems Integrators, LLC; an Alaskan Native Corporation.

The former COO of the firm, Ann Messner, will testify that there was misconduct and mismanagement of funds. Her testimony is accompanied by voluminous documentation (33 exhibits, 400 pages) which purportedly supports her allegations of the owners’ lies and bad faith

actions during the past 2 years. She will also testify that while the employee paychecks were bouncing and health plans were being terminated for non-payment, STARTECH funds were used to buy Mr. Waites and his wife a new \$530,000 beachfront condo and pay the mortgage on a boat slip for their yacht.

Mr. Waites has indicated his intent to defend himself at the June 21 hearing. As he explained to Committee staff, he wishes to, "tell Congress how the DHS drove his company into financial ruin." We expect that he will testify that FPS' slow processing of invoices forced him to borrow to cover expenses until there was too much debt for the company to remain viable. Ms. Messner indicates that she has evidence that proves otherwise.

We will also hear from the men and women who were directly affected by STARTECH's demise – the impact to the guards' families, bank accounts, health benefits, and pensions. The two unions that represent the majority of contract guards protecting federal buildings will also testify that STARTECH is not an isolated incident.

Finally, the DHS IG will testify on prior work evaluating FPS' oversight of the contract guard program. In October 2006, the IG found that there were serious deficiencies in staffing and processes that were causing financial loss to the government and placing financial hardships on contractors. FPS and ICE Acquisitions will testify that much improvement has been made in the past year in addressing these deficiencies and will outline any current plans to improve the oversight of its guard program, including proposals for improving the post-award financial monitoring and due diligence of company financial performance.

BACKGROUND

FPS was established in 1971 as the uniformed protection force of the General Services Administration for government-occupied facilities. These include office buildings, courthouses, border stations and warehouses owned, occupied or secured by the federal government under GSA's jurisdiction. The Homeland Security Act of 2002 transferred FPS from its former placement within GSA to the Immigration, Customs, and Enforcement (ICE) agency which is within the Department of Homeland Security (DHS). Pursuant to this transfer, FPS was granted the authority to protect properties held by DHS components that were not under GSA jurisdiction.

On an annual basis, the FPS handles: 10 million law enforcement calls for service, including 3.8 million radio calls, 2.4 million telephone calls, and 3.8 million alarm responses; more than 1,000 criminal investigations for crimes against government facilities and employees; arresting more than 4,000 people for committing crimes on federal property. In total, FPS is responsible for protecting approximately 9,000 federally owned or leased properties.

As part of its overall strategy to ensure the physical safety of government employees and visitors, FPS uses contract guards to deter the commission of crime in and around federal buildings. These guards support and augment the activities of the 1150 federal law enforcement officers employed directly by FPS. These guards control access to installations and facilities; screen employees and visitors through magnetometers; screen packages and other items through a X-Ray machine; monitor CCTV, monitor visitor conduct; check deliveries; patrol the interior and exterior

of facilities; respond to reports of injured or ill employees and visitors and initial response to security alarms.

As a result of the Oklahoma City bombing in 1995, the federal contract guard workforce more than doubled and now totals about 15,000 nationwide.

THE STARTECH STORY

Background

STARTECH was incorporated in the District of Columbia on April 25, 1989 as a small business venture (8a) by a team of 2 decorated military veterans. Over the next 25 years, the company grew to more than 500 employees with annual revenue of approximately \$27 million.

In 2006, roughly one-half of the company's annual income resulted from five security contracts with the Department of Homeland Security (\$13.2 million). Buildings covered under these contracts included Administrative Office of the Courts, Social Security Administration (multiple locations), Food and Drug Administration (multiple locations), Housing and Urban Development, Department of Education (multiple locations), the International Trade Commission, and the National Building Museum. In the Washington, DC Metropolitan area, STARTECH deployed approximately 600 guards to protect federal buildings, including those under contract to DHS.¹

Ownership Changes Precede Financial Decline

In 2005, the company changed hands after its two founders suddenly became ill and retired. The company quickly went downhill under the stewardship of its new owners, Weldon and Sharon Waites. Weldon Waites had been the insurance advisor for STARTECH. Somehow in the transition, it escaped FPS' attention that Weldon Waites had served nearly 5 years in prison on 29 felony counts of conspiracy, bank fraud, and money laundering.

The Chief Operating Officer of STARTECH, Ann Messner, is cooperating with the Committee and the other criminal investigations that we know to be ongoing. She has agreed to testify on Thursday as to her opinion that, "STARTECH is currently not only financially bankrupt, but morally and ethically as well." Her testimony, which includes and is backed up with 33 exhibits (nearly 400 pages) with names, dates, accounting records, correspondence (Messner's testimony will be distributed without exhibits, but exhibits will be available electronically to members and staff upon request).

Although the most obvious problems emerged in May 2007 when STARTECH failed to fully cover its payroll on 3 consecutive weeks, the financial problems began to manifest themselves earlier. As early as January 2007, STARTECH had ceased forwarding withholdings for health benefits and pension contributions to PrevWage, its pension and benefits Administrator. In a May 24, 2007 letter, PrevWage informed STARTECH employees, "Unfortunately, since the beginning of the year, STARTECH has not made contributions to your pension plan on a regular basis and your account balance [...] is not what it should be..." Further, PrevWage advised employees, "For those

¹ STARTECH also had approximately \$12 million in contracts with the USDA and the Navy. USDA has a delegation from DHS so that it contracts for its own security rather than through FPS.

of you covered under medical benefit plans with STARTECH (...) contributions to pay the current premiums have not been made, and most likely your coverage will be cancelled in the very near future, if it hasn't been cancelled already.”

But STARTECH's owners were impervious to the company's financial woes—just when things were getting tight for employees, STARTECH bought its' owners a new \$530,000 condo in North Myrtle Beach. STARTECH couldn't pay health benefits, but it could afford the mortgage on the Waites' boat slip in Myrtle Beach. The same situation applies to the DC Condo and the tailgating parking spots at the University of South Carolina.

In 2005, The Defense Contract Audit Agency (DCAA) found that STARTECH's accounting system had nine significant deficiencies, and concluded that “the accounting system is non-existent for Government contract accounting purposes...”

STARTECH is Not an Isolated Incident

According to Union officials and members, Contractors that provide private security services to the federal Government have a long-standing record of violating the terms of their contracts in terms of how they treat employees. There have been several high-profile cases similar to STARTECH in recent years, including Superior Contracting in Tampa, where, almost exactly a year ago, guards threatened to strike after pay checks bounced for more than 2 months. Superior employed armed guards in the Tampa Bay area to guard buildings including Social Security offices, the federal building in Lakeland, FL, as well as FBI headquarters and the US Attorney's Office in Tampa. At that time, Dennis O'Connor, a spokesman for the FPS was quoted as saying, “Anything that may affect the overall security of federal facilities – including not paying their employees – is a concern of ours.”

In addition to pay issues, other non-compliance issues include failure to pay for training and uniforms that were built into the competitive bid proposal. In October 2006, the Department of Labor forced AKAL Security – a company that does about \$121 million in FPS business every year – to pay over \$269,000 in back wages to 469 workers because it had not calculated overtime hours correctly. DOL's investigation revealed that AKAL failed to compensate guards for the time required to pick up their weapons and report to assigned duty posts.

DHS IG Finds Serious Flaws in FPS' Oversight of the Contract Guard Program

Since transitioning from GSA to DHS, FPS has experienced persistent problems with contract oversight. In October 2006, the DHS Inspector General audited the FPS contract guard program in the National Capitol Region. The IG found that contractors were not complying with the terms and conditions of their contracts, because “FPS personnel were not effectively monitoring the contract guard program”. One of the IG's findings was that FPS' Quality Assurance Specialists – the employees who monitor security service contracts—were not providing adequate onsite monitoring of guard contracts. Each week the QAS' are required to collect GSA Form 139s² from each guard post to validate that guards were posted as stipulated in the contract. One contract guard told the IG that no one had collected the Form 139's in the 5 months he had been posted at the

² When contract guards report to work, they are required to sign in and to sign out on GSA Form 139, Record of Time of Arrival and Departure Contract Guarding Duty Register.

building. The IG also attributed lapses in contract oversight to understaffing. In the National Capital Region, 8 of 12 contract specialist positions were vacant. As a result, the IG found that, “contractors were not getting paid, invoices were not getting reviewed, and new contracts were not getting awarded.”

Since the IG last updated its report, FPS states – and the DHS IG informally concurs – that it has made significant improvements in its oversight of the contract guard program. ICE’s response to the DHS IG report stated that, “FPS contracting activity has been merged into the ICE contracting component under the supervision of the director of the ICE Office of Acquisitions Management.” ICE further states that it will, “continue to work with FPS to achieve improvements in business processes that will address these concerns.”

FPS has consolidated operations into four regional Consolidated Contracting Groups and centralized all invoicing into one location in Vermont. The agency acknowledges that it has a shortage of trained personnel involved in monitoring the contract guard program. FPS is attempting to hire contracting personnel but is competing with other federal agencies for a shared (and limited) pool of qualified applicants.

FPS Has No Protocols to Identify or Intervene When a Company is in Financial Distress

The OIG’s report, and FPS’s focus to date, has been on improving its services to clients and its protection of federal monies. FPS has not established any procedures to ensure that the employees of its contractors are treated equitably and professionally. In STARTECH’s case, where the guards continued to show up for work despite not being paid, FPS’s position was that the client was “still performing” and therefore FPS had no grounds to intervene.

FPS had numerous opportunities to identify financial difficulties early on at STARTECH. FPS Inspectors are required to have almost daily interaction with STARTECH guards, yet they were either a) unaware that the guards were not getting paid, b) failed to communicate this fact to someone who could take action, or c) relayed this information but FPS managers either didn’t listen or failed to act. As early as 2 years ago, FPS had indications that STARTECH’s financial performance was a concern. In 2005, the DCAA’s audit of STARTECH found a “non-existent” accounting system. That should have sent up an immediate red flag that, at a minimum, should have put STARTECH under the oversight microscope.

CONGRESSIONAL OVERSIGHT

On **April 18, 2007**, the House Committee on Transportation and Infrastructure held a hearing to examine whether current Administration proposals to reduce the number of Federal Protective Service officers and presence nationally will adversely affect the federal government’s efforts to protect the thousands of federal workers and visitors to federal buildings every day across the country. The Committee was also concerned about the placement of the Federal Protective Service in the Department of Homeland Security and how that was affecting the agency’s funding, whether the diminished funding has played a role in the reduction in force, and whether a reduction in force poses a significant risk to the federal workforce and federal assets.

The hearing also addressed more broadly the issue of whether the Federal Protective Service, like the Federal Emergency Management Agency has suffered in its focus on its core

mission since being placed within the Department of Homeland Security. The Federal Protective Service is a part of the frontline defense for thousands of federal buildings which include federal courthouses, Social Security Administrations buildings, agency headquarters, and other buildings. As the federal inventory of buildings has had a steady increase in assets over the last 30 years, the amount of Federal Protective Service officers has steadily declined. [The committee is concerned with these trends and will examine whether the Federal Protective Services has the resources and personnel to continue to provide top flight protection for federal workers and federal buildings.]

On May 1, 2007, the House Committee on Homeland Security held a hearing on FPS that covered essentially the same scope as the T&I Committee's hearing on April 18, 2007. In addition, the DHS Inspector General's Office testified concerning the results of their audit issued in October 2006. The IG did not update its work.

LEGISLATIVE HISTORY

In the 105th Congress, then Ranking Member James Traficant introduced H.R. 4034, the Federal Protective Service Reform Act of 1998. On October 4, 1998 the subcommittee held a hearing on bill. No further action was taken

In the 106th Congress, Rep. Bob Franks introduced H.R. 4519. H.R. 4519 contained Federal Protective Service Reform - Federal Protective Service Reform Act of 2000 which amended the Act of June 1, 1948, to re-designate special policemen of the General Services Administration (GSA) as police officers. H.R. 4519 was passed on suspension on September 26, 2000. No further action was taken.

In the 106th Congress, Rep. James Traficant introduced H.R. 809. H.R. 809, the Federal Protective Service Reform Act of 2000, was passed by the House on June 27, 2000 as amended. H.R. 809 was refereed to the Senate Environment and Public Works subcommittee on Transportation and Infrastructure. Hearings were held in the subcommittee on Transportation and Infrastructure on September 28, 2000. No further action was taken.

In the 107th Congress, Rep. James Traficant introduced H.R. 307 to amend the Act of June 1, 1948 to provide for reform of the Federal Protective Service, to enhance the safety and security of federal employees, members of the public and for children enrolled in childcare facilities located in public buildings under the control of the General Services Administration, and for other purposes. A subcommittee hearing was held September 6, 2001. No further action was taken.

In the 107th Congress, then Chairman of the full committee Rep. Don Young introduced H.R. 4770, to provide an Office of the Federal Protective Service (FPS) which shall be headed by a Commissioner making FPS independent of the Public Building Service. H.R. 4770 incorporates findings from the hearing on H.R. 307 on September 6, 2001. The bill was later marked up at full committee on May 23, 2002. No further action was taken.

In the 107th Congress, Rep. Richard Armey, introduced H.R. 5005, the Homeland Security Act of 2002, which created the Department of Homeland Security. H.R. 5005 was passed by the Senate and became Public Law 107-296. H.R. 5005 directed the Federal Protective Service to be placed under the control of the Secretary of the Homeland Service.

WITNESSES

Panel 1

Mr. Weldon Waites
Vice President, Business Development
STARTECH International Security
Columbia, SC

Ms. Ann Marie Messner
Former Chief Operating Officer and General Manager
STARTECH International Security
Waynesboro, PA

Panel II

Ms. Laytanya Montgomery
Former STARTECH International Security Guard
Laurel, MD

Mr. Brian Smith
Former STARTECH International Security Guard
Landover, MD

Mr. James D. Carney
Acting President
United Government Security Officers of America (UGSOA)
Westminster, CO

Mr. Assane B. Faye
Washington, D.C. District Director
Security, Police and Fire Professionals of America (SPFPA) International Union
Washington, D.C.

Panel III

The Honorable Richard L. Skinner
Inspector General
US Department of Homeland Security
Washington, DC

Mr. Gary W. Schenkel
Director
Federal Protective Service
U.S. Department of Homeland Security
Washington, DC

Ms. Ashley J. Lewis
Director, Office of Acquisition Policy and Oversight
U.S. Immigration and Customs Enforcement
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