



Homeland
Security

August 20, 2007

The Honorable John D. Dingell
Committee on Energy and Commerce
U.S. House of Representatives
Washington, DC 20515

Dear Chairman Dingell:

This responds to your letter of August 10, 2007 concerning the Department of Homeland Security (DHS) Domestic Nuclear Detection Office (DNDO) development of a new type of radiation portal monitor (RPM) known as Advanced Spectroscopic Portal (ASP) that has the potential to significantly harden our defenses against nuclear smuggling.

The ASP program has been the subject of a number of hearings, briefings, field visits, and requests for information, and over the last year at least two Government Accountability Office (GAO) reviews -- with the second GAO review nearing completion. The Department appreciates the need for rigorous review to ensure this critical program satisfies the goal of preventing the smuggling of nuclear materials through our borders. To this end, the Department has responded to requests for information. The Department is itself collecting information to assist the Secretary in determining whether he should certify that there will be a significant increase in operational effectiveness with the procurement of ASP systems -- a certification required by Congress. Part of that effort includes using the analysis of the results of tests conducted earlier this year and the results of field tests of Low Rate Initial Production ASP systems in realistic operational settings at domestic ports of entry of these new systems. DNDO will also use the test results to seek approval of the DHS Investment Review Board (IRB), of which I am the Vice Chair, prior to proceeding to full-scale production of ASP systems at ports of entry.

In addition, given the critical national importance of this effort, I thought it was important to have an independent review of the test procedures and test results to support the DHS decision-making process. I therefore recommended to the Secretary that we conduct an independent review. He agreed with my recommendation and directed me to assemble an appropriate team of technical and programmatic expertise to conduct such an analysis.

Based on your August 10 letter and the August 2 meeting with your staff, there appears to be several areas of misunderstanding related to this effort that I hope to clarify below.

The DHS review is for the purpose of providing the Secretary with sufficient information to make the required certification and is not intended to be a substitute for the GAO review.

The Secretary must collect information to inform his certification decision on this program. I made a recommendation to the Secretary to conduct an independent review, based on past experience where reviews such as this have assisted the decision-maker in making an informed decision. In my opinion, this independent review will provide valuable assistance to the Secretary and to me as the Department Acquisition Executive and Vice Chair of the DHS Investment Review Board as DHS considers the best way forward. The Department of Defense typically uses such review efforts to facilitate decision-making on major programs.

Your letter implies that DHS' effort to conduct an independent review of the ASP program is intended to undermine the pending GAO review. DHS' review of this system is not intended to substitute for GAO's review, nor is it a redundant effort. GAO is an agent of the Congress that appropriately provides information to Congress in support of its oversight function. GAO's efforts do not preclude DHS from conducting its own independent review to support DHS' decision-making process. It is entirely appropriate for DHS to leverage the resources of the executive branch to gather information to make an informed decision on a critical program. DHS may enlist whoever it deems appropriate for consultation in exercising its responsibilities for program execution.

DHS does not question GAO's ability to conduct any review.

The GAO has expertise in government program review and has access to relevant information within the Federal Government, and can amass the required expertise to review a program of interest. In the case of ASP, we understand that NIST is providing technical support for this program review. My recommendation for an independent review was based in part on the need for the Department to have the benefit of specialized technical expertise and a party other than Congress' oversight agent to provide input to support the Department's as we make decisions about this critical program.

The review is not a DTRA review.

Your letter regularly refers to our effort as a "DTRA review." This is not a DTRA-sponsored review. My intent was to leverage some DTRA resources by requesting an individual from DTRA to assemble an appropriate team of technical experts to perform this task. This assignment was to the individual personally, not to DTRA. We fully expected that the majority of members would be from outside of DTRA.

The DHS review effort will be an honest effort to make an independent assessment of this program.

Your August 10 letter implies that because of the participants and timing of the review it will be biased and the outcome of the assessment has been pre-determined. You stated “[u]nlike the new DTRA/DHS review, GAO has not pre-judged the outcome of its assessment....” This statement pre-judges our review efforts. As the Department’s Acquisition Executive and the Vice Chair of the Investment Review Board, I regularly must assess the validity of various departmental programs. I do not pre-judge the viability of a program until I know the facts. Similarly, I expect the participants in this review (who will be appropriately vetted for conflicts of interest) to conduct a rigorous review based on their technical expertise.

A detail response to your 12 questions is attached.

A copy of this letter is being sent to the ranking member of the Committee on Energy and Commerce, ranking member of the Subcommittee on Oversight and Investigations, the Chairman and ranking member of the Committee on Homeland Security, the Chairman and ranking member of the Subcommittee on Homeland Security Committee on Appropriations, Chairman and ranking member of the Senate Committee on Homeland Security and Governmental Affairs and the Director of the Domestic Nuclear Detection Office at the Department of Homeland Security.

Thank you for your continued support of the Department of Homeland Security and DNDO’s programs. If I can be of more assistance on this or other matters, please contact me or Mr. Jeffrey Readinger in the Office of Legislative Affairs at 202-447-5890.

Sincerely,



Paul A. Schneider
Under Secretary for Management

Enclosures

cc: The Honorable Bart Stupak

DHS RESPONSES TO ASP QUESTIONS AND REQUESTS

1. Please provide a copy of the protocols being used by DTRA to conduct this review.

Answer: The protocols are being developed and will be provided when available.

2. Does DHS intend to conduct further testing of ASP performance with various threat and masking material prior to certification?

Answer: No. DNDO has already conducted extensive testing at NTS and NYCT, as well as at manufacturer's facilities. Deployment integration testing and field validation is being conducted by CBP at operational ports of entry (POEs). The results of all these test campaigns will be documented in test analysis reports either already provided to the GAO or that will be provided once the reports are complete. The results from these test campaigns will provide a sufficient technical and operational basis for the Secretary to make the determination to certify that ASP systems provide a significant improvement in operational effectiveness over the presently deployed systems.

Does DNDO intend to conduct further testing after certification?

Answer: Yes. Further testing will be conducted as necessary to support spiral development, enhanced algorithms, new ASP variants, and deployment to new venues.

3. Is it DNDO's recommendation that ASPs be used in primary screening or as a secondary screening device?

Answer: The DHS Appropriations Act for FY 2007 requires the Secretary to certify that ASP represents a significant increase in operational effectiveness. After that assessment is made, it is up to DNDO to work with the customer to determine deployment options. For DHS, that means that CBP will decide on deployment, and whether ASP is deployed into secondary or primary or both. The current plan is to introduce ASP into secondary and, with experience, decide if and when to deploy into primary.

4. Please provide a list of the DTRA review team members, their organizational affiliations, their qualifications, and copies of their completed conflict of interest (COI) and financial disclosure forms. What are the specific criteria to be used in assessing COI? Who is developing these criteria? Please provide their names and titles. Who is conducting the COI reviews?

Answer: As mentioned earlier, this is not a DTRA sponsored review and the team is not yet assembled. I requested that Dr. Nanos from DTRA assist in assembling an appropriate team of technical experts to perform this task. This assignment was to him personally, not to DTRA. We fully expected that the majority of the members would be from outside of DTRA. When the team is assembled, it will be appropriately vetted to ensure there are no inappropriate conflicts of interest.

5. How is the DTRA review team's work being funded? Is this funded by DTRA, or will DHS be reimbursing DTRA? Please provide the interagency agreement between DTRA and DHS that covers the cost of this review. What is the estimated cost of this review?

Answer: The effort will be funded by DHS. The estimated cost of this review is being developed. An interagency agreement will be negotiated to effect this action. A copy of the cost estimate will be provided when issued.

6. The "terms of reference" memorandum indicates that two vendors' ASPs have been deployed so far. Please identify which vendor's ASPs have been deployed. Which vendor's ASPs have not been deployed?

Answer: Raytheon Inc. and Thermo-Fisher Scientific Inc. ASP portal units have been deployed at 8 operational ports of entry for purposes of field validation. Canberra ASP portals have not yet been deployed.

7. The "terms of reference" memorandum indicates there is a "Developed Cost Benefit Analysis," which evaluates the probability of successfully detecting and identifying radiation and nuclear threats, and a comparison between ASP and PVT detection systems. Please provide a copy of the Cost Benefit Analysis.

Answer: The Cost Benefit Analysis (CBA) to be used for Secretarial Certification has not been completed. It is anticipated that this CBA will be completed sufficiently in advance to provide to the Secretary prior to certification.

8. Please provide a copy of all records between DNDO and DTRA regarding the review of ASPs as the date of this letter.

Answer: DNDO has no such records.

9. Please provide copies of all drafts of the “terms of reference” memorandum.

Answer: We have provided the final “terms of reference” memorandum. The only differences between the drafts and the final “terms of reference” document were the date of completion and the name of the DNDO liaison official.

10. Please provide the basis for concluding that GAO is not qualified to review the performance of ASPs or DNDO’s tests. Please provide all internal communications regarding DNDO or DHS’ concerns about the GAO review.

Answer: The question presupposes that DHS made a determination that GAO is not qualified to conduct this review. DHS has not made such a determination.

11. Please provide the name of the individual who provided DHS with a copy of the draft letter prepared by the Homeland Security Committee and the date you received it.

Answer: The draft letter was provided to the DHS congressional staff. This is a common practice given the close coordination that exists between DHS and the principal DHS oversight committees. I reviewed a copy of this letter in late July 2007.

12. In explaining your credentials, you indicated that you had worked as a defense and aerospace consultant. This included work on the Coast Guard’s Deepwater program. Please provide a copy of your consulting agreement, all reports and deliverables related to your contract with the Coast Guard/DHS, and records of any and all payments received by you pursuant to that contract.

Answer: The work I performed for the Coast Guard was performed under a contract that I had with Interactive Technologies Group, Inc. (ITG). ITG was under contract with Defense Acquisition University (DAU). I was a subcontractor to ITG. I am providing a copy of my Master Services Agreement with ITG per your request. The work I performed for DAU included the Rescue 21 program and the Deepwater program. The hours were subsequently increased in their automated invoicing system to cover my effort on the Deepwater Program. The deliverables under my contract were draft documents that were subsequently finalized and submitted to the Coast Guard. DAU owns these documents. Consequently, I recommend that you obtain these documents. I am happy to provide validation of my credentials as I previously did through the confirmation process, but the relevance of my payment records to this inquiry is unclear. I respectfully decline to provide this information at this time.

Master Services Agreement

This Master Services Agreement, hereinafter referred to as the "Agreement", is made effective as of April 10, 2006 by and between the Prime Contractor, Interactive Technologies Group, Inc., hereinafter referred to as "ITG", of 331 West 3rd Street, Suite 140, Davenport, Iowa 52801 and Paul Schneider, hereinafter referred to as "Subcontractor", of 106 Placid Court, Arnold, Maryland 21012.

ITG is engaged in the business of management engineering, interactive technologies, training, and consulting. The Subcontractor will primarily provide technical services to support ITG efforts at a Defense Acquisition University, hereinafter referred to as "Client", location.

A. ITG desires to have the services of the Subcontractor.

B. Subcontractor is willing to provide services to ITG.

Now, therefore, in consideration of the mutual promises, covenants, and agreements contained herein, the parties agree as follows:

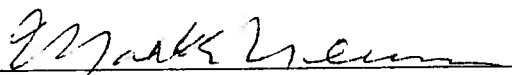
1. **SERVICES PROVIDED BY THE SUBCONTRACTOR.** Subcontractor shall provide services on an "as needed basis". Subcontractor accepts and agrees to provide such services, subject to this agreement, at a level approved by ITG and ITG's management/supervisory personnel. Exhibit A provides a brief description of Services.
2. **BEST EFFORTS OF SUBCONTRACTOR.** Subcontractor agrees to perform faithfully, industriously, and to the best of Subcontractor's ability, experience, and talents, all the services described on the attached Exhibits A, which is made part of this Agreement by reference.
3. **FEES AND PAYMENT TERMS.** Fees are performance based. For acceptable services provided by Subcontractor under this Agreement, ITG will pay Subcontractor the amount listed per hour worked on the project/task as defined in Exhibit A and requested by Client and ITG. This amount shall be paid no later than ten (10) business days after ITG receives payment from Client. The fees outlined in Exhibit A represent the entire compensation for services under this contract. No other fees, compensations, or reimbursements outside of Exhibit A will be considered. As schedule is finalized with task delivery component, Exhibit A is subject to amendment. Subcontractor agrees to record hours per project/task from Exhibit A into ITG's accounting management system weekly.
4. **REIMBURSEMENT OF EXPENSES.** ITG will reimburse Subcontractor for reasonable business expenses, in accordance with ITG policies. Expenses other than those listed in ITG policies, specified in exhibit A, or approved in advance will not be reimbursed.
5. **RELATIONSHIP OF THE PARTIES.** Subcontractor is an independent subcontractor and is neither an employee nor agent of ITG. Nothing contained in this Agreement will be construed as creating an employment relationship between the parties hereto, nor will either party have the right, power, or authority to create any obligation or duty, express or implied, on behalf of the other. Neither party will be responsible for the other's business obligations, including but not limited to, insurance and employment related taxes.

6. **PROPRIETARY RIGHTS.** The work product provided hereunder shall be deemed to be "work made for hire" and Subcontractor agrees that all rights, title, and interests of Subcontractor in and to the work product shall be and are assigned to ITG as its sole and exclusive property, to the extent allowed by the Government. Subcontractor shall provide ITG with all information, suggestions, and recommendations regarding ITG's business, of which Subcontractor has knowledge, which will be of benefit to ITG. Any copyrightable works, ideas, discoveries, inventions, patents, products, or other work product developed in whole or in part by Subcontractor in connection with the services shall be the exclusive property of ITG, to the extent allowed by the Government. Upon request, Subcontractor shall sign all documents necessary to confirm or protect the exclusive ownership of ITG to the Work Product.
7. **CONFIDENTIAL INFORMATION.** In the course of performance of this agreement either party (the "recipient") may learn Confidential Information of the other party (the "owner"). Recipient agrees to disclose such information to its employees only on a need to know basis and agrees not to directly or indirectly, divulge, disclose, or communicate in any manner any information to any third party without the prior written consent of ITG. "Confidential Information" means information, including hard copy or electric form, written or oral, which a reasonable person would consider to be confidential in nature. All Confidential Information will be considered trade secrets and will be entitled to all protections under the law for trade secrets. In no event shall Recipient use the Owner's Confidential Information to reverse engineer or otherwise develop products or services functionally equivalent to the products or services of the Owner. The parties' obligations under this section will survive the termination of this agreement. A violation by Subcontractor of this paragraph shall be a material violation of this Agreement and will justify legal and/or equitable relief. Subcontractor shall:
- A. Sign a non-disclosure statement provided by Client. If Client does not supply, ITG will provide one that will remain on file with the Client and in personnel records maintained by ITG.
8. **TERM/TERMINATION.** This Agreement may be terminated by ITG:
- A. The Subcontractor may terminate this Agreement upon five (5) business days written notice.
 - B. If, for any reason our Client cancels the contract.
 - C. Upon five (5) business days written notice if in its sole discretion ITG determines that Subcontractor has acted dishonestly or carelessly, committed an act of misconduct or acted in any way that adversely affects ITG's reputation.
 - D. If Subcontractor is in material breach of any of its obligations under this Agreement and fails to remedy such breach within five (5) business days of receipt of a written notice by ITG which specifies the material breach.
 - E. If the services provided by the Subcontractor fail to meet a level minimum to industry standards.
9. **ENTIRE AGREEMENT.** This Agreement contains the entire agreement of the parties and there are no other promises or conditions in any other agreement whether oral or written. This Agreement supersedes any prior written or oral agreements between the parties. Amendments to this Agreement must be made in writing and signed by both parties to be binding on either party.
10. **NON-COMPETE.** ITG and Subcontractor agree that marketing and sales efforts could offer additional revenue generating opportunities not anticipated in this agreement. Subcontractor shall not, either directly or indirectly, solicit or contract with any former or current client of ITG, for services that are the same or similar to services offered by ITG, for the duration of this Agreement

and for the (1) year period following the termination thereof. This is not intended to restrict subcontractor from providing services to other customers, subject to provisions of this clause.

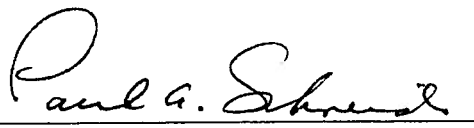
11. **ABANDONMENT.** If Subcontractor abandons this agreement or fails to complete the services as described in Exhibit A without written consent from ITG, it will be considered a breach of contract and ITG may seek any and all legal remedies available.
12. **AMENDMENT.** This Agreement may be modified or amended, if the amendment is made in writing and is signed by both parties.
13. **SEVERABILITY.** If any provisions of this Agreement shall be held to be invalid or unenforceable for any reason, the remaining provisions shall continue to be valid and enforceable. If a court finds that any provision of this Agreement is invalid or unenforceable, but that by limiting such provision it would become valid or enforceable, then such provision shall be deemed to be written, construed, and enforced as so limited.
14. **WAIVER OF CONTRACTUAL RIGHT.** The failure of either party to enforce any provision of this Agreement shall not be construed as a waiver or limitation of that party's right to subsequently enforce and compel strict compliance with every provision of this Agreement.
15. **APPLICABLE LAW.** The laws of the State of Iowa shall govern this Agreement and the resolution of any dispute or claim arising from this Agreement shall be determined solely within the Courts of the Sate of Iowa.

Prime Contractor:
Interactive Technologies Group, Inc.

By: 

Date: 4/24/06
Mark E. Newsome
President & CEO
331 West 3rd Street, Suite 140
Davenport, Iowa 52801
563.391.0230
mnewsome@itgco.com

Subcontractor:

By: 

Date: 4/12/2006
Paul Schneider
Senior Domain Expert
106 Placid Court
Arnold, Maryland 21012
301-858-7223
paul_a_schneider@msn.com

Exhibit A - Deliverables, Payables and Schedule

**Defense Acquisition University
 Consulting and Training Services**

ITG Title: Senior Domain Expert

Deliverables	Quantity	Unit	Unit Price	NTE Amount
Consulting and Training Services				
Travel				
Total				

Subcontractor will:

Provide consulting and training services to include acquisition program assessments, recommendations and corrective action plans. Specific tasks that may be required include:

- Develop study plans, schedules and estimates of resource requirements
- Review and assess acquisition documentation
- Arrange and conduct interviews with government and industry officials involved in the management of acquisition programs and related activities
- Attend reviews and meetings
- Provide informal reports of progress, such as in execution of studies
- Draft and present assessments, recommendations and corrective action plans
- Coordinate activities that may be performed by others involved in studies
- Advise government acquisition officials on the development of acquisition strategies, contracts and other acquisition documentation and plans

Period of Performance: Immediate through 30 Sept 06

POC: David Fitch/Janet Vincent