



STATEMENT OF

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BEFORE THE

**U.S. HOUSE OF REPRESENTATIVES
COMMITTEE ON HOMELAND SECURITY**

Subcommittee on Oversight and Management Efficiency

*“Doing Business with DHS:
Industry Recommendations to Improve Contractor Employee Vetting”*

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Chairman Perry, Ranking Member Correa, and distinguished Members of the Subcommittee, thank you for the opportunity to appear before you to provide the collective perspectives from the Homeland Security Industrial Base on some of the challenges contractors face with respect to the DHS fitness adjudication process. I am Marc Pearl and serve as the President and CEO of the Homeland Security & Defense Business Council (Council). We are a non-profit, non-partisan corporate membership organization of the leading large, mid-tier, and small companies that provide homeland security and homeland defense technology, product, and service solutions to the Department of Homeland Security (DHS) and other government agencies in the homeland security enterprise.

The Council was created more than 13 years ago to facilitate greater dialogue and engagement between industry and government on critical issues that affect the mission and management of homeland security. Our focus is to bring both sectors together to share expertise and best practices, exchange perspectives of the procurement process, and to discuss ways to improve contract outcomes and the manner in which we conduct business together. In this regard, particularly as it pertains to today's hearing, our members have led and participated in a number of DHS forums, including Reverse Industry Days and Personnel Security Acquisition Innovation Roundtables that have identified challenges, future areas of focus, and provided industry perspectives on the vetting process.

At the outset, we applaud DHS for its willingness to solicit feedback from industry on its personnel security business practices and engage with industry on this topic. However, despite the many discussions, both industry and program officials at the Department have been frustrated by the lack of meaningful change, particularly as it relates to improving communication and making the process faster and more efficient. Each component wants to individually set standards, conduct their own or additional background investigations, and control their process. Our perception is that many of the DHS components are resistant to change and in some cases this is not entirely justified.

Industry understands and supports the need to properly vet contractors, but the current system is inefficient at best or broken at worst. The process lacks consistency, transparency, and communication. It takes long amounts of time, sometimes requires duplicative efforts, which limits competition, adds substantial costs to both government and industry, and prevents DHS from obtaining the best workforce to accomplish its mission.

The Council's testimony today will focus on the challenges that contractors experience trying to recruit, vet and onboard employees to the government, the impact and costs to both government and industry, and a few recommendations to improve the process. We strongly believe that changes can be made that would ensure the integrity of the program and reduce the pain points for everyone.

I. Background on Contractor Fitness and Relationship to Security Clearances

Suitability and fitness determination are often confused with the determination to grant a security clearance. A security clearance determines eligibility for access to classified information. A suitability check evaluates an individual's character and conduct to determine if that person is suitable for federal employment. Fitness – a term often used interchangeably with suitability – refers to the character and conduct required by a potential *contractor employee* to perform work for or on behalf of a federal agency. Suitability refers to a potential government employee. All contractor employees who need access to DHS facilities, their IT systems, or Sensitive Information must receive an appropriate fitness screening, based on the risk level of their positions (i.e. low, moderate, or high).

The risk and sensitivity level of the position determines the type of background investigation required¹. The information gathered during the background investigation is used to determine fitness based upon specific requirements set for different mission areas. Some positions will require both a fitness determination and a security clearance (depending on position sensitivity), while others only require a fitness determination. Note that a fitness determination by itself does not grant access to classified information. However, the background investigation used to determine fitness often involves many of the same investigative criteria used in the security clearance investigation. The decision to grant a security clearance is made *in addition to and subsequent* to a final fitness determination.

II. Industry Challenges with Fitness Determinations

Challenge 1: There are too many different fitness standards and procedures across DHS, inconsistent application of policy, and a need for better communication.

DHS policy² established by the Office of the Chief Security Officer sets minimum standards and reporting protocols for the DHS Personnel Suitability and Security Program. It does not, however, prohibit DHS components from exceeding the minimum requirements. The result is that each component has its own personnel security office with different standards, procedures, thresholds, and adjudicators for determining fitness.

When determining fitness, adjudicators consider and evaluate the presence or absence of eight (8) types of conduct that may be incompatible with the duties of a position (i.e., alcohol and drug use, financial irresponsibility, criminal and immoral conduct, dishonesty, violence, employee misconduct/negligence, firearms and weapons violations, statutory or regulatory bars). Each component within DHS has established different requirements for fitness. For example, Border Patrol has particular concerns with applicants that have ever had involvement in illegal drug activity; USCIS with illegal immigration activities; and TSA with theft and interpersonal issues. There are also different tolerance levels for certain types of conduct (i.e., bad debt levels range from

¹ Different types of background investigations include Single Scope Background Investigation, Full Field Background Investigation, Minimum Background Investigation, National Agency Check with Inquiries.

² *DHS Instruction Handbook 121-01-007.*

nothing allowed to \$3000, \$5000, or \$10,000 depending on the component). Each component is also given sole discretion over whether any of seven (7) additional considerations³ are pertinent to the adjudication.

While some are learned through time, the different standards are not always well understood by industry. Companies frequently experience uncertainty in knowing what policies and procedures will apply as well as inconsistent application of similar policies across DHS. This is particularly true for policies and procedures related to prioritizing and expediting fitness determinations. Some members have said they have experienced an expedited process on some critical contracts while others did not believe prioritization procedures existed.

There is a need for more transparency, consistency, and better on-going communication with industry on all of the different fitness requirements, policies, and procedures. Having greater visibility and understanding of these issues by component is critical to a company's ability to recruit and pre-vet candidates, particularly to find candidates that might be eligible for reciprocity. Increased communication improves industry's ability to do business planning, develop budgets, and hire candidates that will make it through the process and execute contracts on time.

Challenge 2: Fitness reciprocity is difficult to achieve at DHS because it is based upon equivalent fitness criteria rather than equivalent investigative criteria

Reciprocity refers to the acceptance of a prior, favorable fitness determination from another component or division of DHS or another federal agency, without requiring additional information. The ability to grant fitness reciprocity for contractors is important because it ensures security but provides a way to save considerable time and effort as well as cost savings for both DHS and industry. The granting of reciprocity on a previously favorable fitness determination allows companies to quickly onboard or transfer employees to contracts that best fit their skill sets and experience.

At DHS, fitness reciprocity can *only occur* when the new receiving agency uses equivalent *fitness criteria* as the former agency, the fitness criteria meets or exceeds the scope and standards for the new position, and there is no break in service. An agency is not required to grant reciprocal recognition of a prior favorable fitness determination when:

- The new position requires a higher level of investigation than previously conducted for that individual;
- An agency obtains new information that calls into question the individual's fitness based on character or conduct; or

³ (1) Nature of the position for which the person is applying or in which the person is employed; (2) The nature and seriousness of the conduct; (3) The circumstances surrounding the conduct; (4) The recency of the conduct; (5) The age of the person involved at the time of the conduct; (6) Contributing societal conditions; and (7) The absence or presence of rehabilitation or efforts toward rehabilitation.

- The individual's investigative record shows conduct that is incompatible with the core duties of the new position.

This is different than the standards for fitness reciprocity at the Department of Defense (DoD). Reciprocity criteria at DoD looks at whether the determination was based on an *investigation* equivalent to or more comprehensive than the investigation required for the new position.

By relying on fitness standards to determine reciprocity, it prevents candidates who have a high level security clearance from receiving fitness reciprocity. The effect is that even a candidate with a Top Secret, SCI clearance from the DoD who is selected to work on a Customs and Border Protection (CBP) contract will have to wait to have his previous investigative file requested and reviewed (and possibly undergo additional investigation steps) so that CBP can make an additional determination on fitness according to its unique standards. This is an odd result when the investigation used for a Top Secret, SCI clearance exceeds the investigation standards of a CBP background investigation.

With so many different fitness standards throughout DHS, there are fewer opportunities for reciprocity to apply and for the government (and industry) to receive the benefits of the policy. When there are reduced opportunities for reciprocity, there is a limited pool of candidates who can begin contract work promptly. This increases the likelihood of a company having to submit multiple candidates for single positions, which increases the number of investigations and costs for each component's Personnel Security Division (PSD), and increases the amount of time between contract award and contractor employees executing a contract.

Challenge 3: Unpredictable and lengthy timelines and the lack of ongoing communication negatively affects company's ability to on-board quality employees.

As mentioned above, at any point in the process after submitting the requisite electronic forms to receiving notification of a fitness determination, there exists the potential for numerous delays and errors to occur. Often, neither the company nor the candidate is informed of the status of the investigation, what is causing delays, or what is needed to resolve problems. This makes the process unpredictable and lengthy.

The contractor is also not allowed to submit someone else's name for an investigation until the original individual's adjudication is complete. They cannot submit another candidate(s) as a back-up. Additionally, if a company has advance knowledge that an individual will be leaving a position at some point in the future, they are not permitted to submit the paperwork for a new candidate until the other person has actually left. This also adds an unnecessary amount of time to the process.

CBP is the DHS component that is most often cited by our members as having the most stringent fitness and investigation standards and the one that does not allow reciprocity from other components or agencies. One company told us that the *average* processing time for their CBP candidates has gone from less than 40 days in FY2015 to 111 days in FY2017. There are also outlier situations where candidates with excellent credentials can

take up to two years to receive fitness approval (even when these individuals already possess a security clearance) for reasons ranging from their having dual nationality or extensive foreign contacts.

Due to the duration and unpredictable nature of the investigation process, candidates with the best skills and experience frequently take other positions while waiting for the completion or review of the investigation and fitness adjudication. They do not want to wait months or years to start a new job.

Companies are often not notified that a candidate accepted another position until the background investigation and fitness adjudication is complete. One company told us of an instance when their candidate's CBP background investigation took 13 months. When they contacted the candidate to notify him of his approval, they learned he already accepted another position. This required the company to start the hiring process all over again.

While our members have processes and procedures in place to screen candidates for likely disqualifiers, there is always uncertainty whether **any** individual will make it through the process. Companies must regularly recruit, interview and provide conditional offers of employment for a single position multiple times. This happens so frequently that companies often build the time and cost of hiring multiple candidates into the company's rates and pricing models that are charged to the government.

Occasionally, as you can imagine, there are cases of delay and denials due to errors in the investigation process. I can cite one case where it took a candidate with a previous DoD secret clearance over 14 months to undergo a CBP background investigation. At the end of CBP's investigation, the individual was denied due to an alleged outstanding debt. The candidate retained a lawyer who discovered the debt belonged to someone with the same name, but not the same social security number or date of birth. The candidate resubmitted his paperwork and is back in the adjudication process at this time. Had there been better communication with the candidate and the company throughout the process, this issue could have been mitigated much earlier.

With every new candidate or error in the system, the government must spend additional time and money to conduct a new investigation, fitness determination, or to correct mistakes. These delays result in added cost, lost productivity, and prevent companies from executing on mission critical contracts. It also prevents DHS from getting the best and most qualified contractor workforce.

Challenge 4: CBP's process adds an additional layer, forcing companies to compete to attract vetted candidates, thereby further raising labor costs

Due to the length of time involved with getting a previously non-cleared person processed at CBP, people that already have a CBP background investigation or a favorable fitness determination are highly valued and sought after. Companies compete and try to steal previously credentialed candidates away from other companies. These candidates know they can negotiate for higher compensation because they are the only resource available in the timeframe of the company's requirement. This frequently

happens during re-competes when companies seek to hire the same personnel that worked on the previous contract.

Another problem is that this class of individuals with already existing CBP credentials often insists on working as independent contractors (1099s), rather than as an employee. This affects the company's ability to direct how the work is done and significantly raises rates to the government because of allowable billing practices in these situations. The result is that the government is paying excessive compensation (well above market rates) for positions such as software developers and system engineers. Companies often feel they have no choice – either meet the demands of the available workforce or not meet contract requirements.

Challenge 5: Lack of visibility and communication on the status and known delays of a candidates investigation

The fitness process begins when selected candidates provide their personal investigative data to the hiring agency through the electronic system known as *e-Qip*. The Contracting Officers Representative (COR) is the primary liaison between the PSD and the industry representative. However, due to privacy concerns, the COR only communicates the status and delays with the candidate. **The candidate's employer is left with little to no information until the adjudication is complete.**

Companies need some ability to estimate how long the process will take, general information on where the candidate's case falls in the system, and if there are known delays that will extend the timeline. Companies are not seeking to have derogatory or embarrassing information about a candidate disclosed. They simply need information on status and delays, so they can appropriately plan for contract execution, hiring, and future budgeting.

III. Recommendations

While the Homeland Security & Defense Business Council and our members strongly support the need for DHS to have appropriately and sufficiently vetted contractors, we believe the problems and costs of the current system far outweigh the security benefits. Change is needed and can be accomplished. Some of it will require DHS to study and evaluate the feasibility of consolidating functions and requirements while other aspects will require change across the federal government. In all instances, we feel that outreach to industry is a necessary component – not just for input, but to ensure a commitment to work together to resolve the delays and improve the overall process.

Right now, we see only support for the status quo and an unwillingness, even by the government officials who are burdened by the current system, to champion change or for any of the components to cede control. An improved system would have numerous benefits: it would reduce system backlogs and timelines; prevent unnecessary delays so that companies could onboard employees faster and begin contract work promptly; increase communication and transparency; mitigate unneeded costs and performance risk; avoid unnecessary duplication of effort; and ensure that DHS has access to a quality contractor workforce, so it can accomplish its mission most effectively and efficiently.

The Council has three (3) suggestions for improvements:

1. Increase opportunities for reciprocity

If DHS wants mission critical contracts executed in a timely manner, companies need to be able to onboard employees in a faster manner. This can occur if reciprocity is available in more situations. Currently, reciprocity is only granted at DHS when the new agency uses equivalent fitness criteria and the fitness criteria meets or exceeds the scope and standards for the new position. Obtaining fitness reciprocity at DHS is difficult because every component has different fitness requirements.

There is also no eligibility for fitness reciprocity when someone has a high-level security clearance from another component or agency even though candidates with the highest levels of security clearances will have necessarily been vetted through that investigation for fitness concerns. Many people in industry have a hard time comprehending why someone with a top secret, SCI clearance from the FBI or DoD would need to have an additional fitness determination for a contractor position at DHS.

a. DHS should consider fitness reciprocity based upon similar investigative elements rather than fitness requirements

If DHS relied upon investigative elements (like DoD) rather than fitness standards, this would increase opportunities for reciprocity. This would create many instances where fitness could be automatically granted by the fact that a candidate has a certain level of security clearance.

b. Greater standardization and alignment is needed across the federal government on the investigation process, suitability/fitness standards, and application forms

While executive branch officials routinely honor other agencies' security clearances or investigations, DHS often finds it necessary to take additional steps to address limitations with available information on prior investigations before granting reciprocity. OPM ensures that certain clearance data necessary for reciprocity is available to adjudicators but shared information often contains summary level detail so agencies take steps to obtain additional information, which prevents or slows down the granting of immediate reciprocity. Agencies are sometimes reluctant to be accountable for investigations and adjudications conducted by other organizations. To increase the speed and availability of reciprocity, granting agencies must have confidence in the quality of prior investigations and adjudications and a clear understanding of what conduct and character traits were evaluated during the course of the investigation.

OPM has recognized this need and has been working on developing new Federal Investigative Standards for years. The new approach, partially in roll out but not yet fully implemented, includes a five-tier investigation system, each which is intended to build on a successively higher level of investigation. Adjudication is also intended to build upon, but not duplicate, the ones below it. For example, Tier 1 requires a, b, c; Tier 2 requires a, b, c, and d; Tier 3 requires a, b, c, d, and e. Therefore, Tier 3 meets all Tier 1 and Tier 2 requirements.

The tiered investigation system must also be tied to the investigative steps done for suitability/fitness determinations and aligned to the different personnel security intake forms. The lack of a single standard application form is still a barrier to aligning federal investigations.

If investigative standards are tied to fitness concerns, this would allow DHS to have different fitness standards but still increase the opportunities for fitness reciprocity. This would require some collapse and simplification of DHS' current suitability/fitness standards but would still allow the components to have different fitness standards based upon their mission. More importantly, this would dramatically increase the opportunities for fitness reciprocity by increasing the pool of people available to work at DHS and make recruiting and onboarding a faster process for industry.

c. Consolidate and Improve Communication on Different Fitness Standards Across DHS

While it will take time for the federal government to standardize investigations and tie them to fitness, DHS could still increase eligibility for reciprocity by looking for more opportunities for standardization, simplification, and reduction of the fitness requirements that currently exist across the Department. In some cases, as was suggested by the 2009 Inspector General report on the DHS Personnel Security Process (OIG-09-65, May 2009), it could help for DHS to set a maximum threshold (e.g. bad debt) and permit components to use less but not more than the maximum amount as the standard.

We encourage the creation of a matrix or guide to the various fitness requirements and conduct thresholds for different types of positions across DHS and the federal government so that companies can more readily determine which candidates are likely to receive reciprocity. A matrix showing the greatest to least stringent requirements across components and the federal government would provide additional transparency and facilitate discussion into whether the current fitness requirements make sense and whether certain agencies or organizations should revise or realign their requirements.

2. Direct further investigation or study into opportunities to centralize and consolidate the Personnel Security Department functions within DHS to reduce the length of the process and common delays

The 2009 Inspector General Report focused on the effectiveness and efficiency of the suitability process with federal employees, rather than the fitness process with contractors. However, many of the challenges and recommendations apply equally to the process for fitness determinations and *still apply to DHS almost a decade later*. As was suggested in the report, there are a number of opportunities for the DHS PSD, as part of the Office of the Chief Security Officer, to consolidate various functions of the personnel security process. Doing this would *not* remove components ability to apply mission specific requirements to their process. It would however help in aligning policies, reducing duplicative efforts and known bottlenecks, improving customer service, and increasing transparency into the system.

There may also be additional value in having the DHS Inspector General or GAO look specifically at the fitness process since there are aspects to and challenges with this process that are unique from the suitability process.

3. Encourage DHS to explore the development of an electronic system that provides companies with visibility into the status of investigations and fitness determinations

DHS lacks communication into the status and known delays of investigations. We believe the development of an electronic personnel security status system, similar to what is used by the Defense Manpower Data Center, would allow a properly designated person from industry (such as the company's Facilities Security Officer) to have some visibility into the status of a candidate investigations. Such a system would not require DHS to share unfavorable or derogatory information about a contractor employee that is discovered during an investigation. It would simply allow a company to know where the candidate's status falls against specific milestones in the process. Such a system would reduce the amount of phone calls and emails to staff and give companies a better sense that delays have occurred and whether more time will be required for the investigation. This would dramatically increase transparency and communication and improve a company's ability to plan, budget, and hire staff.

IV. Conclusion

The current contractor vetting process at DHS lacks consistency, transparency, and communication. It requires duplicative effort and unnecessarily long amounts of time, it also limits competition which creates substantial costs to both government and industry, and prevents DHS from obtaining the best workforce and ultimately from accomplishing its mission.

Personnel security is of utmost importance, but there are ways to improve the process without giving up the integrity of the program. We urge Congress to consider the ideas put forth today and to continue to play an active role in driving change both at DHS and across the federal government.

On behalf of the Homeland Security & Defense Business Council, I appreciate the opportunity to provide the collective perspectives of our members on the challenges involved with the DHS fitness process for contractor employees. The Council stands ready to answer any additional questions you may have on these topics.