



Department of Homeland Security Office of Inspector General

Review of the National Bio and Agro-Defense Facility Site Selection Process



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Preface

The Department of Homeland Security (DHS) Office of Inspector General (OIG) was established by the *Homeland Security Act of 2002* (Public Law 107-296) by amendment to the *Inspector General Act of 1978*. This is one of a series of audit, inspection, and special reports prepared as part of our oversight responsibilities to promote economy, efficiency, and effectiveness within the department.

This report addresses issues pertaining to the department's site selection process for the National Bio and Agro-Defense Facility. It is based on interviews with employees and officials of relevant agencies and institutions, direct observations, and a review of applicable documents.

We trust this report will result in more effective, efficient, and economical operations. We express our appreciation to all of those who contributed to the preparation of this report.

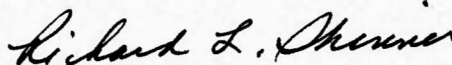

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Abbreviations

A/C/O	Acquisition/Construction/Operations
APHIS	Animal and Plant Health Inspection Service
ARS	Agricultural Research Service
BSL	Biosafety Level
CEQ	Council on Environmental Quality
DHHS	Department of Human and Health Services
DHS	Department of Homeland Security
DOD	Department of Defense
EIS	Environmental Impact Statement
EOI	Expressions of Interest
FAD	Foreign Animal Diseases
FAQ	Frequently Asked Questions
FAR	Federal Acquisition Regulations
HBAC	Kansas (Heartland Bio Agro Consortium)
HHS	Health and Human Services
HSPD-9	Homeland Security Presidential Directive 9
KBA	Kansas Bioscience Authority
NBAF	National Bio and Agro-Defense Facility
NEPA	National Environmental Policy Act

PIADC Plum Island Animal Disease Center
ROD Record of Decision
S&T Science and Technology
USDA U.S. Department of Agriculture

OIG

*Department of Homeland Security
Office of Inspector General*

Executive Summary

In January 2006, the Department of Homeland Security (DHS) requested expressions of interest from government agencies, industry, academia, and other parties and organizations interested in proposing a location to build a new National Bio and Agro-Defense Facility (NBAF). Twenty-nine consortia responded. Following a three-year site evaluation process, on January 16, 2009, DHS selected the Manhattan Campus site in Manhattan, Kansas, as the preferred NBAF site. Members of Congress wrote the Inspector General to express concerns that the NBAF site selection process appeared to be biased and inconsistent with federal law, and requested that we review the process.

DHS carried out the site selection process fairly, and we did not identify any evidence of bias. It adhered to requirements contained in congressional appropriations and the National Environmental Policy Act of 1969. It followed a pre-approved site selection plan consistent with federal guidelines for identifying future government facilities. Federal subject matter experts established sound evaluation criteria that resulted in comprehensive assessments of all prospective sites. DHS informed the public of the importance of in-kind contributions and weighed them fairly. We determined that the former Under Secretary for Science and Technology's (Under Secretary) decisions during the process were not pre-determined.

Meetings between elected officials and the Under Secretary created perceptions that some consortia gained an unfair advantage during the site selection process. We could not substantiate that these meetings affected the site selection process. In addition, we determined that the Under Secretary's appointment of a representative of the Kansas Heartland Bio Agro Consortium to the Homeland Security Science and Technology Advisory Committee was not an attempt to influence, and did not influence, the site selection process. We make no recommendations in this report.

Background

Homeland Security Presidential Directive 9 (HSPD) “*Defense of United States Agriculture and Food*” establishes a national policy to defend the nation’s agriculture and food system against terrorist attacks, major disasters, and other emergencies. HSPD-9 mandates that the Secretary of the Department of Homeland Security accelerate and expand development of current and new countermeasures against the intentional introduction or natural occurrence of catastrophic animal, plant, and zoonotic diseases (disease transmitted from “animal” to humans).

Plum Island Animal Disease Center (PIADC) located on the northern tip of Long Island, NY, performs much of the Nation’s current animal disease research. Built in the 1950s, PIADC is nearing the end of its lifecycle, and it cannot accommodate research on highly pathogenic agents and zoonotic diseases. DHS proposed to build a new National Bio and Agro-Defense Facility (NBAF) to be co-located with the U.S. Department of Agriculture’s Animal and Plant Health Inspection Service--Veterinary Services and Agricultural Research Service. Co-locating the NBAF with USDA will enable research, diagnostics, and responses to outbreaks in agricultural animals from a single facility.

The proposed NBAF will consist of an integrated high-containment Bio Safety Level-4 facility with laboratories for an estimated 250 to 350 scientists and support staff.¹ DHS began designing the facility in 2009, and expects to begin construction of the central utility plant in FY2011. DHS expects construction of the NBAF to be completed by FY2016 and fully operational in FY2018. DHS estimates the project may cost as much as \$775 million.

The DHS Appropriations Act of 2006 (PL 109-90), authorized DHS to select a future NBAF site. In 2006, DHS requested Expressions of Interest (EOI) submissions from federal, state and local government agencies, industry, academia, and other interested parties and organizations. DHS received 29 submissions. It assessed the submissions against four primary site evaluation criteria:

¹ A biosafety level is the extent of the biocontainment precautions an enclosed facility must have to study dangerous biological agents. Levels of containment range from the bio safety level 1 (lowest) to bio safety level 4 (highest).

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- Proximity to research capabilities;
 - Proximity to workforce;
 - Community acceptance/cost sharing/integrated partnerships, and;
 - Acquisition/construction/operations requirements.

An interagency working group composed of technical specialists from DHS, USDA, and other federal agencies developed the criteria and sub-criteria. In August 2006, DHS narrowed the list of sites to 18 sites (one consortium subsequently withdrew). An evaluation committee comprised of federal agency employees visited the 17 sites and recommended four sites to the Under Secretary. The Under Secretary added an additional site.

In July 2007, S&T initiated an Environmental Impact Statement (EIS) process to evaluate the potential environmental consequences of constructing and operating the NBAF at the five sites, plus Plum Island. The sites were:

- South Milledge Avenue site; Athens Georgia;
- Manhattan Campus Site; Manhattan, Kansas;
- Flora Industrial Park Site; Flora, Mississippi;
- Umstead Research Farm Site; Butner, North Carolina; and,
- Texas Research Park Site; San Antonio, Texas.

The Under Secretary decided to include Plum Island because it “appear[ed] to meet the NEPA requirement that the proposing Federal agency evaluate the range of all “reasonable alternatives” to a proposed action.”

During the 60-day EIS scoping period from July to September 2007, DHS sought public comments and conducted public meetings at each site. DHS received more than 3,870 comments during the period. DHS addressed concerns about public health in the event of an accident, potential effects on the population, and the ability of affected communities to evacuate the area. Other issues under review included proximity of animals susceptible to the diseases studied, the environmental effects to biological and natural resources, and the resources required for the construction and operation of the NBAF, including in-kind contributions to offset infrastructure costs. In December 2008, DHS published the NBAF Final EIS. On January 16, 2009, DHS published its Record

of Decision (ROD), which announced the Manhattan Campus site in Manhattan, KS as the preferred NBAF site.

Results of Review

DHS evaluated and rated prospective sites fairly, and we did not identify any evidence of bias. It sufficiently documented the process used to select Manhattan, KS as the future location of the National Bio and Agro-Defense Facility.

DHS complied with guidance contained in congressional appropriations, completed the NBAF Environmental Impact Statement (EIS) in accordance with the National Environmental Policy Act, and followed a department-approved site selection plan consistent with the General Services Administration's procedures for selecting prospective sites for future government facilities. With the assistance of other federal subject matter experts, DHS established sound evaluation criteria that resulted in comprehensive written assessments of all prospective sites. A steering committee led by the Science and Technology's Office of National Laboratories and consisting of senior federal officials, unanimously recommended the Manhattan Campus site to the then-Under Secretary for Science and Technology and as the Selection Authority, he accepted the committee's recommendation.

In July 2007, during DHS' process to select the five final sites, the Under Secretary added the Flora Industrial Park site in Flora, Mississippi and subsequently added the Plum Island site. Although the Under Secretary had the discretion to include additional sites if he determined that it was in the best interest of the government, the addition of the Flora, Mississippi site created the perception that he disregarded the steering committee's analysis in favor of this site. There was no evidence that the Under Secretary favored any particular site for other reasons or inappropriately influenced the steering committee's selections. Increasing the number of finalists from five to six had no effect on which site was ultimately selected.

Members of Congress and some of the consortia questioned whether DHS fully informed the public of the importance of in-kind contributions. DHS clearly stated in the EOI that submissions were the first step in a process, and that it would ask for more

information from the interested consortia during subsequent stages of the site assessment process, which it did. Following responses to the EOI, DHS communicated that it preferred, but did not require, in-kind contributions or other offers of support and it collected and assessed consortia's in-kind contributions as a sub-criterion.

DHS met all National Environmental Policy Act (NEPA) required timeframes for the public comment periods. However, some consortia perceived that DHS hastily considered last-minute comments to the Final Draft EIS, when it issued the Final EIS only days after the comment period closed. We did not determine that the short turnaround time meant DHS did not consider all comments. NBAF officials noted that DHS responded to late comments received after the public comment period to the extent practicable.

There was confusion regarding ground rules for meeting with the Under Secretary. The fact that elected officials met with the Under Secretary during his visits to prospective NBAF sites and at his Washington, DC office, created a perception that some consortia had an unfair advantage in the NBAF site selection. In addition, we determined that the Under Secretary's appointment of a representative of the Kansas Heartland Bio Agro Consortium to the Homeland Security Science and Technology Advisory Committee was not an attempt to influence the site selection process.

DHS Complied with the Appropriation Authority and Other Requirements

DHS complied with guidance contained in Congressional appropriations, completed the NBAF Environmental Impact Statement (EIS) according to the National Environmental Policy Act, and devised and followed a department-approved site selection plan consistent with the General Services Administration's procedures for selecting prospective sites for future government facilities.

DHS' Authority to Select a Future NBAF Site

The Department of Homeland Security Appropriations Act of 2006 P.L. 109-90, authorized DHS to select a future NBAF site. The

appropriation did not include acquiring the land for the site or initiating the construction of the NBAF. The site selection process did not constitute a procurement activity and was not subject to Federal Acquisition Regulations (FAR).

The Act provided DHS \$23 million “to select a site for the National Bio and Agro defense Facility” and to “perform other pre-construction activities.” Fiscal Year 2007 House Committee Report 109-699 stipulated that DHS “submit a project schedule, including expected completion dates and funding requirements for all phases of the project to the Committee within 45 days after the date of enactment of this act.”

In response, in December 2006, DHS proposed a plan to select the future facility location, known as the National Bio and Agro-Defense Facility Project Schedule. The plan included the project schedule, expected completion dates, and a preliminary funding requirement estimate of \$451 million based on a 500,000 square feet facility. The cost estimate did not include the costs of infrastructure or related site-specific characteristics, or for decommissioning the PIADC. According to DHS’ report to Congress, under United States Code Title 41, Section 14, DHS “did not have the statutory authority to acquire the land upon which the NBAF would be built,” and therefore NBAF funding and activities were restricted to site selection and pre-construction activities leading to the identification of a site for a future NBAF.

The NBAF project schedule described the Science and Technology Office of National Laboratories’ responsibility to develop a non-site-specific conceptual design, including the facility concept, technical requirements, and footprint. The schedule established key milestones for the site assessment and selection process and targeted October 2008 for a final decision. DHS envisioned the site selection plan as a multi-tiered, multi-phased approach encompassing the NBAF conceptual design and feasibility study, site visits to prospective locations, and issuing a Notice of Intent for the Environmental Impact Study, among other key activities.

A former Deputy Secretary for DHS directed S&T to pursue in-kind contributions for NBAF sites and infrastructure to help offset future budget appropriations requested for construction. In its report to Congress, DHS discussed the process to accept in-kind or other contributions. DHS is authorized to accept gifts such as in-kind contributions and land under the authority granted the

Secretary pursuant to Title 6 of the United States Code, Section 453, and section 507 of Public Law 108-90, DHS Appropriations Act of 2004.

In subsequent appropriations, Congress directed DHS to conduct further risk and threat analysis. Specifically, DHS' Fiscal Year 2009 Appropriations Act (PL 110 -329) stipulated that none of the available NBAF funds "shall be obligated for construction of a National Bio and Agro-defense Facility...until the Secretary of Homeland Security completes a risk assessment of whether foot-and-mouth disease work can be done safely on the United States mainland and this assessment is reviewed by the Government Accountability Office." As of April 2010, Congress had not appropriated funds for the construction of the NBAF.

DHS Designed and Implemented the NBAF Site Selection Process According to Accepted Federal Practices

DHS based its site selection plan on the General Services Administration's *Site Selection Guide*, and the contributions of an interagency work group comprised of DHS S&T, Health and Human Services (HHS), and the United States Department of Agriculture (USDA) Animal and Plant Health Inspection Service (APHIS) and Agricultural Research Service (ARS). The guide is used by GSA's real estate and design professionals, federal agencies, and stakeholders. The guide instructs users how to acquire future sites, the guide outlines the site selection process, presents best site selection practices, and identifies potential participants, their roles, and when various activities of the process should occur. It provided overarching guidance for the NBAF site review process. DHS' plan described the NBAF mission criteria, sub-criteria, department preferences, and the process it would follow to select a site. DHS program officials responsible for designing and managing the NBAF process adhered to these standards to achieve a fair and transparent site selection process.

DHS convened the interagency work group to develop the NBAF site evaluation criteria by addressing the key requirements for the NBAF facility. The interagency group's goal was to ensure that the future NBAF met the interdependent needs of DHS and each member's respective agency to protect the nation against biological threats to human health and animal agriculture. Federal officials—subject matter experts with biosafety, research, and facility design and operations experience—established the evaluation criteria to

guide the assessment of potential NBAF sites. Everyone we interviewed commented that the criteria were widely accepted by the working group's respective agencies, industry, academia, and other parties and organizations.

DHS Completed the Environmental Impact Statement According to the Council on Environmental Quality Regulations and NEPA

Members of Congress and consortia raised concerns regarding whether the draft and final NBAF Environmental Impact Statements complied with NEPA. They also expressed a concern that the NBAF EIS did not provide enough detailed information to allow for substantive decision-making.

NEPA requires that all federal agencies prepare detailed statements assessing the environmental impact of and alternatives to major federal actions significantly affecting the environment. After a final EIS is prepared and at the time of its decision, a federal agency will prepare a public record of its decision addressing how it incorporated the EIS' findings into the agency's decision-making process, including consideration of alternatives.

DHS documented each step of the site selection and the EIS processes, and maintained a complete administrative record of them. DHS posted records of public meetings, the Draft EIS, the Final EIS, and other supporting documentation and technical studies on its website and made them available to the public. S&T also initiated additional studies and reviews to support the EIS process and its final site selection decision.

DHS assembled experienced federal managers to manage and oversee the EIS process. It hired a contractor to conduct the EIS. We did not review the contractor's technical performance. However, the contractors and the federal employees involved with scoping activities, public meetings, and review of the Draft EIS described it as one of the most comprehensive and transparent EIS projects they had conducted.

We determined that DHS' EIS process complied with the Council on Environmental Quality's regulations and the National Environmental Policy Act of 1969. The Council on Environmental Quality (CEQ) coordinates federal environmental efforts and works closely with agencies and other White House offices in the development of environmental policies and initiatives. Congress

established the council within the Executive Office of the President as part of NEPA and the Environmental Quality Improvement Act of 1970 provided additional responsibilities. DHS adhered to all timeframes for public comment period durations established by NEPA and CEQ regulations and requirements. DHS also evaluated and reported on a “No Action Alternative,” which would keep national biodefense research operations at the Plum Island facility.

On July 31, 2007, as required under NEPA, DHS published in the Federal Register (72 FR 41764-41765) a *Notice of Intent* to prepare the NBAF EIS to evaluate the environmental impacts of constructing and operating the proposed NBAF at one of the reasonable site alternatives. Subsequently, DHS conducted scoping meetings near the six site alternatives, along with one regional meeting in Washington, DC. More than 1,350 people attended the scoping meetings. Nearly 300 people provided oral comments at the public meetings, and DHS received more than 3,870 comments during the scoping period. The 60-day scoping period ended on September 28, 2007. DHS documented the scoping process and related issues in the February 2008, *NBAF EIS Scoping Report*, and posted the report on its website.

On June 27, 2008, as also required under NEPA, DHS published the *Notice of Availability* of the NBAF Draft EIS in the Federal Register (73 FR 36540-36542). The public comment period extended through August 25, 2008. DHS held 13 public meetings in July and August 2008 at the same locations as the aforementioned scoping meetings or at nearby alternate locations. During the 60-day NBAF Draft EIS public comment period, more than 1,770 individuals attended the public meetings and 378 individuals provided DHS oral comments. In total, the public comment period yielded, and DHS analyzed, more than 5,400 individual written and oral comments.

DHS conducted programmatic and planning studies in 2008 in addition to the NEPA requirements. It used relevant information from these reports in the preparation of the NBAF Final EIS and in committee and the Under Secretary’s analysis of the final group of potential sites. These studies and reports were:

- (1) Threat and Risk Assessment;
- (2) Site Cost Analysis;
- (3) Site Characterization Study;

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- (4) Plum Island Facility Closure and Transition Cost Study dated July 2008;
 - (5) The Final Selection Memorandum for Site Selection for the Second Round Potential Sites for the National Bio and Agro-Defense Facility (NBAF); and,
 - (6) The Plum Island Memorandum for the Record.

In August 2008, DHS posted all of the reports on its website (with redactions) except the Threat and Risk Assessment, which was designated For Official Use Only.

In December 2008, as required by 40 CFR 1502.14, DHS identified the NBAF Preferred Alternative Selection and described its rationale in the NBAF Final EIS. In its Preferred Alternative Selection memorandum, which DHS published on its website, DHS described in detail the basis for and process used to select the Preferred Alternative. DHS clarified that according to CEQ regulations the environmentally preferred alternative is the alternative that causes the least impact to the environment and best protects, preserves, and enhances historic, cultural, and natural resources.

In the EIS, DHS identified the “No Action Alternative,” the continued operation of the PIADC, as the environmentally preferred alternative because it would have the least environmental impact—only minor and temporary effects from construction of infrastructure upgrades—in the short term. However, DHS determined that the PIADC site did not satisfy the NBAF’s purpose or mission.

DHS distributed approximately 3,000 copies of the NBAF Final EIS and NBAF Final EIS Executive Summary to members of Congress and other elected officials; federal, state, and local government agencies; native American representatives; public interest groups; public reading rooms; and to individuals. DHS also posted the Final EIS and the Executive Summary on its website.

In January 2009, pursuant to 40 CFR Parts 1500-1508, and DHS Directive 023-01 (Environmental Planning Program), DHS prepared and published a Record of Decision (ROD) on the proposed site, construction, and operation of the NBAF in Manhattan, KS. The ROD presented the information and analysis developed in the NBAF Final EIS including public comments, and

consideration of such factors as national policy, site evaluation criteria, threat and risk assessment, costs, security, and other programmatic requirements. The ROD included written responses to questions, issues and concerns submitted in response to the Final EIS by the consortia offering NBAF sites. The ROD also described DHS' review and consideration of comments and concerns submitted by the public. DHS collected and responded to public comments during the EIS draft development and final EIS publication.

DHS met all Timeframes for the Public Comment Periods Required Under NEPA

Congress raised concerns that DHS did not conform to NEPA requirements during the 30-day comment period. DHS complied with NEPA's comment period requirements. It met all timeframes and expanded comment periods because of the length and complexity of the EIS scoping process. For example, DHS expanded the EIS scoping period deadline by 30 days and the deadline to respond to the Draft EIS by 15 days. Although DHS expanded the public comment periods for the scoping period and the draft EIS, it did not expand the comment period for the final EIS because it believed doing so was unnecessary. DHS made the site selection only days after the final comment period ended. On December 12, 2008, DHS published its Notice of Availability for the NBAF Final EIS in the Federal Register. On January 16, 2009, it published its ROD, only four days after the comment period ended. However, the timing of the ROD fueled perceptions that DHS did not adequately consider comments on the Final EIS. We could not substantiate these perceptions.

DHS Fairly Evaluated and Rated Prospective Sites Using a Qualitative and Quantitative Scoring Process

Members of Congress and some consortia questioned DHS' site selection scoring process. Congress asked us to review how precisely did DHS assess, weigh, and score the criteria and financial support and whether the process was transparent. They also questioned how DHS convened its steering committee and whether its members were qualified.

We evaluated DHS' scoring methodology and determined that it carried out the process fairly and without bias. DHS officials and

other federal subject matter experts with extensive experience in facility design and operations, bioresearch, and bio-safety established evaluation criteria that were sound, widely accepted, and resulted in comprehensive assessments of all prospective sites. DHS also conducted site visits in a fair and transparent manner. We did not determine that the Under Secretary's decision to add two sites during the list of final sites was arbitrary, pre-determined, or an attempt to influence the steering committee. In addition, we determined that DHS informed the public of the importance of in-kind contributions and its process for collecting, assessing, and scoring in-kind contributions from interested consortia was reasonable.

The Scoring/Evaluation Process

DHS executed each phase of the site selection process—evaluation of consortia responses to the EOI and the first cut from 29 to 18 sites, the second cut from 17 to 5 sites, and the EIS process leading to the final decision—in a logical and transparent fashion. DHS documented each step of each committee and its individual members' assessment and scoring process. Except for not disclosing some details supporting the steering committee's evaluation and ranking of the final sites under consideration, DHS clearly articulated its criteria, sub-criteria, and preferences and how it weighed and scored them. The scoring process became more refined and detailed with each round. The Under Secretary considered the recommendations of the steering committee before making his decision.

DHS Reviewed Responses to the Request for Expressions of Interest Thoroughly

On March 31, 2006, DHS received 29 EOI submissions from 24 consortia in response to the EOI. On May 24, 2006, to guide its review of the submissions, DHS approved and issued an Expression of Interest Selection Plan for Potential Sites for NBAF. The plan identified and guided the selection of the steering and criteria evaluation committees and their process to review the prospective NBAF sites who responded to the initial EOI. The plan identified and defined the role of the Selection Authority, to include responsibility for making the final site selection. The June 2006 Results of NBAF EOI Review, described how the committee considered each of the consortia proposals. We determined that

the criteria committees and steering committee adhered to the plan and documented their decisions.

The plan described the composition of the EOI Evaluation Board, which included a steering committee, three criteria committee chairpersons, the criteria committee members as well as their duties and functions. DHS selected federal agency staff with relevant expertise to conduct the NBAF site selection process. All “voting” committee members and chairpersons were federal employees and criteria committee members represented multi-DHS component offices including S&T, Office of the Chief Medical Officer, Management, Safety and Health, Asset Management, and the Coast Guard, as well as agencies from DOD, USDA, and HHS. To ensure objectivity and rigor in the review process, DHS selected members of the steering and criteria committees based on their technical and professional skill backgrounds. DHS asserted that it vetted these individuals for any past or on-going associations with the consortia, allied organizations, or educational institutions within those states who had responded to the EOI.

The plan set forth the site evaluation process, criteria factors and sub-factors derived from NBAF mission requirements. It also defined the adjectival rating system of excellent to unsatisfactory that individual committee members would apply to each site proposal and for consensus committee scoring. It contained a review sheet to rate the sites.

DHS considered each prospective site’s proximity to research capabilities applicable to the NBAF mission, to be the most important criteria. It considered proximity to workforce, acquisition/construction/operations (A/C/O), and community acceptance/cost sharing/integrated partnerships to be equal in importance. The steering committee established the three evaluation committees: research and workforce; community acceptance; and A/C/O.

Table 1: Site Evaluation Criteria

Criteria	Sub-Criteria	Sub-Criteria Weight	Overall Criteria Weight
Research Capabilities	- Existing Research Programs	40%	40%
	- Strength and Breadth of Scientific Infrastructure	30%	
	- Ability to Absorb Additional Research Infrastructure	20%	
	- Experience of Existing Research Programs with B SL3 and/or 4 Agents	10%	
Workforce	- Critical mass of intellectual research capacity	25%	20%
	- Recruiting opportunities for research staff	30%	
	- Local labor force availability for operations staff	30%	
	- Capability to meet mutual aid (police/fire/hospital) requirements to operate	15%	
Community Acceptance	Profile of Public Engagement coverage	40%	20%
	Demonstrate strong, Integrated Mission Support	40%	
	Letters of Support for locating the NBAF Facility at the Site.	20%	
A/C/O	Land acquisition/development potential to locate the facility	35%	20%
	Access to the site by highways and proximity to international airports	15%	
	Lack of environmental constraints	25%	
	Adequate utility infrastructure to support operations of facility	15%	
	Availability of local labor force consideration	10%	

The A/C/O criterion included sub-criteria for: (1) land acquisition and development potential; (2) environmental compatibility, including the presence of existing environmental concerns regarding contamination or environmentally sensitive areas; and (3) adequacy of utility infrastructure. Cost-sharing and in-kind contributions or support was a sub-criteria factor under consideration in the assessment of each prospective site’s community acceptance factor. As part of this sub-criteria, committee members assessed the consortia’s proposed in-kind, matching, or third-party financing contributions. During the EOI submission review, DHS did not collect additional information about possible contributions from the consortia to evaluate their responses.

Individual criteria committee members were responsible for assessing each site’s strengths, weaknesses, and deficiencies against one of the evaluation criteria. After committee members evaluated the sites individually, their entire committee discussed each site and produced a consensus adjectival rating, which ranged from excellent to unsatisfactory. Each criteria committee chairperson was required to report their committee’s rationale for

their adjectival ratings to the steering committee and document their analysis of the strengths, weaknesses, deficiencies and risks to support the assignment of the adjectival rating. Each committee documented its basis for the top ratings under each criterion for the sites selected to continue the process and provided reasons why it did not recommend the other sites for consideration.

The steering committee discussed the individual committee chair's reports and based on numerical scores given to each site, recommended in rank order its site preferences to the Under Secretary. On August 9, 2006, DHS selected 18 of the initial 29 sites for further review and evaluation. The former Under Secretary joined DHS in August 2006, and therefore was not involved in the initial cut from 29 to 18 sites.

DHS Documented its Review of the 18 Sites That Advanced to the Second Round

On December 8, 2006, DHS communicated specific and detailed instructions to the 12 consortia representing the 18 sites still under consideration regarding “(1) additional information to complete the next phase of the evaluations; (2) DHS’ preferences for certain criteria; (3) instructions on how to submit the requested information; and (4) information on the next steps in the process.” Responses were due by February 16, 2007. DHS stated that it would give strong preference to sites:

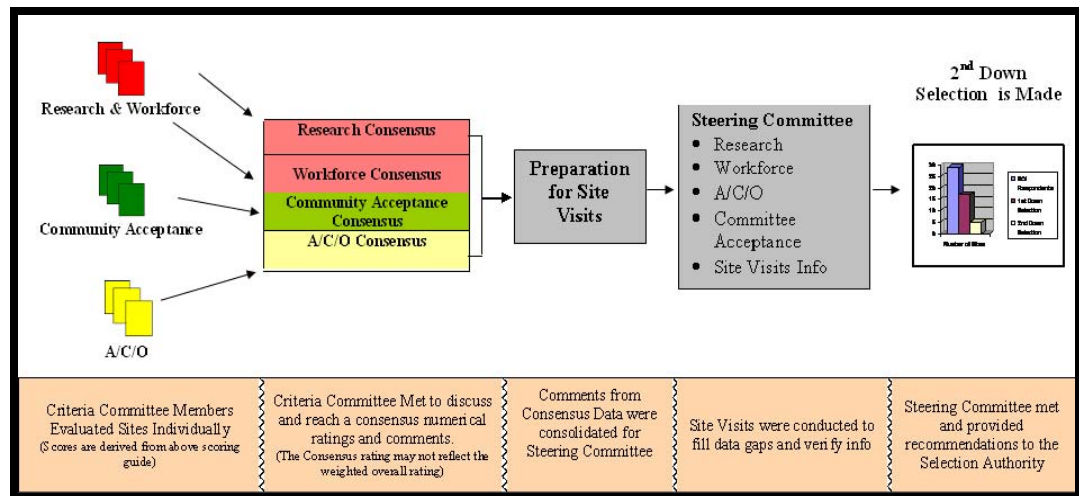
- Within a comprehensive research community with existing research programs in areas related to the NBAF mission requirements (veterinary, medical and public health, and agriculture);
- Within proximity to skilled research and technical staff with expertise in biological and agricultural research facilities operations;
- Within proximity to training programs to develop skilled research and technical staff with the needed expertise;
- With title to a minimum 30-acre site deeded at no cost or minimal cost to the federal government, either by in-kind contribution, sale, or quit claim, where DHS could construct the entire NBAF;
- With in-kind contributions offered by the consortium, state government, local government, or private entities such as deeded land at no cost rather than sale, new utility

provisions and/or upgrades, sewer, electricity, water, and new roadways;

- With a proposing consortium or other organizations that will assist DHS in the NEPA process to conduct the environmental analysis at the proposed site; and,
- With a proposing consortium that demonstrates local and national agriculture stakeholder and community member support or, at a minimum, does not oppose locating the NBAF at the proposed site.

In February 2007, DHS issued its Site Selection Plan for the Second Round Potential Sites for the National Bio and Agro-Defense Facility. The plan specified an eight-step process DHS would follow to review the remaining sites before the second cut, and determine which sites would undergo the NEPA-mandated Environmental Impact Statement process. This plan was very similar to the methodology DHS used to evaluate responses to the EOI. It provided specific detailed descriptions and expectations for each step of the site assessment activity. The steering committee chair oversaw and coordinated the entire evaluation process, and steering committee members each chaired one of the three criteria committees. DHS used the same three criteria committees as discussed above.

Chart 1: 2nd Round Selection Process



However, the second round differed from the first round in several respects. First, DHS sought and considered additional information from the consortia related to the four criteria. Second, DHS evaluation teams visited each site. Third, the criteria committees

not only provided the steering committee an adjectival rating, but also included a numeric rating in the written assessment of each site to evaluate and rank the sites. Finally, the plan called for the steering committee to reduce the list of sites and forward their recommendations to the Selection Authority.

With respect to the numerical rating, S&T developed an evaluation tool—a computer generated database—to provide a transparent process from individual reviewers through the final selection. In addition, the tool helped reviewers track and report the strengths, weakness, and deficiencies of each site, using the criterion. We learned how reviewers used the tool, and we accessed the system to review samples of scoring data from each reviewer.

We confirmed that at least initially, each criteria committee member individually reviewed all of the data and information collected on each site for their respective criteria. Individual reviewers had access to the system to assign a numerical score. These numerical consensus ratings corresponded with an adjectival rating, ranging from excellent (90-100) to marginal (50-69). Reviewers were able to enter comments in the database, as well as address the site's strengths, weaknesses and deficiencies. Reviewers could not see the scores and comments of other committee members during their review.

After assigning scores to each sub-criterion, the system calculated the numerical score to obtain a weighted average. Like the first round, the criteria committees also used consensus ratings. Each criteria committee's members collaborated to review the adjectival, numerical, and written commentary on each of the sites. Based on these discussions, the committees derived a consensus score for each sub-criterion and calculated the weighted average. Committee chairs consolidated the consensus comments and ratings into committee reports for consideration by the steering committee. The steering committee reviewed the criteria committee ratings and evaluation comments, individually and as a group, for each of the potential NBAF sites and identified information to clarify or validate during up-coming site visits.

The evaluation tool was used for pre-site visits and post site visits; both consensus ratings were recorded. After the steering committee went on site visits to confirm and verify information in consortia's proposals, it reevaluated the scores. It could change the scores based on new information uncovered through site visits.

When the steering committee changed a score, it documented its rationale in the evaluation tool. We did not identify any discrepancies in the scores from each criteria committee report and scores in the Final Selection Memorandum, which outlined the steering committee's recommendations.

DHS Reviewed the Alternative Sites to Recommend the Preferred Alternative and Documented Its Analysis

DHS used a four-step process to evaluate the remaining sites and determine the preferred site. It did not use numerical scoring in the final selection. An adjectival rating, represented by color was assigned to each site, ranging from green, excellent to red, satisfactory. During this process, the steering committee reviewed the ratings from the first round selections, evaluated new data, the Threat and Risk Assessment, and EIS; and lastly, determined overall site ratings and rankings. The steering committee did not change any of the "research" and "workforce" scores. However, scores were adjusted for A/C/O and community acceptance given the committee's knowledge of new information on certain sites.

We did not identify any evidence of ratings changes without a corresponding rationale. The steering committee documented all adjustments in the ROD. For example, the steering committee reduced one consortium's rating for community acceptance, given emerging residential opposition. Explanations for such changes were addressed in the ROD.

The Under Secretary Acted within His Authority, and Decisions were Transparent

The plan described in very specific terms the duties and decision process for the Under Secretary as the Selection Authority. It clarified that the Selection Authority shall only base a decision on the information in the first round EOI responses, the responses to DHS' December 2006 "Additional Information Request" memorandum to consortia, and data validation and site observations gathered during the site visits performed by the steering committee for the 18 potential NBAF sites. The Under Secretary could only weigh public records, media reports, or information generated by third party sources approved and reviewed by the steering committee into his final decision.

The Under Secretary also considered the steering committee's recommendations. He based his final selection on information received in each round. He made the final selection after each EIS process was completed and the steering committee made its final recommendation. This was consistent with GSA guidelines, which stated, "Developing support among decision-makers and obtaining project approvals are necessary for the success of the project. Identifying who is responsible for making each decision and recognizing when decisions are needed are equally important."²

DHS documented all of these decisions in the ROD, released to the public on January 16, 2009. It stated that the Under Secretary's decision was determined by:

- (1) The site's ability to satisfy the evaluation criteria published in the EOI;
- (2) The ability to satisfy DHS' preferences (including in-kind contributions to offset infrastructure costs) communicated to all second round potential NBAF sites;
- (3) Confirmation of the site offers for site infrastructure;
- (4) The environmental impacts identified in the NBAF Final EIS; and,
- (5) Information contained in supporting documents including the Threat and Risk Assessment, Site Cost Analysis, Site Characterization Study, and The Plum Island Facility Closure and Transition Cost Study.

DHS reported in the ROD that the EIS analysis indicated that there would be "very little difference in environmental impacts" among the other five site alternatives. The ROD noted "a lack of strong differentiation" between the finalist sites regarding the EIS and the threat and risk assessment." Consequently, the Under Secretary wanted to select a site that would "optimize the capability to diagnose and cure large animal diseases" and was proximate to research capabilities. The Manhattan Campus site in Manhattan, KS:

- Best met its mission needs due to its proximity to Kansas State University, its Colleges of Veterinary Medicine and Agriculture, and the newly constructed Bio-Security Research Institute;

² General Services Administration's Guidelines for Decision Making, p.16.

-
- Was among the least expensive locations;
 - Was environmentally acceptable; and,
 - Demonstrated strong community acceptance for an agro-defense research facility.

DHS Evaluation Team Conducted Site Visits

Members of Congress expressed concerns regarding how DHS researched and assessed the prospective NBAF site workforce, research capabilities, consortia in-kind offers, and state or local support or opposition. During April and May 2007, evaluation teams consisting of DHS, DHHS, and USDA employees visited the 17 NBAF sites. DHS selected its team members based on their evaluation criteria expertise.

The purpose of the visits was to verify the information provided and representations made in the EOI submissions and additional information submitted; view any observable physical conditions and constraints at the proposed site; and, if applicable, view the site's utilities and infrastructure.

We interviewed NBAF evaluation team members who conducted the site visits, and representatives from all of the consortia visited. We reviewed plans developed for the site visits and letters sent to the consortia in advance and we reviewed documents generated as a part of these visits. There was no evidence that the evaluation teams provided an unfair advantage for any consortium

In advance of these visits, DHS asked consortia to prepare updated information to respond to specific questions about their site; advise regarding their site's suitability to the NBAF mission criteria; and confirm offers for in-kind contributions and other support. DHS notified each consortium by letter that the committee visits would be tightly scheduled with an identical timeline and scripted delivery of information that included a:

- 30-minute DHS presentation on the selection process and criteria;
- 2-hour presentation from consortia on the requested site additional information;
- 1 ½ -hours or less for lunch and an evaluation team question and answer session;
- 3-hours or less to tour potential site; and,

-
- 1-hour or less for a wrap-up discussion and final question and answer session.

Also in advance of the site visit, DHS sent each consortium a detailed list of site and consortia-specific questions and issues for clarification. For example, DHS asked consortia for:

- Information on utility easements on the site; details regarding the provision of the required utilities for chilled water, distilled water and steam;
- Their intent regarding in-kind contributions;
- Clarification of plans to provide the necessary linkages to the agricultural and veterinary expertise, infrastructure, and programs required for the NBAF mission;
- Their plans to recruit and retain the necessary scientific staff and workforce at the proposed site; and,
- Challenges of recruiting and maintaining the necessary staff at a rural location.

To ensure consortia received the same information during the committee visit, the steering committee chair made the same presentation at each location. DHS informed consortia that the group would only accept (1) a copy of the consortium's presentation given during the site visit and (2) additional information that clarified or responded to information requested by the committee.

During the scripted presentation, the steering committee chair delivered information from prepared slides on the NBAF criteria and preferences, the selection process, and selection schedule. DHS only accepted written questions from the consortia. DHS posted all questions and its official answers on the NBAF website after concluding the site visits.

The Under Secretary was Authorized to Add Sites for Further Consideration

Members of Congress expressed concern regarding DHS' methodology to identify the final six sites, specifically, that the Under Secretary placed subjective emphasis on certain strengths and weaknesses while appearing to ignore the steering committee's numerical scores. During DHS' July 2007 selection to five sites, the Under Secretary added the Flora Industrial Park Site in Flora,

Mississippi and shortly thereafter added the Plum Island site. Congress questioned whether the Under Secretary actually made a truly objective and merit-based decision. We did not identify any evidence that the Under Secretary favored a particular site. Increasing the number of finalists from five to six had no effect on which site was ultimately selected.

The Under Secretary Disagreed with the Steering Committee's Assessment of Flora, Mississippi Site

On July 10, 2007, DHS issued its Final Selection Memorandum: Site Selection for the Second Round Potential Sites for the NBAF. This memorandum described the process used and provided specific details of the selection process to decide the final list of potential NBAF sites. Although the Under Secretary was responsible for considering the steering committee's recommendations, he also had the authority to include additional sites based on his discretion. In addition to naming the Georgia, Kansas, North Carolina, and Texas sites among the finalists, the Under Secretary also included the Mississippi site, despite the fact that the Steering Committee ranked 13 sites higher. This decision was subjective in that he acted based on what he believed to be a significant strength of the consortium. Although the Under Secretary had the discretion to include additional sites if he determined that it was in the best interest of the government, the addition of the Mississippi site created the perception that he favored a particular site.

In the memorandum, the Under Secretary stated that, "My decision is the result of my integrated assessment and evaluation of the strengths, weaknesses, and risks associated with each proposed site against DHS' evaluation criteria and preferences. The memorandum documents the basis for the selection decision for each site and it provides the following discussion of the decision to include the Flora, MS site in the final group of five (the Plum Island site was added later):

"Based on the final evaluation results presented by the Steering Committee, as reported to and discussed with me by the Steering Committee Chairperson, I evaluated the information submitted by the consortia and personally visited each second round potential NBAF site, giving careful consideration to each of the evaluation criteria and DHS preferences set forth in the Site Selection Plan and

their relative weighting. The adjectival ratings and corresponding numerical scores appearing in the following discussion of the proposed sites (both those I selected and those I did not select as reasonable alternatives in the Notice of Intent for the NBAF Environmental Impact Statement Process) result from the evaluation process followed by the Criteria Committees and the Steering Committee. This evaluation process is described at the beginning of this Final Selection Memorandum. I took the Steering Committee's adjectival ratings and numerical scores for each site into strong consideration; but, as my discussion below illustrates and as the Selection Authority, I at times placed emphasis on certain strengths I saw in a proposal which offset certain weaknesses. On other occasions, I found certain proposal's weaknesses as more insurmountable than the Steering Committee had and, accordingly, those weaknesses offset the proposal's strengths."

Specifically addressing the addition of the Flora, Mississippi site, the evaluation committee scoring, and steering committee recommendation for the Flora, Mississippi site, the Under Secretary stated:

"I note that the Research and Workforce Committees provided the consortium low scores in both the Research and Workforce evaluation categories and, while I take the Committees' concerns to heart, I do not concur with the low scores they assigned for their respective evaluation criteria due to the Battelle led consortium's proposed workaround ("when built, they come") which I found to be a significant strength offsetting what otherwise would have been a significant weakness."

Explaining his rationale for adding the Flora, Mississippi site, the Under Secretary stated that he understood the ramifications of the decision, and reiterated that he sincerely believed the site deserved to be included among the finalists.

The Under Secretary's Addition of the PIADC Site to the Final List of Potential Sites Met NEPA EIS Standards and was Documented

After the NBAF site selection process was underway, the Under Secretary decided to add the Plum Island Animal Disease Center

site to the final group of prospective sites. In a memorandum for the record entitled, An Addendum to the Final Selection Memorandum for the Site Selection for the Second Round Potential Sites for the NBAF, dated November 6, 2008, the Under Secretary documented the basis for that decision. He explained that:

“During the site selection process to identify possible locations for the NBAF, the Department of Homeland Security did not believe it was appropriate to respond to its own Request for an Expression of Interest (EOI) with a property owned and managed by DHS... however, Plum Island is included in the NBAF selection process for evaluation concurrent with the five mainland sites because:

- 1) Plum Island appears to meet the NEPA requirement that the proposing Federal agency evaluate the range of all “reasonable alternatives” to a proposed action; and
- 2) PIADC currently fulfills a portion of the NBAF mission and potentially meets some of the NBAF evaluation criteria, including: Proximity to Research by performing Biosafety Level (BSL)-3/3AG research on three foreign animal diseases (FADs); Proximity to Workforce by having an existing skilled workforce in a BSL-3/3Ag environment; and, Acquisition Construction and Operations by the availability of Government-owned property.”

The addendum explained that DHS’ evaluation of the Plum Island site used the same evaluation process it applied to all of the other sites it considered for the July 2007 second selection of potential NBAF sites. DHS based its assessment on the evaluation criteria it published in the initial Public Notice Soliciting Expressions of Interest (EOIs) for Potential Sites for the NBAF. It was also based on preferences DHS communicated to all second round potential NBAF sites by letter on December 8, 2006, and additional information collected by evaluation team members and the Selection Authority during site visits.

In August 2008, DHS re-convened the criteria evaluation committees who conducted the pre-EIS site selection process for prospective sites. The evaluation committees used the evaluation criteria and preferences to assign scores and ratings to Plum Island.

The steering committee evaluated the criteria committees' scores for Plum Island and included them as part of the addendum.

DHS Informed the Public Regarding NBAF Criteria and Preferences Including In-Kind or Other Support

Congress also raised concerns that DHS did not communicate openly about the importance of in-kind contributions. DHS demonstrated in its earliest planning that it was considering how it would accept in-kind contributions and cost share opportunities for the NBAF. DHS stated in the EOI that submissions were the first step in a process, and that it would ask for more information from the interested consortia during a subsequent stage of the site assessment process, which it did. After receiving responses to the EOI, DHS articulated that it preferred, but did not require, in-kind contributions or other offers of support, and its process for collecting, assessing, and scoring in-kind contributions from interested consortia was reasonable.

In its December 2006 Report to Congress in Response to Senate Appropriations Report 109-273, DHS noted that Section 507 of the *FY 2004 Authorization Act* (P.L. No. 108-90) provided DHS with general gift acceptance authority and authority to accept in-kind contributions (cash, real property, and personal property). Using this gift acceptance authority, in September 2009 DHS provisionally accepted the land offered by the State of Kansas at the Manhattan Campus site. Senior DHS officials identified their preference for in-kind contributions during initial planning meetings.

DHS initiated broad contact with the public regarding the NBAF site opportunity, criteria, and preferences in both the January 19, 2006, EOI, published in the Federal Register and the January 17, 2006, publication of *Federal Business Opportunities*. These announcements provided background on the proposed NBAF and its research mission, defined the four site criteria categories, and described the information required from interested consortia. Initial responses to the EOI were limited to 20 pages. DHS stated that the EOI “was the first step to consider site options” and it “reserved the right to request additional information and clarifications from consortia whose submissions were deemed worthy of further consideration based on the evaluation of their submitted materials.”

DHS accepted questions from the public and interested parties, and prospective responders to the EOI through February 16, 2006. DHS published common questions and answers in a Frequently Asked Questions list available to the public on the website www.dhs.gov/NBAF. The website was the primary method for all official communications to and from interested parties. It was linked to the Federal Register EOI, to NBAF and Plum Island fact sheets, and to descriptions of NBAF next steps and process for public involvement.

In its response to the Frequently Asked Questions, DHS stated that it would consider and evaluate “all viable options for the NBAF location,” as well as “all viable options for how the site was obtained.” It stated that the method of acquiring the facility would be handled under a separate competitive procurement. Asked whether it “will take into consideration cost sharing opportunities,” DHS answered that it “strongly encourages cost sharing including cost sharing in-kind from state and local jurisdictions that could be applied toward construction and operations of the NBAF.”

In December 2006, DHS wrote letters to each of the 17 consortia to communicate its preference for in-kind contributions. Along with detailed information on next steps in the process, DHS advised that it would “give strong preference to consortia with title to a minimum 30-acre site, deeded “at no cost or minimal cost to the Federal Government through in-kind contribution, sale, or quit claim.” In its letter, DHS also stated that it would “give strong preference” to offers of “in-kind contributions, e.g., deeded land at no cost rather than sale, new utility provisions and/or upgrades, e.g., sewer, electricity, water, chilled water, steamed water, etc., and new roadways” offered to DHS by the consortium, state government, local government, or private entities.

In our interviews with representatives of the five final consortia, four consortia stated that DHS had made its preference for in-kind contributions very early in the site selection process. These four were aware of the importance of in-kind at least mid-way through the process. One consortium underscored that there was early and clear communication on this topic and stated “DHS’ interests in in-kind contributions were stated in the very first NBAF site selection process announcement.”

The June 2006, Results of NBAF EOI Review, described the consideration of “in-kind, matching or 3rd party financing

contributions” as one facet of the criteria committee’s Community Acceptance sub-criteria review. DHS described the methods used by criteria committee members to “record, assess, and score in-kind contributions” in the May 24, 2006 *Expression of Interest Selection Plan for Potential Sites for NBAF*.

Meetings with the Under Secretary Created Perceptions That Some Consortia Gained an Unfair Advantage

Under Secretary Visits to Prospective NBAF Sites

During April 2007, the Under Secretary visited the 17 prospective NBAF sites. Letters from the Science and Technology Directorate Chief of Staff were sent to all the consortia in advance of the site visits advising them that the purpose of the site visit was “to gain firsthand knowledge of your consortium's potential NBAF location.” The letters DHS sent to consortia providing guidance on the Under Secretary’s site visits did not prohibit or limit the participation of elected officials. Other than the letters, there were no other written ground rules addressing interaction with elected officials during his visits to prospective NBAF sites. Elected officials did meet with the Under Secretary during his visits to prospective sites. We could not substantiate that these meetings affected the site selection process.

The fact that one or more consortia believed that elected officials were prohibited from such meetings created a perception that elected officials were attempting to, and had, influenced the site selection process. According to the letters to the consortia:

“DHS is managing the site selection similar to a competitive acquisition to ensure that a rigorous selection process is followed. Fairness, integrity, and transparency are extremely important to DHS and we are very serious about treating each consortium fairly and equally. To that end, please respect the request not to provide additional handouts or presentations to Under Secretary Cohen. Under Secretary Cohen's visit is strictly a viewing of the physical site.”

Additional conditions and ground rules established for the visit were communicated in the letter: Consortia were informed that

any information they wished to provide to DHS in response to the Steering Committee's requests for clarifications should be provided directly to the Steering Committee during its site visit. The entire site visit process was closed to the press and consortium representatives were limited to three people. The Under Secretary allocated one hour for each site visit, and DHS arranged his travel to the site.

The Under Secretary told us his main two ground rules were: “No written briefs were to be delivered; and, no “step aside” meetings with politicians. One of the consortia stated it recalled being told verbally by the steering committee chairperson that elected officials were prohibited from attending the Under Secretary site visits. Another consortium stated it was told in advance, who could interact with the Under Secretary or the Steering Committee during site visits. However, other consortia did not recall that a DHS official delivered such a prohibition verbally or in writing.

According to the Under Secretary, each of the consortia “had broken different rules” set forth by DHS in the April 18, 2007, letter, in addition to his request for “no political.” He stated, “all had overstepped the rules set” for the site visit. During the site selection process, consortia were hearing information about each other's Under Secretary site visits. Two consortia stated they heard some consortia did not adhere to DHS’ instructions about access by politicians.

Several consortia and the Under Secretary described short “meet and greet” sessions that were conducted by some national level political figures. Three of the five consortia recall national and local political leaders participating in site visits. Of those three, one consortium stated a local elected official drove the Under Secretary to a few places including the potential NBAF site. The Under Secretary mentioned he also had breakfast with this official without the presence of other individuals.

During another site visit, both the consortium and the Under Secretary mentioned an “overland” view of the potential sites via helicopter. Reports of this visit surfaced in the media, which added to other consortia’ perceptions of partiality and unfairness. The Under Secretary refuted allegations made about this visit, stating “in hindsight, he is still glad he went and “eyeballed” each site to see the lay of the land, to take in any considerations for

threats from terrorism.” The Under Secretary did not observe anything improper during his site visits.

Meetings with the Under Secretary in Washington, DC

The Under Secretary stated he had an open door policy and welcomed the opportunity to speak with consortia representatives or any elected officials in Washington, DC during the selection process. We confirmed there were no restrictions to meeting with the Under Secretary in his office. However, DHS did not formally notify consortia that the Under Secretary would honor meeting requests by consortia or elected officials. All of the final five consortia agreed they did not receive any information on political contact with the Under Secretary and confirmed that the Under Secretary granted elected officials access to him.

Steering Committee members and the Office of General Counsel (OGC) attorney advised were concerned about potential perceptions stemming from these meetings. Despite their warnings, the Under Secretary met with anyone who wanted to see him, and as far as they knew did not decline to meet with any elected official.

We determined that during the site selection process, the Under Secretary met with elected officials representing four of the five final consortia. On some occasions, consortium representatives and elected officials were present. When the Under Secretary met with any elected official, there was an S&T official present. Both the Under Secretary and NBAF program officials described the meetings as very brief, lasting only about 30-45 minutes, and informational only. One DHS official stated, “these meetings were a ‘waste of time’ because the Under Secretary only relayed that DHS was conducting a transparent process.” One consortium representative stated the Under Secretary “insisted they not bring any documents” to the meeting.

The Under Secretary as well as consortia representatives anticipated that political leaders would take an interest in the NBAF process and want to show their support, and the Under Secretary was not concerned about impairing his own objectivity. One DHS official stated elected officials were aggressively pursuing “the opportunity to visit the Under Secretary in Washington to promote the ‘we are fighting for you’ objective to

constituents.” In one instance, there were approximately 20 individuals representing their consortium.

The majority of the final five consortia believed this aspect of the process was “to be expected” but not necessarily “inappropriate.” Yet the lack of established ground rules on visits in Washington created a perception that the Under Secretary afforded some consortia’s delegations greater access. Although the Under Secretary did not seek these meetings and we could not substantiate that these meetings compromised the NBAF site selection process, DHS may have benefitted by limiting the number of times a consortium could meet with the Under Secretary.

The Under Secretary Appointed a Bio Scientist Affiliated with the Kansas (Heartland Bio Agro Committee (HBAC)) to the Homeland Security Science and Technology Advisory Committee

In July 2007, the Under Secretary re-appointed a bio-scientist to the Homeland Security Science and Technology Advisory Committee who was affiliated with the Kansas Heartland Bio Agro Facility Consortium that was bidding for the NBAF site. The committee serves as a source of independent, scientific, and technical planning advice for the Under Secretary. The bioscientist has been a board member of the Kansas BioScience Authority (KBA) since its inception. The KBA and Kansas State University formed the Kansas HBAC. Having been appointed to this advisory position, it raised concerns that not only did the bio-scientists have unique access to the Under Secretary and could leverage that access to help the Kansas consortium, but that the Under Secretary had pre-selected the Kansas consortium. That the bioscientist met with the Under Secretary in his office in March 2007 while representing the Kansas consortium added to the speculation that the site selection process was tainted.

The bioscientist was familiar to S&T officials who recommended his reappointment to the Under Secretary because he had served on the committee previously. Then-Under Secretary Dr. Charles E. McQueary first appointed him to the committee in February 2004 due to his expertise in biosciences, and he served on the committee until it suspended activities in 2006.

We interviewed both the Under Secretary and the bioscientist about his appointment, their relationship, the meeting in the Under

Secretary's office, interaction between the Under Secretary and the committee, and whether they ever discussed the NBAF process during committee meetings. The Under Secretary asserted he was unaware of the member's affiliation with the Kansas consortium, that his appointment had nothing to do with the NBAF mission, and it was an oversight by S&T officials vetting potential committee members. The Under Secretary said he had little interaction with the whole committee and no one-on-one conversations with this committee member. He stated that the committee member never made a direct representation on behalf of the Kansas consortium to him or the steering committee.

As a board member for one of the two entities comprising the Kansas consortium, the committee member described that "listening in on phone calls" was the extent of his involvement in the NBAF process. Based on his description of his involvement, we surmised that he did not spearhead the Kansas HBAC effort and did not attempt to use his position on the committee to advance the interests of the Kansas HBAC. He acknowledged that he attended the meeting with the Under Secretary but did not participate in the discussion. He also stated at the end, he felt like it was a waste of his time because others did most of the talking and he did not contribute anything.

The Under Secretary did not intend to influence the steering committee or undermine the site selection process. In addition, the committee member's ability to influence the outcome of the site selection process was mitigated by the lack of interaction with the steering committee, which recommended the Kansas site to the Under Secretary.

Appendix A

Purpose, Scope, and Methodology

We conducted this review in response to a request from 17 members of Congress representing congressional districts in Texas and Georgia who expressed concerns that the NBAF site selection process appeared to be biased and inconsistent with federal law.

Our objectives were to determine whether S&T completed the NBAF Environmental Impact Statement (EIS) according to the *National Environmental Policy Act*; how the directorate established, assessed, weighed, and scored site evaluation criteria; why S&T did not inform the public of the importance of in-kind contributions in the first public notice requesting Expressions of Interest; and S&T's rationale for allowing the public only 30 days to comment on the final EIS. We also gathered information and data relative to a concern that S&T officials afforded some delegations greater access, or were inappropriately lobbied.

We interviewed S&T staff and contractors, representatives of other federal agencies including the U.S. Department of Agriculture, and others who managed or participated in the NBAF site selection process. These interviews included the NBAF steering and evaluation committees, and the former Under Secretary. We interviewed individuals representing the consortia that submitted Expressions of Interest for the NBAF site.

We collected and reviewed documents and records relevant to the development of the NBAF Environmental Impact Statement, including public meetings and materials requested from consortia during the EIS process. We gathered information and documents relevant to S&T officials' interaction, contacts, and communications with the consortia and elected officials. We traveled to two of the five final sites under consideration—Manhattan, Kansas and San Antonio Texas--to interview concerned parties and collect documents.

We performed fieldwork from August 2009 to May 2010. Our review was conducted under the authority of the *Inspector General Act of 1978*, as amended, and according to the *Quality Standards for Inspections* issued by the President's Council on Integrity and Efficiency.

Appendix B Management Comments to the Draft Report

Under Secretary for Science and Technology
U.S. Department of Homeland Security
Washington, DC 20528

October 6, 2010



**Homeland
Security**

Mr. Richard L. Skinner
Inspector General
U.S. Department of Homeland Security
Washington, DC 20528

Dear Mr. Skinner:

Thank you for the opportunity to review and comment on the Office of Inspector General (OIG) Draft Report: *Review of the National Bio and Agro-Defense Facility (NBAF) Site Selection Process*.

Following a three-year site selection process, the Department of Homeland Security (DHS) considered environmental impacts, public comments on the NBAF Draft Environmental Impact Statement (DEIS) and the Final EIS (FEIS), national policy, evaluation criteria, threat and risk assessments, costs, site characterizations, security, and other programmatic requirements in its decision to site, construct, and operate the NBAF in Manhattan, Kansas. Upon consultation with then Secretaries of Homeland Security and Agriculture, the former Under Secretary for Science and Technology, acting as the site Selection Authority, accepted the unanimous recommendation of the Steering Committee (comprised of Federal employee subject matter experts) and selected Manhattan, KS as the site for the NBAF.

We concur with the OIG draft report conclusions that DHS carried out the site selection process fairly, that OIG found no evidence of bias, that DHS adhered to requirements contained in Congressional appropriations and the National Environmental Policy Act (NEPA), that Federal subject matter experts established sound evaluation criteria that resulted in comprehensive assessments of all prospective sites, and that DHS informed the public of the importance of in-kind contributions and weighed that evaluation factor fairly. OIG determined that the Under Secretary for Science and Technology's decisions during the site selection process were not predetermined and that OIG could not substantiate the allegation, from some of the competing consortia, that meetings between elected officials and the Under Secretary for Science and Technology affected the site selection process. Additionally, OIG found that the Under Secretary's appointment of a representative from the Kansas Heartland Bio Agro Consortium to the Homeland Security S&T Advisory Committee was not an attempt to influence, and did not influence, the site selection process.

We would like to clarify a few points in the OIG report (on pages 5 and 11) relating to the public comment periods during the EIS. DHS does not concur with the OIG's comments that the Department "hastily" considered any last-minute comments to the FEIS when it issued the FEIS "only days after" the comment period closed (page 5 of the OIG report) or that there was a "hasty timing of the ROD" which created perceptions that

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DHS did not adequately consider comments in the EIS (page 11 of the OIG report). On page 11, OIG stated that DHS complied with NEPA comment period requirements and expanded comment periods when it "could." DHS expanded the public comment period for the EIS scoping period by 30 days and the DEIS by 15 days not because DHS "could" do it, but because the length and complexity of the EIS scoping process and DEIS review warranted the additional time. Moreover, DHS issued the Record of Decision (ROD) on January 16, 2009 in the Federal Register, four days after the minimum required 30-day comment period, because additional time was not warranted. All comments were thoroughly reviewed and considered in preparation of the FEIS and the ROD. All on-time comments were addressed in the FEIS and all late comments (received after the public comment period deadline) were collected, placed into issue categories, and responded to in the FEIS as late comments to the extent practicable. None of the late comments substantially differed from the comments received before the close of the comment period. Therefore, neither the FEIS nor the ROD was in fact published in a hasty manner or done so in a manner that could create that perception.

We submitted technical and editorial comments under separate cover for your use in preparing the final report. If you have any questions concerning this response, please contact Mr. James Johnson (Director, Office of National Laboratories) at 202-254-6098 or James.Johnson2@dhs.gov.

Sincerely,



Tara O'Toole, M.D., M.P.H.
Under Secretary for Science and Technology

cc: Mr. Rolf A. Dietrich
Deputy Under Secretary for Science and Technology (Acting)

Mr. James Johnson
Director, Office of National Laboratories

Ms. Nicole Marcson
Assistant General Counsel for Science and Technology, Office of the
General Counsel

NBAF Chronology

2006

- FY 2006- **FY06 Appropriations Bill**
Congress appropriated \$23 Million for NBAF. The Act provided DHS with \$23 million “to select a site for the National Bio and Agro defense Facility” and to “perform other pre-construction activities.”
- January 19, 2006- **Notice of Request for Expression of Interest (EOI) for Potential Sites**
DHS entered Expressions of Interest (EOI) in the Federal Registry requesting submissions from federal, state and local government agencies, industry, academia, and other interested parties and organizations.
- February 2006- **FAQ on DHS Website**
S&T accepted questions from the public and interested parties, and prospective responders to the request for expressions of interest through February 16, 2006. DHS published a Frequently Asked Questions (FAQ) list available to the public on the website www.dhs.gov/NBAF. This document provides more information on cost sharing.
- March 31, 2006- **EOI Submissions Received**
S&T received 29 proposals for potential sites from respondents of the EOI.
- August 9, 2006- **First Down Selection**
After evaluating proposals against four evaluation criteria, DHS narrowed the list of sites from 29 to 18 sites (one site dropped out of the process).
- August 9, 2006- **Non-select Letter**
Notifications of non-selection were sent to AL, AR, AZ, CO, DC, FL, IA, NM, ND, and PA.
- December 8, 2006- **Select Letter/Request for Additional Information**
S&T sent a letter requesting additional information to each of the potential sites (17) selected in the first down selection for further evaluation. DHS communicated its preference for in-kind contributions in this letter.

Appendix C

NBAF Chronology

(February 16, 2007-Deadline for Responses)

2007

- April –May 2007- **Steering Committee Site Visits**
Committees visited the 17 sites to verify submitted information, visit physical site location and infrastructure. In advance of the site visits, each consortium was notified by letter on April 7 that the committee visits would be tightly scheduled with an identical timeline and scripted delivery of information.
- April 2007- **Under Secretary Site Visits**
Under Secretary visited the 17 sites to verify information, visit physical location and infrastructure. In advance of the site visits, each consortium was notified by letter on April 18 that the committee visits would be tightly scheduled with an identical timeline and scripted delivery of information.
- July 2007- **Second Down Selection/Final Selection Memorandum**
After further evaluation of the remaining sites, DHS went from 17 to 6 prospective sites.
- July 31, 2007- **Notice of Intent (NOI)**
S&T issued the Notice of Intent (NOI) to prepare an Environmental Impact Statement (EIS), which initiated the evaluation of the environmental impacts of constructing and operating the NBAF at the five prospective sites, plus the Plum Island site.
- August-Sept 2007- **Scoping Meetings**
DHS sought public comments and conducted scoping meetings at prospective sites. Written and oral comments were collected for the EIS scope.

2008

- February 29, 2008- **“Best and Final” Offer Letter**
S&T provided consortia the opportunity to validate previously submitted in-kind information. Via letter, they requested consortia finalize and confirm in-kind contributions and other support (offsets to infrastructure costs).

Appendix C

NBAF Chronology

(March 31, 2008- Deadline for Responses)

- June 2008- **Draft Version of EIS**
DHS issued NBAF Draft EIS to obtain public comments.
- July-August 2008- **Public Meetings**
S&T conducted these meetings to present criteria used in the selection process and collect public comments on the Draft EIS.
- November 2008- **Steering Committee Site Recommendation**
The Steering Committee presented their unanimous site recommendation to the NBAF Selection Authority (Under Secretary).
- December 2008- **Issued Final EIS/
Preferred Alternative Memorandum**
DHS announced the Manhattan, KS as the preferred alternative site, which was released to the press on December 5, 2008.

2009

- January 16, 2009- **Record of Decision (ROD)**
On January 16, 2009, DHS published its Record of Decision (ROD), which announced the Manhattan Campus site in Manhattan, KS as the preferred NBAF site alternative. The ROD was based on the information and analysis in the NBAF final Environmental Impact Statement, including how each site was rated against the evaluation criteria.

Appendix D
Major Contributors to this Report

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Appendix E
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