



INTELLIGENCE AND
NATIONAL SECURITY
ALLIANCE

Statement for the Record of

Charles E. Allen
Senior Intelligence Advisor
Intelligence and National Security Alliance (INSA)

For a Hearing on

***Doing Business with DHS:
Industry Recommendations to Improve Contractor Employee Vetting***

Before the

U.S. House of Representatives
Committee on Homeland Security
Subcommittee on Oversight and Management Efficiency

February 27, 2018



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Introduction

Chairman Perry, Ranking Member Correa, Members of the Subcommittee, thank you for the opportunity to testify today. My name is Charlie Allen. I am the Senior Intelligence Adviser at the Intelligence and National Security Alliance (INSA), a nonpartisan, nonprofit forum for advancing intelligence and national security priorities through public-private partnerships. I serve as chair of INSA's Security Policy Reform Council (SPRC), which brings together industry and government stakeholders to improve the effectiveness of security policy and programs and to enhance industry's ability to support national security. The SPRC has been a thought leader for modernizing the security clearance process. We have championed clearance reciprocity, the adoption of continuous monitoring and evaluation for cleared personnel, and other transformative steps to bring our trusted workforce into the 21st Century. Many of the challenges associated with the security clearance process apply to the DHS fitness and suitability assessment process.

My testimony is informed by input from INSA's membership, which includes small, medium and large firms that have contracts with the Department of Homeland Security and with individual DHS components, as well as with the Intelligence Community and the Department of Defense. My testimony is also informed by more than 40 years in the Intelligence Community, which I

¹ Charles E. Allen, a Principal at the Chertoff Group, is the Senior Intelligence Advisor to the Intelligence and National Security Alliance (INSA), a non-partisan, non-profit forum dedicated to advancing intelligence and national security priorities through public-private partnerships. He serves as chairman of INSA's Security Policy Reform Council, which applies private sector expertise and commercial best practices to improve the efficiency of U.S. Government policies regarding security clearances and related matters. From 2005-2009, he served as the Department of Homeland Security's Under Secretary of Intelligence and Analysis and Chief Intelligence Officer. He concluded 47 years of service at the Central Intelligence Agency by serving as the Assistant Director of Central Intelligence for Collection.

concluded by serving as the Department of Homeland Security's Under Secretary of Intelligence and Analysis and its Chief Intelligence Officer from 2005 to 2009.

Fitness determinations of contractor employees are essential to developing a workforce the American people can trust to protect them. Unfortunately, however, the inefficiency of this process deters some companies from seeking work with the Department of Homeland Security; hinders companies' ability to execute their contracts; increases companies' costs; and ultimately undermines DHS's mission. The Department's processes must be responsive to its industry partners, as the Department depends on contractors' unique skills, expertise, and experience for many critical functions.

I am here today to advocate for a number of reforms that would eliminate inefficiencies in the DHS fitness/suitability process, including: (1) standardizing the suitability and fitness requirements across the Department, consistent with the "unity of effort" campaign undertaken by DHS Secretaries from both the current and previous Administrations, (2) making those requirements publicly available, (3) empowering the Department's Chief Security Officer to determine and implement consistent requirements across the Department, and (4) eliminating the requirement to conduct a fitness/suitability assessment on government or contractor personnel who possess a valid, in-scope security clearance.

Background

Before characterizing the challenges presented by DHS's fitness/suitability requirements, it would be helpful to define some key terms and explain the investigative and adjudicative process.

Fitness / Suitability Assessment

Before starting work on any DHS contract in any capacity, a contractor must receive a fitness determination, based on a background investigation, from the specific DHS component being supported. If the contractor seeks to support a second DHS component organization, he or she must go through a second fitness assessment.

The need for a fitness determination applies to everyone. It does not only apply to contractors who are working at a DHS site and accessing DHS networks and databases – people whom the Department would understandably want to vet. It includes copyeditors who review a report written for DHS under contract. It includes program managers overseeing project staffing and budgets. It includes security guards checking IDs for a DHS-contracted conference at a contractor facility – someone who will never access DHS information or facilities. There is little, if any, need for contractors in such roles to be investigated by the Department.

In the Department's *Instruction Handbook on the DHS Personnel Suitability and Security Program*, DHS's Chief Security Officer defines "suitability/fitness" as "an assessment of an individual's character or conduct that may have an impact on promoting the efficiency and the

integrity of the Federal service.”² Assessments are conducted at three levels – high-, medium-, and low-risk – depending on whether the position has the potential for exceptionally serious, serious, or limited impact “on the integrity and efficiency of Federal service.”³

As the U.S. Citizenship and Immigration Services (USCIS) web site⁴ describes the process of gathering information to conduct a fitness assessment, the Department will investigate a wide range of past behavior by the person requesting access, including “illegal drug use, financial delinquencies, employment history, residences, education, police record, alcohol use and counseling, among other things.” The investigation involves interviews of “close personal associates, spouse, former spouse(s), former employers, co-workers, neighbors, [and] landlords,” and it involves checks of references and records related to one’s education, credit history, military service, tax payments, and police interactions.

Security Clearance

If a contractor needs access to classified information, he or she will first have to be granted an appropriate level security clearance, which differs from a fitness/suitability determination. The DHS Suitability and Security *Instruction Handbook* defines a security clearance as “a determination that a person is able and willing to safeguard classified national security information”⁵ – the release of which, according to Executive Order 13526, could cause “exceptionally grave” or “serious” damage to U.S. national security.⁶

It should be noted that anyone who holds an active security clearance has already gone through a background investigation that considers the same factors evaluated in a DHS fitness assessment – though likely far more in-depth – and had the findings be favorably adjudicated. Yet even if one has a top-level security clearance – and even if that clearance was granted and held by DHS – a contractor must still undergo a less-thorough and duplicative fitness investigation and assessment before he or she can begin work.

² Department of Homeland Security, Office of the Chief Security Officer, *The Department of Homeland Security Personnel Suitability and Security Program*, DHS Instruction Handbook 121-01-007, June 2009, p. 5. As of February 21, 2018: <https://www.dhs.gov/sites/default/files/publications/instruction-121-01-007-personnel-suitability-and-security-program.pdf>.

³ Department of Homeland Security, *The Department of Homeland Security Personnel Suitability and Security Program*, p. 14.

⁴ U.S. Citizenship and Immigration Services, “Q&A Regarding Background Investigations,” web site. Updated March 18, 2008. As of February 16, 2018: <https://www.uscis.gov/faq-page/qa-regarding-background-investigations#t12832n40208>.

⁵ Department of Homeland Security, *The Department of Homeland Security Personnel Suitability and Security Program*, p. 20.

⁶ Executive Order 13526, December 29, 2009, sec. 1.2. As of February 21, 2018: <https://www.archives.gov/isoo/policy-documents/cnsi-eo.html>.

Inefficiencies

In my personal experience and that of several INSA member firms, a number of factors hinder timely suitability determinations.

- 1) **Lack of transparency.** Many DHS components do not make their full suitability criteria publicly available, hindering firms' ability to understand the personnel needs of a given DHS component, both during the bid process and after the contract is awarded.
- 2) **Inconsistency.** Fitness standards vary across DHS components, precluding reciprocity of favorable suitability assessments when a contractor joins a contract with a different DHS component.
- 3) **Redundancy.** Even if an individual contractor has received a favorable fitness determination from one DHS component, before he or she can support a contract for another DHS component, he or she must secure a favorable determination from that component too. Similarly, even contractors who hold valid, in-scope security clearances must undergo a fitness investigation despite having successfully completed a more in-depth background investigation that addresses the Office of Personnel Management's fitness requirements and many of the issues of concern to DHS components.

Lack of Transparency

In preparation for my testimony, I had intended to compare and contrast the suitability criteria of different DHS components to see where – and perhaps divine why – they differ. Unfortunately, only one – the Transportation Security Administration (TSA) – makes its full list of criteria publicly known, as they are mandated in law. TSA is statutorily required to consider 28 types of criminal behavior that would disqualify an individual from employment with the agency.⁷

In the absence of information, contracting firms must decide whether, how, and how much to bid for contracts without knowing whether they have sufficient staff who will meet the fitness criteria. Firms do not even receive clearly defined fitness criteria *after* being awarded the contract. As a result, they simply propose staff and wait.

⁷ The requirements are specified in 49 U.S.C. § 44936(b) and 49 C.F.R. § 1542.209(d). See *The Insider Threat to Homeland Security: Examining Our Nation's Security Clearance Processes*, Hearing Before the Subcommittee on Counterterrorism and Intelligence, Committee on Homeland Security, U.S. House of Representatives, 113th Cong., 1st Sess. (November 13, 2013). (Gregory Marshall, Chief Security Officer of the Department of Homeland Security, Answers for the Record to Questions Submitted by Rep. Peter King.) As of February 21, 2018: <https://www.gpo.gov/fdsys/pkg/CHRG-113hrg87372/pdf/CHRG-113hrg87372.pdf>. The criteria are specified more clearly in Transportation Security Administration, "Self-Assessment for Applicants for the Transportation Security Administration (TSA)," web site, revised June 2011. As of February 17, 2018: <https://hraccess-assessment.tsa.dhs.gov/tsofaqs/backgroundrequirements.pdf>.

Inconsistency

DHS Instruction Handbook 121-01-007 establishes minimum standards for the DHS Personnel Suitability and Security Program but adds, “any DHS component is not prohibited from exceeding the requirements.” Barring comprehensive data, I would hazard a guess many components have added what they have identified as mission-specific criteria. The DHS Inspector General, for example, reported that because Border Patrol officials routinely come across illegal drug activity, CBP deems unsuitable anyone who has “ever had any illegal involvement in the cultivation, manufacturing, distribution, processing, or trafficking of any drug or controlled substance”.⁸ Clearly, a person with such a history would not be fit to work at another DHS component, even if its personnel do not directly address illegal narcotics. This highly specific disqualifying factor is thus unnecessary. Yet because the criterion exists, CBP must investigate whether a contractor violates it even if the contractor has already been cleared to work by another DHS component.

It is not clear that component-specific security requirements have demonstrated any value-added. Instead, they have precluded or delayed qualified contractors from beginning work, introducing uncertainty for firms, contractors, and the components depending on them. Favoring component autonomy is a holdover from DHS components’ legacy as independent agencies. In the present era, when successive DHS Secretaries advocate for a “unity of effort” across the Department, no DHS component requires fitness standards so unique that a uniform standard would not suffice.

The continued existence of component-specific criteria yields a requirement for component-specific fitness assessments. DHS leadership should direct components to assess whether the specific criteria that are unique to them really add so significantly to determinations of employee and contractor trust that these inconsistencies must be maintained. A uniform set of standards would enable reciprocity across components that is presently not possible.

Redundancy

When reciprocity is not an option, redundancy often surfaces. In the absence of common adjudicative criteria and a shared database of investigation data, DHS components are doomed to duplicate each other’s work. Contractors—who often support multiple components within DHS and across broader USG – are considerably more susceptible to endure redundant investigations.

DHS considers fitness determinations to be contract-specific. As a result, a contractor who has successfully passed one DHS component’s fitness investigation cannot work on a contract for another DHS component unless he passes that organization’s own investigation. As a

⁸ Department of Homeland Security, Office of Inspector General, *The DHS Personnel Security Process*, OIG-09-65, May 2009, p. 19. As of February 21, 2018: https://www.oig.dhs.gov/assets/Mgmt/OIG_09-65_May09.pdf.

comparison, consider if staff from this Subcommittee could not support another Subcommittee without being reinvestigated.

Even worse, if a contractor is already supporting a DHS component on a contract, having successfully received a fitness determination, he cannot support a new task order on the same contract without undergoing another fitness investigation by the same component. So even if this individual is already doing work for a DHS component, he cannot work on another project for the same organization without being reinvestigated. This would be like investigating the staff of this Committee so they could support today's hearing and then investigating them all over again to enable them to support a hearing scheduled for next week.

In particular, reinvestigating contractors with an existing fitness determination or a valid, in-scope security clearance wastes time and resources. A government agency already has compiled the entire body of information necessary to generate a complete fitness investigation (i.e., interviews with neighbors and employers, checks of police, academic, and credit records, etc.) —and adjudicated it successfully. DHS policy indicates prior investigations conducted within the past five years would satisfy investigative requirements—but would not in and of themselves prove sufficient for an affirmative adjudication. Rather, data from investigative files must be “obtained and reviewed in conjunction with pre-employment checks to make a fitness decision for employment.”⁹

Nothing illustrates the lack of interagency trust and an almost compulsive need to check internal boxes more than requiring holders of active security clearances to undergo a more cursory fitness assessment from DHS. This happens all the time.

- One INSA member firm hired an individual specifically because he had a skill set relevant to a DHS contract. Yet despite holding a Department of Defense Top-Secret clearance, he is still awaiting a fitness determination from DHS fourteen months later.
- The DHS program manager at one large services firm waited four months to receive her fitness determination from a DHS component – even though a DHS Headquarters office, the Office of Intelligence and Analysis (I&A), already held her TS/SCI clearance. During this four months, she could not bill to the contract – so she could not oversee or manage her firm's work for the component.
- One company told INSA of a person who was denied a fitness determination because he was married to a foreign national. But this person held a TS/SCI clearance, which means that another agency had already investigated the foreign spouse and determined that she posed no security risk.

Fitness investigations of cleared personnel virtually never yield derogatory information that would merit a denial of access. Data provided by several INSA member companies indicate that the share of their cleared personnel who are rejected for DHS fitness is between zero and 1.3 percent. One of the firms explained that the few employees it had who were denied fitness

⁹ Department of Homeland Security, Office of the Chief Security Officer, *The Department of Homeland Security Personnel Suitability and Security Program*, p. 17.

determinations had short-term debt problems associated with the collapse of the housing market at the beginning of the recent recession. Such employees are so few and far between – and so low-risk – that the fitness investigations of these firms’ personnel added little, if any, to the Department’s efficiency or integrity.

I encountered this predicament more than I care to remember as DHS’s Under Secretary for Intelligence. I frequently saw cleared individuals with years of experience in the Intelligence Community unable to come to work because they were awaiting a cursory suitability or fitness review. If we are to make fitness and suitability standards work for DHS and its industry partners, reciprocity must be part of the solution.

Impact on Industry

The requirement that all personnel on a DHS contract receive a fitness determination specific to that contract burdens both government and industry with delayed productivity and increased costs – thus hindering the Department’s ability to fulfill its mission.

- 1) **Firms struggle to staff contracts in a timely manner despite having qualified personnel available.** Firms often must rely on contractors new to a DHS component in order to complete staffing of a contract. One large services firm told us that the average wait over the past five years has been 61 days. Another large services firm told INSA that its staff waits 26 days on average for a fitness determination to do classified work and 42 days for a fitness determination to do unclassified work. Another INSA member organization asserted that its staff routinely wait 60 to 90 days to receive fitness determinations. In practice, the delays encountered are even longer, as it takes roughly one to two weeks to complete and submit paperwork before a fitness investigation can be started, and it takes another one to two weeks after a fitness determination is provided for the individual to be indoctrinated, or “read in” by the DHS component.

Delays awaiting a fitness determination for contractors previously unknown to US Government are understandable and even prudent; however, these figures also include contractors who hold Secret or TS/SCI clearances, who received affirmative fitness determinations from other DHS components, or who are already working for the very same DHS component on another contract or task order.

These delays can be incredibly counterproductive for firms who, by the nature of contracting, have limited time to produce results. Some contracts may be issued for only one year, with additional option years if the work is done satisfactorily. A two-month delay to investigate staff wastes as much as one-sixth of a firm’s performance period, thereby diminishing productivity and undermining relationships between the contractors and the government officials they support.

- 2) **Staffing delays increase overhead costs associated with contract support.** Firms incur costs while their contractors wait for suitability determinations. These costs increase the

firms' operating expenses and contribute to staff turnover, as bored staff inevitably look for more engaging opportunities. One INSA member firm stated it incurs \$500,000 per year in overhead costs waiting for staff fitness determinations. This figure would be larger were it not for the firm's ability to give employees other temporary assignments—work that may not be substantive or professional rewarding.

Another firm reported average costs of \$900 per day per employee and average wait times of 42 days, or 30 business days, for a fitness determination. That comes to a loss of \$27,000 for each individual slotted to work on a DHS contract. If the company was required to provide 50 people on the contract – not an unusual level of effort, particularly for an on-site staff augmentation contract – the company would lose \$1.35 million in revenue waiting for DHS to conduct fitness assessments. If this firm had won its contract under a firm fixed price or Lowest Price Technically Acceptable (LPTA) procurement, the firm would be unable to recoup the costs of this lost staff time.

- 3) **Costs incurred waiting for fitness determinations hit small- and medium-sized firms especially hard.** Small firms do not have the resources to carry unbillable staff while they wait for a fitness determination that could take weeks or months to receive. If a small firm cannot put its people to work relatively quickly, it will be reluctant to pursue DHS opportunities – or it may assign employees to other projects, making them unavailable to support DHS when the fitness determination comes through. If the Department wants to take advantage of the skills and expertise of smaller firms – many of which are owned by women, minorities, and veterans – fitness determinations must be better aligned to provide firms with greater certainty that their personnel will be able to do the job efficiently.

Recommendations

DHS can take a number of steps to eliminate the burden that the fitness requirement places on its industry partners. In doing so, the Department would improve its ability to execute its mission and reduce costs for both contractors and the government.

- 1) **DHS should eliminate suitability requirements for staff who already hold a valid, in-scope security clearance.** Fitness assessments consider the same broad behavior and characteristics that are investigated and evaluated in the process of granting someone a clearance. DHS has no valid reason for reinvestigating and readjudicating the same facts. Requiring a more cursory and mostly duplicative background check on contractors who have already undergone much more thorough investigations is a waste of time and resources on the part of both the Department and its industry partners.
- 2) **DHS should set consistent criteria suitability standards across the Department.** As I have discussed, there is simply no reason for DHS components to have different standards for fitness and suitability. The Department should determine the criteria that make someone fit or unfit to handle sensitive information and tasks on its behalf and

apply those standards across the entire organization. Such a measure would be consistent with a 2006 DHS Management Directive that called for DHS to “standardize security policies and appropriate procedures” across the Department.¹⁰

3) DHS should mandate – and implement – suitability reciprocity among all components.

Ten years ago, Under Secretary for Management Elaine Duke signed a memorandum committing the Department to implement suitability reciprocity at DHS headquarters.¹¹ A decade hence, this goal remains unfulfilled.

4) DHS should share fitness investigations records across the Department to facilitate reciprocity.

The Department uses the Integrated Security Management System (ISMS) to store information needed to identify an individual and to track completion of suitability/fitness and security related processes, including background investigations. Data in the system includes a range of biographic and biometric data, as well as records regarding previous suitability/fitness and security clearance determinations.¹² If the Department had consistent fitness standards, a component could use this database to verify that a contractor had already been granted a fitness determination by another component and immediately provide the contractor access needed to begin work.

5) Fifth, to facilitate reciprocity, efficiency, and information-sharing, a single DHS official must be responsible for fitness/suitability determinations and be held accountable for performance that facilitates the Department’s work. The DHS Chief Security Officer is the single official who is positioned to oversee this issue across the Department. A DHS Directive of 2008, which describes this official’s responsibilities and authorities, states:

The CSO exercises the DHS-wide security program authorities in the areas of personnel security, physical security, administrative security, special security, counterintelligence operations, security-related internal investigations, and security training and awareness.... The CSO develops, implements, and oversees DHS security policies, programs, and standards; delivers security training and education to DHS personnel; and provides security support to DHS Components. Working with the CSO Council, the OCSO integrates all security programs used to protect the

¹⁰ Department of Homeland Security, “Security Line of Business Integration and Management,” Management Directive 11080, January 3, 2006, Sec. VI(C)(1)(a). As of February 20, 2018: <https://www.hsdl.org/?view&did=692121>.

¹¹ Office of Inspector General, Department of Homeland Security, *The DHS Personnel Security Process*, OIG-09-65, May 2009, p. 18. As of February 20, 2018: <https://fas.org/sgp/othergov/dhs/persec.pdf>.

¹² Department of Homeland Security, *Privacy Impact Assessment for the Integrated Security Management System (ISMS)*, March 22, 2011, pp. 6-7. As of February 20, 2018: https://www.dhs.gov/sites/default/files/publications/privacy_pia_dhswide_isms-2011.pdf. Also Department of Homeland Security, *Privacy Impact Assessment Update for the Integrated Security Management System (ISMS)*, DHS/ALL/PIA-038(c), June 26, 2017, p. 6. As of February 20, 2017: <https://www.dhs.gov/sites/default/files/publications/privacy-pia-dhsall038-isms-june2017.pdf>.

Department in a cohesive manner, increasing efficiency and enhancing the overall security of DHS.¹³

The Secretary should empower the Department's Chief Security Officer to set consistent standards, enforce their implementation, and report on their effectiveness to Congress, industry, and other stakeholders.

Finally, there is something specific that this body can do to promote fitness/suitability reciprocity and unity of effort at DHS. **Congress should rescind the TSA fitness/suitability requirements that it has enshrined in law.**¹⁴ Statutory requirements will inhibit any effort to standardize criteria across the Department and thus obstruct reciprocity among components. The statutory criteria for TSA are mostly (but not all) transportation-specific, but they should apply to anyone who works at the Department. If one has been convicted of air piracy, or interfering with an air crew, or smuggling drugs in an airplane, or forging aircraft registration – not to mention garden-variety felonies such as murder, kidnapping, hostage-taking, or armed robbery – one is not suitable to work at any component of the Department of Homeland Security. There is no need to define such criteria in statute only, and explicitly, to the TSA.

Conclusion

These shortcomings, inefficiencies, and costs make it difficult and costly for DHS contractors to provide the support for which the Department has engaged them. More critically, however, they undermine the Department's ability to keep the American people safe. DHS relies heavily on industry to provide critical skills, experience, and expertise necessary to fulfill the Department's mission. If DHS impedes contractors' ability to do their work, it undermines its own effectiveness.

The inefficiencies I have described should be no surprise to senior officials at the Department of Homeland Security and its components. In September 2015, in an appearance before *this very Subcommittee*, Elaine Duke – the current Deputy Secretary of the Department, but at the time a private citizen – reflected upon her experience as a Deputy Assistant Administrator at TSA and as the Under Secretary for Management of the entire Department. In her prepared statement, she asserted:

DHS must also address its security clearance, suitability, and on-boarding processes for both its own and contractor employees. The long lead times, duplicity [sic] between the clearance and suitability processes, and lack of reciprocity between DHS components is very costly both in terms of time and cost of investigations. Additionally,

¹³ Department of Homeland Security, "Chief Security Officer," Directive 121-01, June 30, 2008, Secs. IV(A), V(A). As of February 20, 2018:

https://www.dhs.gov/sites/default/files/publications/mgmt_dir_121_01_office_of_the_chief_security_officer.6.3.0.08.pdf.

¹⁴ 49 U.S.C. § 44936(b) and 49 C.F.R. § 1542.209(d).

*it delays the time that employees can report to work, further degrading the efficiency of offices waiting for key staff and contractor support.*¹⁵

Deputy Secretary Duke was onto something back in 2015. As I have noted in my testimony, however, the Department continues to face the same challenges in 2018.

On behalf of INSA and its members, I thank you for the opportunity to testify today. I look forward to addressing your questions.

¹⁵ *Making DHS More Efficient: Industry Recommendations to Improve Homeland Security*, Hearing Before the Subcommittee on Oversight and Management Efficiency, Committee on Homeland Security, U.S. House of Representatives, 114th Cong., 1st Sess. (September 18, 2015). (Prepared statement of Elaine C. Duke, Principal, Elaine Duke & Associates, LLC.) As of February 21, 2018: <https://www.gpo.gov/fdsys/pkg/CHRG-114hhr99575/pdf/CHRG-114hhr99575.pdf>.