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ONE HUNDRED TENTH CONGRESS

U.S. House of Representatives
Committee on Energy and Commerce
Washington, DC 20515-6115

JOHN D. DINGELL, MICHIGAN
CHAIRMAN

October 19, 2007

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The Honorable Paul A. Schneider
Under Secretary for Management
U.S. Department of Homeland Security
c/o Office of Legislative Affairs
Mailstop 0150
Washington, D.C. 20528

Dear Under Secretary Schneider:

Thank you for appearing before the Subcommittee on Oversight and Investigations on Tuesday, September 18, 2007, at the hearing entitled "Nuclear Terrorism Prevention: Status Report on the Federal Government's Assessment of New Radiation Detection Monitors." We appreciate the time and effort you gave as a witness before the Subcommittee.

Under the Rules of the Committee on Energy and Commerce, the hearing record remains open to permit Members to submit additional questions to the witnesses. Attached are questions directed to you from Subcommittee Chairman Stupak. In preparing your answers to these questions, please address your response to Chairman Stupak and include the text of his question along with your response.

In order to facilitate the printing of the hearing record, your responses to these questions should be received no later than the close of business **Wednesday, October 31, 2007**. Your written responses should be delivered to **316 Ford House Office Building** and faxed to **202-225-5288** to the attention of Kyle Chapman, Legislative Clerk. An electronic version of your response should also be sent by e-mail to Mr. Kyle Chapman at kyle.chapman@mail.house.gov in a single Word formatted document.

The Honorable Paul A. Schneider
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Thank you for your prompt attention to this request. If you need additional information or have other questions, please contact Kyle Chapman at (202) 226-2424.

Sincerely,



JOHN D. DINGELL
CHAIRMAN

Attachment

cc: The Honorable Joe Barton, Ranking Member
Committee on Energy and Commerce

The Honorable Bart Stupak, Chairman
Subcommittee on Oversight and Investigations

The Honorable Ed Whitfield, Ranking Member
Subcommittee on Oversight and Investigation

The Honorable Bart Stupak

1. What is the date for the delivery of the report related to the independent review? Have you issued anything in writing that sets forth this date?
2. Has the "Terms of Reference Memo," which was issued on August 3, been modified?
3. Do you agree with the three Government Accountability Office (GAO) recommendations outlined below? If not, please identify specific disagreements and explain why.
 - a. "DHS [Department of Homeland Security] delay Secretarial certification and full-scale production decisions of the [Advanced Spectroscopic Portal monitors] ASPs until all relevant tests and studies have been completed and limitations to these tests and studies have been identified and addressed. Furthermore, results of these tests and studies should be validated and made fully transparent to DOE [Department of Energy], CBP [Customs and Border Protection], and other relevant parties."
 - b. "Once the tests and studies have been completed, evaluated, and validated, DHS [Department of Homeland Security] should determine in cooperation with CBP, DOE, and other stakeholders including independent reviewers, if additional testing is needed."
 - c. "If additional testing is needed, the Secretary should appoint an independent group within DHS, not aligned with the ASP acquisition process, to conduct objective, comprehensive, and transparent testing that realistically demonstrates the capabilities and limitations of the ASP system. This independent group would be separate from the recently appointed independent review panel."
4. On August 3, 2007, you designated Dr. Peter Nanos at the Defense Threat Reduction Agency (DTRA) to head an independent review and supplied a "Terms of Reference Memo."
 - a. On what date did Dr. Nanos begin work on the independent review?
 - b. On what date did he terminate his work on the independent review?
 - c. When did you begin searching for a replacement for Dr. Nanos?
5. In your August 20, 2007, letter to Chairman Dingell, you stated that Dr. Nanos would assist in heading up an appropriate team of experts. On August 21, 2007, the Committee was informed that John Higbee was appointed to head up the independent review. Is there a reason that you did not disclose that Dr. Nanos was leaving the independent review team in your August 20, 2007, letter?
6. Please describe the actual work performed by Dr. Nanos during his brief tenure.
 - a. Why was Dr. Nanos removed as the head of this team only three weeks after he was appointed?

The Honorable Bart Stupak (continued)

- b. Was Dr. Nanos removed by you, or did he resign on his own initiative?
 - c. Please explain any potential conflict of interest that may have led to his resignation.
 - d. How much did DNDO expend for the services of Dr. Nanos on this particular review?
7. On what date did you appoint John Higbee of the Defense Acquisition University to lead the review team? On what date was he terminated?
 8. On what date did you learn that Mr. Higbee was interested in seeking a senior position at DHS? Did he discuss this with you at any point prior to the date he was appointed as the head of the independent review?
 9. On what date did you learn Mr. Higbee might be offered a position at DHS?
 10. What specific due diligence was performed before hiring Mr. Higbee to ensure he had no potential conflict of interest?
 11. Which office within DHS is considering hiring Mr. Higbee? Would that activity fall under your responsibility as Under Secretary?
 12. You testified that Mr. Higbee had no conflict of interest in performing work for DHS on this independent review, even though he was seeking employment from DHS at the same time. Please explain why this did not present an actual or appearance of conflict of interest?
 13. How much did DHS expend on the services of Mr. Higbee for the independent review?
 14. Your testimony states that Mr. George Thompson, Deputy Director of the Homeland Security Institute (HSI), will replace Mr. Higbee as the chair of the independent review, and you will be issuing a Task Order to fund this work. Further, you testified, "We worked with HSI in reviews of other DHS programs. And I was pleased—I've been pleased to date with the type of support we have got."

The Honorable Bart Stupak (continued)

- a. Please identify those activities where you have personally worked with HSI and have been “pleased” with the work they have completed.
- b. Please provide the names of the two individuals who were provided by HSI as potential candidates to lead the independent review team?
- c. What due diligence have you conducted on HSI and the HSI operating contractor, Analytical Services Inc. (ANSER), to ensure they are technically qualified to head this particular review? Given that HSI has had four executive directors in the past three years and repeated reorganizations, how has this turbulence affected HSI’s performance?
- d. What due diligence have you performed on HSI and ANSER to assess whether or not there are potential conflicts of interest?
- e. Are there any individuals employed at HSI or by ANSER who have any conflicts of interest with respect to this independent review?
- f. Which HSI employees will be authorized to work on this independent review? Please provide their names and titles.
- g. Please provide the name(s) of the Federal official(s) who have vetted the members of the independent review team and the HSI staff for conflicts of interest.
- h. What specific conflict of interest criteria were used to assess conflicts of interest? Please describe how far back in time will you examine with respect to potential for conflicts of interest.
- i. What is the maximum value of the Task Order for the HSI-led independent review?
- j. Who will do the actual drafting of the independent review report on ASP testing? Will it be Mr. Thompson, or the subject matter experts who are on the review team?
- k. Will Dr. Ruth David, the director of ANSER, be permitted to review, comment, or edit the independent review?
- l. Does Dr. David have a conflict of interest as the chief executive of ANSER and Executive Advisor at HSI?
- m. Will each independent review team member have the authority to withhold their approval of the final report, if it does not fully and fairly capture their views? Will the final technical and editorial judgments be reserved to HSI staff?

The Honorable Bart Stupak (continued)

- n. Will HSI provide for differing professional opinions in the development of the report? Will dissenting views be published in the final report?
15. Has HSI had any of its employees detailed or embedded in the Office of the Under Secretary for Management or in DNDO during the past 12 months?
16. The DHS contract with ANSER, the company running HSI, expires in 2009, and a decision will be made by DHS in fiscal year (FY) 2008 on whether to re-compete their contract. To the extent that ANSER has made it an organizational priority to avoid a re-compete of this contract, could their economic interest in avoiding a re-compete affect their independence or otherwise affect their ability to give an unvarnished assessment?
17. Is there a protocol for the review to be carried out by the independent review team? If not, why not?
18. What specific data sets will the independent review team examine? Please indicate whether this will include:
- a. Phase 1 data and test plan;
 - b. Phase 3 data and test plan;
 - c. Special test (red team) and test plan; and
 - d. Injection studies to assess the detection limits of ASPs (including the injection study plan).
19. Does the independent review panel have the independence to withhold a recommendation regarding certification or readiness for deployment until the injection studies have been completed and submitted to the panel for their review?
20. Even though the detection limits of the ASPs are not known at this time, DNDO says they do not need the results of the injection studies to proceed with a recommendation for certification. Do you agree? Should the recommendation for certification to the Secretary wait until the injection studies are completed?
21. DNDO says it plans to use the Phase 3 test data in support of certification; however, the test plan says that Phase 3 studies were not designed for a Key Decision Point-3 decision in support of full-scale production. Further, the Phase 3 test plan says the sample sizes are not large enough to provide a high confidence level regarding probability of detection. Given these limitations, is it your view that DNDO should be using Phase 3 studies in support of certification?

The Honorable Bart Stupak (continued)

22. William R. Knocke, spokesman for DHS, wrote an e-mail to a reporter at the Washington Post, which was included in an August 16, 2006, article. It states:

“There is ample reason to be concerned that the GAO lacks the critical experience and expertise necessary for a project of this magnitude. We want to involve the very best experts in the field...that is why the department has asked the Defense Threat Reduction Agency for an independent review of the Advanced Spectroscopic Portal System.”

- a. Was Mr. Knocke authorized to speak for DHS on this matter?
 - b. Did you review this quote before it was issued? If not, who drafted and approved this quote?
 - c. Do you believe that GAO is unqualified to undertake a review of the management of the testing of ASPs?
 - d. Is the DHS perception that GAO lacks needed expertise a factor in the DHS request for an independent review of ASPs?
23. Will GAO have access to staff and documentation to examine the independent review process carried out by HSI?
24. Will the report of this independent review be provided to the Committee and GAO?