Secretary
U.S. Department of Homeland Security
Washington, DC 20528

Homeland Security

January 11, 2008

01-14-08A10:41 RCVD

The Honorable Bennie G. Thompson
Chairman
Committee on Homeland Security
U.S. House of Representatives
H2-176 Ford House Office Building
Washington, D.C. 20515

Dear Chairman Thompson:

Thank you for your December 17, 2007 letter regarding the Committee on Homeland Security's review of the Department of Homeland Security's (DHS) use of Other Transaction Authority (OTA). As you mentioned in your letter, DHS's OTA is granted in Section 831 of the Homeland Security Act of 2002 (P.L 107-296) and codified in Title 6 of the United States Code Subchapter VIII, Part D, Section 391. DHS's OTA is modeled after the Department of Defense's (DOD) authority as defined by 10 U.S.C. 2371 and Section 845 of the Public Law-103-160, November 30, 1993.

In your letter, you asked a number of questions about the Department's decision to award BAE Systems and Northrop Grumman Other Transaction (OT) agreements for the Countermeasures for Man-Portable Air Defense System (Counter-MANPADS) program in February 2004. The following are the Department's responses to your questions:

Who approved the use of OTA for Counter-MANPADS?

Mickey Jones, while serving as the Director, Office of Procurement Operations (OPO), approved the use of the OTA agreements, pursuant to Section 831(a) (2) of Public Law 107-296, for the execution of Phase I and Phase II. Mr. Jones was the only warranted individual authorized to sign OT agreements on behalf of DHS at the time of the award. Mr. Jones also personally awarded the OT agreements. Mr. Jones, and Jim Tuttle, the Counter-MANPADS Program Manager, concluded that the use of OTA was necessary for the Counter-MANPADS program because the program required military technology to be transitioned to the civilian airline industry. This meant that traditional government contractors would have to work with commercial airlines to convert the classified technology to commercial use and to integrate this technology into the commercial operation and maintenance processes used by all commercial airlines (considered non-traditional government contractors).

Was an acquisition strategy (including expected benefits and a rationale for the use of OTA) developed for Counter-MANPADS OT?

An initial acquisition strategy for the program was documented in the OTA file and a solicitation was published in Federal Business Opportunities (FedBizOpps) on a full and open competition basis. For Phase III, the acquisition strategy was modified and approved by the appropriate DHS officials.

Did the OT Contracting Officer (OTCO) obtain a review by legal counsel?

Diane Sidebottom, while serving as an attorney in the Office of the General Counsel supporting the Science and Technology Directorate (S&T), participated in the program formulation and acquisition strategy and approved the use of OTA.

What competitive procedures were used prior to entering into the OTA agreements for Counter-MANPADS?

After the acquisition strategy was approved, S&T issued a solicitation in FedBizOpps for a full and open competition basis. As described in the solicitation, the program would consist of three phases. The three teams selected for Phase I after this full and open competition included non-traditional mixtures of military and commercial contractors that would not have been possible under the Federal Acquisition Regulations (FAR). For example, the United Airlines team included Aeronautical Radio, Inc.; Avisys Inc.; Alliant Techsystems, Inc.; Thales; ARM Tech; Vaisala; and AirDat. The Northrop Grumman Corporation (NGC) team included Federal Express (FedEx) and Northwest Airlines. The BAE Systems team included Delta, Continental, and Honeywell, among other commercial contractors and vendors. The original solicitation informed all potential offerors of the government's intent to use Phase I as a precursor to Phases II and III, with down-select decisions made from the selected contractors from the preceding phase.

Phase I began in January 2004. The focus of Phase I was the performance of broad technology trade studies and feasibility assessments that would culminate in preliminary design reviews for the contractors' unique systems. Twenty-five white papers were submitted in response to the solicitation and five vendors were selected to submit full proposals. The source selection process considered technical approach, managerial skills, experience, and costs. Three contractor teams were selected and awarded OT agreements to pursue these preliminary designs:

Team 1 – United Airlines
Team 2 – NGC teamed with FedEx and Northwest Airlines
Team 3 – BAE Systems of Nashua, New Hampshire, teamed with Delta Airlines

Phase II began on August 1, 2004, for a period of 18 months after a competition was held amongst the three teams selected in Phase I. NGC and BAE Systems teams were selected. These contractors continued to implement program management and system engineering efforts. Both teams had significant participation by their non-traditional contractor team members.

Phase III began in March 2006 after a competition between NGC and BAE Systems. The NGC team was selected because they provided the best value. BAE Systems, however, was also funded to continue development of its basic technology. The NGC team was selected to conduct revenue-generating flights on 11 cargo aircraft managed by FedEx. The BAE Systems prototype needed additional development and was carried forward during Phase III to ensure that the Government had choices in countermeasures technology and to further promote competition. The continuing Phase III efforts will assist DHS in formulating its final recommendation for potential full production options.

Have annual reports been submitted to the Director, Acquisition Policy and Oversight?

The requirement to submit annual reports to the Office of Acquisition Policy and Oversight did not exist at the time of the Phase I and Phase II agreement awards. The DHS OTA Management Directive 0771.1 was issued on July 8, 2005, and established the requirement for annual reporting. Therefore, with the start of Phase III, all agreement modifications made to the OT agreements of NGC and BAE Systems were reported in OPO Procurement Information System Management contract writing system and subsequently have been reported as part of OPO's annual obligation.

As a result of OTA, has the Department acquired Counter-MANPADS? If so, what type of instrument was used to acquire Counter-MANPADS?

Counter-MANPADS have not been acquired for use by the Department. Prototypes have been developed solely for test and evaluation purposes. The program's intent was not to procure production items, rather it was to prove the feasibility of using Counter-MANPADS technology on commercial aircraft and to equip, protect, and defend these large aircraft in civilian airspace using affordable, commercially available technology. Therefore, sufficient prototypes had to be built pursuant to the program in order to install and test them on the commercial aircraft.

Did the OTCO for BAE Systems and Northrop Grumman OTA agreements include a provision in each agreement authorizing the Government Accountability Office (GAO) access to records in certain circumstances?

Yes, each agreement contains a provision authorizing GAO access to records in certain circumstances.

What are the anticipated cost savings of improvement in performance associated with Northrop Grumman and BAE Systems OTs?

Cost avoidance directly attributable to the use of OTA was achieved with both NGC and BAE Systems. During all three phases, NGC contributed an in-kind equivalent of over $27 million, including reduced overhead, facilities capital cost of money, independent research and development (IR&D), and airline out-of-service revenue loss. During the same phases and the upcoming passenger service evaluation, BAE Systems would have contributed an in-kind equivalent of over $20 million savings, resulting from contributions in IR&D, no fees, and no General Administrative costs. It is also noted that over the administrative course of these

agreements, the NGC team has and continues to offer a three percent reduction in their profit rate (typically 12-15 percent) based on approved Defense Contract Audit Agency Forward Pricing Rate Agreements. To date, this translates to an additional $3.4 million saved.

What are the actual costs or schedule savings, or improvements in performance? How does the actual result compare with what would have been expected if a contract were awarded pursuant to the Federal Acquisition Regulation (FAR)?

DHS realized savings in time by the use of OT agreements. After a full and open competition, three six-month OT agreements were awarded for Phase I, which was less than eight weeks after the program was initiated. This rapid schedule was several months shorter than what would be experienced for comparable programs of similar size and complexity using a FAR-based solicitation and contract award. Performance results achieved to date would not have been possible without the OT agreements because the non-traditional contractors (commercial airlines and associated operation and maintenance companies) would not have participated under a FAR-based contract.

The research and development of prototypes to Counter-MANPADS is a state-of-the-art project. Nothing comparable has been done before by DHS, thus there are no FAR-based contracts to compare actual results. This has been a reoccurring challenge in OTs for prototype projects. A RAND Corporation study conducted on behalf of DOD highlighted this problem in the Defense Advanced Research Projects Agency/Air Force High Altitude Long Endurance Program.[1] This program, which adapted existing and evolving military technology for commercial aviation use, led to technological gains; however, DOD could not easily quantify the savings.

The use of OTA for prototype projects will allow DHS to complete a three-phase system demonstration and development program in five to six years compared to similar DOD programs (i.e., the Air Force's Large Aircraft Infrared Countermeasures) that have been programmed since the mid-1990s. DHS's effort, from January 2004 through calendar year 2008, will have spent just under $274 million.

The Department appreciates the continued support of this Committee in regard to OTA. If you have any questions, please contact my office or Donald H. Kent, Jr. Assistant Secretary for Legislative Affairs at (202) 447-5890.

Sincerely,

Michael Chertoff

[1]Rand Corporation's "Innovative Development Executive Summary--Global Hawk and DarkStar: Their Advanced Concept Technology Demonstration Program Experience, Executive Summary (2002)