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Secretary

U.S. Department of Homeland Security
Washington, DC 20528cc: -
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Security

February 25, 2008

The Honorable John Dingell
Chairman
Committee on Energy and Commerce
U.S. House of Representatives
Washington, D.C. 20510

Dear Chairman Dingell:

Thank you for your September 21, 2007 letter expressing continued interest in the efforts of the Department of Homeland Security (DHS) to prevent a nuclear terrorist attack and the Domestic Nuclear Detection Office's (DNDO) Advanced Spectroscopic Portal (ASP) program.

I share your concern over the threat of nuclear terrorism and consider countering this threat to be one of the Department's top priorities. We face an enormous challenge at our ports and borders as we balance the flow of goods and commerce with the need to sufficiently scan cargo entering our Nation for radiological or nuclear threats. The technologies that we are pursuing in the ASP program are a critical component in addressing that challenge.

I also recognize the unique role that the Government Accountability Office (GAO) plays by providing investigative support to the Congress, and I take to heart the issues that GAO raised in the hearing of September 18, 2007. With that said, the combination of evaluations undertaken by DNDO and U.S. Customs and Border Protection (CBP), the oversight and evaluation provided by the Under Secretary for Management, and the independent review panel that he commissioned represent a substantial and sufficient level of assessment necessary to meet the legislative requirements included in the FY 2007 Homeland Security Appropriations Act (P.L. 109-295). In addition, we will also be consulting the National Academy of Sciences pursuant to the requirements of the *Consolidated Appropriations Act 2008*, P.L. 110-161. The Department will continue down a methodical and reasoned path towards improving our capabilities in the field. Even after the conclusion of the most recent test campaign and the decision that I ultimately make regarding ASP performance, I will continue to challenge DNDO and CBP to develop incremental improvements to our technical and operational capabilities.

It is understandable why the Committee and GAO are concerned with determining the "detection limits" of ASP systems. However, it is important to note that the appropriations language requires the certification of ASP systems relative to the performance of current systems, rather than in the absolute. While the final limits of ASP performance may not be known to absolute precision, I assure you that any decision I make regarding improvements in ASP performance will be based on a full understanding of the limits of current systems.

As was always planned, injection studies, based on data collected under real world conditions and against actual threat materials will be used to continue to explore the performance limits of ASP systems. Injection studies provide an effective and economical way to evaluate systems against a wide range of scenarios, assuming that the studies are periodically validated against additional data points and will be used to inform additional tests as required. As limits become known and understood, we will continue to improve the systems through a standard modeling, development, and testing cycle.

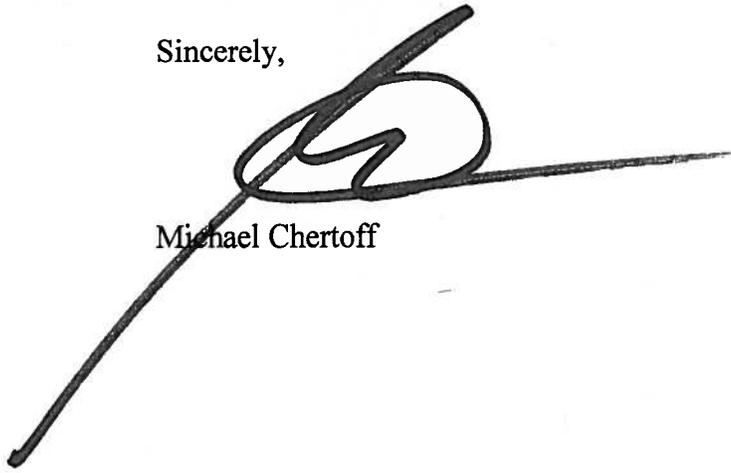
As part of the process leading to a certification decision, CBP, which is the eventual operator of ASP systems, conducted a series of field validations at ports of entry. Review of the status of field validation testing led to the determination that additional functional capability is needed to meet operational requirements.

Based on these results and because certification was originally scheduled to be made prior to the major production decision, the Department decided it was prudent to instead couple the certification decision more closely with a larger production and deployment decision. Therefore, my certification will now signify not only that the next-generation ASP system demonstrates significant improvement in operational effectiveness, but that the system also fully meets the functional requirements of the operator, i.e., CBP. As such, the certification will communicate the Department's final position prior to both full-scale production and deployment.

To ensure that I will have all information necessary to make this certification, ASP systems will undergo an additional period of development, testing, and evaluation. Development efforts in FY 2008 will be focused primarily on meeting the final functional requirements identified by CBP as necessary prior to larger deployment. Additional testing will be done to validate that functional improvements do not adversely affect the detection and identification capabilities of the systems. Finally, DNDO will collect data to provide benchmark spectra for injection studies. These studies will allow DNDO to further assess the performance of ASP systems against a wider range of threats and cargo loads.

In response to your concern regarding the use of the Homeland Security Institute (HSI), I have attached a letter addressing the questions that arose during the September 7, 2007 hearing concerning the independence of HSI. I assure you that the decision I make whether to proceed with ASP production and deployment or not will be taken with the greatest care and consideration. I welcome and appreciate your active engagement with this program, and look forward to continuing our cooperation as we move forward together.

Sincerely,



Michael Chertoff

Enclosure



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October 3, 2007

The Honorable Bart Stupak
Chairman
Subcommittee on Oversight and Investigations
Committee on Energy and Commerce
U.S. House of Representatives
Washington, DC 20515

Dear Mr. Chairman:

This letter is in response to the questions you asked concerning the Homeland Security Institute (HSI) during the September 18th hearing on "Nuclear Terrorism Prevention."

HSI was established by statute in the Homeland Security Act of 2002 as a Federally Funded Research and Development Center (FFRDC). Consistent with that congressional direction, the Department of Homeland Security (DHS) competitively selected Analytic Services, Inc. (ANSER) in April of 2004 to operate the HSI on behalf of DHS. The FFRDC contract provisions were heavily modeled after those in use by the Department of Defense. Moreover, in the administration of HSI, we instituted the concept of a core program to enable the FFRDC to hire the talent necessary to have a first-class analytic organization and to conduct foundational analytic work for the Department. Much of this "start up" period also involved establishing a program office within the Science and Technology Directorate (S&T) to work with various components in the Department to identify how the FFRDC could meet the Department's basic analytic needs. In addition, the program office identified sponsors of potential task-ordered work to ensure that HSI was only assigned work that is strictly appropriate for an FFRDC. Furthermore, considerable management attention during the foundational period has been spent in ensuring that HSI tasks are well defined analytically and reflect rigorous quality control throughout the execution of both core and task-ordered work.

Please provide the Committee with the agreement by which work is assigned to HSI as DHS' FFRDC.

Enclosed is the agreement requested.

Does HSI get 100 percent of its funding from DHS?

That is correct; HSI does receive 100 percent of its funding from DHS. This is to be expected, however, since HSI is a FFRDC sponsored by DHS. With very few exceptions, FFRDCs in the federal government receive their total funding from their primary government

“sponsor” and other government customers who contract with the sponsor for work with that FFRDC on a “task order” basis.

Does HSI have some of its employees detailed or embedded at the Domestic Nuclear Detection Office (DNDO)?

HSI does not have any detailees to the Department nor do they have an “embedded analyst” in DNDO. At the direction of the Department, HSI established a “Forward Analyst Program” which allows them to deploy analysts to select DHS functions to provide onsite analytic support on a short fuse basis and enable DHS to access HSI’s broader capabilities. Prior to establishment, principles governing the Forward Analyst Program were reviewed and approved by DHS legal counsel to ensure that it operates within FFRDC policy as well as the HSI contract. Also, the Forward Analyst Program is modeled on similar highly effective integrating programs in other agencies, most notably the Department of Defense. Currently, HSI forward analysts are deployed to the Federal Emergency Management Agency, Office of Counter narcotics Enforcement, Office of National Capital Region Coordination, U.S. Coast Guard (USCG), DHS Office of Policy, Office of the Secretary’s Chief of Staff, and the USCG Deployable Operations Group. Up until June of 2007, HSI did have a part-time forward analyst deployed to DNDO. HSI’s current support to DNDO includes two additional small tasks: a multi-stage study that involves helping DNDO evaluate Concept of Operations (CONOPS) for Mobile detection systems; and a small study to assist DNDO in assessing the benefit of pairing passive detection systems with active analytical techniques. Neither of these forward analysts are involved with the Advanced Spectroscopic Portal (ASP) program.

Do you believe that analysts, who are deployed at DNDO, could have an impact on HSI's independence?

HSI was established strictly in accordance with Federal Acquisition Regulations (FAR) Part 35 through a competitive award to ANSER Corporation in order to operate a FFRDC in the public interest. This would help satisfy DHS’ long-term research and development needs as well as transition those research findings into Departmental Programs. You should also be aware that HSI has a unique, Congressionally mandated charter as set forth in Section 312 of the Homeland Security Act of 2002. It is subject to Congressional oversight not typical of private sector companies, not-for-profit organizations or even other FFRDC’s working in DHS. HSI has a statutory requirement to report their activities to Congress every year. HSI is also bound contractually to the Department to operate in a manner which ensures its objectivity and independence. It is also important to note that FFRDCs came into being to provide support that is not readily available in the sponsoring agency or the private sector. FFRDCs by definition produce independent analysis not biased to favor commercial interests or to endorse the position of a client. HSI is the DHS’ single FFRDC focused solely on providing analytic support to all DHS Components in support of the broader homeland security mission. They were envisioned by Congress to provide long-term strategic support to DHS. HSI, like other FFRDCs, has sharp restrictions on its ability to obtain any commercial work and HSI’s parent organization is similarly contractually prohibited from obtaining work which leverages activities which they perform in operating the FFRDC.

Are any HSI employees deployed to your office?

I can confirm that there are no HSI forward analysts deployed to my office. However, if there were a forward analyst in my office, it would be irrelevant to the task at hand based on the standard to which we hold HSI as the Department's FFRDC.

Does your office provide funding to HSI or has the HSI leadership, specifically Mr. Thompson or Mr. Anderson, lobbied your office for work?

My office provides funding to HSI for work that is appropriate for an FFRDC and is not the result of lobbying activity. DHS has made a significant investment in HSI and I and Under Secretary Cohen want HSI actively working with all of the Department's components to apply its analytic expertise to solve the Department's problems. I am not aware of any lobbying effort on the part of Mr. Thompson or Mr. Anderson.

In your due diligence, have you examined the work performed by HSI to ensure they were the appropriate agency to make recommendations?

I responded that we are using them in other areas to support reviews of individual programs, and they appear to be doing a good job. I would refer you to HSI's most recent annual report to Congress that I have enclosed for your information. It lays out in some detail their activities and contributions over the past year. Beyond their charter as an FFRDC, this is precisely the reason why I selected them to lead this investigation into the ASP program.

Are you aware of the Senate Homeland Security Appropriations Committee's concerns, per S.1644, with HSI?

My research leads me to conclude that the Senate language was written before HSI's most recent annual report to Congress was delivered to key members and staff and thus, does not appear to be based on up-to-date information. Furthermore, the Senate Appropriations Committee Professional Staff indicated to S&T budget and finance officials that the primary reason for the cut (and this is reflected in the language in the Senate Report (110-84)) was that it believed HSI activities could be better funded through individual task orders with DHS customers versus a large core program. Also, the cuts to the HSI core program were rationalized as a "bill payer" for other very high priority programs such as Improvised Explosive Device (IED) detection. Many S&T programs sustained similar cuts. DHS has opposed the Senate cut and looks forward to a progress on this particular issue when the Senate and House Appropriations Committees meet in conference to reconcile their versions of the Fiscal Year 08 Appropriations Act.

Are you aware of the turnover in HSI's leadership, particularly having four Directors in the last three years?

I can confirm that is in fact the case but do not think that the turnover reflects a lack of commitment by DHS or ANSER Corporation to stand-up a first class analytic support

FFRDC. It is important to note that George Thompson, who was selected to lead the ASP assessment team, has been part of the senior leadership of HSI since its inception in 2004.

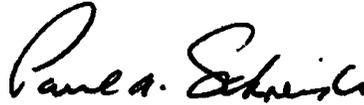
Does DHS' contract with ANSER, an independent public-service research institute and not-for-profit corporation, who currently operates HSI, expire in Fiscal Year 2009?

The base contract does in fact expire at the end of December 2008. The Department is currently conducting a comprehensive review in accordance with the FAR 35.017-4 pertaining to extension of the current FFRDC contract. No decision has been made regarding future action in this regard. In response to your follow-on question, regarding any potential impact this contract extension could have on the ASP independent review, I would again reiterate my comments on the fundamental nature of FFRDCs and the fact that HSI was chartered by Congress to be an independent source of analysis for the Department.

In closing, you made it very clear that you were concerned about the connectiveness between HSI and Department of Homeland Security. I would suggest that both the Department and the Congress should be evaluating HSI based on the quality and objectivity of their work—how well they fulfill their role as a FFRDC.

Thank you for your continued support of the Department of Homeland Security, should you have any further questions please contact Mr. Jeffrey Readinger, in the Office of Legislative Affairs at (202) 447-5462.

Sincerely,



Paul A. Schneider
Under Secretary for Management

Enclosure