Questions for the Record Submitted to
Under Secretary Patrick Kennedy by
Senator Kelly Ayotte (1)
Senate Committee on Homeland Security and Governmental Affairs
July 16, 2013

Question:

Does State have a standardized process for screening all new contracts overseas to ensure our tax dollars are not flowing to our enemies or to those working against our interests?

Answer:

New contracts are subject to normal responsibility determinations that require contracting officers to check the System for Award Management (SAM) to identify if vendors are excluded from government contracting due to debarment or suspension. Contracts in Afghanistan and five pilot countries -- Philippines; Guatemala; Kenya; Lebanon; and Ukraine -- are subject to special vetting procedures that include reviewing pertinent public sources, unclassified and classified U.S. Government databases and verification that vendors are not listed by Department of Defense as supporting terrorists.

Questions for the Record Submitted to
Under Secretary Patrick Kennedy by
Senator Kelly Ayotte (2)
Senate Committee on Homeland Security and Governmental Affairs
July 16, 2013

Question:

Does State have a standardized process for screening existing contracts overseas to ensure our tax dollars are not flowing to our enemies or to those working against our interests?

Answer:

The Department of State follows current government-wide practice which is not to screen existing contracts once the contract has been awarded. Vendors who have been subject to screening as part of the Department's Afghan vetting or five country vetting pilot programs are subject to rescreening if they change principal officers during contract performance.

Questions for the Record Submitted to
Under Secretary Patrick Kennedy by
Senator Kelly Ayotte (3)
Senate Committee on Homeland Security and Governmental Affairs
July 16, 2013

Question:

Does State require prime contractors to identify which sub-contractors they will work with or are working with? Does State make an attempt to confirm this information?

Answer:

Specific programs such as guard services, construction, logistics support, and others require contractors to identify subcontractors in their proposals. Contractor team composition is the subject of proposal evaluation prior to contract award. State complies with Federal Acquisition Regulation (FAR) requirements which do not require buying offices to confirm subcontractor participation independent of prime contractor submissions. Prime contractors submitting false information regarding subcontractors would be subject to false statements penalties, potential voiding of the contract award, and debarment or suspension.

Questions for the Record Submitted to
Under Secretary Patrick Kennedy by
Senator Kelly Ayotte (4)
Senate Committee on Homeland Security and Governmental Affairs
July 16, 2013

Question:

If not, how do you know our money is not flowing to our enemies?

Answer:

The Department of State vets key individuals, contractors and grantees in projects that have been analyzed as high risk in Afghanistan to ensure money is not flowing to our enemies.

Questions for the Record Submitted to
Under Secretary Patrick Kennedy by
Senator Kelly Ayotte (5)
Senate Committee on Homeland Security and Governmental Affairs
July 16, 2013

Question:

If yes, do your acquisition officials compare the names of these sub-contractors with information from intelligence databases to ensure they have not engaged in past waste, fraud, and abuse and that they are not diverting money to our enemies?

Answer:

In Afghanistan, allegations that contractors or subcontractors are engaging in waste, fraud and abuse would be referred to either the Department of State Inspector General or the Special Inspector General for Afghanistan Reconstruction (SIGAR) for investigation. If verified, those offices would refer the matter to the contracting officer for potential default termination and/or to the Suspension and Debarment Official (SDO) for suspension and/or debarment action. Key individuals, contractors and grantees are to subject to special vetting procedures. These individuals and organizations are validated against various classified and unclassified databases, and other databases to ensure they are not diverting money. The individuals and organizations are also compared to the list of vendors created by the Department of Defense as supporting the insurgency. Subcontractors are

also compared to the list of vendors supporting the enemy created by the Department of Defense and other databases to ensure they are not diverting money.

Questions for the Record Submitted to
Under Secretary Patrick Kennedy by
Senator Kelly Ayotte (6)
Senate Committee on Homeland Security and Governmental Affairs
July 16, 2013

Question:

What intelligence databases do State acquisition officials reference to make their determinations?

Answer:

Department officials have access to and reference databases at the Department of State, the National Counterterrorism Center, and the Central Intelligence Agency.

Questions for the Record Submitted to
Under Secretary Patrick Kennedy by
Senator Kelly Ayotte (7)
Senate Committee on Homeland Security and Governmental Affairs
July 16, 2013

Question:

Do your acquisition officials reference the Federal Awardee Performance and Integrity Information System (FAPIIS) before putting out a new contract?

Answer:

Yes.

Questions for the Record Submitted to
Under Secretary Patrick Kennedy by
Senator Kelly Ayotte (8)
Senate Committee on Homeland Security and Governmental Affairs
July 16, 2013

Question:

If State discovers that an existing contractor or sub-contractor has engaged in or is engaging in waste, fraud, and abuse or is diverting our tax dollars to our enemies (e.g. diverting money to an improvised explosive device manufacturer or facilitator), what authorities does State currently have to quickly terminate an existing contract without paying an equitable adjustment?

Answer:

In Afghanistan, allegations that contractors or subcontractors are engaging in waste, fraud and abuse would be referred to either the Department of State Inspector General or the Special Inspector General for Afghanistan Reconstruction (SIGAR) for investigation. If verified, those offices would refer the matter to the contracting officer for potential default termination and/or to the Suspension and Debarment Official (SDO) for suspension and/or debarment action.

The Department of State has the authority to void a contract if it was obtained as a result of fraud. Fraud, waste, or abuse during the performance of a

contract could be grounds for a termination for default depending on the specific circumstances.

The Department of State has the authority to immediately terminate any contract for convenience. Termination costs on a convenience termination are negotiated between the parties and are subject to a final decision by the contracting officer on the reasonableness of the settlement.

As I stated in my testimony, the Department of State would welcome additional authority to terminate any contract, regardless of the nationality of the vendor, for default for supporting enemies of the United States.

Questions for the Record Submitted to
Under Secretary Patrick Kennedy by
Senator Kelly Ayotte (9)
Senate Committee on Homeland Security and Governmental Affairs
July 16, 2013

Question:

What clause in the Federal Acquisition Regulation allows you to terminate the contract and not pay equitable adjustment?

Answer:

The Federal Acquisition Regulation (FAR) has various termination clauses depending on the type of contract (i.e., fixed price, time and materials, cost reimbursement). Each of these clauses provides for a termination for default or cause for failure to perform. Fraud in contract performance could constitute a cause for default depending on circumstances.

The Department of State has the authority to immediately terminate any contract for convenience. Termination costs on a convenience termination are negotiated between the parties and are subject to a final decision by the contracting officer on the reasonableness of the settlement.

As I stated in my testimony, the Department of State would welcome additional authority to terminate any contracts, regardless of the nationality of the vendor, for default for supporting enemies of the United States.

Questions for the Record Submitted to
Under Secretary Patrick Kennedy by
Senator Kelly Ayotte (10)
Senate Committee on Homeland Security and Governmental Affairs
July 16, 2013

Question:

Will State please provide a formal review of S. 675 – The Never Contract with the Enemy Act? If State has any objections to the legislation, please provide recommended revised language that would extend the FY12 NDAA Section 841 and 842 authorities to State – making the appropriate adjustments to reflect the unique nature of State contracting.

Answer:

As I stated during my testimony, the Department would support an independent grant of authority to the Secretary of State to be able to cut off a contract where it is determined that money is going to terrorists. The Department has preliminary comments on S. 675, and would be glad to discuss the bill and our comments with the Committee.