



# Three Steps to Ensure Responsible Security Contracting in the Public Sector



**W**ith more than 50 years of experience in the private security industry, SEIU is the nation's largest union of security officers, representing more than 35,000 security professionals nationwide.

SEIU members protect office buildings, apartments, stadiums, arenas and other facilities in Boston, New York City, Philadelphia, Washington, D.C., Atlanta, Chicago, Minneapolis, Denver, Los Angeles, San Francisco, Oakland and Sacramento, Calif., and Seattle.

Working in partnership with security contractors and their clients, SEIU has developed a marketwide approach to raising security industry standards that allows contractors to compete on the basis of reliability, rather than reduced wages and benefits. Our approach guarantees officers the freedom to form a union without putting security contractors or their clients—whether in the public sector or in the private sector—at a competitive disadvantage.

By improving jobs, strengthening training and toughening legislative standards, we are helping to create the good jobs our communities need and to guarantee the quality security services that clients rely on.

**W**ith anti-government sentiment on the rise and with Americans increasingly relying on government to help them through the recession, the need for reliable and helpful security services at government facilities is great.

In response to the need for security services and under pressure to cut spending at all levels of government, public agencies are increasingly looking to private contractors to provide vital security services. Contracted security officers are guarding federal sites such as military installations, power plants and detention facilities, as well as state and local facilities including school systems, courthouses and civic buildings.



When hiring security contractors, public officials expect reliable performance, trustworthy owners and executives, and experienced, well-trained and fairly compensated security officers. Currently, many contractors in the private security industry fail to consistently meet these goals. This means that low-bid security contractors with records of performance failures, financial mismanagement and executive malfeasance consistently bid on lucrative government contracts – putting taxpayer dollars and public safety at risk.



Contractors with poor employee relations may also compromise security at public facilities by causing low employee morale and high turnover. Such companies may underpay guards or skip payments altogether, and they are less likely to provide their employees with adequate training. Employees of these troubled companies who speak out—blowing the whistle on security lapses, overbilling, or fraud—often face retaliation, which harms the reputation and interests of the public agencies where they work.

Unlike many private sector clients, public agencies often have stringent requirements for contract security. These include formal standards, oversight procedures and contractor transparency. Even under the strictest guidelines, however, poor screening and lack of accountability can result in performance failures and financial malfeasance on the part of substandard security contractors. The lack of a national system to track contractor misconduct at all levels of government means that security companies that have violated laws, disregarded standards, or endangered the public while working under a government contract may go undetected, only to be employed in the future by another public agency.

The private security industry is not regulated under national standards. Instead the industry is subject to widely varying, mostly inadequate and uncoordinated state-level regulations. In the absence of national accountability mechanisms, public agencies need to rigorously screen all security contractors under consideration for public work to make sure they are able to meet contract requirements and perform at the highest level. Procurement officers and elected officials should take all measures to ensure that taxpayer dollars are spent only on responsible security contractors that deliver reliable, high-quality services, while providing the best value for public funds.

# Security Contractor Failures Under Public Contracts

The following case studies highlight problems at irresponsible security contractors. These examples illustrate the need for careful screening during the bid process and rigorous monitoring of company performance throughout the life of the contract.

## ISI: Poor Screening Allows Law-Breaking Contractor to Repeatedly Obtain Public Contracts



Despite a long record of legal and ethical lapses that disqualified it from public contracts elsewhere, contractor International Services continued to win public contracts in California due to an apparently inadequate screening processes. As a result, in 2009 the County of Los Angeles faced potential security lapses, financial liability, and a public scandal when International Services—in the wake of criminal charges against its principals—declared bankruptcy and failed to meet payroll obligations to security officers for more than a month.

Starting in the late 1990s and continuing through 2009, International Services, Inc. provided security under federal, state, and county contracts<sup>1</sup> despite ongoing violations of federal wage laws and state registration and background check requirements:

- Beginning in 1999, International Services faced allegations from the Department of Labor (DOL) that it failed to pay its employees minimum wages as required under federal contract law. Despite guidance from the Department on compliance, the DOL ultimately found that between 1996 and 2002, ISI's underpayments totaled \$630,081.07 and affected 1,943 employees—what the DOL's Administrative Review Board termed an “astounding” number of violations.<sup>2</sup>
- In July 2008, the federal government finally debarred International Services and principal Sam Karawia from federal contracts for a term of three years for violations of the Service Contract Act.<sup>3</sup> (Federal debarment prohibits contractors from bidding on new work.)
- In 2002, the State of New York charged that International Services defrauded the state by supplying unqualified personnel with criminal convictions to guard sensitive state sites.<sup>4</sup> The lawsuit was settled the following year and under the settlement ISI forfeited the right to do business in New York State for five years, and agreed to pay \$1.1 million in reimbursed fees and penalties. Bunce Pierce, senior vice president of ISI, plead guilty to one criminal charge of hiring an unregistered security officer.<sup>5</sup>

<sup>1</sup> Troubled security firm hired by county; International Services Inc. won lucrative contracts despite federal, state probes that found problems,” Los Angeles Times, April 23, 2009

<sup>2</sup> U.S. Department of Labor Administrative Review Board case number 05-136. Final Decision and Order, December 21, 2007.

<sup>3</sup> Federal excluded parties list system, <https://www.epls.gov>. Last accessed July 28, 2010..

<sup>4</sup> “State takes action against security guard firms of public sites,” Associated Press. June 27, 2002.

<sup>5</sup> “State caught off guard,” Newsday. July 25, 2003; “Public Integrity Unit Fights Corruption,” New York Law Journal, January 23, 2003. Accessed at <http://www.law.com/jsp/article.jsp?id=900005533986>.

<sup>6</sup> See “Troubled security firm hired by county; International Services Inc. won lucrative contracts despite federal, state probes that found problems,” Los Angeles Times, April 23, 2009; “Taking liberties with security: Ex-cons guarded statue months after 9/11,” New York Daily News. June 23, 2002. “State takes action against security guard firms of public sites,” The Associated Press. June 27, 2002. “Public Integrity Unit Fights Corruption,” New York Law Journal, January 23, 2003. Accessed at <http://www.law.com/jsp/article.jsp?id=900005533986>. “State caught off guard,” Newsday. July 25, 2003.

<sup>7</sup> “Supervisors bicker over guards’ pay,” Los Angeles Times, September 16, 2009; “L.A. County reserve deputy is accused of fraud at his security firm,” Los Angeles Times, April 16, 2009.

Despite the fact that International's violations were matters of public record since at least 1999 and, in the case of the NY violations, well documented in the press since 2002, the County of Los Angeles and other public agencies continued to award contracts to International Services. Screening processes appear to have been inadequate.<sup>6</sup> That a company with so egregious a record as International Services was able to repeatedly secure LA County as well as a California state contract indicates the need for better screening mechanisms in awarding public contracts.

ISI continues to be a problem for public officials. In 2009 the County of Los Angeles was plunged into crisis when the company stopped paying county officers and declared bankruptcy after its principals were arrested on charges of conspiracy, grand theft, making false statements and insurance fraud.<sup>7</sup> While most guards showed incredible dedication by continuing to work despite not being paid, after 5 weeks without pay some officers abandoned post, exposing the county to potential security lapses. The county also faced financial liability when more than 100 officers filed claims for unpaid wages for the time they protected county facilities without pay. As of mid-2010, the county has offered financial settlements to most of those officers.<sup>8</sup>

## STARTECH: Financial Mismanagement Increases Security Vulnerabilities

As the example above illustrates, companies in financial turmoil may not be able to assure basic continuity of security operations. Over a 25- year period, security contractor STARTECH won more than \$100 million in federal contracts<sup>9</sup> by guarding Washington DC sites including USDA Headquarters,<sup>10</sup> the Department of Education,<sup>11</sup> and the Navy Yard<sup>12</sup>. STARTECH also had a contract with the Federal Protective Service, which it maintained even as an executive's criminal background was uncovered and red flags were raised about the firm's financial solvency – with the situation eventually culminating in the company failing to adequately staff contracted guard posts.



<sup>8</sup> Meeting Transcript, LA County Board of Supervisors, September 15, 2009, p. 55; Letter from Janet Herold, SEIU Counsel to Ralph Rosato, Assistant County Counsel, LA County, November 16, 2009

<sup>9</sup> Testimony of Ann Marie Messner, Former COO and General Manager, STARTECH, before Economic Development, Public Buildings and Emergency Management Subcommittee of House Committee on Transportation and Infrastructure. Hearing on "The Responsibility of the Department of Homeland Security and the Federal Protective Service to Ensure Contract Guards Protect Federal Employees and Workplaces." pg 6, June 21, 2007. Protective service under fire for oversight of contract guards. Government Executive, June 21, 2007. FedSpending Federal Contract Summary STARTECH 2000-2008 Q1.pdf

<sup>10</sup> Statement of James D. Carney Acting President United Government Security Officers of America Committee on House Transportation and Infrastructure Subcommittee on Economic Development, Public Buildings and Emergency Management June 21, 2007

<sup>11</sup> Statement of James D. Carney Acting President United Government Security Officers of America Committee on House Transportation and Infrastructure Subcommittee on Economic Development, Public Buildings and Emergency Management June 21, 2007

<sup>12</sup> Statement of Assane B. Faye Director Washington, DC District Security, Police and Fire Professionals of America International Union Committee on House Transportation and Infrastructure Subcommittee on Economic Development, Public Buildings and Emergency Management, June 21, 2007

<sup>13</sup> Testimony of Ann Marie Messner, Former COO and General Manager, STARTECH, before Economic Development, Public Buildings and Emergency Management Subcommittee of House Committee on Transportation and Infrastructure. Hearing on "The Responsibility of the Department of Homeland Security and the Federal Protective Service to Ensure Contract Guards Protect Federal Employees and Workplaces." pg. 6, June 21, 2007.

<sup>14</sup> Testimony of Ann Marie Messner, Former COO and General Manager, STARTECH, before Economic Development, Public Buildings and Emergency Management Subcommittee of House Committee on Transportation and Infrastructure. Hearing on "The Responsibility of the Department of Homeland Security and the Federal Protective Service to Ensure Contract Guards Protect Federal Employees and Workplaces." pg 7, June 21, 2007. Protective service under fire for oversight of contract guards. Government Executive, June 21, 2007.

In 2006, Bank of America found STARTECH in default for violating loan conditions when it discovered the company's Vice President of Development had concealed prior felony convictions on 29 counts of conspiracy, bank fraud and money laundering.<sup>13</sup> The resulting loss of working capital impaired STARTECH's financial solvency, which increased the risk of security lapses.

STARTECH turned to invoice factoring for short-term cash as a stopgap, which should have raised red flags at FPS and other public clients. By selling invoices payable by the Department of Homeland Security to a factoring company, STARTECH immediately received 90% of face value while paying 10% as fees<sup>14</sup> — a clear sign of financial distress.

STARTECH's mistreatment of its workers should have raised additional red flags about the company's insolvency. On several occasions in 2006 and 2007, security officers' paychecks were "shortened, delayed, or simply not available."<sup>15</sup> The company's former chief operating officer also charged that STARTECH did not forward payroll deductions for health insurance, 401k/pension and union dues to benefit providers.<sup>16</sup> Serving beyond reasonable expectation, most officers employed by STARTECH continued to stand guard despite not being paid. Finally, on June 3, 2007, FPS terminated STARTECH contracts for cause after it failed to fully staff contracted guard posts.<sup>17</sup>

## USProtect: Security Company Executives With Criminal Records In Charge of Sensitive Government Contracts



With their access to sensitive data and locations, security company owners and executives should be certifiably trustworthy. In many states, however, security company executives are exempt from even basic criminal background checks. At least 22 states lack any criminal background check requirement for a security agency license, and the District of Columbia and 13 states permit ex-felons to operate security companies.<sup>18</sup>

The lack of standards regarding security company executives' backgrounds leaves clients vulnerable to criminal activity.

Unaware that USProtect executive Richard S. Hudec, Jr. finished a sentence for bank fraud in 2001, federal agencies awarded the company contracts totaling more than \$360 million at key sites including Air Force bases, the Walter Reed Army Medical Center, and the FBI training center in Quantico, Va.<sup>19</sup>

<sup>15</sup> Testimony of Brian Smith before Economic Development, Public Buildings and Emergency Management Subcommittee of House Committee on Transportation and Infrastructure. Hearing on "The Responsibility of the Department of Homeland Security and the Federal Protective Service to Ensure Contract Guards Protect Federal Employees and Workplaces." pg 1, June 21, 2007.

<sup>16</sup> Testimony of Ann Marie Messner before Economic Development, Public Buildings and Emergency Management Subcommittee of House Committee on Transportation and Infrastructure. Hearing on "The Responsibility of the Department of Homeland Security and the Federal Protective Service to Ensure Contract Guards Protect Federal Employees and Workplaces." pg 13, June 21, 2007.

<sup>17</sup> Testimony of Gary W. Schenkel, Director, Federal Protective Service, before Economic Development, Public Buildings and Emergency Management Subcommittee of House Committee on Transportation and Infrastructure. Hearing on "The Responsibility of the Department of Homeland Security and the Federal Protective Service to Ensure Contract Guards Protect Federal Employees and Workplaces." pg 7, June 21, 2007.

<sup>18</sup> "Forgotten Front Lines" SEIU Report, Sept 2009, See Table 2 on p. 6.

<sup>19</sup> "Ex-felon employed by US security contractor," The Washington Times, October 10, 2007; "Contractors elude scrutiny; Federal rules don't require background checks," The Washington Times, December 17, 2007; FedSpending Federal Contract Summary USProtect 2000-2009 Q3; FedSpending Federal Contract Summary Holiday Intl Security 2000-2009 Q3

The FBI stated that in 2002 and 2004, “Hudec, as either the chief financial officer or chief operating officer, caused the company to falsely certify that no principal of the company had a civil judgment for fraud or false statements rendered against him within the three years preceding the company’s proposal.”<sup>20</sup> Federal contracting officials apparently relied on HIS/USProtect’s self-certification of executives, unaware that the Bureau of Prison’s public inmate locator website reportedly “shows that Mr. Hudec was released from prison on Feb. 21, 2001.”<sup>21</sup>

## Guide to Selecting and Monitoring Reliable, High-Road Security Contractors – And How to Respond When Contractors Fail

Public procurement officers are expected to employ high-quality security contractors that provide good value for taxpayer dollars. In the absence of an adequate centralized system that tracks security contractor misconduct, procurement officials should create mechanisms that allow them to rigorously examine the records of companies bidding on public security contracts. Public agencies need to regularly evaluate the performance of security contractors, and consider sanctions on companies that fail to meet contract requirements.

The Federal Acquisition Regulation (FAR) limits awards to “responsible contractors”<sup>22</sup> The National Employment Law Project (NELP), a non-profit organization dedicated to improving conditions for U.S. workers, notes that some government agencies have also begun to consider quality and reliability factors in the contractor selection process – for example, by including prospective contractors’ compliance with workplace and safety standards as evaluation factors or by recognizing that the provision of fringe benefits generally improves staff retention.<sup>23</sup>

Public agencies should consider replacing “lowest bid” solicitations with “best value” bids to enable officials to evaluate risks associated with companies with questionable records and practices. The procurement process should also consider the “price realism” of solicitations to limit underbidding tactics — federal practice allows bidders to protest awards based on price realism.

Some local and state agencies have taken the lead in creating best practices to determine whether contractors meet responsibility standards. The cities of San Diego and Los Angeles, for example, require bidders to complete “responsibility questionnaires” as part of the pre-qualification process. NELP notes that El Paso, Texas gives contractors that offer their employees health benefits a preference in the contracting process by making provision of health benefits a positive evaluation factor — along with price, reputation, technical qualifications, and past performance — that is weighed by city agencies in making their contract award decisions.<sup>24</sup>

Although many government entities have some form of responsible contracting policy, the overwhelming majority do not include comprehensive questionnaires for prospective contractors and do not create a process for independent investigations into potential contract awardees.

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<sup>20</sup> 2008-06-13 DOJ-FBI-Fmr USProtect Chairman sentenced for concealing prior fraud judgments <http://baltimore.fbi.gov/dojpressrel/pressrel08/ba061308.htm>

<sup>21</sup> “Ex-felon employed by US security contractor,” *The Washington Times*, October 10, 2007; “Contractors elude scrutiny; Federal rules don’t require background checks,” *The Washington Times*, December 17, 2007.

<sup>22</sup> [https://www.acquisition.gov/far/html/Subpart%209\\_1.html](https://www.acquisition.gov/far/html/Subpart%209_1.html)

<sup>23</sup> “The Road to Responsible Contracting: Lessons from States and Cities for Ensuring That Federal Contracting Delivers Good Jobs and Quality Services,” National Employment Law Project, June 2009.

<sup>24</sup> “The Road to Responsible Contracting: Lessons from States and Cities for Ensuring That Federal Contracting Delivers Good Jobs and Quality Services,” National Employment Law Project, June 2009.



## Three Steps to Ensure Responsible Security Contracting:

### 1. Create a Responsibility Questionnaire that Bidders Are Required to Complete

In order to determine the trustworthiness of a security contractor, government agencies should require bidders to complete a questionnaire about the company's history and current status. The questionnaire should solicit full disclosure of the following information:

#### Financial responsibility, including:

- Audited financial statements for past year
- Proof of adequate bonding and insurance
- Description of business organization and structure, including names of all subsidiaries and related entities
- Any history as debtor in bankruptcy cases



#### Performance history, including:

- Any and all previous contracts with agency
- Any and all contract terminations
- Any and all debarments or determinations of non-responsibility
- Any and all court disputes over past five years, outstanding judgements against the contractor, or damages assessed on any contracts

#### Compliance, including:

- Any and all investigations, citations or penalties assessed against company owners, partners or officers by relevant government agencies
- Any and all violations of licensing laws, or any investigations, citations, penalties or disciplinary action taken against company by a licensing agency

#### Business integrity, including:

- Any and all investigations, convictions or liability related to firm making false claims or material misrepresentations
- Any and all owner or officer convictions in crimes involving the bidding, awarding or performance of government contracts, or crimes of fraud, theft, embezzlement, perjury or bribery

#### Employee Relations, including:

- Any and all violations of employees' freedom to form a union
- Any and all violations of minimum wage laws.
- Any and all unfair labor practice charges or complaints against the company
- Any and all violations or penalties under the Federal Labor Standards Act and the Service Contract Act.

Bidders' completed questionnaires should be a matter of public record as soon as the bidding deadline passes.

**Public agencies interested in creating a responsibility questionnaire may view a model here <http://standforsecurity.org/clients>.**

## 2. Create expanded and standard investigatory procedures

Public agencies should not rely solely on company self-reporting but should conduct independent responsibility investigations of bidders to verify fitness. These investigations should focus on:

- Pending and past litigation against the company, particularly claims of labor law violations, fraud, breach of contract, and poor performance;
- Pending and past complaints to the Department of Labor and the State's Department of Labor Standards Enforcement regarding wage law compliance;
- The company's timely payment of all local, state, and federal taxes;
- Performance history;
- Background investigations on key executives and company owners to examine suitability including criminal, employment and personal background checks

## 3. Create Strong Mechanisms to Address Contractor Misconduct

- All public agencies should institute processes to monitor security contractor conduct, including regular performance evaluations. Performance records should be made accessible to the public to create compliance incentives and provide strong factual basis for procurement decision-making. Agencies should consider establishing a schedule of liquidated damages to be paid by the contractor for typical incidents such as open posts or missing supervisors. On-site security officers are well-positioned to notice waste, fraud or abuse under government contracts. Procurement officials should consult with workers as part of the evaluation process and take their concerns seriously.
- Public agencies should maintain publicly accessible records of cost increases, regardless of cause, to improve management of public budgets by providing "batting averages" for contractors and creating incentives for price realism.
- Public agencies should only award performance bonuses in cases where contractors have shown merit. Award fees are a mechanism to encourage exemplary performance and should be an incentive, not an automatic payment. Similarly, agencies should re-evaluate their security contractors at the end of each contract period on factors such as on-budget performance, and not automatically grant award extensions. Because award fees are taxpayer-funded bonuses, the basis for making these payments should be publicly accessible information.
- In the event that specific allegations of illegal or irresponsible activity on the part of a security contractor is brought to an agency's attention, the agency should promptly and thoroughly investigate the allegations to prove or disprove them. The records of investigations, investigative findings, and any related settlements should be made available to the public. If the contractor has received any reimbursement for legal defense associated with a public contract, those amounts and cases should also be public records.
- The FAR requires federal agencies to suspend or "debar" federal contractors who have demonstrated a "lack of responsibility" in performing under government contracts. State and local agencies must also consider suspension or termination in cases where contractor irresponsibility puts the firm in breach of contract. Many security firms operate in multiple jurisdictions — to avoid unscrupulous firms taking advantage of jurisdictional boundaries, public agencies should establish rules that trigger local suspension and debarment proceedings when a firm has been suspended or debarred in another jurisdiction.

Government officials increasingly rely on private security companies to police public facilities. But in the absence of national mechanisms of accountability, who will police the security companies? Ultimately this responsibility falls to the government officials who hire the security companies.

This guide gives government officials the tools they need to rigorously screen and track the business practices of security contractors. It is important to use these tools in order to insure that taxpayer dollars are used to deliver the highest quality security services at the best value.

