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September 11, 2012

The Honorable Thomas G. Walker
U.S. Attorney
Eastern District of North Carolina
310 New Bern Avenue
Federal Building, Suite 800
Raleigh, North Carolina 27601-1461

Dear Mr. Walker:

I am writing to request additional information on the Deferred Prosecution Agreement (Agreement) that your office recently entered into with Academi LLC, its wholly-owned subsidiaries, and certain of its former affiliates (Academi/Blackwater). The Agreement ends a five-year criminal investigation of Academi/Blackwater for multiple alleged violations of arms export controls and federal firearms laws between January 2003 and December 2008.

Notwithstanding the \$7.5 million fine agreed to by Academi/Blackwater and the company's current and former commitments to strengthen corporate governance and compliance, I have concerns that the Agreement does not adequately serve the public interest or protect national security. Specifically, the conclusion of the investigation in this manner does not resolve many factual questions surrounding Academi/Blackwater's conduct and gives the appearance that the Agreement merely "permits the company to resolve the charges" against it for a nominal cost.¹ For a company that the U.S. government previously found to be in "systemic noncompliance" with arms export controls, and yet holds or has held billions of dollars in U.S. government contracts, it is extremely difficult to understand how it was determined that the penalty in any way fits the gravity of the determined offense.²

I find many aspects of the company's alleged criminal conduct and the terms of the Agreement to be troubling. First, the settlement does not describe the final disposition of

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

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 2006.³ However, no additional information is provided on the disposition of these items.

In addition, 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.⁴ Not only do such unauthorized exports undermine U.S. foreign policy objectives, they create the potential for defense articles to transfer undetected into the hands of insurgents or terrorists since they are shipped without approval and fall outside proper channels for oversight.

Second, the Agreement “acknowledges and references” a 2010 settlement between Academi/Blackwater and the State Department imposing a \$42 million fine on the company for 288 alleged violations of arms export controls. However, it is unclear to what extent your office took into account the State Department’s findings of systemic noncompliance with arms export controls, the company’s refusal to initially cooperate with the State Department’s investigation, and the company’s current contracts and eligibility to bid on future U.S. government contracts.⁵

Under the Agreement with your office, Academi/Blackwater agreed to a \$7.5 million fine, which may be reduced to \$5 million for compliance program costs. This amount appears inadequate to penalize Academi/Blackwater for a pattern of alleged criminal conduct that even the FBI has described as “systemic disregard for U.S. government laws and regulations.”⁶ As importantly, the current penalty does not appear calculated to deter future wrongdoing by Academi/Blackwater or other government contractors who hold contracts worth tens and hundreds of times the current financial penalty.

³ 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).

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). An Academi/Blackwater employee later confirmed shipment by stating “[t]oys were delivered and they are now functioning.”

⁵ U.S. Attorney’s Office for the Eastern District of North Carolina, *Academi/Blackwater Charged and Enters Deferred Prosecution Agreement* (Aug. 7, 2012); 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.pmdtc.state.gov/compliance/consent_agreements/pdf/Xe_PCL.pdf).

⁶ 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).

Given these disturbing facts and in an effort to ensure and promote integrity in U.S. government contracting, I request a staff briefing, not later than September 25, 2012, which addresses the following:

- 1.) Disposition of any defense or technology articles exported by Academi/Blackwater without a license or written authorization, including, but not limited to:
 - a. Ammunition and body armor exported to Iraq and Afghanistan between October 2004 and March 2006;
 - b. Satellite phones provided to the Government of South Sudan between November 2005 and February 2006; and
 - c. Armored helicopters.⁷
- 2.) How your office arrived at the current penalty amount, whether a more substantial financial penalty was considered, and if so, what factors led to a reduction to the penalty amount;
- 3.) Whether the requirement for a “Export Compliance Monitor” is duplicative of the requirement that Academi/Blackwater appoint a “Special Compliance Monitor” pursuant to the company’s 2010 agreement with the State Department⁸; and
- 4.) Whether your office consulted with the State Department on Academi/Blackwater’s compliance since 2008, and whether your office considered the lack of suspension and debarment proceedings against and ongoing eligibility of Academi/Blackwater for future U.S. government contracts when negotiating the Agreement.

Last, I want to bring to your attention a recent article that suggests that Academi/Blackwater may have already violated the terms of its Agreement with your office.⁹ According to the article, the company made a self-exculpating, public statement that may have violated the Agreement’s prohibition on statements “contradicting any aspect of the Statement of Facts.”¹⁰

⁷ 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).

⁸ Deferred Prosecution Agreement, (Aug. 7, 2012), *U.S. v. Academi LLC*, E.D.N.C. (No. 2:12 CR 00014).

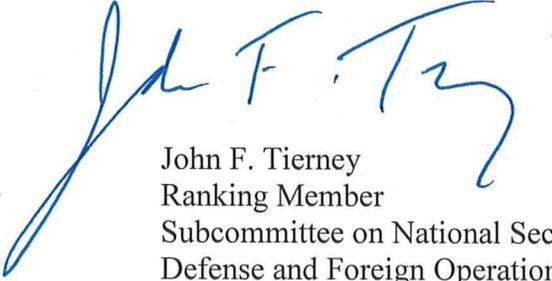
⁹ *Company Once Known as Blackwater Settles Arms Case*, Associated Press (Aug. 8, 2012).

¹⁰ Deferred Prosecution Agreement, (Aug. 7, 2012), *U.S. v. Academi LLC*, E.D.N.C. (No. 2:12 CR 00014).

The Honorable Thomas G. Walker
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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 "John F. Tierney". The signature is stylized with a large, sweeping initial "J" and a long, curved tail.

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

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