

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

ELECTRONIC PRIVACY INFORMATION CENTER,)	
)	
Plaintiff,)	
)	
v.)	Civil Action No.: 11-00945 (ABJ)
)	
UNITED STATES DEPARTMENT OF HOMELAND SECURITY,)	
)	
Defendant.)	
_____)	

DEFENDANT’S MOTION FOR SUMMARY JUDGMENT

The Electronic Privacy Information Center (EPIC) brings this action under the Freedom of Information Act (FOIA), 5 U.S.C. § 552, regarding the United States Department of Homeland Security’s (DHS) response to a FOIA request submitted by letter dated November 24, 2010. Specifically, EPIC challenges DHS’s invocation of FOIA Exemptions 3, 4, 5 and 6 to withhold contract proposals and confidential information submitted by third parties; information generated as part of deliberations by the agency; and telephone numbers, email addresses and signatures of private individuals and government employees.

As there are no material facts in dispute, DHS moves under Fed. R. Civ. P. 56 for summary judgment. DHS submits that the attached memorandum of points and authorities, statement of material facts not in genuine dispute, and supporting declarations and exhibits thereto establish that it is entitled to summary judgment.

Respectfully submitted,

RONALD C. MACHEN JR., D.C. Bar #447889
United States Attorney

RUDOLPH CONTRERAS, D.C. Bar #434122
Chief, Civil Division

By: ____/s/_____
JAVIER M. GUZMAN, D.C. Bar #462679
Assistant United States Attorney
555 4th Street, N.W.
Washington, D.C. 20530
Tel: (202) 616-1761
Fax: (202) 514-8780
Javier.Guzman2@usdoj.gov

Of counsel:
Marshall L. Caggiano, Esq.
Office of General Counsel
Science & Technology Directorate
Department of Homeland Security

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

ELECTRONIC PRIVACY INFORMATION CENTER,)	
)	
Plaintiff,)	
)	
v.)	Civil Action No.: 11-00945 (ABJ)
)	
UNITED STATES DEPARTMENT OF HOMELAND SECURITY,)	
)	
Defendant.)	
_____)	

**DEFENDANT’S STATEMENT OF MATERIAL FACTS
NOT IN GENUINE DISPUTE**

Defendant, per Local Civil Rule 7(h), submits that the following material facts are not in genuine dispute.

1. The Homeland Security Advanced Research Projects Agency (HSARPA) is the external funding arm for the Department of Homeland Security Science and Technology Directorate (S&T). *See* HSARPA, Prototype and Technology for Improvised Explosives Device Detection, Broad Area Announcement (BAA) 05-03, at 3 (Dec. 21, 2004) (attached hereto as Ex. 1). HSARPA invests in programs offering the potential for cutting-edge changes in technologies that promote homeland security by, in part, awarding procurement contracts for research or prototypes to public and private entities, businesses and universities. *Id.*

2. In the wake of several overseas bombings of mass transit systems in the early and mid-2000s, HSARPA issued BAA 05-03, announcing the creation of the Prototypes and Technology for Improvised Explosives Device Detection (PTIEDD) Program. BAA 05-03;

Declaration of Rebecca Medina, ¶ 3 (attached hereto as Ex. 2).¹ The program's goals were to develop and improve existing systems capable of detecting explosive compounds in vehicles; and to support research and development of next generation technologies for detecting improvised explosive devices in vehicles, leave-behind packages, or carried by suicide bombers. BAA 05-03 at 3; Medina Decl., ¶ 3. BAA 05-03 invited interested parties to submit proposals for developing working prototypes of explosive detection devices and novel technologies and devices that would advance the state of the art. BAA 5-03 at 3.

3. Bidders were required to register and submit proposals online at a password-protected website. BAA 05-03 at 8-9; Medina Decl., ¶ 4. All data uploaded to the website was protected from public view or download and could only be reviewed by the submitter, authorized government representatives, support contractors and assigned evaluators who had signed appropriate non-disclosure agreements. *Id.* Furthermore, all submissions were considered proprietary/source selection sensitive. *Id.*

4. On May 19, 2006, HSARPA issued an amendment to BAA 05-03 inviting submissions for a prototype electro-imaging device capable of detecting concealed explosives, explosive devices, and other weapons at a minimum standoff distance. Amendment to BAA 05-03 (May 19, 2006) (attached hereto as Ex. 3).² Like submissions under original BAA 05-03, submissions under the amendment were made to a secure website, were considered proprietary/source selection sensitive, and were reviewed by a discrete set of individuals who had signed appropriate non-disclosure agreements. *Id.* at 4, 8-9.

¹ Ms. Medina is a senior policy advisor in the Explosives Division (EXD) within DHS/S&T. She is familiar with EXD past and present projects and supervised the processing of the FOIA request at issue. *Id.*, ¶¶ 1-2.

² Standoff detection is a method of explosives detection meant to reduce the risk of travel system inefficiencies where constant movement of large numbers of people and vehicles are involved. *See* Medina Decl., ¶ 6.

5. Under BAA 05-03, HSARPA awarded two contracts: to Northeastern University (NEU) to assess the state of the art in explosives detection technology and its adaptability to mass transit scenarios, and to Rapiscan, Inc. to explore how its portal-based detector system might be adapted for stand-off detection in mass transit threat scenarios. Medina Decl., ¶¶ 5-6.

6. The contracts ended in 2008 and EXD, having succeeded HSARPA in managing the PTIEDD program, decided to terminate it. Medina Decl., ¶ 7.

7. On November 24, 2010, Plaintiff, the Electronic Privacy Information Center (EPIC), submitted a request under the Freedom of Information Act, 5 U.S.C. § 552 (FOIA), to DHS seeking certain records pertaining to DHS's activities in developing and using explosives detection systems. Specifically, Plaintiff sought seven categories of records:

- a. "All documents detailing plans by federal law enforcement agencies to implement body scanner technology in the surface transportation context."
- b. "All contracts, proposals, and communications with private transportation and shipping companies (including, but not limited to NJ PATH, Amtrak, and Greyhound) regarding the implementation of body scanner technology in surface transit."
- c. "All contracts, proposals, and communications with states, localities, tribes, and territories (and their subsidiaries or agencies) regarding the implementation of body scanners in surface transportation."
- d. "All documents detailing plans by federal law enforcement agencies to use 'Z Backscatter Vans' or similar technology."
- e. "All contracts, proposals, and communications with states, localities, tribes, and territories (and their subsidiaries or agencies) regarding the implementation of 'Z Backscatter Vans' or similar technology."
- f. "All images generated by the 'Z Backscatter Vans' or body scanner technology that has been used in surface transit systems."

Compl., ¶ 16; Medina Decl., ¶ 8.

8. The request was referred to S&T Executive Secretary office, which in turn assigned the request to EXD, specifically, Ms. Medina, for processing. Medina Decl., ¶¶ 8-10. EXD was the only division to possess records potentially responsive to the request because it dealt with detection of explosives and had conducted research on Z Backscatter Vans and body scanner technology. *Id.*, ¶ 10.³ Additionally, the HSARPA employee who had overseen explosives detection research, Dr. Mike Shepherd, had been subsequently reassigned to EXD as part of a reorganization of S&T and had brought his files with him. *Id.*

9. Ms. Medina forwarded the request to the five employees in EXD, including Dr. Shepherd, who work on issues related to standoff detection or mass transit security and asked them whether they were involved in any programs in which Whole Body Imaging, Advanced Imaging Technology, Millimeter Wave, or Backscatter technologies were being implemented as a detection option in the mass transit context. Medina Decl., ¶ 11. Two employees replied affirmatively and three replied negatively. *Id.* Ms. Medina then directed the two employees who replied affirmatively, both of them program managers, to search all paper and electronic files, including emails, for the projects they had. *Id.*, ¶ 12.

10. EXD files, both paper and electronic, are kept by the managers for each program. Paper files are stored in file cabinets or binders by project. Medina Decl., ¶ 12. Electronic files are stored on each program manager's location on the network drive, typically in master folders for each project. *Id.* Emails are stored in these master folders or electronic in-boxes. Older emails are stored in archived locations. *Id.*

11. The program managers searched the cabinets and binders for responsive records in paper form. Medina Decl., ¶ 13. As to the electronic search, they searched the network drive

³ Backscatter scanning is an advanced X-ray imaging technology capable of being used to detect hidden explosives and weapons on transit passengers. *Id.*, ¶ 5.

master folders, email, and email archives using the following search terms to retrieve potentially responsive records: “Whole Body Imager,” “Advanced Imaging Technology,” “Millimeter Wave,” “Backscatter,” and “Z-Backscatter Van.” *Id.* This search was completed within two weeks of Ms. Medina’s request. *Id.*

12. The EXD staff identified 21 records, comprising approximately 1,100 pages of records, as potentially responsive. Medina Decl., ¶ 14. Ms. Medina independently reviewed the records with respect to responsiveness and forwarded them to S&T’s Office of General Counsel to determine whether the documents were subject to any of the FOIA disclosure exemptions and to Exec Sec for processing and release to EPIC of all responsive, non-exempt records. *Id.* Another record, which was initially identified as responsive, was upon further review determined not to be responsive to any of the categories in EPIC’s FOIA request. *Id.*, ¶ 15. Thus, a total of 20 records have been determined to be responsive to the request.

13. As a result of this process, DHS released 15 pages of records in full and 158 pages in part, and withheld 671 pages in full. Medina Decl., ¶ 24. The information withheld was determined to be protected under FOIA Exemptions 3, 4, 5 and 6. *Id.*, ¶¶ 15-22; *see Vaughn Index* (Attachment 1 to the Medina Declaration).⁴

14. In an effort to narrow the issues for judicial review, DHS, subsequent to the filing of this action, has further reviewed the records to determine whether any additional non-exempt information could be reasonably segregated and disclosed. Medina Decl., ¶ 25. As a result, DHS has released three additional records, two that had been withheld in full and one that been withheld in part. DHS has also released reasonably segregable information from three additional

⁴ In *Vaughn v. Rosen*, 484 F.2d 820 (D.C. Cir. 1973), the court provided that agencies should generally prepare an itemized index correlating each withheld document with a specific FOIA exemption and the agency’s justification for non-disclosure.

records withheld in part. *Id.* Thus, DHS is presently withholding 17 records in full or in part. *Id.*

15. DHS has also determined that it erroneously charged EPIC \$7.30 for processing, *i.e.*, conducting a search and review of the request. Medina Decl., ¶ 26. DHS has waived that charge. *Id.*

16. The declaration of Rebecca Medina and accompanying document index set forth the details of the scope of DHS's search, as well as the grounds for all of DHS's withholding decisions under the applicable FOIA exemptions. Defendant also submits the declaration of Peter Modica, Vice President of Product Line Management for Rapiscan Systems, Inc. (attached hereto as Exhibit 4), setting forth additional grounds for withholding certain Rapiscan records under Exemption 4).

Respectfully submitted,

RONALD C. MACHEN JR., D.C. Bar #447889
United States Attorney

RUDOLPH CONTRERAS, D.C. Bar #434122
Chief, Civil Division

By: ___/s/_____
JAVIER M. GUZMAN, D.C. Bar #462679
Assistant United States Attorney
555 4th Street, N.W.
Washington, D.C. 20530
Tel: (202) 616-1761
Fax: (202) 514-8780
Javier.Guzman2@usdoj.gov

Of counsel:
Marshall L. Caggiano, Esq.
Office of General Counsel
Science and Technology Directorate
Department of Homeland Security

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

ELECTRONIC PRIVACY INFORMATION CENTER,)	
)	
Plaintiff,)	
)	
v.)	Civil Action No.: 11-00945 (ABJ)
)	
UNITED STATES DEPARTMENT OF HOMELAND SECURITY,)	
)	
Defendant.)	
_____)	

**MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF
DEFENDANT’S MOTION FOR SUMMARY JUDGMENT**

The Electronic Privacy Information Center (EPIC) has sued the Department of Homeland Security (DHS) under the Freedom of Information Act (FOIA), 5 U.S.C. § 552 (FOIA), seeking release of records concerning the use of explosives detection systems, known as whole body imaging and backscatter technology, in the mass transit context. Because DHS has conducted an adequate search and produced all responsive documents that are not exempt from release under FOIA, as demonstrated by the declarations and *Vaughn* index submitted herewith, summary judgment should be granted in Defendant’s favor.

FACTUAL AND PROCEDURAL BACKGROUND

I. The PTIEDD Program

The Homeland Security Advanced Research Projects Agency (HSARPA) is the external funding arm for the DHS Science and Technology Directorate (DHS/S&T). HSARPA invests in programs offering the potential for cutting-edge changes in technologies that promote homeland security by, in part, awarding procurement contracts for research or prototypes to public and

private entities, businesses and universities. Def.'s Statement of Genuine Facts Not in Material Dispute (Undisputed Facts), ¶ 1.

In the wake of several overseas bombings of mass transit systems in the early and mid-2000s, HSARPA in December 2004 issued Broad Agency Announcement 05-03, announcing the creation of the Prototypes and Technology for Improvised Explosives Device Detection (PTIEDD) Program. The program's goals were to develop and improve existing systems capable of detecting explosive compounds in vehicles; and to support research and development of next generation technologies for detecting improvised explosive devices in vehicles, leave-behind packages, or carried by suicide bombers. BAA 05-03 invited interested parties to submit proposals for developing working prototypes of explosive detection devices novel technologies and devices that would advance the state of the art. In May 2006, HSARPA amended BAA 05-03 to invite submissions for a prototype electro-imaging device capable of detecting concealed explosives and weapons. *Id.*, ¶¶ 2, 4.

DHS assured all bidders that their proposals would be treated with confidentiality. Bidders were required to register and submit proposals online at a password-protected website. All data uploaded to the website was protected from public view or download and could only be reviewed by the submitter, authorized government representatives, support contractors and assigned evaluators who had signed appropriate non-disclosure agreements. Furthermore, all submissions were considered proprietary/source selection sensitive. *Id.*, ¶ 3.

HSARPA awarded two contracts under BAA 05-03: to Northeastern University (NEU) to assess the state of the art in explosives detection technology and its adaptability to mass transit scenarios, and to Rapiscan, Inc. to explore how its portal-based detector system might be adapted

for standoff detection in mass transit threat scenarios.¹ The contracts ended in 2008 and S&T's Explosives Division (EXD), having succeeded HSARPA in managing the PTIEDD program, decided to terminate it. *Id.*, ¶¶ 5-6.

II. FOIA Request at Issue

On November 24, 2010, EPIC submitted a FOIA request to DHS seeking certain records pertaining to DHS's activities in developing and using explosives detection systems.

Specifically, Plaintiff sought seven categories of records:

1. "All documents detailing plans by federal law enforcement agencies to implement body scanner technology in the surface transportation context."
2. "All contracts, proposals, and communications with private transportation and shipping companies (including, but not limited to NJ PATH, Amtrak, and Greyhound) regarding the implementation of body scanner technology in surface transit."
3. "All contracts, proposals, and communications with states, localities, tribes, and territories (and their subsidiaries or agencies) regarding the implementation of body scanners in surface transportation."
4. "All documents detailing plans by federal law enforcement agencies to use 'Z Backscatter Vans' or similar technology."
5. "All contracts, proposals, and communications with states, localities, tribes, and territories (and their subsidiaries or agencies) regarding the implementation of 'Z Backscatter Vans' or similar technology."
6. "All images generated by the 'Z Backscatter Vans' or body scanner technology that has been used in surface transit systems."²

Id., ¶ 7.

DHS referred the request to the S&T Executive Secretary office, which in turn assigned the request to EXD because it was the only division to possess records potentially responsive to

¹ Standoff detection is a method of explosives detection meant to reduce the risk of travel system inefficiencies where constant movement of large numbers of people and vehicles are involved. *Id.*, ¶ 4 n.2.

² Backscatter scanning is an advanced X-ray imaging technology capable of being used to detect hidden explosives and weapons on transit passengers. *Id.*, ¶ 8 n.3.

the request because it dealt with detection of explosives and had conducted research on Z Backscatter Vans and body scanner technology. Additionally, the HSARPA employee who had overseen explosives detection research, Dr. Mike Shepherd, had been subsequently reassigned to EXD as part of a reorganization of S&T and had brought his files with him. *Id.*, ¶ 8.

Rebecca Medina, an EXD Senior Policy Advisor familiar with the division's various projects, supervised the search and processing of EPIC's request. Ms. Medina forwarded the request to the five employees in EXD, including Dr. Shepherd, who work on issues related to standoff detection or mass transit security and asked them whether they were involved in any programs in which Whole Body Imaging, Advanced Imaging Technology, Millimeter Wave, or Backscatter technologies were being implemented as a detection option in the mass transit context. Two employees replied affirmative and three replied negatively. Ms. Medina then directed the two employees who replied affirmatively, both of them program managers, to search all paper and electronic files, including emails, for the projects they had. *Id.*, ¶¶ 8-9.

EXD files, both paper and electronic, are kept by the managers for each program. Paper files are stored in file cabinets or binders by project. Electronic files are stored on each program manager's location on the network drive, typically in master folders for each project. *Id.* Emails are stored in these master folders or electronic in-boxes. Older emails are stored in archived locations. *Id.*, ¶ 10.

The program managers searched the cabinets and binders for potentially responsive records in paper form. They searched the network drive master folders, emails, and email archives using the following search terms to retrieve potentially responsive records in electronic form: "Whole Body Imager," "Advanced Imaging Technology," "Millimeter Wave,"

“Backscatter,” and “Z-Backscatter Van.” *Id.* This search was completed within two weeks of Ms. Medina’s request. *Id.*, ¶ 11.

The EXD staff identified 21 records as potentially responsive to EPIC’s request. Ms. Medina independently reviewed the records with respect to responsiveness and forwarded them to S&T’s Office of General Counsel to determine whether the documents were subject to any FOIA exemptions and to Exec Sec for processing and release to EPIC of all responsive, non-exempt records. Another record, which was initially identified as responsive, was upon further review determined not to be responsive to any of the categories in EPIC’s FOIA request. Thus, a total of 20 records have been determined to be responsive to EPIC’s FOIA request. *Id.*, ¶ 12.

As a result of this process, DHS released 15 pages of records in full and 158 pages in part, and withheld 671 pages in full. DHS has invoked FOIA Exemptions 3, 4, 5 and 6 to withhold information. *Id.*, ¶ 13; *see Vaughn Index* (Attachment 1 to Medina Declaration).

In an effort to narrow the issues for judicial review, DHS, subsequent to the filing of this action, has further reviewed the withheld records to determine whether any additional non-exempt information could be reasonably segregated and disclosed. As a result, DHS has released three additional records, two that had been withheld in full one and one that had been withheld in part. DHS has also released reasonably segregable information from three additional records withheld in part. Thus, DHS is presently withholding 17 records in full or in part. *Id.*, ¶ 14.³

LEGAL STANDARD

Summary judgment is appropriate when the pleadings and evidence “show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law.” Fed. R. Civ. P. 56(c); *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 247 (1986);

³ DHS has also determined that it erroneously charged EPIC \$7.30 for processing, *i.e.*, conducting a search and review of the request. DHS has waived that charge. *Id.*, ¶ 15.

Celotex Corp. v. Catrett, 477 U.S. 317, 322 (1986); *Tao v. Freeh*, 27 F.3d 635, 638 (D.C. Cir. 1994). The party seeking summary judgment must demonstrate the absence of a genuine issue of material fact. *See Celotex*, 477 U.S. at 248. A genuine issue of material fact is one that “might affect the outcome of the suit under the governing law.” *Anderson*, 477 U.S. at 248. Once the moving party has met its burden, the nonmoving party “may not rest upon the mere allegations or denials of his pleading, but . . . must set forth specific facts showing that there is a genuine issue for trial.” *Anderson*, 477 U.S. at 248.

FOIA cases are typically and appropriately decided on motions for summary judgment. *Citizens for Responsibility & Ethics in Washington (CREW) v. Dep’t of Labor*, 478 F. Supp. 2d 77, 80 (D.D.C. 2007); *Wheeler v. Dep’t of Justice*, 403 F. Supp. 2d 1, 5-8 (D.D.C. 2005). An agency is entitled to summary judgment in a FOIA case if it demonstrates (1) that it has conducted an adequate search for responsive records and (2) each responsive record that it has located either has been produced to the plaintiff or is exempt from disclosure. *See Weisberg v. Dep’t of Justice*, 627 F.2d 365, 368 (D.C. Cir. 1980). To meet its burden, a defendant may rely on reasonably detailed and non-conclusory declarations. *See McGehee v. CIA*, 697 F.2d 1095, 1102 (D.C. Cir. 1983); *Vaughn v. Rosen*, 484 F.2d 820, 826-27 (D.C. Cir. 1973); *Wheeler*, 403 F. Supp. 2d at 6.

In determining the adequacy of a search, courts are guided by principles of reasonableness. *Campbell v. Dep’t of Justice*, 164 F.3d 20, 27-28 (D.C. Cir. 1998). The agency must explain the “scope and method of the search” in “reasonable detail[,]” but need not provide “meticulous documentation [of] the details of an epic search.” *Perry v. Block*, 684 F.2d 121, 127 (D.C. Cir. 1982). The agency must show “that it made a good faith effort to conduct a search for the requested records, using methods which can be reasonably expected to produce the

information requested.” *Oglesby v. Dep’t of the Army*, 920 F.2d 57, 68 (D.C. Cir. 1990). “There is no requirement that an agency search every record system.” *Id.* Rather, “the issue to be resolved is not whether there might exist any other documents possibly responsive to the request, but rather whether the *search* for those documents was *adequate*.” *Weisberg v. Dep’t of Justice*, 745 F.2d 1476, 1485 (D.C. Cir. 1984). On this issue, courts accord agency affidavits “a presumption of good faith, which cannot be rebutted by ‘purely speculative claims about the existence and discoverability of other documents.’” *SafeCard Servs., Inc. v. SEC*, 926 F.2d 1197, 1200 (D.C. Cir. 1991) (quoting *Ground Saucer Watch, Inc. v. CIA*, 692 F.2d 770, 771 (D.C. Cir. 1981)). In short, a search’s adequacy is measured by the methods employed, not by the results obtained. *Weisberg*, 745 F.2d at 1485.

The agency must also justify any records withheld subject to FOIA’s statutory exemptions. FOIA “represents a balance struck by Congress between the public’s right to know and the government’s legitimate interest in keeping certain information confidential.” *Ctr. for Nat’l Sec. Studies v. Dep’t of Justice*, 331 F.3d 918, 925 (D.C. Cir. 2003). As such, while the statute “affords the public access to virtually any federal government record that FOIA itself does not specifically exempt from disclosure,” *EPIC v. Dep’t of Homeland Sec.*, 384 F. Supp. 2d 100, 106 (D.D.C. 2005), Congress recognized “that legitimate governmental and private interests could be harmed by release of certain types of information and provided nine specific exemptions under which disclosure could be refused.” *FBI v. Abramson*, 456 U.S. 615, 621 (1982). These exemptions are specified in 5 U.S.C. § 552(b).

The agency has the burden of justifying nondisclosure based on any exemptions. *EPIC*, 384 F. Supp. 2d at 106. It may meet this burden by providing affidavits and, if necessary, an index that provides an adequate description of each withheld document or portion thereof, and

how each asserted exemption applies. *Id.* “[T]he Court may award summary judgment solely on the basis of information provided by the department or agency in declarations when the declarations describe ‘the documents and the justifications for nondisclosure with reasonably specific detail, demonstrate that the information withheld logically falls within the claimed exemption, and are not controverted by either contrary evidence in the record nor by evidence of agency bad faith.’” *CREW*, 478 F. Supp. 2d at 80 (quoting *Military Audit Project v. Casey*, 656 F.2d 724, 738 (D.C. Cir. 1981)).

ARGUMENT

I. DHS CONDUCTED AN ADEQUATE SEARCH FOR RESPONSIVE DOCUMENTS.

As outlined in the attached declaration of Rebecca Medina, Senior Policy Advisor in EXD, DHS conducted an adequate search that was reasonably expected to produce the information requested. Upon initial receipt of EPIC’s FOIA request, which expressly referred to body scanner technology and Z Backscatter Vans, DHS referred the request to EXD, because “as the division that dealt with explosives detection (including body scanner technology and Z Backscatter Vans), it was the only one to possess records responsive to EPIC’s FOIA request.” Medina Decl., ¶ 10. Additionally, Dr. Mike Shepherd, the employee who had overseen explosives detection projects, had been reassigned from HSARPA to EXD as part of a reorganization of S&T and had brought his files with him. *Id.*; see *Hornbostel v. Dep’t of Interior*, 305 F. Supp. 2d 21, 26-27 (D.D.C. 2003) (finding search adequate where FOIA request involved discrete project dealt with primarily by one division within agency and scope of search was relevant division employees’ electronic and paper records followed by review of retrieved documents by FOIA supervisors).

Ms. Medina forwarded the request to the five employees in EXD, including Dr. Shepherd, who work on issues related to standoff detection or mass transit security and asked them whether they were involved in any programs in which Whole Body Imaging, Advanced Imaging Technology, Millimeter Wave, or Backscatter technologies were being implemented as a detection option in the mass transit context. Medina Decl., ¶ 11. Two employees replied affirmative and three replied negatively. *Id.* She then asked the two employees to search all paper and electronic files, including emails, for the projects they had. *Id.*, ¶ 12.

As explained by Ms. Medina, paper and electronic files are kept by the managers for each program. Paper files are stored in file cabinets or binders by project. Electronic files are stored on each program manager's location on the network drive, typically in master folders for each project. Emails are stored in these master folders or electronic in-boxes. Older emails are stored in archived locations. *Id.*

The two employees, both program managers, searched the cabinets and binders for potentially responsive paper records. *Id.*, ¶ 13. They searched the network drive master folders, emails and email archives using the following search terms to retrieve potentially responsive electronic records: "Whole Body Imager," "Advanced Imaging Technology," "Millimeter Wave," "Backscatter," and "Z-Backscatter Van." *Id.* The search and retrieval were completed within two weeks of Ms. Medina's request. *Id.*

The EXD staff provided 21 records, comprising approximately 1,100 pages of records for review. *Id.*, ¶ 14. Ms. Medina independently reviewed the records to assess their responsiveness to EPIC's request and forwarded them to S&T's Office of General Counsel (OGC) to determine

whether the records were subject to any of the disclosure exemptions under FOIA and to Exec Sec for processing for release to EPIC of all responsive, non-exempt records. *Id.*⁴

In sum, DHS searched the only component reasonably likely to have responsive records, Ms. Medina tasked the most knowledgeable employees to conduct a search, and these employees searched electronic and paper files and emails for responsive records. The agency's search was therefore adequate. *CREW v. Dep't of Justice*, 535 F. Supp. 2d 157, 162 (D.D.C. 2008) (finding search adequate where agency explained how "all files likely to contain responsive materials were searched, by whom they were searched, and in what manner"); *Landmark Legal Found. v. EPA*, 272 F. Supp. 2d 59, 66 (D.D.C. 2003) (finding search adequate where agency explained "how the FOIA request was disseminated within [agency's] office and the scope of the search, which particular files were searched, and the chronology of the search"); *Ferranti v. ATF*, 177 F. Supp. 2d 41, 47 (D.D.C. 2001) ("Affidavits that include search methods, locations of specific files searched, descriptions of searches of all files likely to contain responsive documents, and names of agency personnel conducting the search are considered presumptively sufficient."), *summary affirmance granted*, No. 01-5451, 2002 WL 31189766, at *1 (D.C. Cir. Oct. 2, 2002).

II. THE WITHHOLDINGS BY DHS WERE PROPER.

DHS processed the responsive records in accordance with FOIA's requirements and withheld certain information in full or in part pursuant to the exemptions established by 5 U.S.C. § 552(b)(3), (b)(4), (b)(5), and (b)(6). As explained below, DHS properly invoked all exemptions and released to EPIC all information reasonably segregable from the exempt records, and is therefore entitled to summary judgment.

⁴ As Ms. Medina explains in her declaration, one record, entitled "DHS S&T Countermeasures Test Beds (CMTB) Rail Security Pilot Final Report," was, upon further review, determined not be responsive to any of the categories of records sought by EPIC. *Id.*, ¶ 15. That record therefore is not at issue.

A. DHS Properly Withheld Competitive Proposal Information under Exemption 3

DHS is withholding four records in full under FOIA Exemption 3, which permits an agency to withhold information that is:

specifically exempted from disclosure by statute . . . if that statute

- (A)(i) requires that the matters be withheld from the public in such a manner as to leave no discretion on the issue; or
- (ii) establishes particular criteria for withholding or refers to particular types of matters to be withheld.

5 U.S.C. § 552(b)(3); Medina Decl., ¶ 18; *Vaughn* Index, Record Nos. 1-4. The Court’s review of an agency’s withholdings under Exemption 3 is extremely limited. Specifically, “[w]hen analyzing whether the defendant is entitled to invoke Exemption 3, the court need not examine the detailed factual contents of specific documents withheld; rather, the sole issue for decision is the existence of a relevant statute and the inclusion of withheld material within the statute’s coverage.” *James Madison Project v. CIA*, 607 F. Supp. 2d 109, 126 (D.D.C. 2009) (internal quotation marks omitted).

The National Defense Authorization Act of 1997 specifically prohibits the disclosure of “a proposal in the possession or control of an agency” to any person under FOIA, so long as that proposal is not set forth or incorporated by reference in a contract entered into between the agency and the contractor that submitted the proposal. 41 U.S.C. §§ 253b(m)(1), (2). A “proposal” is defined as “any proposal, including a technical, management or cost proposal, submitted by a contractor in response to the requirements of a solicitation for a competitive proposal.” *Id.*, § 253b(m)(3).

DHS has withheld the subject records on the grounds that they constitute competitive proposal information submitted in response to BAA 05-03. Two of the records are proposal

submitted by Rapiscan for work on Phases I and II of “Non-Intrusive Detection of Suicide Bombers.” *Vaughn* Index, Record Nos. 1-2. The other two records are proposals submitted by NEU for “BomDetec – Wide Area Surveillance and Suicide Bomber Detection at > 10M.” *Id.*, Record Nos. 3-4. The contents of these proposals are not set forth or incorporated into the contracts awarded to Rapiscan or NEU under BAA 05-03. Medina Decl., ¶ 18. They are therefore properly withheld under Exemption 3. *Hornbostel*, 305 F. Supp. 2d at 30.

B. DHS Properly Withheld Confidential Commercial and Financial Information under Exemption 4

DHS is withholding nine records, five in full and four in part, under FOIA Exemption 4, which exempts from disclosure “[1] trade secrets and commercial or financial information [2] obtained from a person and [3] privileged or confidential.” 5 U.S.C. § 552(b)(4) (bracketed material added); Medina Decl., ¶¶ 19-21; *Vaughn* Index, Record Nos. 6-10, 12, 15-17; *see generally* Rapiscan Decl. As explained below, the withheld records meet each of these criteria.

First, the information contained in the documents was obtained “from a person,” which is defined as “an individual, partnership, corporation, association, or public or private organization other than an agency.” 5 U.S.C. § 551(2). The withheld information was provided to DHS by Rapiscan, a corporation, which qualifies as a “person” under FOIA. *Pub. Citizen Health Res. Gp. v. NIH*, 209 F. Supp. 2d 37, 44 (D.D.C. 2002) (“There is no doubt that a corporation may be considered a ‘person’ for purposes of exemption 4.”).

Second, the information is “commercial or financial.” The D.C. Circuit has broadly interpreted these terms to mean that records are commercial so long as the submitter has a “commercial interest” in them. *Pub. Citizen Health Res. Gp. v. FDA*, 704 F.2d 1280, 1290-91 (D.C. Cir. 1983). The information at issue pertains to technical and cost specifications of the Whole Body Imaging system proposed by Rapiscan and contracted by DHS. Medina Decl., ¶

20; Declaration of Peter Modica (Modica Decl.), ¶¶ 1, 5-11. For instance, Rapiscan has provided technical information on its Whole Body Imaging system, including internal procedures and software configurations for factory testing, system specifications and modifications unique to Rapiscan's system, design schematics and renderings, and cost estimates. *See Vaughn Index*, Record Nos. 6-10. This information falls squarely within the type of information which the courts have typically regarded as commercial. *See, e.g., Allnet Communication Servs., Inc. v. FCC*, 800 F. Supp. 984, 986-88 (D.D.C. 1992); *Durnan v. Dep't of Commerce*, 777 F. Supp. 965, 965-67 (D.D.C. 1991).

Third, the information is confidential. As the D.C. Circuit has articulated, whether commercial information should be considered confidential and therefore protected under Exemption 4 is guided by the substantial competitive harm test. *National Parks and Conservation Ass'n v. Morton*, 498 F.2d 765, 770 (D.C. Cir. 1974) (“*Nat'l Parks I*”), as modified by *National Parks and Conservation Ass'n v. Kleppe*, 547 F.2d 673, 679 (D.C. Cir. 1976) (“*Nat'l Parks II*”). This standard remains the definitive measure for evaluating whether information falls within the scope of Exemption 4 where the materials in question were not volunteered, but required to be provided, to the Government. In *National Parks I*, the D.C. Circuit held that commercial or financial information qualified as “confidential” if disclosure of the information would likely: (1) “cause substantial harm to the competitive position of the person from whom [it] was obtained,” or (2) “impair the Government’s ability to obtain necessary information in the future.” 498 F.2d at 770. Disclosure here threatens both harms.

1. Disclosure would cause substantial competitive harm to Rapiscan.

The D.C. Circuit does not require that a party show “actual competitive harm” in order to make an adequate showing of the likelihood of substantial competitive harm. *Pub. Citizen*

Health Res. Gp., 704 F.2d at 1291 (quoting *Gulf & W. Indus., Inc.*, 615 F.2d 527, 530 (D.C. Cir. 1979)). Rather, “evidence revealing ‘[a]ctual competition and the likelihood of substantial competitive injury’ is sufficient to bring commercial information within the realm of confidentiality.” *Kahn v. Fed. Motor Carrier Safety Admin.*, 648 F. Supp. 2d 31, 36 (D.D.C. 2009) (quoting *Pub. Citizen*, 704 F.2d at 1291). Although conclusory and generalized allegations of substantial competitive harm are insufficient to justify the application of Exemption 4, “the court need not engage in a sophisticated economic analysis to determine whether there is a likelihood of substantial competitive injury.” *Id.*

Here, the declaration submitted by Rapiscan provides detailed support demonstrating that it faces actual competition in the emerging market for Advanced Imaging Technology, including Whole Body Imaging systems and the likelihood of substantial competitive injury that would result from disclosure of their commercial and financial information. *See Nat’l Parks II*, 547 F.2d at 684 (concluding that it is “virtually axiomatic” that disclosure of commercial and financial information is likely to cause competitive harm in light of the “extremely detailed and comprehensive nature of the financial records requested”).

As Peter Modica, Vice President of Product Line Management for Rapiscan attests, the Advanced Imaging Technology market is highly competitive throughout the world. Modica Decl., ¶ 12. Domestically, there is “considerable” competition for the provision of scanner systems to the United States, where it is expected that the Transportation Security Administration will procure 500 Advanced Imaging Technology systems in the near term. *Id.*, ¶ 13. In such a competitive environment, firms seek any increment of useful information about their competitors’ businesses, particularly their pricing and technical capability, because obtaining that information could give them a decisive advantage. *Id.*

The Rapiscan records withheld under Exemption 4 fall into four categories: indirect cost information, unit pricing information, systems design and specifications information, and employee contact information. *See* Modica Decl., ¶¶ 11-15. The indirect cost information includes labor rates, indirect costs and costs for supplies and services. *Id.*, ¶ 5; *Vaughn* Index, Record Nos. 8-9, 15. Rapiscan does not release this information publically, maintaining it on a secure, password-protected intranet system; and limiting access to authorized persons. Disclosure of this information would provide competitors with insight into Rapiscan's cost structure, enabling them to predict Rapiscan's ability to price contracts in future procurements. Modica Decl., ¶ 6; *see Hecht v. Agency for Int'l Dev.*, No. 95-263, 1996 WL 33502232, at *8-*9 (D. Del. Dec. 18, 1996) (upholding application of Exemption 4 to indirect cost rates); 48 C.F.R. § 15.506(e) (prohibiting disclosure of indirect cost rates and other confidential commercial information during offeror debriefing).

Rapiscan's unit pricing information, if disclosed, would provide competitors with a roadmap to how Rapiscan prices its scanner systems and related research and development projects. Modica Decl., ¶ 7; *see Vaughn* Index, Record Nos. 8, 15, 16. Furthermore, this information, when combined with other pricing information, would provide competitors insight into how Rapiscan and its suppliers and subcontractors adjust their prices over time, thereby allowing competitors to forecast Rapiscan's prices. Modica Decl., ¶ 7. Competitors would therefore be able to undercut Rapiscan's prices in future competitions. *Id.*; *see Essex Electro Engineers, Inc. v. Sec'y of Army*, 686 F. Supp. 2d 91, 94 (D.D.C. 2010) (upholding application of Exemption 4 to unit pricing data).

The design and specifications for Rapiscan's Whole Body Imager include image resolution measurements, detection capabilities, effectiveness of the system at particular

distances, and the ability of scanner to operate in multiple configurations. Modica Decl., ¶ 8; *Vaughn* Index, Record Nos. 6-10, 12. Rapiscan believes that the design for its imaging system (known as the Secure 1000) gives it a decisive advantage over its competitors. The disclosure of this information would allow competitors to more effectively design and build their own systems to compete with Rapiscan for future contracts. Modica Decl., ¶ 9; *see SMS Prods. Gp., Inc. v. Dep't of Air Force*, No. 88-481, 1998 WL 201031, at *3 (D.D.C. May 11, 1989) (upholding application of Exemption 4 to proprietary technical information concerning competitor's laptop computer, noting that competition in laptop market is "fierce").

Finally, release of employees' contact information also would harm Rapiscan. It has invested heavily in the training of its employees in order to develop a workforce capable of competing in a rapidly emerging technological market. Equipping competitors with contact information would make it easier for them to recruit away employees with knowledge of the development and capabilities of Rapiscan's scanner systems. Modica Decl., ¶¶ 10-11; *Vaughn* Index, Record Nos. 15-17; *Met. Life Ins. Co. v. Usery*, 426 F. Supp. 150, 160-63 (D.D.C. 1977).⁵

In sum, disclosure of Rapiscan's confidential commercial information, as described above, would likely injure Rapiscan's competitive position in the scanner technology market. Therefore, DHS properly withheld the subject records under Exemption 4.

2. Disclosure would impair DHS's research and development efforts.

In evaluating the interests protected by Exemption 4, courts have recognized interests beyond the impairment of an agency's ability to obtain necessary information in the future, such as the interest in the effectiveness of a government program. *See Pub. Citizen Health Res. Gp.*, 209 F. Supp. 2d at 51-52 (observing that "impairment of the effectiveness of a government

⁵ DHS has also invoked Exemption 6 with respect to the contact information of these employees and other private individuals. *See* Argument, § II.D.

program is a proper factor for consideration in conducting an analysis under FOIA exemption 4”); *Comstock Int’l (U.S.A.), Inc. v. Ex-Im. Bank of the United States*, 464 F. Supp. 804, 808 (D.D.C. 1979) (citing *Nat’l Parks I*, 498 F.2d at 770 n.17) (upholding agency’s application of Exemption 4 to withhold information obtained through negotiation because effectiveness of government program would be impaired by disclosure).

In addition to the competitive harm that may result to DHS’s contracting parties, disclosure of the requested information would have an adverse impact on DHS’s ability to sponsor research and development in emerging security technologies. For instance, the PTIEDD program was created to solicit research and prototype development of devices capable of detecting explosives hidden in vehicles, leave-behind packages, and carried by suicide bombers – among the most challenging of homeland security issues. BAA 05-03 (Ex. 1); Medina Decl., ¶ 2. DHS sought to spur this research because at the time no deployable or operational system existed in the mass transit context. Medina Decl., ¶ 6. Indeed, no such system exists even today. *Id.*

Companies such as Rapiscan are engaged in keen competition in this arena and have a legitimate expectation that their confidential financial and technical information will not be disclosed to the public and thus available to their competitors. *Id.*, ¶ 21; Modica Decl., ¶ 4. To that end, BAA 05-03 expressly stated that all submissions were to be submitted to a password-protected website requiring registration by the submitter, would be reviewed only by the submitter, authorized government representatives, support contractors and assigned evaluators who had signed appropriate non-disclosure agreements; and would be considered “proprietary/source selection sensitive.” BAA 05-03 (Ex. 1) at 8-9; Medina Decl., ¶ 4; Modica Decl., ¶ 4 (explaining that Rapiscan secured non-disclosure agreements from DHS technical

advisors). Release of a submitter's financial and technical information directly undercuts that expectation. If DHS was required to do so with respect to Rapiscan, it would discourage Rapiscan and other companies from participating in DHS-sponsored research like the PTIEDD program. Modica Decl., ¶ 14. Because this reluctance would impair DHS's ability to incubate emerging technologies capable of protecting the homeland at a time when the threat of a domestic terrorist attack remains of utmost concern, DHS properly applied Exemption 4 to withhold Rapiscan's commercial information shared in conjunction with its contract. Medina Decl., ¶ 21; see *Judicial Watch*, 108 F. Supp. 2d at 30 (upholding application of Exemption 4 to export insurance documents where disclosure would interfere with agency's "ability to carry out its statutory purpose" of promoting the exchange of goods between the United States and foreign countries).

C. DHS Properly Withheld Deliberative Process-Privileged Information under Exemption 5

DHS is withholding three records, two in full and one in part, under FOIA Exemption 5, which protects "[1] inter-agency or intra-agency memorandums or letters [2] which would not be available by law to a party other than an agency in litigation with the agency." 5 U.S.C. § 552(b)(5) (bracketed material added); Medina Decl., ¶ 22; *Vaughn* Index, Record Nos. 5, 8, 17. Courts have construed this language to exempt those documents that are normally protected in the civil discovery context and to incorporate all evidentiary privileges that would be available in that context. See *United States v. Weber Aircraft Corp.*, 465 U.S. 792, 799 (1984); *FTC v. Grolier, Inc.*, 462 U.S. 19, 26 (1983); *NLRB v. Sears, Roebuck & Co.*, 421 U.S. 132, 149 (1975); *Martin v. Office of Special Counsel*, 819 F.2d 1181 (D.C. Cir. 1987). As explained below, the withheld documents meet each of the Exemption 5 criteria.

First, the records are “intra-agency” communications. Courts have expansively interpreted this term to include not only records generated within agencies, but also advice generated by outside experts working for or on behalf of agencies. *See, e.g., Soucie v. David*, 448 F.2d 1067, 1078 n.44 (D.C. Cir. 1971). This is because federal agencies frequently have a special need for opinions and recommendations “outside their ken, and it clearly is preferable that they enlist the help of outside experts skilled at unraveling their knotty complexities. *CNA Fin. Corp. v. Donovan*, 830 F.2d 1132, 1162 (D.C. Cir. 1987); *Ryan v. Dep’t of Justice*, 617 F.2d 781, 790 (D.C. Cir. 1980) (“Congress apparently did not intend ‘inter-agency or intra-agency’ to be rigidly exclusive terms.”).⁶

Here, the withheld documents were generated by or as a result of Rapiscan and NEU’s meetings and consultations with DHS officials under the contract to develop a suicide bomber detection systems. *Vaughn* Index, Record Nos. 5, 8, 17. The documents assess the progress of the detection system, including strengths and weaknesses, and identify and evaluate factors for the parties to consider in moving into the next phase of work. *Id.* Rendering this candid, neutral advice under a government contract is analogous to the type of work an employee of DHS would do directly, and falls within the scope of intra-agency communications required by Exemption 5. *See, e.g., Info. Network for Responsible Mining v. Dep’t of Energy*, No. 06-2271, 2008 WL 762248, at *7 (D. Colo. Mar. 18, 2008) (ruling that advisory documents from contractor to agency concerning agency program qualified as intra-agency); *CREW v. DHS*, 514 F. Supp. 2d at 44 (protecting documents prepared by contractors for FEMA); *Sakamoto v. EPA*, 443 F. Supp.

⁶ Courts have likewise broadly construed the term “memorandums and letters” to include emails, meeting minutes, and briefing materials – the types of documents at issue under DHS’s Exemption 5 claim. *See, e.g., Hornbostel*, 305 F. Supp. 2d at 31 (protecting emails); *Carter, Fullerton & Hayes LLC v. FTC*, 520 F. Supp. 2d 134, 144 (D.D.C. 2007) (protecting meeting notes); *CREW v. Dep’t of Homeland Security*, 514 F. Supp. 2d 36, 44 (D.D.C. 2007) (protecting briefing materials).

2d 1182, 1191 (N.D. Cal. 2006) (protecting documents prepared by a private contractor hired to perform audit for agency); *Citizens Progressive Alliance v. Bureau of Indian Affairs*, 241 F. Supp. 2d 1342, 1355 (D.N.M. 2001) (protecting recommendations provided by private company hired by BIA).

Second, the documents would not be available to an adverse party in litigation with the agency. The documents at issue are protected by the deliberative process privilege, the purpose of which is to prevent injury to the “quality of agency decisions.” *Klamath Water Users Protective Ass’n v. Dep’t of Interior*, 532 U.S. 1, 8 (2001). The privilege is an ancient one predicated on the recognition that “the quality of administrative decision-making would be seriously undermined if agencies were forced to operate in a fishbowl.” *Dow Jones & Co. v. Dep’t of Justice*, 917 F.2d 571, 573 (D.C. Cir. 1990) (quoting *Wolfe v. HHS*, 839 F.2d 768, 773 (D.C. Cir. 1988) (en banc)). It is intended to: (1) encourage open, frank discussion of policy matters between subordinates and supervisors; (2) protect against premature disclosure of proposed policies before they become final; and (3) protect against public confusion that might result from the disclosure of reasons and rationales that were not, in fact, the ultimate grounds for the agency’s action. See *Russell v. Dep’t of Air Force*, 682 F.2d 1045, 1048 (D.C. Cir. 1982); *Coastal States Gas Corp. v. Dep’t of Energy*, 617 F.2d 854, 866 (D.C. Cir. 1980); *Jordan v. Dep’t of Justice*, 591 F.2d 753, 772-73 (D.C. Cir. 1978) (en banc), *overruled in part on other grounds*, *Crooker v. ATF*, 670 F.2d 1051 (D.C. Cir. 1981) (en banc). Accordingly, the privilege protects not merely documents, but also the integrity of the deliberative process itself where the exposure of that process would result in harm. *Nat’l Wildlife Fed’n v. U.S. Forest Serv.*, 861 F.2d 1114, 1119 (9th Cir. 1988).

To assert the privilege, the information must be both pre-decisional and deliberative. *See Mapother v. Dep't of Justice*, 3 F.3d 1533, 1537 (1993). A document is pre-decisional if “it was generated before the adoption of an agency policy,” and deliberative if “it reflects the give-and-take of the consultative process. *Coastal States*, 617 F.2d at 866. The withheld documents are both.

The first document is an email (including attachments) from a NEU official to one of the DHS program managers for the BomDetec development program. The email outlines the author’s evolving thinking on development and technology and system testing choices to be considered in Phase II. *Vaughn* Index, Record No. 5. The second record is a set of minutes from a “preliminary design review” meeting between Rapiscan and DHS. The minutes record internal discussions of options presented to DHS for moving forward with Phase II of system design, a variety of possible deployment scenarios, and the type of software that may need to be developed to effectively manage the system. *Id.*, Record No. 8. The third record is a set of briefing materials concerning development of Rapiscan’s system. The record provides a discourse on the strengths and weaknesses of Rapiscan’s prototype system and, like the other two records, sets forth items for DHS to consider before moving forward with further development. *Id.*, Record No. 17⁷

In sum, all three records reflect officials offering candid assessment of the progress in developing the respective suicide bomber detection systems, and factors to be considered in refining and improving the systems in future phases of development. In other words, they are the “give-and-take,” *Coastal States*, 617 F.2d at 866, that is critical to the internal government

⁷ The fact that the contracts awarded to NEU and Rapiscan have expired does not alter the pre-decisional character of the records withheld under Exemption 5. *EPIC v. DHS*, 384 F. Supp. 2d at 112 (holding that records concerning now-abandoned agency program were nonetheless predecisional).

decision-making process, particular where, as here, emerging technologies are involved. *See Chem. Mfrs. Ass'n v. Consumer Prod. Safety Comm'n*, 600 F. Supp. 114, 118 (D.D.C. 1984) (holding it appropriate to withhold technical materials when disclosures of a scientist's "nascent thoughts . . . would discourage the intellectual risk-taking so essential to technical progress"). Release of these records, by their very nature, would stifle the free and frank exchange of information within DHS. *Nat'l Wildlife Fed'n*, 861 F.2d at 1121 ("Recommendations on how to best deal with a particular issue are themselves the *essence* of the deliberative process."); *see CREW v. DHS*, 514 F. Supp. at 44 (protecting briefing materials concerning ongoing response to Hurricane Katrina, which included "proposed solutions and approaches"). They are therefore properly withheld under Exemption 5.

D. DHS Properly Withheld Information under Exemption 6 That if Released Would Constitute an Unwarranted Invasion of Personal Privacy

DHS is withholding from eight records telephone numbers, email addresses and signatures of employees of Rapiscan, NEU and DHS under Exemption 6, which protects information about individuals in "personnel and medical and similar files" when "disclosure would constitute a clearly unwarranted invasion of personal privacy." 5 U.S.C. § 552(b)(6); Medina Decl., ¶ 23; *Vaughn* Index, Record Nos. 5, 8, 11, 13-17. To evaluate an Exemption 6 claim, a court should ask three questions: whether the withheld information is contained in a personnel, medical or "similar" file; whether disclosure would compromise a "substantial privacy interest;" and, if so, whether the public interest in disclosure outweighs the privacy interest in non-disclosure. *Dep't of State v. Wash. Post Co.*, 456 U.S. 595, 602 (1982); *Consumers' Checkbook Ctr. for the Study of Servs. v. HHS*, 554 F.3d 1046, 1050 (D.C. Cir. 2009).

The information withheld by DHS – contained in emails, contracts and miscellaneous documents – falls within Exemption 6. Although the information does not come from personnel or medical files, “the Supreme Court has made clear that the phrase ‘similar files’ is intended to cover personal information contained in any government records regardless of how they are labeled.” *Phillips v. Immigration Customs & Enforcement*, 385 F. Supp. 2d 296, 304 (D.D.C. 2005) (involving personal information contained in agency counsel memoranda) (citing *Wash. Post*, 456 U.S. at 602).

The privacy interest at stake is substantial. In the FOIA context, a “substantial privacy interest is anything greater than a de minimis privacy interest.” *Multi Ag Media LLC v. USDA*, 515 F.3d 1224, 1229 (D.C. Cir. 2008). As explained by Ms. Medina, signatures were withheld not only as personalized information but also to guard against identity theft and impersonation. Medina Decl., ¶ 23; *see Wilson v. U.S. Air Force*, No. 08-324, 2009 WL 4782120, at *3 (E.D. Ky. Dec. 9, 2009) (applying Exemption 6 to signatures). Telephone numbers and email addresses were withheld to protect the individuals, all of whom were involved in mass transit security matters, from the risk of harassing or threatening emails and calls in the work place. Medina Decl., ¶ 23. Work contact information has been held to be protected for both private and government employees. *Electronic Frontier Found. v. Office of Dir. of Nat’l Intelligence*, 639 F.3d 876, 888 (9th Cir. 2010) (applying Exemption 6 to third party email addresses because one “can easily envision possible privacy invasions resulting from public disclosure”); *Budik v. Dep’t of Army*, 742 F. Supp. 2d 20, 38 (D.D.C. 2010) (applying Exemption 6 to government employee’s email address); *Phillips*, 385 F. Supp. 2d at 308 (same with respect to government employee email addresses and telephone numbers); *Wilson*, 2009 WL 4782120, at *3 (same with respect to government employee email addresses); *but see Leadership Conf. on Civil Rights v.*

Gonzales, 404 F. Supp. 2d 246, 257 (D.D.C. 2005) (finding that government employee work telephone numbers are not information similar to a personnel or medical file).⁸

And that privacy interest outweighs any public interest in disclosure. DHS has released the names of the individuals, thereby enabling EPIC to identify those DHS officials and third party employees who were involved in the Rapiscan and NEU explosives detection programs contracted by DHS. The release of these names satisfies the only cognizable public interest in any FOIA action: to “shed . . . light on an agency’s performance of its statutory duties.” *Dep’t of Justice v. Reporters Comm. for Freedom of the Press*, 489 U.S. 749, 773 (1989). The signatures, telephone numbers and email addresses add nothing to that interest. *Electronic Frontier Found.*, 639 F.3d at 888; *Budik*, 742 F. Supp. 2d at 38.

III. DHS Has Released All Reasonably Segregable Information to EPIC

FOIA requires that if a record contains information that is exempt from disclosure, any “reasonably segregable” information must be disclosed after deletion of the exempt information unless the non-exempt portions are “inextricably intertwined with exempt portions.” 5 U.S.C. § 552(b); *Mead Data Central, Inc. v. Dep’t of Air Force*, 566 F.2d 242, 260 (D.C. Cir. 1977); *Hornbostel*, 305 F. Supp. 2d at 34. The D.C. Circuit has held that a district court considering a FOIA action has “an affirmative duty to consider the segregability issue sua sponte.” *Trans-Pacific Policing Agreement v. United States Customs Serv.*, 177 F.3d 1022, 1028 (D.C. Cir. 1999).

In order to demonstrate that all reasonably segregable material has been released, the agency must provide a “detailed justification” rather than “conclusory statements.” *Mead Data*,

⁸ *Leadership Conference* is distinguishable on the grounds that the agency also withheld the names of government employees, so as to preclude any means of identifying certain employees involved in a voter integrity initiative spearheaded by the Attorney General. 404 F. Supp. 2d at 256-57. Here, as explained below, DHS has released the names of the individuals. Only their contact information and signatures have been withheld.

566 F.2d at 261. The agency is not, however, required “to provide such a detailed justification” that the exempt material would effectively be disclosed. *Id.* All that is required is that the government show “with ‘reasonable specificity’” why a document cannot be further segregated. *Armstrong v. Executive Office of the President*, 97 F.3d 575, 578-79 (D.C. Cir. 1996). Moreover, the agency is not required to “commit significant time and resources to the separation of disjointed words, phrases, or even sentences which taken separately or together have minimal or no information content.” *Mead Data*, 566 F.2d at 261, n.55.

DHS has processed and released all reasonably segregable information from the responsive records under Exemptions 4, 5 and 6. For instance, it has narrowly applied Exemption 6 to withhold only personal information as explained above, and released all non-exempt information from those records. *Vaughn* Index, Record Nos. 11, 13-17. It has done the same with records that contain information subject to Exemptions 4 and 5. *Id.*, Record Nos. 12, 15-17. And it has conducted multiple reviews to ensure segregability, releasing additional information and records. Medina Decl., ¶ 25.

CONCLUSION

For the reasons set forth above, Defendant respectfully requests that this Court grant its motion for summary judgment.

Respectfully submitted,

RONALD C. MACHEN JR., D.C. Bar #447889
United States Attorney

RUDOLPH CONTRERAS, D.C. Bar #434122
Chief, Civil Division

By: _____/s/_____
JAVIER M. GUZMAN, D.C. Bar #462679
Assistant United States Attorney
555 4th Street, N.W.

Washington, D.C. 20530
Tel: (202) 616-1761
Fax: (202) 514-8780
Javier.Guzman2@usdoj.gov

Of counsel:

Marshall L. Caggiano, Esq.
Office of General Counsel
Science and Technology Directorate
Department of Homeland Security

EXHIBIT 1

**Prototypes and Technology for Improvised Explosives Device
Detection
(PTIEDD)**

Broad Area Announcement 05-03

(BAA 05-03)

Proposal Information Pamphlet (PIP)

Department of Homeland Security

Homeland Security Advanced Research Projects Agency (HSARPA)

December 21, 2004

White Papers Due February 1, 2005

Proposals Due April 12, 2005

For Questions Regarding This Solicitation:

BAA05-03@dhs.gov



TABLE OF CONTENTS

1	Background	3
1.1	Program Description	3
2	Program Approach and Schedule.....	3
2.1	Government Furnished Equipment and Resources.....	4
2.2	Review Panel	4
2.3	Test and Evaluation Facilities.....	4
2.4	Program Structure and Program Schedule.....	4
3	Objectives and Goals	5
3.1	Technical Topic Areas	5
4	Deliverables	7
4.1	Deliverables	7
5	Information for offerors	8
5.1	Eligible Applicants.....	8
5.2	Types of Awards Including Other Transactions for Prototypes	8
5.3	Registration and Submission Instructions.....	8
5.4	Applications and Submission Information.....	9
5.5	Proprietary Information Protection	9
5.6	Security	9
5.7	Organizational Conflict of Interest	9
5.8	Bidders Conference.....	9
5.9	White Paper Guidance and Content.....	10
5.9.1	Format and Size Limitations	10
5.9.2	Organization Quad Chart	10
5.9.3	Title, Performer, Total Cost	10
5.9.4	Executive Summary	10
5.9.5	Technical Approach	11
5.10	Proposal Guidance and Content.....	11
5.10.1	Volume I, Technical and Management Proposal (15 page limit inclusive).....	12
5.10.1.1	Section I. Official Transmittal Letter:.....	12
5.10.1.2	Section II. Abstract of Proposal:.....	12
5.10.1.3	Section III. Proposal.....	12
5.10.2	Volume II, Management Proposal (50 page limit inclusive)	12
5.10.3	Volume III, Cost Proposal	12
5.11	Contact Information for Questions Regarding this Solicitation	12
5.12	Anticipated Funding Level	12
5.13	Multiple Submissions.....	12
5.14	Preliminary Solicitation and Award Schedule.....	12
6	Evaluation criteria and selection process.....	12
6.1	White Papers	12
6.2	Proposals	12
6.3	Reviews and Selection Process.....	12
7	List of Attachments.....	12

1 BACKGROUND

The Homeland Security Advanced Research Projects Agency (HSARPA) invests in programs offering the potential for revolutionary changes in technologies that promote homeland security and accelerates the prototyping and deployment of technologies that reduce homeland vulnerabilities. HSARPA is the external funding arm for the Department of Homeland Security Science and Technology Directorate (DHS S&T). HSARPA performs these functions in part by awarding procurement contracts, grants, cooperative agreements, or other transactions for research or prototypes to public or private entities, businesses, and universities.

A critical area of focus for DHS is the protection of the homeland from the threat of high explosives in vehicles. In support of this critical focus area, HSARPA is initiating the **“Prototypes and Technology for Improvised Explosives Device Detection” (PTIEDD)** Program. Its goals are:

- To develop, rapid prototype, and improve products and systems capable of detecting explosive compounds in vehicles;
- To support research and development of next generation or novel technologies or prototypes for detection of improvised explosives in vehicles, in leave-behind packages, or carried by suicide bombers.

This BAA consists of two Technical Topic Areas (TTAs) described in Section 3. The BAA is structured to solicit Proposals for near term projects (TTA-1) where pre-production working prototypes are to be delivered and evaluated within 9 to 18 months after award. In addition, Proposals are also solicited to design, develop, and demonstrate future or novel technologies and devices (TTA-2) that will significantly advance the state of the art in each critical area. It is anticipated that prototypes will be delivered under TTA-2 no later than 60 months after award.

1.1 Program Description

The PTIEDD Program will require innovative or novel capabilities in multiple disciplines including material science, computer science, chemistry, physics, electrical, mechanical and systems engineering. In order to best accomplish the goals of the PTIEDD Program, HSARPA anticipates receiving Proposals with innovative teaming that may include private sector organizations; government laboratories, including Federally Funded Research and Development Centers (FFRDCs); and academic institutions.

2 PROGRAM APPROACH AND SCHEDULE

The approach and schedule ensures that explosive detection technologies will be rapidly prototyped and will be in place in a timely manner to be effective against indiscriminate bomb or explosive threats. HSARPA anticipates making multiple awards under this solicitation.

2.1 Government Furnished Equipment and Resources

In support of the TTAs, the government will consider requests for government furnished resources and technologies. As part of this solicitation HSARPA will **not** publish a list of potentially applicable technologies for accelerated schedule Proposals.

2.2 Review Panel

A review panel drawn from government and non-government experts who have signed appropriate non-disclosure agreements will perform technical evaluations of the proposed efforts. Bidders may request a government only review, but must indicate so when submitting on the website.

2.3 Test and Evaluation Facilities

Department of Homeland Security Science & Technology Directorate will make available appropriate test and evaluation facilities to support this program. Bidders must note any specific requirements needed for test and evaluation of proposed concepts in their Proposal.

2.4 Program Structure and Program Schedule

The BAA consists of two Technical Topic Areas (TTAs), described below. Responses to TTA-1 should propose near term (9-18 months) solutions, whereas those to TTA-2 should describe technologies requiring more long-term (up to 60 months) development. All responses should describe multi-Phased efforts, offering clear points for decisions about whether proceeding to the next Phase is technically justified. Continuation of work past Phase I will also be based upon the availability of funds, and other programmatic considerations as determined by HSARPA. Primes may submit only a single response addressing TTA-1 and/or a single response addressing the first round of TTA-2 (see Section 5.13 for additional information). Note there are additional opportunities or rounds to submit responses to address TTA-2 (see Table 5.1).

TTA-1: Provide rapid development and prototypes of systems for the detection of explosives in trucks or cars. It is anticipated that these projects will address prototyping of complete systems and be structured into two Phases:

- Phase I: Performers will provide detailed performance predictions and lifecycle versus performance cost trades during a short program design Phase culminating with a Critical Design Review (CDR).
- Phase II: Following a successful CDR, performers will proceed with a rapid development and testing of a prototype or implementation and testing of enhancements to an existing system.

TTA-2: Develop novel or innovative technologies and/or systems with significant improvements in the performance and total cost of ownership compared to current technologies or those being developed in projects addressing TTA-1 requirements. It is anticipated that these efforts will be structured in three Phases and will culminate in a complete, fully operational, prototype system meeting or exceeding most of the goals for the selected applications:

- Phase I: Performers will conduct the necessary feasibility analysis, research, development, and demonstrations to validate the proposed concepts.

Performers will provide detailed performance predictions and lifecycle cost versus performance trades for the proposed system concept. The phase may contain an interim feasibility analysis review and will culminate in a Preliminary Design Review (PDR).

Phase II: Following a successful PDR, performers will conduct the necessary engineering and development presented at a Critical Design Review (CDR).

Phase III: Following a successful CDR, performers will proceed to develop and test a prototype.

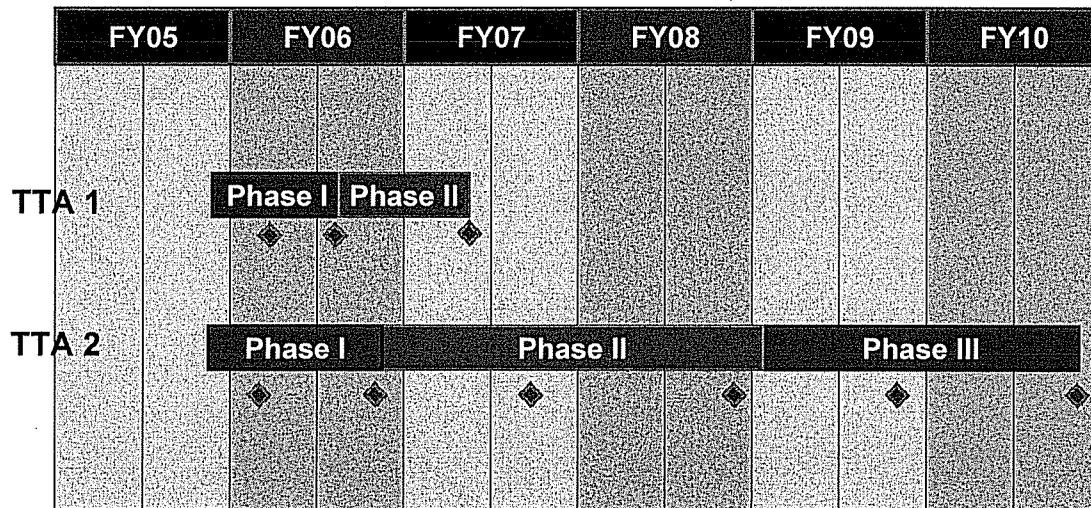


Figure 1. A notional schedule of the program execution timeline. Offerors are encouraged to propose their own schedule based upon their detailed understanding of the technical challenges and their realistic estimate of the technical effort required to solve the problem they propose.

Projects addressing each of the TTAs must include: test and evaluation tasks, lab tests, and, where appropriate, operational user-oriented field tests.

3 OBJECTIVES AND GOALS

The objectives and goals of each TTA emphasize specific aspects of the detection problem. The TTA topics are detailed below:

3.1 Technical Topic Areas

TTA-1: Vehicular IED Detection – Rapid Prototype

Proposals are requested for the rapid development and prototyping of systems for the detection of explosives in large vehicles, cars or other small vehicles. We seek technologies that can be effectively applied at chokepoints such as tollbooths; at staging areas for ferry boarding; and that can be used for random inspections of stationary vehicles in garages, parking lots and at curbside. These devices will be test-bed evaluated within 9 to 18 months following award.

All proposed concepts and designs must be appropriate for indoor and outdoor applications, must be benign to humans and property in the interrogated area, and eventually must be cost-effective to procure and maintain. Depending on the concept design and application, the devices should have the potential to be portable, transportable, or moveable between inspection sites. Deliverables shall include a prototype device and an operator's manual, suitable for dissemination to law enforcement professionals, which includes maintenance procedures and a recommended operational employment protocol.

Desired capabilities include, but are not limited to:

- Detection of the presence of as many different types of known explosives or explosive devices as possible.
- Amount of explosive: Configuration undetermined;
 - Quantity in Large Vehicles: >230 kg
 - Quantity in Small Vehicles: \leq 230 kg
- Time to detect: Real time or near real time
- Transportable, mobile, or portable device

TTA-2: Novel and Innovative Explosive Detection Technologies (Open for 12 months after release date of BAA)

One or more novel and innovative research and development projects may be funded to advance the sensitivity, selectivity, standoff distance, and remote detection capability of current explosive detection systems in various applications, including, but not limited to, detection of leave-behind packages, vehicles, and suicide bombers.

All proposed concepts and designs must be appropriate for indoor and outdoor applications, must be benign to humans and property in the interrogated area, and eventually be cost effective to procure and maintain. The Proposal should describe the technology and the proposed application of the technology. Depending on the concept design and application, the devices should have the potential to be portable, transportable, or moveable between inspection sites. Deliverables shall include a prototype device and an operator's manual, suitable for dissemination to law enforcement professionals, which includes maintenance procedures and a recommended operational employment protocol.

Desired capabilities include, but are not limited to the following areas:

- Detection of explosives on suicide bombers, or within leave-behind packages or luggage, drums, sealed or open containers, and large and small vehicles.
- Detection through various materials, including but not limited to, the shells of vehicles, suitcases, packages and clothing.
- Wide area surveillance and detection at distances greater than 10 meters. Protection of the operator from blast effects is an additional desired capability (i.e., the operator is safe from blast effects).

- Maximization of the throughput and/or shortened interrogation time of examined items (application dependent). Maximizing the detector performance to minimize false alarm rates.
- Transportable, mobile, or portable device for stationary or mobile targets.

The period of performance of efforts addressing TTA-2 should be no more than 60 months. This solicitation will remain open for responses to TTA-2 for one year after the initial release of this BAA. The timeline for White Paper review is listed in Table 5.1.

4 DELIVERABLES

To the exclusion of exceptions negotiated at time of award, any deliverable associated with this program may be released to outside organizations, both U.S. government and non-government, in support of DHS S&T efforts. The performer may recommend a preferred format for each deliverable, but the government will determine the final format. Monthly status reports are due within one week after the last day of each month; quarterly reports are due one week prior to the time of the quarterly reviews; and a comprehensive final report is due upon task completion.

4.1 Technical and Management Deliverables

Monthly - Brief (not more than one page) narrative reports will be electronically submitted to the Program Manager within one week after the last day of each month. These reports will describe the previous 30 calendar days' activity, technical progress achieved against goals, difficulties encountered, recovery plans (if needed), and explicit plans for the next 30 day period.

Quarterly - Quarterly reports (not to exceed 5 pages) will be electronically submitted to the Program Manager and are due one week prior to the time of the quarterly reviews. These reports will describe the previous 90 calendar days' activity, principals involved in the actual work of the period, technical progress achieved against goals, difficulties encountered, funds expended against each sub-task in the previous 90 day period, recovery plans (if needed), and explicit plans for the next 90 day period.

Final - For a final report, each Team will provide a technical report of their work performed during the preceding Phase or Phases of TTAs 1 - 2. This will include performance predictions, estimates of cost of ownership, and an enumeration of remaining unknowns and uncertainties. This final report will be a cumulative, stand-alone document that describes the work of the entire Phase leading up to it. It should detail how the design concept was refined and why the refinement was undertaken. It must include any technical data gathered, such as, measurements taken, models developed, simulation results, and formulations developed. This final report should also include "lessons learned" from the effort, recommendations for future research in this area, and a comprehensive and detailed account of all funds expended. Performers will develop a plan for executing future Phases of projects addressing TTAs 1 - 2, including an experimental plan for developing and testing the prototype bomb detection system and an activity schedule and cost breakdown. The final report for each of the projects will include a detailed work plan, including a Statement of Work, for executing any appropriate additional work or Phases.

Other –Reports or briefings for required tests, design reviews, or other activities will be provided when appropriate.

4.2 Additional Deliverables

Performers should define additional concept and program specific deliverables as appropriate for their specific proposal.

5 INFORMATION FOR OFFERORS

5.1 Eligible Applicants

Any entity or team of entities, other than the specific Department of Energy Laboratories listed in Appendix A, may submit a White Paper and/or Proposal in accordance with the requirements and procedures identified in this Broad Agency Announcement (BAA). There will be one submission permitted per group as the prime for TTA-1 and the first round of TTA-2. (see Section 5.13 for additional information). Historically Black Colleges and Universities (HBCU), Minority Institutions (MI), Small and Disadvantaged Businesses (SDB), Women-owned Businesses (WB), and HUB-zone enterprises are encouraged to submit Proposals, and to join others in submitting Proposals; however, no portion of the BAA will be set-aside for these special entities because of the impracticality of reserving discrete or several areas of research and development under this topic. Teams, which may include private sector organizations, government laboratories including Federally Funded Research and Development Centers (FFRDCs), and academic institutions, are encouraged to respond.

5.2 Types of Awards Including Other Transactions for Prototypes

Awards may be executed as contracts, grants, cooperative agreements or other transactions. Bidders may propose a preferred mechanism for award subject to negotiation and final approval of the government.

5.3 Registration and Submission Instructions

This BAA will remain open from date of issuance with two separate White Paper and Proposal evaluations. The evaluations will provide a coordinated evaluation of all White Paper and Proposals submitted following the schedule listed in table 5.1. **Note: TTA-2 of this BAA will remain open for 12 months after the initial release of this BAA to accept innovative White Papers and Proposals.** Reviews of subsequent TTA-2 White Paper and Proposals submissions will be completed by dates listed in Table 5.1

To aid in the management of the anticipated large response to this solicitation, bidders are required to register in advance to submit either a White Paper or a full Proposal. Bidders will not be permitted to submit White Papers or Proposals unless registered. For the first round of evaluations (White Papers and Proposals), bidders must register by the deadlines listed in Table 5.1. The registration and submission timelines for the additional rounds for TTA-2, **are included in Table 5.1.** A separate registration is required for each White Paper and Proposal. Submissions will not be accepted from organizations that have not registered.

Any organization that wishes to participate in this BAA must register at www.hsarpabaa.com. Upon acquiring a username and password to access the site, select BAA 05-03 from the list on

the left side of the screen and further select the specific TTA. Registrants should also receive a control identification number. Upon proper selection, buttons for registration and submission will appear. Fill in the requisite fields, and submit your registration, White Paper, or Proposal. Upon registration or submission, a file will be sent to the registered email address. Receipt of a file confirms your registration for the TTA referenced in the file. In the case of a White Paper or Proposal submission, please check the contents of the file. If they are incorrect, return to the website and make corrections.

5.4 Applications and Submission Information

Copies of this BAA may be downloaded from www.hsarpabaa.com. Paper copies of the BAA may be obtained by contacting:

Kelly Bray ~ 703-465-5745
Booz Allen Hamilton
4001 Fairfax Drive, Suite 750
Arlington, VA 22203
bray_kelly@bah.com

5.5 Proprietary Information Protection

All data uploaded to www.hsarpabaa.com is protected from public view or download. All submissions will be considered proprietary/source selection sensitive and protected accordingly. Documents may only be reviewed by the registrant, authorized government representatives, and assigned evaluators.

5.6 Security

It is anticipated that some aspects of this project may require access to classified information. The goals under this solicitation are currently unclassified. In the future, the DHS may choose to classify systems performance developed under this initiative. Bidders to this BAA will need to include a plan to handle SECRET level material.

For additional questions regarding security, please contact Shawn Waters.
Shawn Waters, Special Security Officer (contractor support)
shawn.waters@dhs.gov
202-254-5621

5.7 Organizational Conflict of Interest

Organizational Conflict of Interest issues will be evaluated on a case-by-case basis as outlined in Appendix B. Offerors who have existing contract(s) to provide Scientific, Engineering, Technical and/or Administrative support directly to the Program Officers or other operational activities of the Science and Technology Directorate will receive particular scrutiny.

5.8 Bidders Conference

HSARPA will hold a Bidders Conference for this BAA in January 2005. Additional information will be available on line at: <https://www.enstg.com/signup/passthru.cfm?RT123=DHS35872> or linking from www.hsarpabaa.com. The site includes directions to the location, local airports and names and contact information for area hotels. Explanation of registration fees is broken down on the registration website shown above. The point of contact for the Bidders Conference is:

Donna Blanger ~ 703-807-2795
Booz Allen Hamilton
3811 Fairfax Drive, Suite 600
Arlington, VA 22203
blanger_donna@bah.com

5.9 White Paper Guidance and Content

Offerors are strongly encouraged, but not required, to submit White Papers in advance of full Proposals. White Papers should capture the essence of a Proposal and are designed to permit offerors an opportunity to obtain feedback from HSARPA on their planned technology development without having to go to the expense and effort of writing a complete Proposal. If received by the White Paper submission deadline, the White Paper will be evaluated by a review panel comprised of government employees and government contractors specially selected to eliminate potential conflicts of interest. After this review, offerors will be promptly notified either encouraging or discouraging submission of a Proposal. A White Paper may consist of not more than a total of five pages, including a one page Quad Chart, all pictures, figures, tables, and charts in a legible size.

Notwithstanding a request for a government-only review, the government intends to use employees and subcontractors of a support contractor to assist in administering the evaluation of White Papers and Proposals. These personnel will have signed, and will be subject to, the terms and conditions of non-disclosure agreements. Bidders may request a government-only review, but must indicate so when submitting on the website as well as indicating this clearly on the first page of the submitted document..

5.9.1 Format and Size Limitations

A White Paper is an electronic file in PDF format, readable by IBM-compatible PCs. The individual file size must be no more than 5 MB. **White Papers may not exceed five pages.** The White Paper should contain the following information in the following order:

- Quad Chart
- Title, performer, total cost information
- Executive Summary (including anticipated performance relative to goals)
- Technical Approach
- Summary of Personnel and Performer Qualifications and Experience
- Cost Summary

5.9.2 Organization Quad Chart

For instructions and sample of a Quad Chart, please see Appendix D or visit www.hsarpabaa.com.

5.9.3 Title, Performer, Total Cost

Provide a title of the proposed effort, the name and address of the performing organization, the name of the principal investigator, and the total cost and duration (in months) of the proposed effort. Provide the TTA number to which you are responding.

5.9.4 Executive Summary

Provide a concise description of the scientific, technical, engineering and management approach you propose to address in the TTA. Describe the various components of the system proposed

and relevant details about how they will function together. Describe the concept of operation and what is unique about your proposed solution. Provide a brief summary of your concept's anticipated performance relative to the TTA goals.

5.9.5 Technical Approach

Describe the basic scientific or technical concepts that will be used in each component or subsystem comprising your proposed solution to the problem described in the TTA. What is unique about your solution and what advantages might it afford compared to alternate approaches other performers in this field have taken? What has been the extent of your team's past experience in working with or employing the devices comprising your system or systems? What particular scientific, technical and / or engineering issues need to be addressed and resolved in the technical approach to demonstrate feasibility?

Explain the performance your proposed solution can be expected to meet measured against each of the specific technical attributes and performance requirements described in the Technical Topic Area section of the BAA. What are the key scientific, technical, or engineering challenges and the timing for each that must be met in order to successfully complete this project?

Describe all required material and information, which must be provided by the government to support the proposed work. Provide a brief summary of the costs to execute your Proposal, summarized by task.

5.10 Proposal Guidance and Content

Following Proposal registration, bidders may begin submitting Proposals, which must be submitted prior to the Proposal deadline. Although White Papers are strongly encouraged, bidders may submit a Proposal without a preceding White Paper.

Proposers can choose to alter their ideas, concepts, technical approaches, etc. or expand on their original ideas between submission of a White Paper and submission of the full Proposal. Discussion, suggestions, or advice between the government and offerors of White Paper topics is not binding. Proposers are free to submit a full Proposal without regard to any feedback or advice about White Papers that they may have received. Even if the feedback from the government in response to the White Paper is that a Proposal based on the offered idea is unlikely to receive funding, a full Proposal may still be submitted and will be evaluated uniformly with others. Proposals consist of three separate documents described in detail below.

- Volume I: Core Technical Proposal;
- Volume II: Management Proposal and Supplementary Technical Data;
- Volume III: Cost Proposal.

Volume I is the primary document to be evaluated by the reviewers, with Volumes II and III providing supporting information. The supplemental material in Volumes II and III are to be used at the discretion of the reviewer. The three-volume proposal comprises PDF files, or, if more convenient for Volume III, a Microsoft Excel file. Each volume must be a separate file, and submitted to the appropriate field on the website. The maximum file size for each volume is 5 MB.

Volume I, the core Technical Proposal, shall not exceed fifteen (15) pages in a font no smaller than 12 point. **Proposals for which Volume I exceeds the 15-page limit will be disqualified.**

Volume II may not exceed fifty (50) pages. There is no page limit on Volume III. The fifteen page limitation for Volume I includes all pictures, figures, tables, and charts in a legible size. Graphic images inserted into the file should minimize file size and support clear display and document printing. Nonconforming proposals may be rejected without review. The submission of other supporting materials with the proposal is strongly discouraged and if submitted, will not be reviewed.

5.10.1 Volume I, Technical and Management Proposal (15 page limit inclusive)

Volume I provides the primary technical description of the proposal. **Volume I is the primary document to be evaluated by the reviewers, with Volumes II and III providing supporting information.** The supplemental material in Volumes II and III are to be used at the discretion of the reviewer.

5.10.1.1 Section I. Official Transmittal Letter:

Official transmittal letter with authorizing official signature. Include the proposal title and the specific TTA number that the proposal addresses.

5.10.1.2 Section II. Abstract of Proposal:

A one-page synopsis of the entire proposal including total costs proposed for each Phase. Provide a description of the scientific, technical, engineering and management approach you propose to address the goals of the TTA. Describe the various components of the system proposed and relevant details about how they will function together to achieve the goals of the TTA, pointing out what is unique about your proposed solution. Include a brief summary of your concept's anticipated performance relative to the TTA goals.

5.10.1.3 Section III. Proposal

This section describes the proposed work and the associated technical and management issues.

- a. **Ability of proposed work to meet the program goals.** This section is the centerpiece of the proposal and should describe the overall methodology and how it will meet the desired attributes and functionality goals specified in the TTA .
- b. **Detailed technical descriptions and technical approach for Phase I.** Identifies the critical issues and plans for executing Phase I of the technical effort.
- c. **Overview of technical approach for future Phases.**
- d. **Deliverables.** Provide a brief summary of all deliverables proposed under this effort, including data, software, and reports consistent with the objectives of the work involved.
- e. **Management plan.** Provide a brief summary of the management plan, including an explicit description of what role each participant or team member will play in the project, and their past experience in technical areas related to this proposal.
- f. **Requirements for government furnished resources.** Provide a brief summary of required information and data, which must be provided by the government to support the proposed work, if any.
- g. **Cost summary.** Summarize the projected total costs for each task in each year of the effort including a summary of subcontracts, man-hours, and consumables.

5.10.2 Volume II, Management Proposal (50 page limit inclusive)

- a. **Technical Approach for Phase II (TTA-1) and Phases II and III (TTA-2).** Provide a preliminary description of the Phase II efforts in TTA-1 and the Phase II and III effort in TTA-2, including Gantt Charts and milestones.
- b. **Statement of Work (SOW), Schedule and milestones.** Provide an integrated display for the proposed research, showing each task in the technical approach, including major milestones, in Phase I. Include a summary schedule for Phase II for TTA-1, and Phases II and III for TTA-2 with anticipated milestones. Include a section clearly marked as the Phase I Statement of Work (SOW) you propose to undertake. It is important to note that the SOW will be used for the initiation of contract negotiations for selected Proposals
- c. **Management plan and key personnel.** Describe how the total team effort will be managed and provide rationale for participation of key team members. Provide resumes and curriculum vitas (CVs) for each of the key personnel.
- d. **Relevant past experience.** Present the proposer's previous accomplishments and work in this and closely related research areas.
- e. **Facilities.** Describes key facilities that will be used in the proposed effort. Delineate between classified and unclassified facilities.
- f. **Requirements for government furnished resources.** Describe all required information and data with the respective classification level, if known, which must be provided by the government to support the proposed work, if any.
- g. **Security plan.** Describes the rationale for what aspects of the work, if any, need to be protected, at what classification level, and propose a strategy for doing so. Provide the collateral clearance level held, if any, by each team member.
- h. **Additional technical information or data.**

5.10.3 Volume III, Cost Proposal

Section I. Cost Response

The cost response should be in the offeror's format. Detailed Bases of Estimates are not required. Certified cost or pricing data are required. However, in order for the government to determine the reasonableness, realism and completeness of the Cost Proposal, the following data must be provided for each team member and in a cumulative summary:

Labor: Total labor includes direct labor and all indirect expenses associated with labor, to be used in the technical approach period of performance. Labor hours shall be allocated to each work outline element and segmented by team member. A labor summary by work outline is required. Provide a breakdown of fully loaded labor and rates for each category of personnel to be used on this project. A breakdown of direct and indirect costs is required.

Direct Materials: Total direct material that will be acquired and/or consumed in the technical approach period of performance. Limit this information to only major items of material and how the estimated expense was derived. For this agreement, a major item exceeds \$50,000. Material costs shall be assigned to specific work outline elements. Subcontracts: Describe major efforts to be subcontracted, the source, estimated cost and the basis for this estimate. For this agreement a major effort exceeds \$50,000. Subcontract labor and material shall be accounted for per the two paragraphs above. A summary chart showing each major subcontractor labor and material effort by work outline is required.

Travel: Total proposed travel expenditures relating to the technical approach period of performance. Limit this information to the number of trips, cost per trip, location, duration, and purpose of each trip.

Other Costs: Any direct costs not included above. List the item, the estimated cost, and basis for the estimate. The Cost Proposal should be consistent with your proposed SOW. Activities such as demonstrations required to reduce the various technical risks should be identified in the SOW and reflected in the Cost Proposal.

Section II. Proposed Agreement w/ Attachments

Awards may be issued as a FAR contract, Other Transaction for Research, Other Transaction for Prototype, grants or cooperative agreement. Bidders are recommended to request an award mechanism. Teams requesting a non-FAR based award must submit the rationale for their selection.

5.11 Contact Information for Questions Regarding this Solicitation

The applicable electronic address for all correspondence for this BAA is:
BAA05-03@dhs.gov

Program Manager:
Mr. Trent DePersia
Homeland Security Advanced Research Projects Agency
Washington, D.C. 20528
202-254-6152
trent.depersia@dhs.gov

Dr. Ira Skurnick
Office of Naval Research, Code 341
800 N. Quincy Street
Arlington, VA 22217
703-696-4596
skurnii@onr.navy.mil

5.12 Anticipated Funding Level

HSARPA anticipates that approximately \$9M will be available for award to multiple teams under the PTIEDD solicitation, with the potential for continued effort into future years.

Multiple awards are anticipated. Awards will be made based on the evaluation, funds availability, and other programmatic considerations. The government reserves the right to fund none, some, parts, or all of the proposals received. Portions of resulting awards are likely to be segregated into optional tasks. It is the intention upon completion of proposal evaluation to notify bidders of an initiation of negotiation for awards or rejection of their proposal. In a limited number of cases, proposals will be put on hold pending the outcome of other negotiations and the availability of funds. HSARPA requests that those proposals put on hold remain valid for twelve months after the proposal closing date. The government has limited funds available for reaching the goals described in Section 3, and does not anticipate selecting more than two or three Proposals submitted in each Technical Topic Area.

5.13 Multiple Submissions

Organizations are limited to submitting one prime Proposal or White Paper for TTA-1, and one prime Proposal or White Paper for the first round of TTA-2 in this solicitation. In the case where a single concept applies to multiple TTAs, bidders should submit a single White Paper or Proposal selecting a primary TTA for evaluation. In the Proposal the bidder is invited to describe the relevance of the concept to the other TTA in addition to the primary TTA.

Organizations may participate as subcontractors on more than one White Paper or Proposal for either TTA-1 and/or TTA-2. Organizations who have submitted a prime proposal to TTA-2 in round 1 may submit a prime proposal to TTA-2 in subsequent rounds.

5.14 Preliminary Solicitation and Award Schedule

The timeline for the registration, due dates, and review of the White Papers and the Proposals is included in Table 5.1.

To aid in the management of the anticipated large response to this solicitation, bidders are required to register in advance to submit either a White Paper or a full Proposal. Registration should be done at the website: <http://www.hsarpabaa.com>. White Papers and full Proposals submitted without a registration will not be evaluated. Bidders must register by the deadlines listed in Table 5.1. A separate registration is required for each submission

Date	Event
21 Dec 2004 (Tue)	BAA Published (Website Registration Open)
14 Jan 2005 (Fri)	Bidder's Conference
20 Jan 2005 (Thu)	Registration Closed
1 Feb 2005 (Tue)	White Papers Due TTA-1 & 2 Round 1
11 Mar 2005 (Fri)	White Papers Responses Round 1
12 Apr 2005 (Tue)	Proposals Due TTA-1 & 2 Round 1
20 May 2005 (Fri)	Decisions Announced Round 1
23 May 2005 (Mon)	Registration for TTA-2 Round 2 Open
24 Jun 2005 (Fri)	Registration for TTA-2 Round 2 Closed
8 Jul 2005 (Fri)	White Papers Due TTA-2 Round 2
3 Aug 2005 (Wed)	White Papers Responses TTA-2 Round 2
2 Sep 2005 (Fri)	Proposals Due TTA-2 Round 2
14 Oct 2005 (Fri)	Decisions Announce TTA-2 Round 2
8 Aug 2005 (Mon)	Registration for TTA-2 Round 3 Open
15 Sep 2005 (Thu)	Registration for TTA-2 Round 3 Closed
11 Oct 2005 (Tue)	White Papers Due TTA-2 Round 3
10 Nov 2005 (Thu)	White Papers Responses TTA-2 Round 3
13 Dec 2005 (Tue)	Proposals Due TTA-2 Round 3
20 Jan 2006 (Fri)	Decisions Announce TTA-2 Round 3

Table 5.1. Bidder's Schedule

HSARPA plans to review all White Papers under the initial submission no according to the schedule described in Table 5.1 using the evaluation criteria described in Section 6. After the White Paper review, HSARPA will notify offerors, electronically or in writing, at its discretion, either encouraging or discouraging submission of full Proposals based upon this review. HSARPA does not intend to provide further feedback or a debrief to submitters of White Papers for which full Proposals are not encouraged.

HSARPA plans to review all Proposals according to the schedule described in Table 5.1. Proposals will be evaluated by a review panel using the criteria specified. Following this review offerors will be notified whether or not their Proposal has been selected for initiation of negotiations for award..

6 EVALUATION CRITERIA AND SELECTION PROCESS

6.1 White Papers

The evaluation of White Papers will be accomplished through an independent technical review of each using the following criteria, which are listed in descending order of relative importance:

- **Quality and Technical Merit:** Sound technical and managerial approach to the proposed work, including a demonstrated understanding of the critical technology challenges required to address the desired system performance parameters and a strategy to address those issues, including a risk mitigation strategy;
- **Impact of the Project:** Potential of the concept to address the desired system attributes, performance parameters, and affordability for a relevant homeland security, law enforcement, or public safety applications;
- **Capabilities and Experience:** Capability to perform proposed work and history of performance of the Team and Team members in developing related technologies and systems.

6.2 Proposals

Volume I will be the primary Proposal for the evaluation, with Volumes II and III used as supplementary material at the discretion of the individual reviewer. The evaluation of Proposals will be accomplished through an independent technical review of each using the following criteria, which are listed in descending order of relative importance:

- **Quality and Technical Merit:** Sound technical and managerial approach to the proposed work, including a demonstrated understanding of the critical technology challenges required to address the desired system performance parameters and a strategy to address those issues, including a risk mitigation strategy;
- **Impact of the Project:** Potential of the concept to address the desired system attributes, performance parameters, and affordability for a relevant homeland security, law enforcement, or public safety application;
- **Capabilities and Experience:** Capability to perform proposed work and history of performance of the Team and Team members in developing related technologies and systems;

- **Cost Realism:** Accurate, well-founded estimate of all costs related to performance of the proposed effort.

The final evaluation will be based upon an assessment of the overall best value to the government based upon these criteria.

6.3 Reviews and Selection Process

It is the policy of HSARPA to ensure an impartial, equitable, and comprehensive evaluation of all proposals and to select the source (or combination of sources) whose offer is most advantageous for the government. In order to provide the desired evaluation, government evaluators and employees and subcontractors of a support contractor will review and consider each submission. These personnel will have signed, and will be subject to, the terms and conditions of non-disclosure agreements. Only one submission will be permitted per group as the prime, bidders should submit a single White Paper or Proposal selecting a primary TTA for evaluation. Bidders may request a government-only review, but must indicate so during the White Paper and/or Proposal registration at <http://www.hsarpabaa.com>. HSARPA does not intend to provide further feedback or a debrief to submitters of White Papers for which full proposals are not encouraged.

Exchanges with offerors of the receipt of a Proposal do not constitute a rejection or counter offer by the government.

7 LIST OF ATTACHMENTS

- | | |
|--------------|-------------------------------------|
| ▪ Appendix A | List of Excluded Bidders |
| ▪ Appendix B | Organizational Conflict of Interest |
| ▪ Appendix C | List of Acronyms |
| ▪ Appendix D | Quad Chart Format |

Appendix A

List of Excluded Bidders

This solicitation is a Broad Agency Announcement (BAA) considered to be full and open competition. Therefore any entity other than the following DoE National Laboratories may propose:

- 1) Lawrence Livermore National Laboratory
- 2) Los Alamos National Laboratory
- 3) Oak Ridge National Laboratory
- 4) Pacific Northwest National Laboratory
- 5) Sandia National Laboratory
- 6) Brookhaven National Laboratory
- 7) Argonne National Laboratory
- 8) Idaho National Environmental and Engineering Laboratory
- 9) Remote Sensing Laboratory

The DoE National Laboratories listed above, termed DHS strategic partner laboratories, are prohibited because of their direct participation in DHS programs through the Office of Research and Development.

Appendix B

Organizational Conflict of Interest

ORGANIZATIONAL CONFLICT OF INTEREST

(a) Determination. The Government has determined that this effort may result in an actual or potential conflict of interest, or may provide one or more offerors with the potential to attain an unfair competitive advantage.

(b) If any such conflict of interest is found to exist, the Contracting Officer may

(1) disqualify the offeror, or

(2) determine that it is otherwise in the best interest of the United States to contract with the offeror and include the appropriate provisions to mitigate or avoid such conflict in the contract awarded. After discussion with the offeror, the Contracting Officer may determine that the actual conflict cannot be avoided, neutralized, mitigated or otherwise resolved to the satisfaction of the Government, and the offeror may be found ineligible for award.

(c) Disclosure: The offeror hereby represents, to the best of its knowledge that:

(1) It is not aware of any facts which create any actual or potential organizational conflicts of interest relating to the award of this contract, or

(2) It has included information in its proposal, providing all current information bearing on the existence of any actual or potential organizational conflicts of interest, and has included the mitigation plan in accordance with paragraph (d) of this provision.

(d) Mitigation/Waiver. If an offeror with a potential or actual conflict of interest or unfair competitive advantage believes it can be mitigated, neutralized, or avoided, the offeror shall submit a mitigation plan to the Government for review. Award of a contract where an actual or potential conflict of interest exists shall not occur before Government approval of the mitigation plan. If a mitigation plan is approved, the restrictions of this provision does not apply to the extent defined in the mitigation plan. If not defined, then this provision applies fully.

(e) Other Relevant Information: In addition to the mitigation plan, the Contracting Officer may require further relevant information from the offeror. The Contracting Officer will use all information submitted by the offeror, and any other relevant information known to DHS, to determine whether an award to the offeror may take place, and whether the mitigation plan adequately neutralizes or mitigates the conflict.

(f) Corporation Change. The successful offeror shall inform the Contracting Officer within thirty (30) calendar days of the effective date of any corporate mergers, acquisitions, and/or divestures that may affect this provision.

(g) Flow-down. The contractor shall insert the substance of this clause in each first tier subcontract that exceeds the simplified acquisition threshold.

Appendix C**Acronyms**

BAA	Broad Agency Announcement
CDR	Critical Design Review
COTS	Commercial Off-the-Shelf
DHS	Department of Homeland Security
DoD	Department of Defense
DOE	Department of Energy
FAR	Federal Acquisition Regulations
FedBizOpps	Federal Business Opportunities (www.FedBizOpps.gov)
FFRDC	Federally Funded Research and Development Centers
G&A	General and Administrative
HSARPA	Homeland Security Advanced Research Projects and Agency
IR&D	Independent Research and Development
KClO ₃	Potassium Chloride
PDF	Portable Document Format
PDR	Preliminary Design Review
PTIEDD	Prototypes and Technology for Improvised Explosives Device Detection
RFP	Request for Proposal
S&T	Science and Technology
TBI	Truck Bomb Interdiction
TTA	Technical Topic Area
US	United States

Appendix D

Quad Chart Format

This template will be available in Microsoft PowerPoint Format at www.hsarpabaa.com.

Quad Chart **BAA Number:** *(Number of the BAA Announcement)*
- Format **TTA:** *(insert TTA Number)* **Phase:** *(Insert Part Number)* Offeror Name
 Title: *(Brief/short Title to describe offeror's proposed effort)* Date

<p>Photograph or artist's concept Provide a simple but sufficiently detailed graphic that will convey the main idea of the final capability/use of the prototype, and its technological methodology. It should further give an idea of the size and weight of the end item.</p>	<p>Operational Capability: Provide information on how the system or system component would meet the goals listed in Section 3:</p> <ol style="list-style-type: none"> 1) Performance Targets 2) Cost of Ownership 3) System Characteristics
<p>Proposed Technical Approach: Specifically, how will the problem be approached? Describe tasks to be performed. Describe any actions done to date. Describe any related on-going effort by the offeror. Describe the technology involved and how it will be used to solve the problem. Describe the key technical challenges.</p>	<p>Cost and Schedule: Provide any milestone decision points that will be required. Describe period of performance and total costs. Include the Phase I cost and length, and estimates of cost and lengths of subsequent Phases.</p> <p>Deliverables: Include all hardware and the following data deliverables: monthly status report, final report, test plans, test reports, specifications, computer program end items, user's manual, drawings, transition plan, etc.</p> <p>Corporate Information: You must include Offeror Name, POC full name, address, phone numbers and email.</p>

EXHIBIT 2

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

ELECTRONIC PRIVACY INFORMATION CENTER,)	
)	
Plaintiff,)	
)	
v.)	Civil Action No.: 11-00945 (ABJ)
)	
UNITED STATES DEPARTMENT OF HOMELAND SECURITY,)	
)	
Defendant.)	
_____)	

DECLARATION OF REBECCA MEDINA

I, Rebecca Medina, make this declaration in support of Defendant's Motion for Summary Judgment.

1. I am a Senior Policy Advisor in the Explosives Division (EXD), Science and Technology Directorate (S&T), Department of Homeland Security (DHS). I have held this position since becoming a Federal employee in 2008. Before becoming a Federal employee, I was an employee of Booz, Allen, Hamilton, Inc., assigned to DHS as a program analyst.

2. In my current capacity, my responsibilities include advising the Director of EXD on all external and internal administrative tasks related to the EXD mission. My responsibilities as Senior Policy Advisor have also given me awareness and knowledge of all EXD projects, past and present, making me uniquely qualified to handle the search for records pursuant to Freedom of Information Act (FOIA) requests that are received with respect to EXD activities.

S&T's Work with Explosives Detection Systems

3. Following several bombings of mass transit systems around the world in the early and mid-2000s, S&T decided to explore the methods and technologies available for detecting

and preventing similar attacks within the United States. As a result, in 2005, S&T's Homeland Security Advanced Research Projects Agency (HSARPA) published a broad agency announcement (BAA) entitled "Prototypes and Technology for Improvised Explosives Device Detection (PTIEDD)" in order to solicit research and prototype development of devices capable of detecting explosives in vehicles, leave-behind packages, and packages carried by suicide bombers. The BAA asked for white papers and proposals covering these topical areas.

4. Bidders were required to register and submit proposals online at a password-protected website. All data uploaded to the website was protected from public view or download and could only be reviewed by the submitter, authorized government representatives, support contractors and assigned evaluators who had signed appropriate non-disclosure agreements. Furthermore, all submissions were considered proprietary/source selection sensitive.

5. Ultimately, HSARPA awarded a contract to Northeastern University (NEU) to assess the state of the art in explosives detection technology and its adaptability to mass transit threat scenarios. This "proof of concept" effort was designed to assess the feasibility of placing modified Z Backscatter detection devices in vans for use in and near mass transit locations. NEU subcontracted to Raytheon Corporation for use of its technology in this area. Backscatter is an advanced form of X-ray imaging capable of detecting hidden weapons and explosives on individuals.

6. HSARPA also awarded a contract to Rapiscan, Inc. (Rapiscan) to explore how its portal-based detector system might be adapted for standoff detection in mass transit threat scenarios. Since mass transit involves the constant movement of large numbers of people and vehicles, the research focus was on "stand-off" detection to reduce the risk of impeding travel system efficiencies. The minimal distance between detector and target was at to be at least 3 – 5

meters. At the time, no deployable or operational system existed for this purpose and none exists even today.

7. By 2008, the contracts ended and EXD, having succeeded HSARPA in managing the program, decided to terminate it.

The Processing of EPIC's FOIA Request

8. On December 14, 2010, I received a tasking from the S&T Executive Secretary (Exec Sec) office relaying a request under FOIA from the Electronic Privacy Information Center (EPIC) for the following records:

- a. "All documents detailing plans by federal law enforcement agencies to implement body scanner technology in the surface transportation context."
- b. "All contracts, proposals, and communications with private transportation and shipping companies (including, but not limited to NJ PATH, Amtrak, and Greyhound) regarding the implementation of body scanner technology in surface transit."
- c. "All contracts, proposals, and communications with states, localities, tribes, and territories (and their subsidiaries or agencies) regarding the implementation of body scanners in surface transportation."
- d. "All documents detailing plans by federal law enforcement agencies to use 'Z Backscatter Vans' or similar technology."
- e. "All contracts, proposals, and communications with the manufacturers of the 'Z Backscatter Vans' or similar technology."
- f. "All contracts, proposals, and communications with states, localities, tribes, and territories (and their subsidiaries or agencies) regarding the implementation of 'Z Backscatter Vans' or similar technology."
- g. "All images generated by the 'Z Backscatter Vans' or body scanner technology that has been used in surface transit systems."

9. Exec Sec also provided guidelines regarding how to conduct a search and the availability of exemptions to release under FOIA for certain types of records.

10. The records search focused on EXD because, as the division that dealt with explosives detection (including Z Backscatter Vans and body scanner technology), it was the

only one to possess records responsive to EPIC's FOIA request. Additionally, the HSARPA employee who had overseen explosives detection research, Dr. Mike Shepherd, had been subsequently reassigned to EXD as part of a reorganization of S&T and had brought his files with him.

11. Upon receiving the FOIA request from Exec Sec, I forwarded it to the five employees in EXD, including Dr. Shepherd, who work on issues related to standoff detection or mass transit security and asked them whether they were involved in any programs in which Whole Body Imaging, Advanced Imaging Technology, Millimeter Wave, or Backscatter technologies were being implemented as a detection option in the mass transit context. Two employees replied affirmative and three replied negatively.

12. I then asked the two employees, both program managers, who replied affirmatively to search all paper and electronic files, including e-mails, for the projects they had. Files, both paper and electronic, are kept by the managers for each program. Paper files are stored in file cabinets or binders by project. Electronic files are stored on each program manager's location on the network drive, typically in master folders for each project. Emails are stored in these master folders or electronic in-boxes. Older emails are stored in electronic archive locations.

13. As to the paper search, the program managers searched the cabinets and binders. As to the electronic search, they searched the network drive master folders, e-mail, and email archives using the following search terms to retrieve potentially responsive records: "Whole Body Imager," "Advanced Imaging Technology," "Millimeter Wave," "Backscatter," and "Z-Backscatter Van." Within two weeks of my request, I received either a negative response or potentially responsive records from all the EXD employees.

14. The EXD staff provided 21 records, comprising approximately 1,100 pages of records for review. I conducted an independent review to assess the records' responsiveness to the request and forwarded them to S&T's Office of General Counsel (OGC) to determine whether the documents were subject to any of the disclosure exemptions under FOIA and to Exec Sec for processing for release to EPIC of all responsive, non-exempt records.

15. The initial record sweep by EXD staff picked up a study entitled "DHS S&T Countermeasures Test Beds (CMTB) Rail Security Pilot Final Report." The report, dated December 11, 2006, documents research activities conducted by S&T for detecting explosives in heavy rail transit systems. The study, which consists of 312 pages, bears the legend "Sensitive Security Information," and on that basis was withheld from disclosure under 49 U.S.C § 114 and 49 C.F.R part 1520. Upon further review of the study, however, S&T has determined that the study is not responsive to any of the categories of records sought by EPIC in its FOIA request. Specifically, the report contents and study itself do not set forth a plan by federal law enforcement agencies to implement body scanner technology or to use Z Backscatter Vans or similar technology; are not contracts, proposals or communications regarding the implementation of body scanner technology, body scanners, Z Backscatter Vans or similar technology; and do not contain any images generated by Z Backscatter Vans or body scanner technology.

16. The responsive records can be grouped into two categories: (1) awarded contracts and contract proposals between DHS and NEU for explosives detections machines, and (2) awarded contracts and contract proposals between DHS and Rapsican for explosives detection machines.

17. During the course of S&T's review, FOIA exemptions 3, 4, 5, and 6 were applied to withhold 20 records, 12 full and eight in part. Six of the 20 were withheld under multiple

exemptions. I provide below a general overview of the documents withheld and the reasons for withholding them. The attached *Vaughn* index individually describes each record, the applicable exemptions, and the reasons for withholding.

Exemption 3

18. DHS is withholding four documents under Exemption 3. These documents have been withheld in full as information submitted by NEU and Rapiscan as part of their original proposals in response to BAA 05-03. This information was not incorporated by reference or set forth in the contracts awarded to NEU and Rapiscan, and it is therefore protected under 41 U.S.C. § 253b(m), which prohibits disclosure of competitive proposal information.

Exemption 4

19. DHS is withholding nine records under Exemption 4, five in full and four in part. The information withheld constitutes confidential commercial information related to the efficacy of the systems that Rapiscan provided to the research program. Rapiscan was required to submit the information as part of its contractual obligations.

20. The withheld information provided by Rapiscan was essential to determining whether the system could be adapted to mass transit threat scenarios. It includes technical specifications, capabilities and assessments of its strengths and weaknesses based on its performance.

21. Release of this information would cause substantial harm to Rapiscan's competitive position with respect to future government procurements, as well as giving competitors insight into their product capabilities. Furthermore, companies and research institutions will be less likely to participate in development efforts with DHS without reasonable assurance that their proprietary information will not be publicly disclosed and thus available to

competitors. Release of the information therefore will likely impair DHS's ability to help incubate novel and emerging technologies that could be deployed to protect the homeland at a time when the threat of a domestic terrorist attack remains of utmost concern.

Exemption 5

22. DHS is withholding three records under exemption 5, two in full and one in part. The information withheld relates to the programmatic decision-making process of how EXD employees managed the research as it was being conducted by Rapiscan and NEU under their respective contracts. One withheld record consists of minutes from a preliminary design review meeting at which project performance and whether to move to the next phase of the contract was discussed. The other two records are email communications and briefing materials regarding the ongoing findings and efforts of NEU and Rapiscan's research. These records reveal EXD employees' thought process in managing the contracts and making decisions regarding the progress of developing the systems. Release of this information would have a chilling effect on discussions, opinions and factors being weighed as the contracts progressed. Release could also confuse and mislead the public as it did not represent final agency decision-making but the processes within a contract performance before completion.

Exemption 6

23. DHS has redacted from eight records telephone numbers, email addresses and signatures of employees of Rapiscan, NEU and DHS involved in the contracts. The release of this information would cause a clearly unwarranted invasion of personal privacy, which outweighs any minimal public interest in their disclosure. S&T was particularly careful to withhold contact information for individuals involved in mass transit security projects in order to protect them from the risk of harassing or threatening emails or phone calls in the work place.

Signatures have been redacted as information that is personalized to the individual and that is useful to a thief who attempts to steal an identity or pose as that person. The names of the individuals, however, have been released.

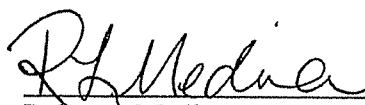
24. By early February 2011, EXD finalized coordination with Exec Sec and OGC of the records responsive to EPIC's request. In summary, EXD released 15 pages in their entirety, partially released 158 pages, and withheld 671 pages in their entirety.

25. Subsequent to this action being filed, a further review of the withheld information has been done in order to determine whether any additional non-exempt information could be segregated and released. As a result, DHS has released to EPIC two records that had been withheld in full, all information that had been withheld in part in another record, and segregable information from three additional records withheld in part. Thus, as set forth in the attached *Vaughn* index, DHS is presently withholding 17 records in full or in part.

26. DHS has also determined that it erroneously charged EPIC \$7.30 to conduct the search and review in response to its FOIA request. DHS has waived that charge.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct to the best of my knowledge and belief.

Executed on: August 18, 2011



Rebecca Medina
Senior Policy Advisor
Explosives Division
Science and Technology Directorate
Department of Homeland Security

ATTACHMENT 1

EPIC v. DHS, No. 11-945 (D.D.C.)*Vaughn* Index

Documents withheld in full or in part

Record number	Number of Pages	Record Title	Record Description	Exemption	Justification for Withholding
1	38	Rapiscan Systems, Phase II Proposal for "Non-Intrusive Detection of Suicide Bombers," dated July 20, 2006.	This record contains all documents submitted by Rapiscan as part of their Phase II proposal in response to DHS/S&T Broad Agency Announcement 05-03, issued April 8, 2005.	(b)(3)	This record is withheld in full. 41 U.S.C. § 253b(m) prohibits the release under FOIA of any competitive proposal except for those portions of the proposal set forth or incorporated by reference in a government contract. The information contained in this record was not set forth or incorporated into the contract awarded to Rapiscan.
2	30	Rapiscan Systems, Proposal for "Non-Intrusive Detection of Suicide Bombers," dated April 8, 2005.	This record contains all documents submitted by Rapiscan as part of their original proposal in response to DHS/S&T Broad Agency Announcement 05-03.	(b)(3)	This record is withheld in full. 41 U.S.C. § 253b(m) prohibits the release under FOIA of any competitive proposal except for those portions of the proposal set forth or incorporated by reference in a government contract. The information contained in this record was not set forth or incorporated into the contract awarded to Rapiscan.

Record number	Number of Pages	Record Title	Record Description	Exemption	Justification for Withholding
3	25	Northeastern University, BomDetec—Wide Area Surveillance and Suicide Bomber Detection at >10M, Technical Proposal, dated September 16, 2005.	This record contains all documents submitted by Northeastern University as part of their original proposal in response to DHS/S&T Broad Agency Announcement 05-03.	(b)(3)	This record is withheld in full. 41 U.S.C. § 253b(m) prohibits the release under FOIA of any competitive proposal except for those portions of the proposal set forth or incorporated by reference in a government contract. The information contained in this record was not set forth or incorporated into the contract awarded to Northeastern University.
4	96	Northeastern University, BomDetec—Wide Area Surveillance and Suicide Bomber Detection at >10M—Phase II, Technical Proposal.	This record contains all documents submitted by Northeastern University as part of their Phase II proposal in response to DHS/S&T Broad Agency Announcement 05-03.	(b)(3)	This record is withheld in full. 41 U.S.C. § 253b(m) prohibits the release under FOIA of any competitive proposal except for those portions of the proposal set forth or incorporated by reference in a government contract. The information contained in this record was not set forth or incorporated into the contract awarded to Northeastern University.

Record number	Number of Pages	Record Title	Record Description	Exemption	Justification for Withholding
5	8	E-mail dated April 30, 2008 from John Beaty, Northeastern University, to Mike Shepard, plus three attachments.	The e-mail contains a discussion between a representative of Northeastern University and a DHS/S&T Federal program manager regarding Phase II of the BomDetec program.	(b)(5) (b)(6)	<p>This record is withheld in full. The document qualifies for protection under the deliberative process privilege and is therefore exempt from disclosure under exemption 5. This email outlines and attaches options related to potential test methodology and technology choices to be made, as well as the progression to develop concepts of operation for equipment once selected and matured for Phase II of the BomDetec program. The release of this information would discourage the expression of candid opinions and inhibit the free and frank exchange of information among agency personnel.</p> <p>This record also contains privacy information withheld under exemption (b)(6) which would cause a clearly unwarranted invasion of personal privacy if released. The information withheld consists of the author's phone number and email address. The privacy interests of the individuals in this agreement outweigh any minimal public interest in</p>

Record number	Number of Pages	Record Title	Record Description	Exemption	disclosure of the withheld information.
6	8	Rapiscan Systems, Factory Acceptance Test Procedure for Secure Stand-off Whole Body Imager.	This record provides Rapiscan's internal procedures and software configurations for the factory acceptance testing of Rapiscan's Whole Body Imager.	(b)(4)	<p>This record is withheld in full. The information withheld includes:</p> <ul style="list-style-type: none"> (1) internal procedures and software configurations for the factory acceptance testing of Rapiscan's Whole Body Imager; (2) specific technological capabilities (i.e. how many people can be scanned in certain periods of time, how threats are spatially resolved, how long average detection takes), design techniques, frequency requirements, operational techniques and requirements, and graphics that show how the Rapiscan system would scan subjects in both single sided and walk through set ups; and (3) information identifying system performance strengths and weaknesses of the capabilities of the standoff detection system, as a result of fulfilling contract award objectives. <p>This information is deemed</p>

<p>proprietary as it provides specific operational data and requirements for standoff detection systems. If this information was released it would cause competitive harm to Rapiscan's efforts and products and with respect to future procurements.</p>					
Record number	Number of Pages	Record Title	Record Description	Exemption	Justification for Withholding
7	39	Rapiscan Systems, Presentation to DHS/S&T, Non-Intrusive Detection of Suicide Bombers, Project Kick-off and Preliminary Design Review Meetings.	This document consists of slides presented to DHS/S&T staff related to the Non-Intrusive Detection of Suicide Bombers work being conducted under contract by Rapiscan. These slides contain technical information, data, and images as well as system specifications and modifications.	(b)(4)	<p>This record is withheld in full. The information withheld includes:</p> <ul style="list-style-type: none"> (1) technical information, data and images as well as system specifications and modifications unique to Rapiscan's stand-off detection system; (2) specific technological capabilities (i.e. how many people can be scanned in certain periods of time, how threats are spatially resolved, how long average detection takes), design techniques, frequency requirements, operational techniques and requirements, and graphics that show how the Rapiscan system would scan subjects in both single sided and walk through set ups; and (3) information identifying system

<p>performance strengths and weaknesses of the capabilities of the standoff detection system, as a result of fulfilling contract award objectives.</p>					

Record number	Number of Pages	Record Title	Record Description	Exemption	Justification for Withholding
8	5	Minutes of meeting held between DHS/S&T and Rapiscan regarding Secure Standoff Preliminary Design Review, held on June 28, 2006.	Minutes prepared of a meeting between Rapiscan Systems and DHS/S&T related to Secure Standoff efforts.	(b)(4) (b)(5) (b)(6)	<p>This record is withheld in full. It is withheld under exemption 4, which protects commercial or financial information obtained from a person that is privileged or confidential. The information withheld includes:</p> <p>(1) Rapiscan cost estimates for both the full standoff detection system and its corresponding software;</p> <p>(2) specific technological capabilities (i.e. how many people can be scanned in certain periods of time, how threats are spatially resolved, how long average detection takes), design techniques, frequency requirements, operational techniques and requirements, and graphics that show how the Rapiscan system would scan subjects in both single sided and walk through set ups; and</p> <p>(3) information identifying strengths and weaknesses of the capabilities of the standoff detection system, as a result of fulfilling contract award objectives; and</p>

<p>(4) contact information for Rapiscan employees.</p> <p>This information is deemed proprietary as it provides specific operational data and requirements for standoff detection systems. The employee contact information is confidential commercial information as it would enable Rapiscan's competitors to target and raid employees with knowledge and capabilities of Whole Body Imager. If this information was released it would cause competitive harm to Rapiscan's efforts and products and with respect to future procurements.</p> <p>This record is also withheld under exemption 5 as information that is protected under the deliberative process privilege. The document provides an outline of options for moving forward with the system design, internal discussions about decisions needed to be made related to a variety of possible deployment and mitigation scenarios, and the types of software that may need to be produced to manage the system effectively. Consideration of this information was necessary for</p>					
----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	--	--	--	--	--

Record number	Number of Pages	Record Title	Record Description	Exemption	Justification for Withholding
9	73	Rapiscan Systems, Non-Intrusive Detection of Suicide Bombers, Monthly Progress Reports, dated October 1, 2005 through June 30, 2006.	These documents consist of monthly reports outlining status of efforts to develop technology to detect suicide bombers at a stand-off distance.	(b)(4)	<p>This record is withheld in full. It contains:</p> <p>(1) the breakdown of specific labor and material costs, system performance specifications and design schematics/renderings, and images of how the system would</p>
<p>moving into Phase II of Secure Standoff program. Release of this internal information would discourage the expression of candid opinions and inhibit the free and frank exchange of information among agency personnel.</p> <p>This record also contains privacy information withheld under exemption (b)(6) which would cause a clearly unwarranted invasion of personal privacy. The withheld information consists of phone numbers and e-mail addresses for persons attending the meeting. The privacy interests of the individuals in this agreement outweigh any minimal public interest in disclosure of the withheld information.</p>					

<p>identify threats; (2) specific technological capabilities, design techniques (i.e. how many people can be scanned in certain periods of time, how threats are spatially resolved, how long average detection takes), frequency requirements, operational techniques and requirements, and graphics that show how Rapiscan system would scan subjects in both single sided and walk through set ups; and (3) information identifying strengths and weaknesses of the capabilities of the standoff detection system, as a result of fulfilling contract award objectives. This information is deemed proprietary as it provides specific operational data and requirements for standoff detection systems. If this information was released it would cause competitive harm to Rapiscan's efforts and products and with respect to future procurements.</p>						<p>identify threats; (2) specific technological capabilities, design techniques (i.e. how many people can be scanned in certain periods of time, how threats are spatially resolved, how long average detection takes), frequency requirements, operational techniques and requirements, and graphics that show how Rapiscan system would scan subjects in both single sided and walk through set ups; and (3) information identifying strengths and weaknesses of the capabilities of the standoff detection system, as a result of fulfilling contract award objectives. This information is deemed proprietary as it provides specific operational data and requirements for standoff detection systems. If this information was released it would cause competitive harm to Rapiscan's efforts and products and with respect to future procurements.</p>
Record number	Number of Pages	Record Title	Record Description	Exemption	Justification for Withholding	
10	30	Rapiscan Systems,	This document consists of	(b)(4)	This record is withheld in full. It	

<p>Slides, Non-Intrusive Detection of Suicide Bombers, Interim Program Review Meeting, held on March 6, 2006.</p>	<p>slides containing a project update on technical status of a Rapiscan effort to detect suicide bombers at a stand-off distance.</p>	<p>contains: (1) information related to the capability of the Rapiscan system and the technical approach the company was proposing to improve the system; (2) drawings and images of proposed systems models and systems components as well as information on how they would be assembled; (3) specific technological capabilities, design techniques, frequency requirements, and operational techniques and requirements; (4) specific technical information about system capability (i.e. how many people can be scanned in certain periods of time, how threats are spatially resolved, how long average detection takes) and graphics that show how Rapiscan system would scan subjects in both single sided and walk through set ups; and (5) information identifying strengths and weaknesses of the capabilities of the standoff</p>
-------------------------------------------------------------------------------------------------------------------	---------------------------------------------------------------------------------------------------------------------------------------	-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

					<p>detection system, as a result of fulfilling contract award objectives.</p> <p>This information is deemed proprietary as it provides specific operational data and requirements for standoff detection systems. If this information was released it would cause competitive harm to Rapiscan's efforts and products and with respect to future procurements.</p>
Record number	Number of Pages	Record Title	Record Description	Exemption	Justification for Withholding
11	9	DHS/S&T and TSA, Technology Transfer Agreement, Standalone Backscatter X-Ray System for Imaging of Explosive Devices for the Counter-Improvised Explosive Program, dated June 18, 2008.	The document outlines plans for the transfer of technology between the DHS/S&T and the Transportation Security Administration.	(b)(6)	This record is withheld in part. The information withheld consists of signatures and email addresses of DHS and TSA officials. The privacy interests of the individuals in this agreement outweigh any minimal public interest in disclosure of the withheld information.
Record number	Number of pages	Record Title	Record Description	Exemption	Justification for Withholding
12	3	Rapiscan Systems, Slides, Walk-By or Walk Through Backscatter X-Ray for Suicide Bomber Detection.	The document provides an overview and graphics of Rapiscan's backscatter x-ray systems.	(b)(4)	This record is withheld in part. The information withheld consists of specific technical information about system capability (how many people can be scanned in certain periods of time, how threats are

						spatially resolved, how long average detection takes) and graphics that show how Rapiscan system would scan subjects in both single sided and walk through set ups. The disclosure of this information is likely to cause substantial harm to the competitive position of Rapiscan.
13	1	DHS, Notice to Proceed, dated July 10, 2006	The document is a letter notifying Northeastern University that DHS there is pending the issuance of a contract for Northeastern's proposal submitted under Broad Agency Announcement 05-03.	(b)(6)		This record is withheld in part. The information withheld consists of the e-mail address and signature of one DHS official and the phone number and e-mail address of another DHS official. The privacy interests of the individuals in this agreement outweigh any minimal public interest in disclosure of the withheld information.
14	72	Contract and Statement of Work between DHS/S&T and Northeastern University	The document outlines the costs for supplies, services, unit price and total costs for a contract awarded under Broad Agency Announcement 05-03.	(b)(6)		This record is withheld in part under exemption 6. The information withheld consists of phone numbers, signatures, and email addresses of contracting officials and points of contact. The privacy interests of the individuals in this agreement outweigh any minimal public interest in disclosure of the withheld information.
						Justification for Withholding
						Exemption
15	73	Contract and Statement of Work Between DHS/S&T	This document outlines the multi-phase effort to develop a backscatter x-ray system that would detect explosive threats	(b)(4) (b)(6)		This record is withheld in part. It is withheld under exemption 4, which protects commercial or financial information obtained from a person

		<p>on people, along with the costs for supplies, services, unit price and total costs for a contract award under Broad Agency Announcement 05-03.</p>	<p>and Rapiscan, Inc.</p>
<p>that is privileged or confidential. The information withheld consists of the costs for supplies, services and unit prices related to detection technologies; and of contact information for Rapiscan employees. If released, this would allow Rapiscan's competitors to unfairly bid on future contracts and to raid Rapiscan's employees.</p> <p>This record is also partially withheld under exemption 6. The information withheld consists of phone numbers, signatures, and e-mail addresses of contracting officials and points of contact. The privacy interests of the individuals in this agreement outweigh any minimal public interest in disclosure of the withheld information.</p>			

Record number	Number of Pages	Record Title	Record Description	Exemption	Justification for Withholding
16	1	E-mail between Ron Hughes of Rapiscan Systems and DHS staff regarding "Summary of Meeting with HSARPA— March 7, 2006."	The document is an email outlining the topics of a meeting held between Rapiscan and DHS on March 7, 2006.	(b)(4) (b)(6)	This record is withheld in part. It is partially withheld under exemption 4, which protects commercial or financial information obtained from a person that is privileged or confidential. The information withheld consists of specific detection capabilities by a number of sensors at a certain distance, and of Hughes' contact information. If this information was released it would cause substantial harm to Rapiscan's efforts and products and with respect to future procurements, and allow competitors to raid Rapiscan employees.
17	7	SSA briefing for BAA 05-03.	Pre-decisional Rapiscan technology development outlines	(b)(4) (b)(5) (b)(6)	This record is also partially withheld under exemption 6. The information withheld consists of the author's e-mail addresses and phone number. The privacy interests of the individuals in this agreement outweigh any minimal public interest in disclosure of the withheld information. This record is withheld in part. The contact information for Rapiscan employees has been withheld under Exemption 4 as confidential commercial information. Release of this information would allow competitors to raid Rapiscan

<p>employees.</p> <p>This record is also partially withheld under exemption 5, which protects from disclosure those inter- or intra-agency documents that are normally privileged in the civil discovery context. After carefully reviewing the document, it was determined that the document qualifies for protection under the deliberative process privilege. This document provides a discourse on the strengths and weaknesses of the prototype system and items for the agency to consider before moving forward with further development. The document is marked as "Pre-Decisional Source Selection Sensitive" by DHS. The release of this internal information would discourage the expression of candid opinions and inhibit the free and frank exchange of information among agency personnel.</p> <p>This record also contains privacy information withheld under exemption 6. The information withheld consists of phone numbers, signatures, and email addresses for two Rapiscan officials. The privacy interests of</p>	

the individuals in this document outweigh any minimal public interest in disclosure of the information.					
---------------------------------------------------------------------------------------------------------	--	--	--	--	--

EXHIBIT 3

**Prototypes and Technology for Improvised Explosives
Device Detection
(PTIEDD)**

**Broad Area Announcement 05-03
(BAA 05-03)**

**Amendment - 2
TTA-3**

Proposer Information Pamphlet (PIP)

**Department of Homeland Security
Homeland Security Advanced Research Projects Agency (HSARPA)**

May 19, 2006

Mandatory White Papers Due: June 19, 2006

Proposals Due: August 24, 2006

For Questions Regarding This Solicitation:

BAA05-03@dhs.gov



NOTE: Offerers are encouraged to view material on both www.fbo.gov (FedBizOps) and www.hsarpabaa.com for information and updates regarding BAA05-03.

**Offerors attention is directed to the highlighted portions which
reflect changes from the original BAA05-03.**

TABLE OF CONTENTS

1	Background	3
1.1	Program Description	3
2	PROGRAM APPROACH AND Schedule	4
2.1	Government Furnished Equipment and Resources	4
2.2	Review Panel	4
2.3	Test and Evaluation Facilities	4
2.4	Program Structure and Program Schedule	4
3	Objectives and GOALS	5
3.1	Technical Topic Area	5
4	DELIVERABLES	6
4.1	Technical and Management Deliverables	6
4.2	Additional Deliverables	7
5	Information for offerors	7
5.1	Eligible Applicants	7
5.2	Types of Awards Including Other Transactions for Prototypes	8
5.3	Registration and Submission Instructions	8
5.4	Applications and Submission Information	8
5.5	Proprietary Information Protection	8
5.6	Security	9
5.7	Organizational Conflict of Interest	9
5.8	Mandatory White Paper Guidance and Content	9
5.8.1	Format and Size Limitations	10
5.8.2	Organization Quad Chart	10
5.8.3	Title, Performer, Total Cost	10
5.8.4	Executive Summary	10
5.8.5	Technical Approach	11
5.9	Proposal Guidance and Content	11
5.9.1	Volume I, Technical and Management Proposal (15 page limit inclusive)	12
5.9.1.1	Section I. Official Transmittal Letter:	12
5.9.1.2	Section II. Abstract of Proposal:	12
5.9.1.3	Section III. Proposal	12
5.9.2	Volume II, Management Proposal (50 page limit inclusive)	13
5.9.3	Volume III, Cost Proposal	13
5.10	Contact Information for Questions Regarding this Solicitation	15
5.11	Anticipated Funding Level	15
5.12	Multiple Submissions	15
5.13	Preliminary Solicitation and Award Schedule	16
6	Evaluation criteria and selection process	16
6.1	White Papers	16
6.2	Proposals	17
6.3	Reviews and Selection Process	17
7	List of Attachments	18

1 BACKGROUND

The Homeland Security Advanced Research Projects Agency (HSARPA) invests in programs offering the potential for revolutionary changes in technologies that promote homeland security and accelerates the prototyping and deployment of technologies that reduce homeland vulnerabilities. HSARPA is the external funding arm for the Department of Homeland Security Science and Technology Directorate (DHS S&T). HSARPA performs these functions in part by awarding procurement contracts, grants, cooperative agreements, or other transactions for research or prototypes to public or private entities, businesses, and universities.

A critical area of focus for DHS is the protection of the homeland from the threat of high explosives. In support of this critical focus area, HSARPA has initiated the **“Prototypes and Technology for Improvised Explosives Device Detection” (PTIEDD)** Program. Its goals are:

- To develop, rapid prototype, and improve products and systems capable of detecting explosive compounds in vehicles;
- To support research and development of next generation or novel technologies or prototypes for detection of improvised explosives in vehicles, in leave-behind packages, or carried by suicide bombers;
- To develop, rapid prototype, and improve products and systems capable of detecting concealed explosives, explosive devices, and/or other weapons.

The solicitation for the PTIEDD Program originated in December 2004 with two Technical Topic Areas (TTAs). Guidelines concerning TTA-1 and TTA-2 can be found in the original Solicitation (www.HSARPAbaa.com) under “Proposer Information Pamphlet” and “Amendment 01”. This amendment, Amendment-2, does not contain any information regarding TTA-1 or TTA-2. All information in BAA05-03 regarding TTA-1 and TTA-2 remains the same.

The purpose of this amendment is to announce the addition of TTA-3 which is available for proposal submission according to the schedule in Table 5.1 in Section 5.13 on page 16 of this document. **Amendment-2 only provides information related to TTA-3; all other information in BAA05-03 remains the same.** TTA-3 is structured to solicit Proposals for near term projects where pre-production working prototypes are to be delivered, demonstrated, and evaluated within 9 to 18 months after award. This Proposer Information Pamphlet should be read in its entirety as sections of this amendment may be different from descriptions provided for TTA-1 and TTA-2.

1.1 Program Description

The PTIEDD Program will require innovative or novel capabilities in multiple disciplines including material science, computer science, chemistry, physics, electrical, mechanical and systems engineering. In order to best accomplish the goals of the PTIEDD Program, HSARPA anticipates receiving Proposals from individual entities or teams, which may include private sector organizations, government laboratories, Federally Funded Research and Development Centers (FFRDCs), and academic institutions.



2 PROGRAM APPROACH AND SCHEDULE

The program approach and schedule ensures that explosive device detection technologies will be rapidly prototyped and will be in place in a timely manner to be effective against indiscriminate bomb or explosive threats. HSARPA anticipates making one award under TTA-3.

2.1 Government Furnished Equipment and Resources

In support of TTA-3, the government will consider requests for government furnished resources and technologies. As part of this solicitation HSARPA will **not** publish a list of potentially applicable technologies for accelerated schedule Proposals.

2.2 Review Panel

A review panel drawn from government and non-government experts who have signed appropriate non-disclosure agreements will perform technical evaluations of the proposed efforts.

2.3 Test and Evaluation Facilities

Department of Homeland Security Science & Technology Directorate will make available appropriate test and evaluation facilities to support this program. Bidders must note any specific requirements needed for test and evaluation of proposed concepts in their Proposal.

2.4 Program Structure and Program Schedule

This amendment consists of one Technical Topic Area (TTA), TTA-3, which is described below. Responses to TTA-3 should propose near term (less than 18 months) solutions and should describe a two-phased effort, similar to the phases described below. The offeror should propose explicit milestones for program reviews and decision point(s).

Primes may submit only a single response addressing TTA-3. Multiple submissions will be accepted from Companies or Universities as long as they are from different facilities, departments, divisions, or other types of organizational structure within the same Company or University.

TTA-3: Provide rapid development and prototypes of portable, handheld, electro-optical based imaging systems for detection of concealed explosives, explosive devices, or other weapons. It is anticipated that these projects will address prototyping of complete systems and be structured into two Phases:

Phase I: Performers will provide detailed performance predictions and lifecycle versus performance cost trades during a short program design Phase culminating with a Critical Design Review (CDR).

Phase II: Following a successful CDR, performers will proceed with a rapid development and testing of a prototype or implementation and testing of enhancements to an existing system.

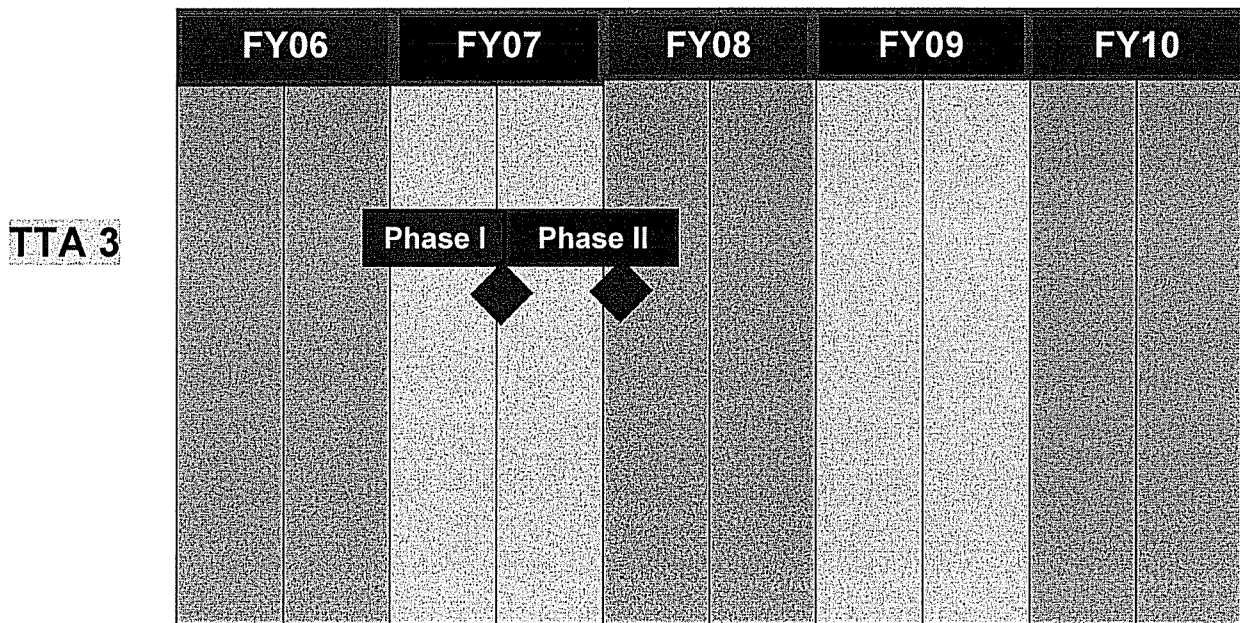


Figure 1. A notional schedule of the program execution timeline. Offerors are encouraged to propose their own schedule based upon their detailed understanding of the technical challenges and their realistic estimate of the technical effort required to solve the problem they propose.

Projects addressing TTA-3 must include: test and evaluation tasks, lab tests, and operational user-oriented field tests.

3 OBJECTIVES AND GOALS

The objectives and goals of TTA-3 emphasize specific aspects of the detection problem. The TTA topic is detailed below:

3.1 Technical Topic Area

TTA-3: Concealed Explosives, Explosive Devices, or Other Weapons Detection – Rapid Prototype of Electro-Optical Imaging Systems

Proposals are requested for the development of a portable, handheld, standoff detection system to be used by a trained operator to identify individuals carrying concealed explosives, explosive devices, or other weapons before those individuals can carry out an attack. Proposed concepts and designs must focus on improving current electro-optical based imaging technologies. Proposals must include test methodologies for assessing resolution and detection capabilities.

All proposed concepts and designs must be appropriate for indoor and outdoor applications, must be benign to humans and property in the interrogated area, and eventually must be cost-effective to procure and maintain.

Required Capabilities include, but are not limited to:

- Detection system must be designed so that one operator can carry, hold, and operate it with one hand. The detection system should be sufficiently rugged to be operated in field demonstrations and evaluations.
- Detection system must have sufficient optical and image processing capabilities, sensitivity, and resolution to allow a trained user to identify an individual concealing explosives or explosive devices under one or two layers of clothing at a stand-off distance of up to a minimum of 50 meters required, 100 meters desired;
- Detection system must be capable of battery operation at a room temperature (20 degrees Celsius) operating environment where three (3) hours continuous use without recharge is required and greater than six (6) hours continuous use is desired;
- Detection system must include a corresponding user manual containing a concise description of the operation of the detection system. The User Manual must include, but not be limited to, the following sections: Specifications, Theory of Operation, Maintenance, Calibration Procedures, Diagrams of Internal Components, and Troubleshooting;
- Up to five (5) Operator Training Series must be provided at the Government's facility on how to operate the detection system. Each training series shall not exceed three (3), eight (8) hour sessions;
- Test methodologies must be proposed for assessing the sensitivity, resolution, and operational performance of the proposed device.

Desired Capabilities include, but are not limited to:

- Detection System may be able to detect other concealed weapons in addition to explosives materials and devices.

4 DELIVERABLES

To the exclusion of exceptions negotiated at time of award, any deliverable associated with this program may be released to outside organizations, both U.S. government and non-government, in support of DHS S&T efforts. The performer may recommend a preferred format for each deliverable, but the government will determine the final format. Monthly status reports are due within one week after the last day of each month; quarterly reports are due one week prior to the time of the quarterly reviews; and a comprehensive final report is due upon task completion.

4.1 Technical and Management Deliverables

Monthly - Brief (not more than two pages) narrative reports will be electronically submitted to the Program Manager within one week after the last day of each month. These reports will describe the previous 30 calendar days' activity, technical progress achieved against goals, difficulties encountered, recovery plans (if needed), explicit plans for the next 30 day period, and

financial expenditures (including expenditures during the past 30 day period, cumulative expenditures, and projected 30 day expenditures).

Quarterly - Quarterly reports (not to exceed 5 pages) will be electronically submitted to the Program Manager and are due one week prior to the time of the quarterly reviews. These reports will describe the previous 90 calendar days' activity, principals involved in the actual work of the period, technical progress achieved against goals, difficulties encountered, funds expended against each sub-task in the previous 90 day period, recovery plans (if needed), explicit plans for the next 90 day period, and financial expenditures (including expenditures during the past 90 day period, cumulative expenditures, and projected 90 day expenditures).

Final - For a final report, each Team will provide a technical report of their work performed during the preceding Phase or Phases of TTA-3. This will include performance predictions, estimates of cost of ownership, and an enumeration of remaining unknowns and uncertainties. This final report will be a cumulative, stand-alone document that describes the work of the entire Phase leading up to it. It should detail how the design concept was refined and why the refinement was undertaken. It must include any technical data gathered, such as, measurements taken, models developed, simulation results, and formulations developed. This final report should also include "lessons learned" from the effort, recommendations for future research in this area, and a comprehensive and detailed account of all funds expended.

Other - Reports or briefings for required tests, design reviews, or other activities will be provided when appropriate.

4.2 Additional Deliverables

The following items must be delivered upon completion of the award:

- Three (3) Fully Functional Prototype Units
- Three (3) Prototype Carry Cases
- Three (3) User Manuals
- Calibration Tools and Procedures Document
- Up to five (5) Operator Training Series
- Acceptance Test Plan
- Test Reports (documenting performance and conformance to specifications)
- Maintenance Schedule
- Mean Time Between Failure (MTBF) Data

Performers should define additional concept and program specific deliverables as appropriate for their specific proposal.

5 INFORMATION FOR OFFERORS

5.1 Eligible Applicants

Any entity or team of entities, other than the specific Department of Energy Laboratories listed in Appendix A, may submit a White Paper and/or Proposal in accordance with the requirements and procedures identified in this amendment. There will be one submission permitted per group as the prime for TTA-3 (see Section 5.12 for additional information). Historically Black Colleges and Universities (HBCU), Minority Institutions (MI), Small and Disadvantaged

Businesses (SDB), Women-owned Businesses (WB), and HUB-zone enterprises are encouraged to submit Proposals, and to join others in submitting Proposals; however, no portion of the amendment will be set-aside for these special entities because of the impracticality of reserving discrete or several areas of research and development under this topic. Teams, which may include private sector organizations, government laboratories, Federally Funded Research and Development Centers (FFRDCs), and academic institutions, are encouraged to respond.

5.2 Types of Awards Including Other Transactions for Prototypes

Awards may be executed as contracts, grants, cooperative agreements or other transactions. Bidders may propose a preferred mechanism for award subject to negotiation and final approval of the government.

5.3 Registration and Submission Instructions

This amendment will remain open from date of issuance with separate White Paper and Proposal evaluations. The evaluations will provide a coordinated evaluation of all White Paper and Proposals submitted following the schedule listed in Table 5.1.

To aid in the management of the anticipated large response to this solicitation, bidders are required to register in advance to submit either a White Paper or a full Proposal. Bidders will not be permitted to submit White Papers or Proposals unless registered. Bidders must register by the deadlines listed in Table 5.1 for White Papers and Proposals; a separate registration is required for each White Paper and Proposal. Submissions will not be accepted from organizations that have not registered.

Any organization that wishes to participate in this amendment must register at www.hsarpabaa.com. Upon acquiring a username and password to access the site, select BAA05-03 from the list on the left side of the screen and further select the specific TTA. Registrants should also receive a control identification number. Upon proper selection, buttons for registration and submission will appear. Fill in the requisite fields, and submit your registration, White Paper, or Proposal. Upon registration or submission, a file will be sent to the registered email address. Receipt of a file confirms your registration for the TTA referenced in the file. In the case of a White Paper or Proposal submission, please check the contents of the file. If they are incorrect, return to the website and make corrections.

5.4 Applications and Submission Information

Copies of this BAA may be downloaded from www.hsarpabaa.com. Paper copies of the BAA may be obtained by contacting:

Kelly Bray ~ 202-254-5720
SETA Support
Booz Allen Hamilton
kelly.bray@associates.dhs.gov

5.5 Proprietary Information Protection

All data uploaded to www.hsarpabaa.com is protected from public view or download. All submissions will be considered proprietary/source selection sensitive and protected accordingly. Documents may only be reviewed by the registrant, authorized government representatives,

support contractors and assigned evaluators. All contractor personnel who will process or review submitted White Paper and Proposals will have signed, and will be subject to the terms of non-disclosure agreements. Their organizations are specifically forbidden to compete in this solicitation.

5.6 Security

Under TTA-3, proposed characteristics of hardware development, principles of operation and/or theoretical concepts can be marked as unclassified (unless classified under other programs). White Papers and Proposals can be submitted as Unclassified. The operational system performance and capabilities, including test plans and results, within the eventual award, however, shall be marked consistent with the Standoff Handheld Explosives Detector Program (SHED) Security Classification Guide (SCG) to be provided with subsequent award. All proposers must have an appropriately cleared facility and personnel to conduct the proposed work up to the SECRET level.

For additional questions regarding security, please contact Chris Featherston:

Christopher Featherston
Director of Security
Science & Technology Directorate
Department of Homeland Security
christopher.featherston@hq.dhs.gov
202-254-6117

5.7 Organizational Conflict of Interest

Organizational Conflict of Interest issues will be evaluated on a case-by-case basis as outlined in Appendix B. Offerors who have existing contract(s) to provide Scientific, Engineering, Technical and/or Administrative support directly to the Program Officers or other operational activities of the Science and Technology Directorate will receive particular scrutiny.

5.8 Mandatory White Paper Guidance and Content

Offerors are required to submit White Papers in advance of full Proposals. Failure to submit a mandatory White Paper will disqualify an offeror from submitting a full Proposal. Only one mandatory white paper per registration is allowed. The lead organization must remain the same on both the mandatory white paper and the proposal. Any full proposals submitted by entities who were not the prime for the mandatory white paper submission will be considered non-responsive.

White Papers should capture the essence of a Proposal and are designed to permit offerors an opportunity to obtain feedback from HSARPA on their planned technology development without having to go to the expense and effort of writing a complete Proposal. If received by the White Paper submission deadline, the White Paper will be evaluated by a review panel comprised of government employees and authorized government representatives specially selected to eliminate potential conflicts of interest. After this review, offerors will be promptly notified either encouraging or discouraging submission of a Proposal. A White Paper may consist of not more than a total of five pages, including a one page Quad Chart, all pictures, figures, tables, and charts in a legible size.

Notwithstanding a request for a government-only review, the government intends to use employees and subcontractors of a support contractor to assist in administering the evaluation of White Papers and Proposals. These personnel will have signed, and will be subject to, the terms and conditions of non-disclosure agreements. Bidders may request a government-only review, but must indicate so when submitting on the website as well as indicating this clearly on the first page of the submitted document.

Discussion, suggestions, or advice given during communication between the Government and offerors on mandatory white paper topics is not binding. Offerors are free to submit a full proposal without regard to any feedback or advice about mandatory white papers that they may have received. Even if the feedback from the Government in response to the mandatory white paper is that a proposal based on the offered idea is unlikely to receive funding, a full proposal may still be submitted and will be evaluated uniformly with all the other proposal submissions.

After the evaluation of mandatory White Papers, HSARPA will promptly notify offerors to either encourage or discourage submission of a full proposal. For those white papers encouraged to submit full proposals, HSARPA will provide comments. Due to the large number of white papers typically submitted, HSARPA will not offer debriefings to offerors discouraged from submitting full Proposals. Offerors will be given 30 days from notification to submit a full proposal. The notification letter will include feedback and the specific deadline for submitting a full proposal.

5.8.1 Format and Size Limitations

A White Paper is an electronic file in PDF format, readable by IBM-compatible PCs. The individual file size must be no more than 5 MB. The font for all White Papers shall be no smaller than 12-font, except for diagrams, tables, or figures. The font for diagrams, figures, or tables should have fonts that are legible – no smaller than 10 point. The White Paper shall be single column. **White Papers may not exceed five pages.** The White Paper should contain the following information in the following order:

- Quad Chart (included in 5-page total limit)
- Title, performer, total cost information
- Executive Summary (including anticipated performance relative to goals)
- Technical Approach
- Summary of Personnel and Performer Qualifications and Experience
- Cost Summary

5.8.2 Organization Quad Chart

For instructions and sample of a Quad Chart, please see Appendix D or visit www.hsarpabaa.com.

5.8.3 Title, Performer, Total Cost

Provide a descriptive title of the proposed effort, the name and address of the performing organization, the name of the principal investigator, and the total cost and duration (in months) of the proposed effort. Provide the TTA number to which you are responding.

5.8.4 Executive Summary

Provide a concise description of the scientific, technical, engineering and management approach you propose to address in the TTA. Describe the various components of the system proposed and relevant details about how they will function together. Describe the concept of operation

and what is unique about your proposed solution. Provide a brief summary of your concept's anticipated performance relative to the TTA goals.

5.8.5 Technical Approach

Describe the basic scientific or technical concepts that will be used in each component or subsystem comprising your proposed solution to the problem described in the TTA. What is unique about your solution and what advantages might it afford compared to alternate approaches other performers in this field have taken? What has been the extent of your team's past experience in working with or employing the devices comprising your system or systems? What particular scientific, technical and / or engineering issues need to be addressed and resolved in the technical approach to demonstrate feasibility?

Explain the performance your proposed solution can be expected to meet measured against each of the specific technical attributes and performance requirements described in the Technical Topic Area section of the BAA. What are the key scientific, technical, or engineering challenges and the timing for each that must be met in order to successfully complete this project?

Describe all required material and information, which must be provided by the government to support the proposed work. Provide a brief summary of the costs to execute your Proposal, summarized by task.

5.9 Proposal Guidance and Content

Following Proposal registration, bidders may begin submitting Proposals, which must be submitted prior to the Proposal deadline.

Offerors must submit a mandatory White Paper in order to submit a Proposal. There will be no exceptions. Only one proposal per registration is allowed. The lead organization must remain the same on both the mandatory White Paper and the Proposal. Any full Proposals submitted by entities who were not the prime for the mandatory White Paper submission will be considered non-responsive.

Proposers can choose to alter their ideas, concepts, technical approaches, etc. or expand on their original ideas between submission of a White Paper and submission of the full Proposal. Discussion, suggestions, or advice between the government and offerors of White Paper topics is not binding. Proposers are free to submit a full Proposal without regard to any feedback or advice about White Papers that they may have received. Even if the feedback from the government in response to the White Paper is that a Proposal based on the offered idea is unlikely to receive funding, a full Proposal may still be submitted and will be evaluated uniformly with others. Proposals consist of three separate documents described in detail below.

- Volume I: Core Technical Proposal;
- Volume II: Management Proposal and Supplementary Technical Data;
- Volume III: Cost Proposal.

Volume I is the primary document to be evaluated by the reviewers, with Volumes II and III providing supporting information. The supplemental material in Volumes II and III are to be used at the discretion of the reviewer. The three-volume proposal comprises PDF files, or, if more convenient for Volume III, a Microsoft Excel file. Each volume must be a separate file, and submitted to the appropriate field on the website. The maximum file size for each volume is

5 MB. The font for all Proposals shall be no smaller than 12-point, except for diagrams, tables, or figures. The font for diagrams, figures, or tables should have fonts that are legible – no smaller than 10 point. The Proposal shall be single column.

Volume I, the core Technical Proposal, shall not exceed fifteen (15) pages in a font no smaller than 12 point. **Proposals for which Volume I exceeds the 15-page limit will be disqualified.** Volume II may not exceed fifty (50) pages. There is no page limit on Volume III. The fifteen page limitation for Volume I includes all pictures, figures, tables, and charts in a legible size. Graphic images inserted into the file should minimize file size and support clear display and document printing. Nonconforming proposals may be rejected without review. The submission of other supporting materials with the proposal is strongly discouraged and if submitted, will not be reviewed.

5.9.1 Volume I, Technical and Management Proposal (15 page limit inclusive)

Volume I provides the primary technical description of the proposal. **Volume I is the primary document to be evaluated by the reviewers, with Volumes II and III providing supporting information.** The supplemental material in Volumes II and III are to be used at the discretion of the reviewer. The total page limit of Volume I includes the official transmittal letter and abstract of proposal described in paragraph 5.9.1.1 and 5.9.1.2. If a separate cover page and table of contents are included at the discretion of the proposer, these pages shall be included in the total page limit of fifteen (15).

5.9.1.1 Section I. Official Transmittal Letter:

Official transmittal letter with authorizing official signature. Include the proposal title and the specific TTA number that the proposal addresses.

5.9.1.2 Section II. Abstract of Proposal:

A one-page synopsis of the entire proposal including total costs proposed for each Phase. Provide a description of the scientific, technical, engineering and management approach you propose to address the goals of the TTA. Describe the various components of the system proposed and relevant details about how they will function together to achieve the goals of the TTA, pointing out what is unique about your proposed solution. Include a brief summary of your concept's anticipated performance relative to the TTA goals.

5.9.1.3 Section III. Proposal

This section describes the proposed work and the associated technical and management issues.

- a. **Ability of proposed work to meet the program goals.** This section is the centerpiece of the proposal and should describe the overall methodology and how it will meet the desired attributes and functionality goals specified in the TTA .
- b. **Detailed technical descriptions and technical approach for Phase I.** Identifies the critical issues and plans for executing Phase I of the technical effort.
- c. **Overview of technical approach for future Phases.**
- d. **Deliverables.** Provide a brief summary of all deliverables proposed under this effort, including data, software, and reports consistent with the objectives of the work involved.
- e. **Management plan.** Provide a brief summary of the management plan, including an explicit description of what role each participant or team member will play in the project, and their past experience in technical areas related to this proposal.

- f. **Requirements for government furnished resources.** Provide a brief summary of required information and data, which must be provided by the government to support the proposed work, if any.
- g. **Cost summary.** Summarize the projected total costs for each task in each year of the effort including a summary of subcontracts, man-hours, and consumables.

5.9.2 Volume II, Management Proposal (50 page limit inclusive)

- a. **Technical Approach for Phase II.** Provide a preliminary description of the Phase II efforts in TTA-3, including Gantt Charts and milestones.
- b. **Statement of Work (SOW), Schedule and milestones.** Provide an integrated display for the proposed research, showing each task in the technical approach, including major milestones, in Phase I. Include a summary schedule for Phase II with anticipated milestones. Include a section clearly marked as the Phase I Statement of Work (SOW) you propose to undertake. It is important to note that the SOW will be used for the initiation of contract negotiations for selected Proposals
- c. **Management plan and key personnel.** Describe how the total team effort will be managed and provide rationale for participation of key team members. Provide resumes and curriculum vitas (CVs) for each of the key personnel.
- d. **Relevant past experience.** Present the proposer's previous accomplishments and work in this and closely related research areas.
- e. **Facilities.** Describes key facilities that will be used in the proposed effort. Delineate between classified and unclassified facilities.
- f. **Requirements for government furnished resources.** Describe all required information and data with the respective classification level, if known, which must be provided by the government to support the proposed work, if any.
- g. **Security plan.** Describes the rationale for what aspects of the work, if any, need to be protected, at what classification level, and propose a strategy for doing so. Provide the collateral clearance level held, if any, by each team member.
- h. **Additional technical information or data.**

5.9.3 Volume III, Cost Proposal

The cost proposal shall be submitted in the format supplied to the Offeror by the Government in the attached Excel file. The Government will **ONLY** accept Cost Proposals that have been completed with the attached Excel file. Since the Government will conduct "What If" scenarios using this information, the file must not be altered in any manner (i.e. no editing of imbedded formulas, no PDF files, etc.). Detailed Bases of Estimates are not required, but Certified Costs and/or Pricing Data are. However, in order for the Government to determine the reasonableness, realism, and completeness of the Cost Proposal, the following data must be provided for each team member as well as a cumulative summary providing an in-depth detailed description to support all Direct and Indirect Rates indicated in the proposal. Data such as Pool Rate Calculations, Pay Scales, Overhead detail, etc. must also be provided by the Offeror in order to appropriately support all rates and costs. The Government requires this data to properly analyze and determine the cost reasonableness of the Offeror's proposal.

1. The Government required format, a Microsoft Excel Spreadsheet attached to this document, details each Phase for the program. It will include:

a) **Direct Labor** - a detailed section including Labor Category, Unburdened Hourly Rates, Hours proposed, and the Total Cost of Labor (All rates must be comparable to GSA or similar labor rates. Offeror **MUST** provide source for all rates listed).

b) **Other Direct Costs (ODC)** - a detailed description and rationale for:

i. **Subcontractor Costs** - Direct Labor, ODC, & Indirect Rates

ii. **Materials** - Detailed costs and support for proposed items

iii. **Travel** - Per Diem, airfare, car rental, days/nights, etc.

“Other Direct Costs” and their prices must be supported. Offeror **MUST** provide substantial support for all costs in this section.

Please Note:

❖ All Subcontractor Costs must be broken out and supported in detail using the Government Cost Proposal Structure (Direct Labor Costs, Other Direct Costs, Indirect Costs, etc.)

❖ All unit prices for Materials must be supported with substantial data (receipts, company estimates, catalogues, etc.). This data can be supplied within the Excel Spread Sheet, a Word Document, or as an attachment in PDF or hardcopy.

❖ In regards to Travel, all information for Travel expenses must be in accordance with the Joint Travel Regulations (JTR) and include the following information:

- Cost of Airfare / Train ticket (provide a weighted average cost using a last minute booking, two week advance booking, and month in advance booking. Also provide where data was attained from – Travelocity, Expedia, etc.)
- Days of travel (provide number of days)
- Number of Contractors traveling
- Per Diem (only 75% of meals can be charged for days of travel)
- Miscellaneous Costs (rentals, parking, mileage/gas, etc.)

❖ **NOTE:** For a list of GSA approved Per Diem Rates and further details regarding the JTR, please refer to the following website:
<http://www.GSA.gov>

c) **Indirect Costs / Rates** - All Indirect Rates incurred must be provided within the proposal; this includes G&A, Overhead, Fringe, and Fee. **Please note that the rates for these costs, like labor rates, MUST be supported with an in-depth detailed description.** Please provide data such as Pool Rate Calculations, Pay Scales, Overhead, Labor Detail, etc. to support all indirect rates. The Government requires this data in order to determine the cost reasonableness of the proposal. All Indirect Rates (Overhead, Fringe, G&A, COM, and Fee) must be applicable to the proposal, if not a rate of 0% should be applied. Rationale and/or support for

designated rates (i.e. DCAA, pool rate, labor description, etc.) is also required to support all data provided by the Offeror.

d) **Total Contract Cost** – Sum of all aforementioned costs

Please note that the analysis of the Cost Proposal cannot begin until all information has been received by the Contracts Office. Any changes to your Technical approach or SOW will have to be captured in a revised Cost Proposal which will be requested by the Contracts Team upon their receipt of the final Technical Evaluation by the PM. Selection of your proposal by the Technical team does not mean that your proposed price is acceptable and final.

Section II. Proposed Agreement w/ Attachments

Awards may be issued as a FAR contract, Other Transaction for Research, Other Transaction for Prototype, grants or cooperative agreement. Bidders are recommended to request an award mechanism. Teams requesting a non-FAR based award must submit the rationale for their selection.

5.10 Contact Information for Questions Regarding this Solicitation

The applicable electronic address for all correspondence for this BAA is:
BAA05-03@dhs.gov

Program Manager:
Mr. Trent DePersia
Homeland Security Advanced Research Projects Agency
Washington, D.C. 20528
202-254-6152
trent.depersia@dhs.gov

Contracting Officer:
Tim Davis
Department of Homeland Security, OPO
Washington, DC 20528
202-254-6110
202-254-6165 (fax)
Tim.Davis@dhs.gov

5.11 Anticipated Funding Level

HSARPA anticipates that not more than \$2M will be available for award to one team under the PTIEDD TTA-3 solicitation. Awards will be made based on the evaluation, funds availability, and other programmatic considerations. The government reserves the right to fund none, some, parts, or all of the proposals received. Portions of resulting awards are likely to be segregated into optional tasks. It is the intention upon completion of proposal evaluation to notify bidders of an initiation of negotiation for awards or rejection of their proposal.

5.12 Multiple Submissions

Organizations are limited to submitting one prime Proposal or White Paper for TTA-3. Organizations may participate as subcontractors on more than one White Paper or Proposal for

TTA-3. Organizations who have submitted a prime proposal to TTA-1 or TTA-2 (any round) may still submit as a prime to TTA-3.

Multiple submissions will be accepted from Companies or Universities as long as they are from different facilities, departments, divisions, or other types of organizational structure within the same Company or University.

5.13 Preliminary Solicitation and Award Schedule

The timeline for the registration, due dates, and review of the White Papers and the Proposals is included in Table 5.1.

To aid in the management of the anticipated large response to this solicitation, bidders are required to register in advance to submit either a White Paper or a full Proposal. Registration should be done at the website: <http://www.hsarpabaa.com>. White Papers and full Proposals submitted without a registration will not be evaluated. Bidders must register by the deadlines listed in Table 5.1. A separate registration is required for each submission.

Date / Time	Event
May 19, 2006	Registration for TTA-3 Open
June 15, 2006 / 4 pm ET	Registration for TTA-3 Closed
June 19, 2006 / 4 pm ET	White Papers Due TTA-3
July 25, 2006	White Papers Responses TTA-3
August 24, 2006 / 4 pm ET	Proposals Due TTA-3
October 10, 2006	Decisions Announced TTA-3

Table 5.1. Bidder's Schedule

HSARPA plans to review all White Papers under the initial submission according to the schedule described in Table 5.1 using the evaluation criteria described in Section 6. After the White Paper review, HSARPA will notify offerors, electronically or in writing, at its discretion, either encouraging or discouraging submission of full Proposals based upon this review. HSARPA does not intend to provide further feedback or a debrief to submitters of White Papers for which full Proposals are not encouraged.

HSARPA plans to review all Proposals according to the schedule described in Table 5.1. Proposals will be evaluated by a review panel using the criteria specified. Following this review offerors will be notified whether or not their Proposal has been selected for initiation of negotiations for award.

6 EVALUATION CRITERIA AND SELECTION PROCESS

6.1 White Papers

The evaluation of White Papers will be accomplished through an independent technical review of each using the following criteria, which are listed in descending order of relative importance:

- **Quality and Technical Merit:** Sound technical and managerial approach to the proposed work, including a demonstrated understanding of the critical technology challenges required to address the desired system performance parameters and a strategy to address those issues, including a risk mitigation strategy;
- **Impact of the Project:** Potential of the concept to address the desired system attributes, performance parameters, and affordability for a relevant homeland security, law enforcement, or public safety applications;
- **Capabilities and Experience:** Capability to perform proposed work and history of performance of the Team and Team members in developing related technologies and systems.

6.2 Proposals

Volume I will be the primary Proposal for the evaluation, with Volumes II and III used as supplementary material at the discretion of the individual reviewer. The evaluation of Proposals will be accomplished through an independent technical review of each using the following criteria, which are listed in descending order of relative importance:

- **Quality and Technical Merit:** Sound technical and managerial approach to the proposed work, including a demonstrated understanding of the critical technology challenges required to address the desired system performance parameters and a strategy to address those issues, including a risk mitigation strategy;
- **Impact of the Project:** Potential of the concept to address the desired system attributes, performance parameters, and affordability for a relevant homeland security, law enforcement, or public safety application;
- **Capabilities and Experience:** Capability to perform proposed work and history of performance of the Team and Team members in developing related technologies and systems;
- **Cost Realism:** Accurate, well-founded estimate of all costs related to performance of the proposed effort.

The final evaluation will be based upon an assessment of the overall best value to the government based upon these criteria.

6.3 Reviews and Selection Process

It is the policy of HSARPA to ensure an impartial, equitable, and comprehensive evaluation of all proposals and to select the source (or combination of sources) whose offer is most advantageous for the government. In order to provide the desired evaluation, government evaluators and employees and subcontractors of a support contractor will review and consider each submission. These personnel will have signed, and will be subject to, the terms and conditions of non-disclosure agreements. Only one submission will be permitted per group as the prime, bidders should submit a single White Paper or Proposal selecting a primary TTA for evaluation. Bidders may request a government-only review, but must indicate so during the White Paper and/or Proposal registration at <http://www.hsarpabaa.com>. HSARPA does not intend to provide further feedback or a debrief to submitters of White Papers for which full proposals are not encouraged.

Exchanges with offerors of the receipt of a Proposal do not constitute a rejection or counter offer by the government.

7 LIST OF ATTACHMENTS

- Appendix A List of Excluded Bidders
- Appendix B Organizational Conflict of Interest
- Appendix C List of Acronyms
- Appendix D Quad Chart Format

Appendix A

List of Excluded Bidders

This solicitation is a Broad Agency Announcement (BAA) considered to be full and open competition. Therefore any entity other than the following DoE National Laboratories may propose:

- 1) Argonne National Laboratory
- 2) Brookhaven National Laboratory
- 3) Idaho National Environmental and Engineering Laboratory
- 4) Lawrence Livermore National Laboratory
- 5) Los Alamos National Laboratory
- 6) Oak Ridge National Laboratory
- 7) Pacific Northwest National Laboratory
- 8) Remote Sensing Laboratory
- 9) Savannah River National Laboratory
- 10) Sandia National Laboratory

The DoE National Laboratories listed above, termed DHS strategic partner laboratories, are prohibited because of their direct participation in DHS programs through the Office of Research and Development.

Appendix B

Organizational Conflict of Interest

ORGANIZATIONAL CONFLICT OF INTEREST

(a) **Determination.** The Government has determined that this effort may result in an actual or potential conflict of interest, or may provide one or more offerors with the potential to attain an unfair competitive advantage.

(b) If any such conflict of interest is found to exist, the Contracting Officer may

(1) Disqualify the offeror, or

(2) Determine that it is otherwise in the best interest of the United States to contract with the offeror and include the appropriate provisions to mitigate or avoid such conflict in the contract awarded. After discussion with the offeror, the Contracting Officer may determine that the actual conflict cannot be avoided, neutralized, mitigated or otherwise resolved to the satisfaction of the Government, and the offeror may be found ineligible for award.

(c) **Disclosure:** The offeror hereby represents, to the best of its knowledge that:

(1) It is not aware of any facts which create any actual or potential organizational conflicts of interest relating to the award of this contract, or

(2) It has included information in its proposal, providing all current information bearing on the existence of any actual or potential organizational conflicts of interest, and has included the mitigation plan in accordance with paragraph (d) of this provision.

(d) **Mitigation/Waiver.** If an offeror with a potential or actual conflict of interest or unfair competitive advantage believes it can be mitigated, neutralized, or avoided, the offeror shall submit a mitigation plan to the Government for review. Award of a contract where an actual or potential conflict of interest exists shall not occur before Government approval of the mitigation plan. If a mitigation plan is approved, the restrictions of this provision does not apply to the extent defined in the mitigation plan. If not defined, then this provision applies fully.

(e) **Other Relevant Information:** In addition to the mitigation plan, the Contracting Officer may require further relevant information from the offeror. The Contracting Officer will use all information submitted by the offeror, and any other relevant information known to DHS, to determine whether an award to the offeror may take place, and whether the mitigation plan adequately neutralizes or mitigates the conflict.

(f) **Corporation Change.** The successful offeror shall inform the Contracting Officer within thirty (30) calendar days of the effective date of any corporate mergers, acquisitions, and/or divestures that may affect this provision.

(g) **Flow-down.** The contractor shall insert the substance of this clause in each first tier subcontract that exceeds the simplified acquisition threshold.

Appendix C**Acronyms**

BAA	Broad Agency Announcement
CDR	Critical Design Review
COTS	Commercial Off-the-Shelf
DHS	Department of Homeland Security
DoD	Department of Defense
DOE	Department of Energy
FAR	Federal Acquisition Regulations (www.gsa.gov)
FedBizOpps	Federal Business Opportunities (www.fbo.gov)
FFRDC	Federally Funded Research and Development Centers
G&A	General and Administrative
HSARPA	Homeland Security Advanced Research Projects and Agency
IR&D	Independent Research and Development
MTBF	Mean Time Between Failure
PDF	Portable Document Format
PDR	Preliminary Design Review
PTIEDD	Prototypes and Technology for Improvised Explosives Device Detection
RFP	Request for Proposal
S&T	Science and Technology
TTA	Technical Topic Area
US	United States

EXHIBIT 4

DECLARATION OF PETER MODICA

Pursuant to 28 U.S.C. § 1746, I, Peter Modica, hereby declare as follows:

1. I am currently employed by Rapiscan Systems, Inc. ("Rapiscan"). I have been employed by Rapiscan for 16 years, and am currently the Vice President, Product Line Management, which includes oversight of all product research and development projects. In this role, I have firsthand knowledge regarding Rapiscan's contract with the Department of Homeland Security ("DHS") on the Prototypes and Technology for Improvised Explosives Device Detection ("PTIEDD") Program. I have personal knowledge of the facts stated herein, and if called as a witness in any proceeding, I would be competent to testify to the following facts.

2. This declaration is being provided at the request of the Department of Justice for use in litigation under the Freedom of Information Act against the DHS involving, in part, documents that Rapiscan has provided to the government as part of DHS' PTIEDD Program. Attachment 1 to this declaration includes a list of all documents that I have been informed are at issue in the DHS litigation. I am familiar with the contents of these documents and I have carefully reviewed them.

3. While not intended to be an exhaustive list of the types of information Rapiscan considers proprietary, release of Rapiscan's (a) internal cost information; (b) unit-pricing information; (c) design details and specifications and performance capabilities for Rapiscan's scanner systems; and (d) the contact and other personal

information of Rapiscan's employees, all contained in the documents at issue in the DHS litigation, would cause Rapiscan substantial competitive harm in future government and commercial procurements.

4. In anticipation that its work related to PTIEDD Program would require limited disclosure to DHS of its proprietary and confidential information, Rapiscan implemented several measures to ensure that such information was not publically disclosed. For example, Rapiscan secured Non-Disclosure Agreements from DHS' technical advisors supporting DHS on the PTIEDD Program.

Indirect Cost Information

5. Rapiscan considers its internal cost information, including labor rates, indirect costs, and costs for supplies and services to be confidential and proprietary, and the disclosure of Rapiscan's internal cost information would cause Rapiscan grave competitive harm. Rapiscan does not release its internal cost information publically, and takes precautions to secure its pricing information as trade secret. Rapiscan maintains such cost information on its secure, password-protected intranet system and access is limited to people authorized to see pricing information.

6. Disclosure of Rapiscan's internal cost information would cause substantial competitive harm because competitors would have insight into Rapiscan's cost structure, which would enable them to predict Rapiscan's ability to price contracts in future procurements. Rapiscan voluntarily submitted this

information to the Government with the understanding that the information would not be disclosed outside the Government. Rapiscan does not consider the release of this information a "cost of doing business with the Government."

Unit Pricing Information

7. Disclosure of this unit-pricing information would cause Rapiscan substantial harm as competitors could undercut Rapiscan's prices in future competitions. Such disclosure would place Rapiscan at a competitive disadvantage in all future procurements because Rapiscan's competitors would have a roadmap to how Rapiscan prices its scanner systems and related research and development projects. In addition, the disclosure of Rapiscan's unit-pricing information, when combined with other pricing information, would provide competitors insight into how Rapiscan and its suppliers and subcontractors adjust their prices over time, thereby allowing Rapiscan's competitors additional information as to how Rapiscan will price its systems and services in the future. The confidential unit-pricing information would give Rapiscan's competitors insight into Rapiscan's pricing strategy, costs, markups, efficiencies, and economies of scale. As such, disclosure of Rapiscan's unit-pricing information would cause Rapiscan substantial competitive harm.

Systems Design and Specification Information

8. Rapiscan would suffer substantial competitive harm if design information and performance specifications for its Secure 1000 scanner system at

issue here were made available to a competitor. The information at issue describes the capabilities of Secure 1000 scanner system, including, for example, image resolution measurements, detection capabilities, effectiveness of the system at particular distances, and the ability of Rapiscan's scanner to operate in multiple configurations. This system design and capabilities information is customarily not made available to the public.

9. The disclosure of design information and performance specifications is likely to cause substantial harm to the competitive position of Rapiscan. The ability to design and build the most effective and efficient scanner system is an extremely important part of the competitive landscape for scanner systems. Rapiscan considers the design for its Secure 1000 system an important technical achievement that gives it a decisive advantage over its competitors. The performance capabilities of this system are very important aspect of the overall design and construction of Rapiscan's scanner system. Knowledge of such performance capabilities would give Rapiscan's competitors insight into the design specifications of the Secure 1000 system and would alert competitors to the standard of performance they must achieve to successfully compete against Rapiscan. Access to such capabilities information, and to design details themselves, would permit a competitor to more effectively design and build its own systems and would, therefore, cause Rapiscan substantial competitive injury.

Information Related to Employees

10. Rapiscan would suffer substantial competitive harm if the contact and other personal information of employees and contractors involved in the radiation tests at issue here were made available to a competitor. Rapiscan's employee contact information are contained throughout all the documents provided by DHS. The contact information and other personal information of Rapiscan's key employees and the work they perform is not made public.

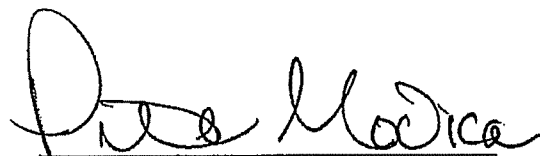
11. Rapiscan has invested heavily in the training of its employees and considers this human capital Rapiscan's most valuable asset. A competitor would benefit (and Rapiscan would be harmed) by the release of the employee information in the documents at issue here because the competitor would know the information about key Rapiscan employees with knowledge of the development and capabilities of Rapiscan's scanner systems. A competitor would then be armed with the information to "raid" these employees and ascertain this information.

12. Having worked in the scanner systems industry for over a decade, I understand that competitive environment in which Rapiscan competes. Further, I am familiar with the firms against which Rapiscan competes. The market for advanced imaging technology is highly competitive both in the United States, in Europe, and around the world. In such a competitive environment, contractors seek any increment of useful information about their competitors' businesses, particularly their pricing and technical capabilities, because obtaining that information could give them a decisive advantage.

13. There is considerable "actual competition" for the provision of scanner systems to the United States government. For instance, Rapiscan expects that the TSA will procure 500 Advanced Imaging Technology systems (which is synonymous with Rapiscan's Secure 1000 systems), as specified in the FY2011 appropriations bill. Rapiscan expects other firms to compete for this work. These firms would benefit from Rapiscan's confidential information at issue because they could more effectively design their scanner systems and structure their proposals to compete with Rapiscan.

14. Because of the intensely competitive nature of the scanner systems industry, Rapiscan would be less willing to participate in future research and development projects, such as the PTIEDD Program, if Rapiscan were required to disclose its proprietary information as a condition of participation in such a governmental program.

I declare under penalty of perjury that the foregoing is true and correct.


Peter Modica

Executed on: August 22, 2011

ATTACHMENT 1

	Document Title	Document Description
1	Rapiscan Systems, Slides, Walk-By or Walk Through Backscatter X-Ray for Suicide Bomber Detection	The document provides an overview and graphics of Rapiscan's backscatter x-ray systems.
2	Contract Award and Statement of Work Between DHS/S&T and Rapiscan Systems	This document outlines the multi-phase effort to develop a backscatter x-ray system that would detect explosive threats on people, along with the costs for supplies, services, unit price and total costs for a contract award under Broad Agency Announcement 05-03.
3	March 8, 2006 e-mail between Ron Hughes of Rapiscan Systems and DHS staff regarding "Summary of Meeting with HSARPA— March 7, 2006"	The document is an email outlining the topics of a meeting held between Rapiscan and DHS on March 7, 2006.
4	Pre-decisional document of Rapiscan Detection Capabilities	Rapiscan marketing piece and pre-decisional Rapiscan technology development outlines
5	Rapiscan Systems, Phase II Proposal for "Non-Intrusive Detection of Suicide Bombers," dated July 20, 2006.	This record contains all documents submitted by Rapiscan as part of their Phase II proposal in response to DHS/S&T Broad Agency Announcement 05-03, issued April 8, 2005.
6	Rapiscan Systems, Proposal for "Non-Intrusive Detection of Suicide Bombers," dated April 8, 2005.	This record contains all documents submitted by Rapiscan as part of their original proposal in response to DHS/S&T Broad Agency Announcement 05-03.
7	Rapiscan Systems, Factory Acceptance Test Procedure for Secure Stand-off Whole Body Imager.	This record provides Rapiscan's internal procedures and software configurations for the factory acceptance testing of Rapiscan's Whole Body Imager.

	Document Title	Document Description
8	Rapiscan Systems, Presentation to DHS/S&T, Non-Intrusive Detection of Suicide Bombers, Project Kick-off and Preliminary Design Review Meetings.	This document consists of slides presented to DHS/S&T staff related to the Non-Intrusive Detection of Suicide Bombers work being conducted under contract by Rapiscan. These slides contain technical information, data, and images as well as system specifications and modifications.
9	Minutes of meeting held between DHS/S&T and Rapiscan on June 28, 2006.	Meeting minutes for a meeting between Rapiscan Systems and DHS/S&T related to Secure Standoff efforts.
10	Rapiscan Systems, Non-Intrusive Detection of Suicide Bombers, Monthly Progress Reports, dated October 1, 2005 through June 30, 2006	These documents consist of monthly reports outlining status of efforts to develop technology to detect suicide bombers at a stand-off distance
11	Rapiscan Systems, Slides, Non-Intrusive Detection of Suicide Bombers, Interim Program Review Meeting, held on March 6, 2006.	This document consists of slides containing a project update on technical status of a Rapiscan effort to detect suicide bombers at a stand-off distance.

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

<hr/>)	
ELECTRONIC PRIVACY INFORMATION)	
CENTER,)	
)	
Plaintiff,)	
)	
v.)	Civil Action No.: 11-00945 (ABJ)
)	
UNITED STATES DEPARTMENT)	
OF HOMELAND SECURITY,)	
)	
Defendant.)	
<hr/>)	

ORDER

Upon consideration of Defendant’s Motion for Summary Judgment and the entire record herein, it is this _____ day of _____, 2011

ORDERED that Defendant’s motion is **GRANTED**.

SO ORDERED.

Amy Berman Jackson
United States District Judge