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September 11, 2012

The Honorable Hillary Rodham Clinton
Secretary of State
2201 C Street, NW
Washington, D.C. 20520

Dear Secretary Clinton:

I am writing to call your attention to the recently concluded investigation by the U.S. Attorney's Office for the Eastern District of North Carolina into alleged criminal misconduct by Academi LLC.¹ The Deferred Prosecution Agreement between that office and Academi/Blackwater ends a five-year, multi-agency investigation of the company for multiple alleged violations of economic sanctions, arms export controls, and federal firearms laws between January 2003 and December 2008. The seriousness of these criminal allegations as well as the State Department's similar investigative findings in 2010 demonstrate Academi/Blackwater's continuous contempt and disregard for U.S. laws and regulations. As a result, I believe that Academi/Blackwater's eligibility for future U.S. government contracts must be re-evaluated.²

The facts uncovered during the criminal investigation raise serious concerns about Academi/Blackwater's fitness as a contractor and its ability to comply with U.S. laws and regulations that protect national security. Notwithstanding the fines imposed on Academi/Blackwater and the company's commitments to strengthen corporate governance and compliance, the U.S. Attorney's Office essentially found that Academi/Blackwater engaged in repeated, systematic violations of U.S. laws and regulations designed to protect national security over an extended period of time. Given that the company holds or has held U.S. government contracts worth billions of dollars and is eligible for future government contracts, it is important

¹ U.S. Attorney's Office for the Eastern District of North Carolina, *Academi/Blackwater Charged and Enters Deferred Prosecution Agreement* (Aug. 7, 2012).

² Letter from Lisa V. Studtmann, Director, Office of Defense Trade Controls Compliance, U.S. Department of State, to Victor Esposito, Chief Operating Officer, Xe Services LLC (Aug. 13, 2010) (online at www.pmdtcc.state.gov/compliance/consent_agreements/pdf/Xe_PCL.pdf).

for the State Department to evaluate whether suspension or debarment is appropriate in this case.³

Furthermore, neither the State Department's administrative investigation nor the criminal investigation has publicly resolved important factual questions surrounding Academi/Blackwater's conduct—information that would be useful to your contracting officers when making award decisions. First, the settlements do not state the final disposition of defense articles or restricted items that were exported without license or written authorization. For instance, Academi/Blackwater admitted that it exported ammunition and body armor without license or written authorization to Iraq and Afghanistan “on multiple occasions” between October 2004 and March 2006.⁴ However, neither settlement agreement includes factual findings on the final disposition of these items—in other words, we do not know who now has those items.

In addition, the criminal investigation uncovered facts that may not have been known during the State Department's administrative investigation of Academi/Blackwater. For instance, the company admitted that it provided encrypted satellite phones to the Government of South Sudan between November 2005 and February 2006 while attempting to obtain security contracts worth up to \$300 million per year. At the time, Academi/Blackwater transshipped the equipment through Kenya “so as not to violate any sanction/import laws,” according to an Academi/Blackwater employee.⁵ Furthermore, Academi/Blackwater may have exported armored helicopters without approval.⁶ Not only do such unauthorized exports undermine U.S. foreign policy objectives, they create the potential for restricted items to transfer undetected into the hands of insurgents or terrorists since they are shipped without approval and fall outside proper channels for oversight.

Given what the FBI described as “systemic disregard for U.S. government laws and regulations,” I am troubled by Academi/Blackwater's ongoing eligibility for U.S. government contracts and worried that this sends the wrong message to other contractors.⁷ Due to the

³ U.S. Attorney's Office for the Eastern District of North Carolina, *Academi/Blackwater Charged and Enters Deferred Prosecution Agreement* (Aug. 7, 2012).

⁴ Deferred Prosecution Agreement, Exhibit A: Statement of Facts (Aug. 7, 2012), *U.S. v. Academi LLC*, E.D.N.C. (No. 2:12 CR 00014).

⁵ Deferred Prosecution Agreement, Exhibit A: Statement of Facts (Aug. 7, 2012), *U.S. v. Academi LLC*, E.D.N.C. (No. 2:12 CR 00014). An Academi/Blackwater employee later confirmed shipment by stating “[t]oys were delivered and they are now functioning.”

⁶ In a press statement, the U.S. Attorney's Office's announced that it investigated allegations of the unauthorized export of armored helicopters. U.S. Attorney's Office for the Eastern District of North Carolina, *Academi/Blackwater Charged and Enters Deferred Prosecution Agreement* (Aug. 7, 2012).

⁷ Statement of Chris Briese, Special Agent in Charge, FBI Charlotte Division, Press Release for U.S. Attorney's Office for the Eastern District of North Carolina, *Academi/Blackwater Charged and Enters Deferred Prosecution Agreement* (Aug. 7, 2012).

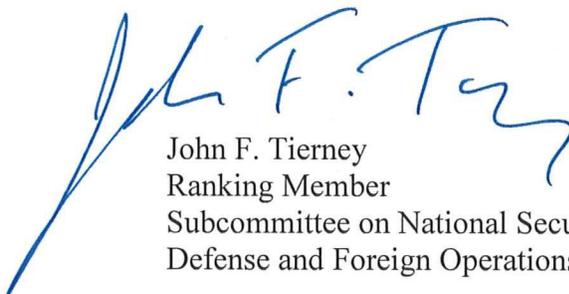
seriousness of the alleged criminal charges and in order to deter future wrongdoing by Academi/Blackwater or other government contractors, I strongly urge the State Department to re-evaluate the case for contract suspension or debarment.

In addition, please provide responses and any supporting documentation, not later than September 25, 2012, which address the following:

- 1.) Whether your Department has previously considered Academi/Blackwater for suspension or debarment on any of its current or former contracts, and if so, what action was taken and when, and what findings supported those actions or decisions;
- 2.) Whether your Department is currently considering Academi/Blackwater for suspension or debarment on any current contracts, and if so, for which contracts, and for what conduct;
- 3.) Whether the U.S. Attorney's Office for the Eastern District of North Carolina's criminal investigation uncovered any facts previously unknown or facts not previously considered during the Department's administrative investigation of Academi/Blackwater for noncompliance with arms export control laws and regulations; and
- 4.) Whether Academi/Blackwater has complied with the terms of its Consent Agreement entered into on August 2010 and what, if any, instances of noncompliance have been found by the Special Compliance Officer appointed in October 2010.

Thank you for your prompt attention to this serious matter. If you have any questions, please have your staff contact Peter Kenny at (202) 225-5051.

Sincerely,

A handwritten signature in blue ink, appearing to read "J. F. Tierney". The signature is stylized and written over a light blue horizontal line.

John F. Tierney
Ranking Member
Subcommittee on National Security, Homeland
Defense and Foreign Operations

cc: The Honorable Leon E. Panetta, Secretary of Defense
Department of Defense

The Honorable Jason Chaffetz, Chairman
Subcommittee on National Security, Homeland Defense and Foreign Operations