

BUY™

SELL™

SHOP™



Downloaded From  
[www.TextBookDiscrimination.com](http://www.TextBookDiscrimination.com)



**SELL YOUR OWN SAMPLES**

(help others get the justice that they deserve)



**BUY™**

**SELL™**

**SHOP™**

[www.TextBookDiscrimination.com](http://www.TextBookDiscrimination.com)

Get ***Booked Up*** on Justice!

© TBD Corporation. All Rights Reserved.

**IN THE DISTRICT COURT OF APPEAL  
OF FLORIDA, FIFTH DISTRICT**

Case No.:  
L.T. No.: DOAH Case No. 07-1820EC  
Commission on Ethics No. 05-105

**FILED**  
2007 NOV 15 A 11:04  
DIVISION OF  
ADMINISTRATIVE  
HEARINGS

KEVIN BEARY,

Petitioner,

vs.

STATE OF FLORIDA,  
COMMISSION ON ETHICS,

Respondent.

---

**REQUEST FOR ORAL ARGUMENT**

Pursuant to Rule 9.320 of the Florida Rules of Appellate Procedure,  
Petitioner Kevin Beary, through undersigned counsel, requests oral  
argument in the above-captioned proceeding.

Respectfully submitted this 14 day of November, 2007.



**MESSER, CAPARELLO & SELF, P.A.**  
MARK HERRON, ESQ.  
Florida Bar No.: 0199737  
ALBERT T. GIMBEL, ESQ.  
Florida Bar No.: 279730  
ROBERT J. TELFER III, ESQ.

Florida Bar No.: 0128694  
P.O. Box 15579  
Tallahassee, Florida 32317  
Telephone: (850) 222-0720  
Facsimile: (850) 224-4359

and

**ALLEN, NORTON & BLUE, P.A.**  
WAYNE L. HELSBY, ESQ.  
Florida Bar No.: 362492  
1477 West Fairbanks Ave., Ste. 100  
Winter Park, Florida 32789  
Telephone: (407) 571-2152  
Facsimile: (407) 571-1496

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a true and correct copy of the foregoing  
was furnished by U.S. mail this 14 day of November 2007 to:

James H. Peterson, III, Esq.  
Office of the Attorney General  
The Capitol, Plaza Level 01  
Tallahassee, Florida 32302

Carolyn S. Holifield  
Division of Administrative Hearings  
The DeSoto Building  
1230 Apalachee Parkway  
Tallahassee, Florida 32399-3060

  
\_\_\_\_\_  
MARK HERRON, ESQ.

**IN THE DISTRICT COURT OF APPEAL  
OF FLORIDA, FIFTH DISTRICT**

FILED

2007 NOV 15 A 11:04

Case No.:

L.T. No.: DOAH Case No. 07-1820EC

Commission on Ethics No. 05-105

DIVISION OF  
ADMINISTRATIVE  
HEARINGS

KEVIN BEARY,

Petitioner,

vs.

STATE OF FLORIDA,  
COMMISSION ON ETHICS,

Respondent.

\_\_\_\_\_ /

**PETITION FOR REVIEW**

**MESSER, CAPARELLO & SELF, P.A.**

MARK HERRON, ESQ.

Florida Bar No.: 0199737

ALBERT T. GIMBEL, ESQ.

Florida Bar No.: 279730

ROBERT J. TELFER III, ESQ.

Florida Bar No.: 0128694

P.O. Box 15579

Tallahassee, Florida 32317

Telephone: (850) 222-0720

Facsimile: (850) 224-4359

**ALLEN, NORTON & BLUE, P.A.**

WAYNE L. HELSBY, ESQ.

Florida Bar No.: 362492

1477 West Fairbanks Ave., Ste. 100

Winter Park, Florida 32789

Telephone: (407) 571-2152

Facsimile: (407) 571-1496

*Attorneys for Petitioner Kevin Beary*

## **TABLE OF CONTENTS**

|                                                                                                                                                                                                                                                            |        |
|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------|
| Table of Contents.....                                                                                                                                                                                                                                     | i      |
| Table of Citations.....                                                                                                                                                                                                                                    | ii-iii |
| Statement of Jurisdiction.....                                                                                                                                                                                                                             | 1      |
| Summary of Facts.....                                                                                                                                                                                                                                      | 8      |
| Nature of Relief Sought.....                                                                                                                                                                                                                               | 14     |
| I. The ALJ Departed from the Essential Requirements of Law in<br>Ordering Production of a “Security System Plan” that is Exempt from<br>the Florida Public Records Law Pursuant to Section 119.071(3),<br>Florida Statutes.....                            | 14     |
| II. The Order Departs from the Essential Requirements of Law by<br>Permitting Carney, a Competitor and Interested Fact Witness, to<br>Examine the HLS-CAM, thus Depriving Beary of the Ability to<br>Cross-Examine Carney on Certain Important Issues..... | 19     |
| III. The Order Departs from the Essential Requirements of Law by<br>Permitting the COE to Circumvent the Appropriate Procedural Rules<br>for Discovery.....                                                                                                | 21     |
| Conclusion.....                                                                                                                                                                                                                                            | 22     |
| Certificate of Compliance.....                                                                                                                                                                                                                             | 24     |
| Certificate of Service.....                                                                                                                                                                                                                                | 24     |

## **TABLE OF AUTHORITIES**

### **CASES:**

|                                                                                                                        |        |
|------------------------------------------------------------------------------------------------------------------------|--------|
| <i>Charlotte County v. General Dev. Utilities, Inc.</i> ,<br>653 So. 2d 1081, 1084 (Fla. 1st DCA 1995).....            | 4      |
| <i>International Truck &amp; Engine Corp. v. Capital Truck, Inc.</i> ,<br>872 So. 2d 372, 374 (Fla. 1st DCA 2004)..... | 4      |
| <i>Eight Hundred, Inc. v. Dep't of Revenue</i> ,<br>837 So. 2d 574, 575 (Fla. 1st DCA 2003).....                       | 5      |
| <i>Dep't of Transp. v. OHM Remediation Servs. Corp.</i> ,<br>772 So. 2d 572, 573 (Fla. 1st DCA 2000).....              | 5      |
| <i>Martin-Johnson, Inc. v. Savage</i> , 509 So. 2d 1097, 1099 (Fla. 1987).....                                         | 5      |
| <i>Tanchel v. Shoemaker</i> , 928 So. 2d 440, 441 (Fla. 5th DCA 2006).....                                             | 5      |
| <i>Cape Canaveral Hosp., Inc. v. Leal</i> ,<br>917 So. 2d 336, 339 (Fla. 5th DCA 2005).....                            | 6      |
| <i>Alterra Healthcare Corp. v. Estate of Shelley</i> ,<br>827 So. 2d 936, 945 (Fla. 2002).....                         | 14     |
| <i>North Miami General Hosp. v. Royal Palm Beach Colony, Inc.</i> ,<br>397 So. 2d 1033, 1035 (Fla. 3d DCA 1981).....   | 14     |
| <i>Dade County Medical Ass'n v. Hlis</i> ,<br>372 So. 2d 117, 121 (Fla. 3d DCA 1979).....                              | 15     |
| <i>WFTV, Inc. v. School Bd. of Seminole</i> ,<br>874 So. 2d 48 (Fla. 5th DCA 2004).....                                | 17, 18 |

## **CITATIONS:**

### **Florida Rules of Appellate Procedure:**

Rule 9.100(c)(3).....1, 4, 5

Rule 9.190(b)(2).....1, 4, 5

### **Florida Constitution:**

Article II, Section 8.....12

### **Florida Statutes:**

Florida Statutes § 120.68(1).....1, 4, 14

Florida Statutes § 120.68(7)(d).....22

Florida Statutes § 119.071(3).....6, 14, 15, 16, 18

Florida Statutes § 119.071(3)(a)1.....16

Florida Statutes § 119.071(3)(a)3.....17, 18

Florida Statutes § 112.312(3) – (18).....12

Florida Statutes § 112.313(2) – (8).....12

Florida Statutes § 228.093.....17

### **Florida Rules of Civil Procedure:**

Rule 1.351.....21

## **STATEMENT OF JURISDICTION**

Petitioner Kevin Beary (“Sheriff Beary”), the Sheriff of Orange County, Florida, hereby submits this Petition for Review pursuant to Rules 9.100(c)(3) and 9.190(b)(2), Florida Rules of Appellate Procedure, and Section 120.68(1), Florida Statutes, for review of the Nonfinal “Order” that, *inter alia*, grants the Advocate for the Commission on Ethics Request for an Order with Guidelines, rendered November 13, 2007 by the State of Florida, Division of Administrative Hearings (the “Order”), and located in the Appendix to this Petition at Tab “1.”<sup>1</sup>

As will be discussed in more detail below, the Advocate for the Respondent State of Florida, Commission on Ethics (“COE”), in “Advocate’s First Request for Production of Documents to Kevin Beary,” requested “All copies of HLS-CAM (the “Homeland Security Comprehensive Assessment Model”), including the customized software version.” *See* App. Tab “2.” The COE also sought, in a Notice of Taking Deposition Duces Tecum to the National Domestic Preparedness Coalition, Inc. (“NDPCI”), “[c]opies of the Homeland Security Comprehensive Assessment Model (‘HLS-CAM’), including all versions from its inception through August 21, 2007.” *See* App. Tab “3.” In addition, the Advocate for the COE filed a Notice of Taking Deposition Duces Tecum on Rickey Ricks

---

<sup>1</sup> The nonfinal order that is the subject of this Petition is not one of the enumerated nonfinal orders subject to interlocutory review under Rule 9.130, Florida Rules of Appellate Procedure.

("Ricks"), a Chief with the Orange County Sheriff's Office, directing Ricks to bring with him and produce at the deposition "a list of HLS-CAM assessments that have been completed for Orange County's critical infrastructure." *See* App. Tab "4." After Sheriff Beary filed Motions for Protective Orders and Motion to Quash Subpoena Duces Tecum on the request and the deposition duces tecum, *see* App. Tabs "5," "6" and "7," the Advocate for the COE filed a "Response for Respondent's Motions for Protective Orders and Advocate's Request for an Order with Guidelines." *See* App. Tab "8." Sheriff Beary subsequently filed a "Response in Opposition to 'Advocate's Request for an Order with Guidelines.'" *See* App. Tab "9."

The Advocate for COE also requested from the FDLE, who is not a party to this matter, to make its automated version of HLS-CAM available to COE's expert, Thomas W. Carney ("Carney"). In response, the general counsel for FDLE, Michael Ramage, in a letter dated October 18, 2007, agreed to such a request, subject to an order of an Administrative Law Judge implementing guidelines to such an inspection. *See* App. Tab 8.

At a hearing on October 30, 2007, the Advocate for COE withdrew the requests for copies of the HLS-CAM that were the subject of one of the Motions

for Protective Order and the Motion to Quash.<sup>2</sup> In addition, counsel for the parties informed the Administrative Law Judge (“ALJ”) that they would further attempt to resolve the issue raised in the Motion for Protective Order relating to the request by the Advocate for COE that Ricks provide a list of HLS-CAM assessments that have been completed for Orange County’s critical infrastructure, and the ALJ held the motion in abeyance until further notice from the parties.

The Order, *inter alia*, grants the Advocate for COE’s Request of an Order with Guidelines, whereby COE’s expert, Carney, and a representative for Sheriff Beary, would have the opportunity to go the headquarters of the Florida Department of Law Enforcement (“FDLE”) and view the HLS-CAM with an FDLE member familiar with the operation of HLS-CAM at a computer terminal in which HLS-CAM is operative and view the HLS-CAM automated assessment tool. The FDLE representative will demonstrate the operation of the HLS-CAM, and Carney and Sheriff Beary’s representative will be able to ask questions or determine whether the HLS-CAM can perform certain functions. Samples of assessments may be provided to Carney and Sheriff Beary’s representative for review and demonstration purposes, but may have identifying information deleted to maintain security of the facility that is the subject of the assessment, at FDLE’s discretion.

---

<sup>2</sup> A transcript of the October 30, 2007 hearing is included in the Appendix at Tab “10.”

The Order also provides that Carney and Sheriff Beary's representative will be allowed to view, but not copy, the HLS-CAM user and training materials. The FDLE, on a case-by-case basis, shall determine whether individual computer "screen shots" can be duplicated. At FDLE's option, a small sampling of actual assessments may be provided for viewing, but they will not be available for copying unless approved by FDLE and unless identifying information can be edited in a way not to jeopardize the security of the information contained in the assessment. The Order directs that neither Carney nor Sheriff Beary's representative shall reveal to third parties outside of this litigation any sensitive material he or she may come across during the review of the HLS-CAM system, and they shall sign a nondisclosure agreement with FDLE prior to viewing any HLS-CAM materials or the system in operation.

This Court has jurisdiction to consider this Petition for Review under Rules 9.100(c)(3) and 9.190(b)(2), as well as Section 120.68(1). Section 120.68(1) provides that "[a] preliminary, procedural, or intermediate order of the agency . . . is immediately reviewable if review of the final agency decision would not provide an adequate remedy." Florida courts have previously held that their scope of review under Section 120.68(1) "is analogous to and no broader than the right of review by common law writ of certiorari." *Charlotte County v. General Dev. Utilities, Inc.*, 653 So. 2d 1081, 1084 (Fla. 1st DCA 1995); *see also International*

*Truck & Engine Corp. v. Capital Truck, Inc.*, 872 So. 2d 372, 374 (Fla. 1st DCA 2004); *Eight Hundred, Inc. v. Dep't of Revenue*, 837 So. 2d 574, 575 (Fla. 1st DCA 2003); *Dep't of Transp. v. OHM Remediation Servs. Corp.*, 772 So. 2d 572, 573 (Fla. 1st DCA 2000).

This Court has jurisdiction to consider this Petition and Quash the Order under Rules 9.100 and 9.190 pursuant to long-standing precedent that permits certiorari review of nonfinal orders granting discovery. In *Martin-Johnson, Inc. v. Savage*, 509 So. 2d 1097, 1099 (Fla. 1987), the Florida Supreme Court stated:

A non-final order for which no appeal is provided by Rule 9.130 is reviewable by petition for certiorari only in limited circumstances. The order must depart from the essential requirements of law and thus cause material injury to the petitioner throughout the remainder of the proceedings below, effectively leaving no adequate remedy on appeal.

The *Martin-Johnson* Court also held that “[o]rders granting discovery . . . have traditionally been reviewed by certiorari.” *Id.* According to the Court, “[t]he rationale . . . is that appeal after final judgment is unlikely to be an adequate remedy because once discovery is wrongfully granted, the complaining party is beyond relief.” *Id.*

The Fifth District Court of Appeal has followed the dictates of *Martin-Johnson*. In *Tanchel v. Shoemaker*, 928 So. 2d 440, 441 (Fla. 5th DCA 2006), the court held that “[c]ertiorari is the appropriate remedy when a discovery order departs from the essential requirements of law, causing material injury throughout

the remainder of the proceedings and effectively leaving no adequate remedy at law.” In *Cape Canaveral Hosp., Inc. v. Leal*, 917 So. 2d 336, 339 (Fla. 5th DCA 2005), the court noted that the basis for certiorari jurisdiction in reviewing discovery orders is that “discovery of protected material could result in letting the ‘cat out of the bag,’ and injury could result if such information was disclosed.”

Accordingly, Sheriff Beary requests that this Court exercise its jurisdiction to review a nonfinal order of the ALJ requiring discovery of the HLS-CAM program. Sheriff Beary will show that the order departs from the essential requirements of law. Sheriff Beary will also show that the Order will cause material injury to Sheriff Beary throughout the remainder of the proceedings below by permitting discovery of the HLS-CAM under the guidelines in the Order, effectively leaving no adequate remedy on appeal for a number of reasons.

First, the Order departs from the essential requirements of law because it permits the production to the COE and its expert, Carney, subject to “guidelines,” of a “security system plan” that is confidential and exempt from the Florida Public Records Law pursuant to Section 119.071(3), Florida Statutes. In addition, the production of this “security system plan,” even with the guidelines imposed by the Order, could be harmful to the public safety and welfare. The items permitted under the Order’s guidelines directly relate to public safety matters and assessment of infrastructure critical to the public safety and welfare.

Second, the Order departs from the essential requirements of law because it permits Carney, the expert for the COE, to review the HLS-CAM. However, Sheriff Beary respectfully submits that Carney, who is president of CAFM, Inc., is not a “disinterested expert,” but is instead an interested representative of a corporate entity, that views itself as a competitor to the HLS-CAM, and a fact witness to this case.<sup>3</sup> Further, by allowing Carney to review the HLS-CAM, Sheriff Beary’s ability to cross-examine Carney will be severely curtailed.

Finally, the Order allows the COE to circumvent the appropriate procedural rules for discovery of this information. COE sought access to HLS-CAM through a public records request to FDLE, and withdrew its discovery requests to Beary. The “guidelines” permit an official for FDLE to conduct the proceeding by which Carney and Sheriff Beary’s representative may observe the HLS-CAM. However, given the confidential nature of this particular procedure, Sheriff Beary’s ability to cross-examine the FDLE representative will also be severely curtailed, if not abrogated.

---

<sup>3</sup> Located in the Appendix, at Tab “11,” is the Interview of Thomas Carney by Ron Maolli, and Investigator for the COE. In the Argument Section of this Petition, Sheriff Beary will argue further that Carney is a fact witness and competitor.

## **STATEMENT OF FACTS<sup>4</sup>**

Sheriff Beary is the Sheriff of Orange County in Orlando, Florida, being first elected in November 1992. In the aftermath of the September 11, 2001, terrorist attacks, seven Regional Domestic Security Task Forces ("Task Forces") were created, first by executive order and later by the Legislature, encompassing the seven FDLE geographical regions throughout the state. At all times pertinent to the proceedings below, Sheriff Beary served as co-manager for Task Force Region Five. One of the major functions assigned to the Task Forces was the identification, assessment and protection of Florida's critical infrastructures.

Sheriff Beary and the Orange County Sheriff's Office ("OCSO") thereafter took the initiative to develop a model that could be used for Orange County and statewide to identify and assess infrastructure vulnerability. Realizing that Orange County could be especially vulnerable as the home of many of our nation's most enduring symbols, Sheriff Beary created America's first Homeland Security Division within the OCSO to prevent and protect against future possible attacks in Orange County.

---

<sup>4</sup> Sheriff Beary presents these facts based on the following: (1) the Report of Investigation conducted by the COE, which is located in the Appendix at Tab "12"; (2) the Advocate's Recommendation, which is located in the Appendix at Tab "13"; and (3) Sheriff Beary's Response to Advocate's Recommendation, which is located in the Appendix at Tab "14."

Sheriff Beary and the employees of the Homeland Security Division, including Captian Rickey Ricks and Captain (then-Lieutenant) Kenneth Glantz ("Glantz") quickly learned that although they could easily identify Orange County's critical infrastructure, current methodologies were inadequate to properly assess the infrastructure's vulnerability to attack. Consequently, after much review of the current assessment methodologies, HLS-CAM was developed. HLS-CAM was the first uniform model in the country to integrate and prioritize critical threat and vulnerability assessments to prevent, deter and respond specifically to terrorist attacks.

Shortly after HLS-CAM was created, Sheriff Beary, Glantz, Edward Dore (another employee at OCSO) and Dr. Julian Bailes (of the University of West Virginia and the West Virginia National Guard) found that expected funding for the program would not be available, because the Department of Defense would not allow the West Virginia National Guard to share its funds with a non-military entity such as the OCSO. Knowing that HLS-CAM needed additional funding to succeed, a non-profit corporation was formed which could apply for and obtain the necessary funding through grants available from such agencies as the Department of Homeland Security. The non-profit corporation, the National Domestic Preparedness Coalition, Inc. ("NDPCI"), was officially incorporated in the State of Florida on January 17, 2003, with Sheriff Beary, Glantz and Bailes as NDPCI's

first officers and directors. In February 2003, NDPCI received a copyright for HLS-CAM, reflecting that HLS-CAM was created in 2002.

In February and May 2003, NDPCI entered into partnership agreements with Intelliorg, Inc. ("Intelliorg"), giving Intelliorg the exclusive right to automate the HLS-CAM system. In August 2003, HLS-CAM was adopted by the FDLE as the assessment model or methodology to assess critical infrastructures within the State of Florida. Although Sheriff Beary was co-chair of Task Force Region Five, he was not involved in FDLE's decision to use HLS-CAM as the State's critical infrastructure assessment model. On March 9, 2004, FDLE signed a \$200,000 contract with NDPCI which provided that NDPCI would provide FDLE with a customized, automated version of HLS-CAM and conduct training on the program for FDLE's seven task forces. NDPCI also received grants and fees for HLS-CAM, including \$654,383 in March 2004 and \$405,816 in June 2005.

During the time period of the development of the HLS-CAM and the emergence of NDPCI, OCSO funds and resources, including personnel, training and office expenses were utilized. NDPCI reimbursed OCSO for those expenses, totaling \$271,064 as reimbursement.

Sheriff Beary, Glantz and Dore dedicated hundreds of their own "off-duty" time to NDPCI and to the further growth and development of HLS-CAM without anticipating that they would be compensated for their work. During his reelection

campaign in 2004, Sheriff Beary stated truthfully that he had not been paid by NDPCI for his activities in connection with NDPCI. In late November 2004, however, it was suggested that as board members, the members of the board of NDPCI could compensate themselves for their off-duty time spent working for the Company as consultants. The creators of HLS-CAM conferred with several advisors regarding the legality and ethics of such an act. All of the advisors informed the board that so long as they were being reasonably compensated for their off-duty work (i.e., not for work associated with their full-time occupations), there was nothing illegal or unethical about being compensated by NDPCI as board members.

After establishing an appropriate hourly rate for each board member, NDPCI compensated each board member, including Sheriff Beary, according to the number of off-duty hours dedicated to NDPCI and HLS-CAM. In accordance with this formula, NDPCI compensated Sheriff Beary in the amount of \$43,000 for his consulting services. Sheriff Beary reported this amount on his COE Form 6 (Full and Public Disclosure of Financial Interests). When controversy arose regarding his being compensated, Sheriff Beary voluntarily returned the money to NDPCI.

Rick Staly, a resident of Orlando, Florida, and an opponent of Sheriff Beary in his 2004 reelection campaign, filed a Complaint with the COE (Complaint Number 05-105) against Sheriff Beary, alleging that Sheriff Beary violated the

following constitutional and statutory provisions: (1) Article II, Section 8 of the Florida Constitution, Ethics in Government, by corruptly abusing his office, malfeasance, misfeasance of public funds, violating the public trust for private gain, and the prohibition between public duty and private interests, as defined in the Florida Constitution and Florida Statutes, specifically Sections 112.312(3), (5), (8), (9), (13), (15) and (16), Florida Statutes, and conspiring with OCSO employees and co-conspirators Captain Glantz and Fore in violation of Section 112.312(18), Florida Statutes; and (2) violations of Sections 112.313(3) (doing business with one's agency), 112.313(4) (receiving unauthorized compensation), 112.313(6) (misusing public position) and 112.313(7) (having conflicting employment or contractual relationship prohibitions), Florida Statutes.

The COE conducted an investigation to determine whether Sheriff Beary violated the following provisions of the Code of Ethics: Sections 112.313(2), 112.313(3), 112.313(4), 112.313(6), 112.313(7)(a) and 112.313(8), Florida Statutes. *See App. Tab 12.* In the Advocate's Recommendation, the Advocate for COE recommended that the COE find probable cause to believe that Sheriff Beary violated Sections 112.313(2), 112.313(6), 112.313(7)(a) and 112.313(8), Florida Statutes. *See App. Tab 13.*

The COE requested Beary to produce "[a]ll copies of HLS-CAM, including the customized software version," *see App. Tab 2*, from NDPCI "[a]ll copies of the

Homeland Security Comprehensive Assessment Model ('HLS-CAM'), including all versions from its inception through August 21, 2007," *see* App. Tab 3, and from Rickey Ricks (in conjunction with a Subpoena Duces Tecum) "a list of HLS-CAM assessments that have been completed for Orange County's critical infrastructure." *See* App. Tab 4. The COE argued that Beary has put the value, uniqueness and quality of the HLS-CAM at issue in this case, by claiming in his Response to the Report of Investigation that: (1) "HLS-CAM was the first uniform model in the country to integrate and prioritize critical threat and vulnerability assessments to prevent, deter, and respond specifically to terrorist attacks"; and (2) "In fact, NDPCI prioritized and assessed over seven hundred assets in Orange County at no charge, services valued at over \$500,000. That Sheriff Beary's purpose of making the public safer is all but certain." *See* App., Tab 8.

The automated version of HLS-CAM is in the possession of the FDLE on its computer system in Tallahassee. FDLE acquired this version of HLS-CAM from NDPCI pursuant to a contract originally signed in March 2004. Many of the assessments conducted using the automated HLS-CAM provided to the FDLE and the Regional Domestic Security Task Forces within the seven Task Force regions are in an FDLE database. The Advocate for the COE requested that FDLE, who is not a party to this matter, to make its automated version of HLS-CAM available to COE's expert, Carney. In response, the general counsel for FDLE, Michael

Ramage, in a letter dated October 18, 2007, agreed to such a request, subject to an order of an Administrative Law Judge implementing the guidelines that are now contained in the Order. *See App., Tab 7.*

### **NATURE OF RELIEF SOUGHT**

Sheriff Beary respectfully requests that this Court quash the ALJ's Order permitting the COE's expert, Carney, to inspect and review the HLS-CAM at FDLE's headquarters in Tallahassee, because the ALJ departed from the essential requirements of law in ordering disclosure of HLS-CAM, even under the guidelines imposed. *See Fla. Stat. § 120.68(7)(d).*

### **ARGUMENT AND CITATION OF AUTHORITY**

**I. The ALJ Departed from the Essential Requirements of Law in Ordering Production of a "Security System Plan" that is Exempt from the Florida Public Records Law Pursuant to Section 119.071(3), Florida Statutes.**

Sheriff Beary sought a protective order in the proceedings below from producing HLS-CAM. *See App., Tabs 5 & 6.* He has also sought to quash that portion of the subpoena duces tecum to NDPCI directing it to produce the HLS-CAM. In deciding whether a protective order is appropriate in a particular case, the court must balance the competing interest that would be served by granting discovery or denying it. *See Alterra Healthcare Corp. v. Estate of Shelley*, 827 So. 2d 936, 945 (Fla. 2002) (citing *North Miami General Hosp. v. Royal Palm Beach*

*Colony, Inc.*, 397 So. 2d 1033, 1035 (Fla. 3d DCA 1981)); *Dade County Medical Ass'n v. Hlis*, 372 So. 2d 117, 121 (Fla. 3d DCA 1979).

The HLS-CAM is confidential and exempt from the Florida Public Records Law as a "security system plan" pursuant to Section 119.071(3), Florida Statutes. Section 119.071(3) provides, in relevant part:

**(3) Security.**

(a) 1. As used in this paragraph, the term "security system plan" includes all:

- a. Records, information, photographs, audio and visual presentations, schematic diagrams, surveys, recommendations, or consultations or portions thereof relating directly to the physical security of the facility or revealing security systems;
- b. Threat assessments conducted by any agency or any private entity;
- c. Threat response plans;
- d. Emergency evacuation plans;
- e. Sheltering arrangements; or
- f. Manuals for security personnel, emergency equipment, or security training.

2. A security system or portion thereof for:

- a. Any property owned by or leased to the state or any of its political subdivisions; or
- b. Any privately owned or leased property

held by an agency is ***confidential and exempt*** from s. 119.07(1) and s. 24(a), Art. I of the State Constitution.

(emphasis added).

The HLS-CAM is a confidential and exempt "security system plan" as defined in Section 119.07(3)(a)1, Florida Statutes, and includes: records, information relating directly to the physical security of a facility or revealing security systems; threat assessments conducted by an agency or a private entity; threat response plans; and manuals for security personnel, emergency equipment, or security training. Thus, any such documents are confidential and exempt from the Florida Public Records Law pursuant to Section 119.071(3), Florida Statutes.

As noted in the Staff Analysis to HB 7033, which became the "security system plan" exemption to the Florida Public Records Law, there is a difference between records that are exempt from public records requirements and those that are *confidential* and exempt:

If the Legislature makes a record confidential and exempt, such record cannot be released by an agency to anyone other than to persons or entities designated in the statute. See Attorney General Opinion 85-62. If a record is simply made exempt from disclosure requirements, an agency is not prohibited from disclosing the record in all circumstances. See *Williams v. City of Minneola*, 575 So. 2d 683, 687 (Fla. 5th DCA), review denied, 589 So. 2d 289 (Fla. 1991).

*House of Representatives Staff Analysis*, HB 7033, p. 2 n.1. The Legislature intended, in enacting this exemption to the public records laws, that a "security system plan" be confidential and exempt, and that such a record could only be released to persons or entities designated in the statute.

In fact, in *WFTV, Inc. v. School Bd. of Seminole*, 874 So. 2d 48 (Fla. 5th DCA 2004), this Court considered a television station's request for student records under Section 228.093, Florida Statutes, that were "confidential and exempt." This Court stated:

There is a difference between records the Legislature has determined to be exempt from The Florida Public Records Act and those which the Legislature has determined to be exempt from The Florida Public Records Act and confidential. If information is made confidential in the statutes, the information is not subject to inspection by the public and may only be released to the persons or organizations designated in the statute.

*Id.* at 53. The Court held that the School Board was prohibited from disclosing the records to the television station (which was not designated in the statute) without written parental consent. *See id.*

Section 119.071(3)(a)3 designates to whom a "security system plan" can be released, and provides as follows:

Information made confidential and exempt by this paragraph may be disclosed by the custodian of public records to:

- a. The property owner or leaseholder; or
- b. Another state or federal agency to prevent, detect, guard against, respond to, investigate, or manage the consequences of any attempted or actual act of terrorism, or to prosecute those persons who are responsible for such attempts or acts.

Neither the COE or its expert, Carney, qualify under Section 119.071(3)(a)3 as an individual or entity that can receive a "security system plan."

At the hearing, the Advocate for COE argued that an exception to Section 119.071(3) existed that would provide for disclosure of HLS-CAM. COE argued that under Section 119.071(3)(b)3, information made “exempt” from that paragraph may be disclosed to another governmental entity “if disclosure is necessary for the receiving entity to perform its duties and responsibilities.” *See App., Tab 10, at p. 21, lines 9-21.* However, this provision only applies to information made “exempt,” as opposed to “confidential and exempt.” Because the Legislature identified a “security system plan” as confidential and exempt, a custodian of those records can only disclose them to the individual or entities listed in Section 119.071(3)(a)3.

At the hearing, the ALJ indicated that she felt that she was without authority to direct FDLE to not disclose HLS-CAM. *See App., Tab 10, at pp. 37-41.* The ALJ’s decision to permit disclosure of the HLS-CAM, which is “confidential and exempt” under the public records laws, to an entity outside of those provided in the statute is a departure from the essential requirements of law. *See WFTV, 874 So. 2d at 53-54.*

In addition, the production of HLS-CAM, even within the guidelines imposed by the Order, could be harmful to the public safety and welfare. The items permitted under the Order’s guidelines directly relate to public safety matters and assessment of critical infrastructure critical to the public safety and welfare.

Making this information accessible could reduce the ability of local and state entities to keep the citizenry safe and could allow any interested person to access information that would be helpful to planning a terrorist attack. If such information were to be made public, it could be used by terrorists to enhance their capabilities to conduct terrorist activities and hamper the abilities of the public and private sector to prevent such acts of terrorism.

**II. The Order Departs from the Essential Requirements of Law by Permitting Carney, a Competitor and Interested Fact Witness, to Examine the HLS-CAM, thus Depriving Beary of the Ability to Cross-Examine Carney on Certain Important Issues.**

The Order provides “guidelines” to the observation and inspection of the HLS-CAM at FDLE’s headquarters in Tallahassee. The Order permits the COE’s expert, Carney, to observe the HLS-CAM, as well as a representative for Sheriff Beary. However, Sheriff Beary respectfully submits that Carney, who is president of CAFM, Inc., is not a “disinterested expert,” but is instead an interested representative of a competitor of HLS-CAM.

In statements made to the COE, Carney has demonstrated that his a fact witness in this matter and a competitor to NDPCI. In an interview with COE Investigator Ron Moalli, Carney stated that he met with Ricks, Dore and Glantz to show them his product in an effort to market it to the OCSO. *See Moalli interview of Carney*, Tab “11,” at p. 6. He claims that the Sheriff’s Office “ripped the county off”:

I have an idea, and I went to talk to one of their managers, at Orange County, the facility guy. And very smart guy, he was in the military, he was a Colonel, Full Colonel, ahm, was a facility director at the airport, Orlando Airport, and came on board with facilities, and so he knew that there was a lot of neat stuff here. He said that I heard that they were developing; you know the Sheriff's Office was developing something like this. And I said, why develop it, we already got it, I already got all the data, and guess what, it's like \$1350 a license, OK. And to do an assessment, the way they were doing them and charging the County an exorbitant amount of money, you know when he says, \$250,000, we saved the County from not doing this assessment. That's bunk. I did a million and a half square feet for about fifty grand, far more complicated than walking through and doing a security analysis. So they ripped the County off. And I have other consultants, nationally, that I can give you their rates.

*Moalli interview of Carney*, Tab "11," at p. 6. In the interview, Carney noted the contract NDPCI entered with FDLE, and stated:

OK, umm, and that \$600,000 that Intelliorg and the rest of them got, I mean, I've developing this for years and believe me, I would have charged maybe, \$25,000 - \$50,000 from scratch, if I didn't know anything, OK. So the Feds got ripped off, the \$250,000 that Beary got to start his company, which they can call it non-profit or anything they want, to me that is a very significant ethical issue. I mean, enormous. Umm, let's say you're a lawyer, you know, what would the state just go give, uhh, one of the big law firms a quarter of a million and say here, go develop a whole new thing and then go out and compete? It just is wrong.

*Id.* at p. 9. Based on these and other statements, Carney is a fact witness to this matter.

Under the ALJ's Order, Carney not only will have a "free look" at HLS-CAM and receive the opportunity to observe how HLS-CAM operates, but may also render himself "off limits" for cross-examination purposes on certain issue

regarding his review of the HLS-CAM at the final hearing, because of the confidential nature of HLS-CAM. The ALJ overlooked the consequence of allowing Carney to review the HLS-CAM at FDLE's headquarters, and the Order thus departs from the essential requirements of law.

**III. The Order Departs from the Essential Requirements of Law by Permitting the COE to Circumvent the Appropriate Procedural Rules for Discovery.**

The COE propounded discovery requests on Sheriff Beary for "[a]ll copies of HLS-CAM (the "Homeland Security Comprehensive Assessment Model") and a Subpoena Duces Tecum on Ricks, directing him to bring with him and produce at a deposition "a list of HLS-CAM assessments that have been completed for Orange County's critical infrastructure." *See* App. Tabs 2 & 4. In addition, he sought the HLS-CAM from NDPCI. *See* App. Tab 3. However, the COE also requested this information directly from FDLE. By allowing the disclosure of HLS-CAM under guidelines, the Order allowed the COE to circumvent the appropriate rules for discovery and hampered the ability for Sheriff Beary to present objections to the discovery requests.

FDLE, as a third party to this matter, should have been served by the COE with a third-party subpoena, and with an objection by Sheriff Beary, would have been subject to a deposition. *See* Fla. R. Civ. P. 1.351. At that deposition, counsel for Sheriff Beary would have had the opportunity to object and cross-examine the

custodian of FDLE. Under the Order, the representative for Sheriff Beary may not interfere with the demonstration of HLS-CAM. Additionally, given the confidential nature of HLS-CAM, Sheriff Beary may not be able to cross-examine the FDLE's representative that demonstrates HLS-CAM to Carney. The failure to require COE to follow the appropriate procedures for discovery in this matter is a departure from the essential requirements of law, and merits reversal.

### **CONCLUSION**

Based on the foregoing, Sheriff Beary respectfully requests that this Court quash that portion of the ALJL's Order permitting the COE's expert, Carney, to inspect and review the HLS-CAM at FDLE's headquarters in Tallahassee, because the ALJ departed from the essential requirements of law in ordering disclosure of HLS-CAM, even under the guidelines imposed. *See* Fla. Stat. § 120.68(7)(d). Sheriff Beary will suffer immediate material injury throughout the remainder of the proceedings, leaving no adequate remedy on appeal.

Respectfully submitted,

**MESSER, CAPARELLO & SELF, P.A.**

P.O. Box 15579

Tallahassee, FL 32317

Telephone: (850) 222-0720

Facsimile: (850) 224-4359

By: 

MARK HERRON, ESQ.

Florida Bar No.: 0199737

ALBERT T. GIMBEL, ESQ.

Florida Bar No.: 279730

ROBERT J. TELFER III

Florida Bar No.: 0128694

and

**ALLEN, NORTON & BLUE, P.A.**

WAYNE L. HELSBY, ESQ.

Florida Bar No.: 362492

1477 West Fairbanks Ave., Ste. 100

Winter Park, Florida 32789

Telephone: (407) 571-2152

Facsimile: (407) 571-1496

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a true and correct copy of the foregoing was furnished by U.S. mail this 14 day of November, 2007 to:

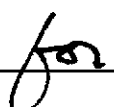
James H. Peterson, III, Esq.  
Office of the Attorney General  
The Capitol, Plaza Level 01  
Tallahassee, Florida 32302

Carolyn S. Holifield  
Division of Administrative Hearings  
The DeSoto Building  
1230 Apalachee Parkway  
Tallahassee, Florida 32399-3060

  
\_\_\_\_\_  
MARK HERRON, ESQ. 

**CERTIFICATE OF COMPLIANCE**

I hereby certify that this brief was prepared in Times New Roman 14-point font, in compliance with Rules 9.100(l) and 9.210(a)(2) of the Florida Rules of Appellate Procedure.

  
\_\_\_\_\_  
MARK HERRON, ESQ. 

**IN THE DISTRICT COURT OF APPEAL  
OF FLORIDA, FIFTH DISTRICT**

Case No.:  
L.T. No.: DOAH Case No. 07-1820EC  
Commission on Ethics No. 05-105

KEVIN BEARY,

Petitioner,

vs.

STATE OF FLORIDA,  
COMMISSION ON ETHICS,

Respondent.

---

**APPENDIX**  
**VOLUME I**

**MESSER, CAPARELLO & SELF, P.A.**  
MARK HERRON, ESQ.  
Florida Bar No.: 0199737  
ALBERT T. GIMBEL, ESQ.  
Florida Bar No.: 279730  
ROBERT J. TELFER III, ESQ.  
Florida Bar No.: 0128694  
P.O. Box 15579  
Tallahassee, Florida 32317  
Telephone: (850) 222-0720  
Facsimile: (850) 224-4359

**ALLEN, NORTON & BLUE, P.A.**  
WAYNE L. HELSBY, ESQ.  
Florida Bar No.: 362492  
1477 West Fairbanks Ave., Ste. 100  
Winter Park, Florida 32789  
Telephone: (407) 571-2152  
Facsimile: (407) 571-1496

*Attorneys for Petitioner Kevin Beary*

**IN THE DISTRICT COURT OF APPEAL  
OF FLORIDA, FIFTH DISTRICT**

Case No.:  
L.T. No.: DOAH Case No. 07-1820EC  
Commission on Ethics No. 05-105

KEVIN BEARY,

Petitioner,

vs.

STATE OF FLORIDA,  
COMMISSION ON ETHICS,

Respondent.

---

**APPENDIX**  
**VOLUME I**

- |         |                                                                           |
|---------|---------------------------------------------------------------------------|
| Tab "1" | Order of the Division of Administrative Hearings, dated November 13, 2007 |
| Tab "2" | Advocate's First Request for Production of Documents to Kevin Beary       |
| Tab "3" | Notice of Taking Deposition Duces Tecum on NDPCI                          |
| Tab "4" | Notice of Taking Deposition Duces Tecum on Rickey Ricks                   |
| Tab "5" | Motion for Protective Order                                               |
| Tab "6" | Motion for Protective Order                                               |

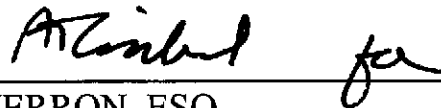
- Tab "7"      Motion to Quash Subpoena Duces Tecum
- Tab "8"      Advocate's Response to Respondent's Motion to Quash; and  
Advocate's Response to Respondent's Motions for Protective Orders  
and Advocate's Request for an Order with Guidelines
- Tab "9"      Response in Opposition to "Advocate's Request for an Order for  
Guidelines"

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a true and correct copy of the foregoing was furnished by U.S. mail this 14 day of November, 2007 to:

James H. Peterson, III, Esq.  
Office of the Attorney General  
The Capitol, Plaza Level 01  
Tallahassee, Florida 32302

Carolyn S. Holifield  
Division of Administrative Hearings  
The DeSoto Building  
1230 Apalachee Parkway  
Tallahassee, Florida 32399-3060

  
\_\_\_\_\_  
MARK HERRON, ESQ.

**CERTIFICATE OF COMPLIANCE**

I hereby certify that this brief was prepared in Times New Roman 14-point font, in compliance with Rules 9.100(l) and 9.210(a)(2) of the Florida Rules of Appellate Procedure.

  
\_\_\_\_\_  
MARK HERRON, ESQ.



2. As to the other Motion for Protective Order relating to a request by the Advocate to Rickey Ricks for a list of HLS-CAM assessments that have been completed for Orange County's critical infrastructure, counsel advised that they would further attempt to resolve the issue and asked that a ruling on this motion be postponed. Therefore, this motion is hereby held in abeyance until further notice from the parties.

3. As to the Advocate's Request for an Order with Guidelines, counsel agreed that a representative for Respondent could be present at the Advocate's expert's review at FDLE, and could inquire of FDLE during the review to the same extent as the Advocate's expert, provided Respondent's representative did not interfere with the Advocate's expert's inquiry, and further provided that Respondent's representative be subject to the same confidentiality requirements and agreements as the Advocate's expert, Thomas W. Carney.

4. Accordingly, the Advocate's Request for an Order with Guidelines is GRANTED, with modifications. It is hereby

ORDERED that:

a. The Florida Department of Law Enforcement ("FDLE") shall provide an opportunity for Thomas W. Carney ("Advocate's expert") and a representative for the Respondent ("Respondent's representative") to come to FDLE headquarters in Tallahassee and sit, at the same time, with an FDLE member familiar with the operation of HLS-CAM at a computer terminal in which HLS-CAM is operative and view the HLS-CAM automated assessment tool;

b. In conjunction with the FDLE representative, the operation of HLS-CAM will be demonstrated, and the Advocate's expert and Respondent's representative will have the ability to ask questions or determine whether the automated HLS-CAM can perform certain functions. Neither the Advocate's expert nor Respondent's representative shall interfere with the questions or inquiry of the other;

c. Samples of assessments may be provided to the Advocate's expert and Respondent's representative for review and demonstration purposes, but may have identifying information deleted to maintain the overall security of the facility that is the subject of the assessment;

d. Determination of whether and to what extent actual assessment material will be provided for viewing by the

Advocate's expert and Respondent's representative remains at FDLE's discretion;

e. The Advocate's expert and Respondent's representative will not be provided the underlying details of how the database is constructed, "code" revealing the functionality of the database, or any information that would place FDLE in violation of its obligation to the HLS-CAM copyright holder to protect the underlying computer code and structure resulting in the operational product known as HLS-CAM;

f. In effect, the Advocate's expert and Respondent's representative will be allowed to see HLS-CAM in operation as it would be viewed by any person using HLS-CAM to conduct an assessment;

g. The Advocate's expert and Respondent's representative will be allowed to view, but not copy, HLS-CAM user and training materials;

h. A determination of whether individual computer "screen shots" can be duplicated for the Advocate's expert and Respondent's representative to carry away from FDLE will be made on a case-by-case basis, with the FDLE representative's decision being final;

i. A small sampling of actual assessments may be provided for viewing by the Advocate's expert and Respondent's representative at FDLE's option;

j. If actual assessments of facilities in Florida are viewed, they will not be available for copying unless approved by FDLE and unless identifying information can be edited in a way to not jeopardize the security of the information contained in the assessment itself;

k. The Advocate's expert and Respondent's representative shall not reveal to third parties outside the subject litigation any sensitive information he may come across during his review of the HLS-CAM system. The Advocate's expert and Respondent's representative shall sign a nondisclosure agreement with FDLE prior to viewing any HLS-CAM materials or the system in operation;

l. In short, FDLE shall allow the Advocate's expert and Respondent's representative to view the HLS-CAM automated system in operation as it would be utilized by someone conducting an

assessment with the system, but will not be allowed to retain confidential or security-sensitive information related to actual sites in Florida or actual assessments performed;

m. Further, the methodology utilized by HLS-CAM is considered sensitive information by FDLE and any discerned information regarding that methodology revealed to the Advocate's expert or Respondent's representative by FDLE under the terms of this Order shall be held in confidence by the Advocate's expert and Respondent's representative, to be revealed only in the context of the litigation at hand. The Advocate's expert and Respondent's representative shall sign a nondisclosure agreement with FDLE that allows them to discuss their observations with counsel for the parties, and to not reveal them in any other context or forum other than in the actual litigation of this matter as structured by this Order; and

n. If any information or materials that have been revealed to the Advocate's expert or Respondent's representative by FDLE under the terms of this Order must be discussed in the actual litigation and are claimed by FDLE to be sensitive or confidential or exempt from public records, such information or materials shall be subject to review in camera by the Administrative Law Judge prior to disclosure. Thereafter, if the Administrative Law Judge determines that such information or materials are confidential or subject to a public records exemption, the proceedings, whether at the final hearing or deposition, shall be closed to the public and only revealed to the Administrative Law Judge, the parties to the litigation, counsel to the parties, and the parties' designated experts as approved by the Administrative Law Judge, and they shall all maintain the confidentiality and prevent disclosure of such information and materials to the public. Unless such protections are in place, the parties and their counsel shall not inquire into those areas in these proceedings.

DONE AND ORDERED this 13th day of November, 2007, in  
Tallahassee, Leon County, Florida.

*Carolyn S. Holifield*

---

CAROLYN S. HOLIFIELD  
Administrative Law Judge  
Division of Administrative Hearings  
The DeSoto Building  
1230 Apalachee Parkway  
Tallahassee, Florida 32399-3060  
(850) 488-9675 SUNCOM 278-9675  
Fax Filing (850) 921-6847  
www.doah.state.fl.us

Filed with the Clerk of the  
Division of Administrative Hearings  
this 13th of November, 2007.

COPIES FURNISHED:

Mark Herron, Esquire  
Messer, Caparello & Self, P.A.  
2618 Centennial Place  
Post Office Box 15579  
Tallahassee, Florida 32317

Kaye Starling  
Florida Commission on Ethics  
Post Office Drawer 15709  
Tallahassee, Florida 32317-5709

Lisa M. Raleigh, Esquire  
Office of the Attorney General  
The Capitol, Pl-01  
Tallahassee, Florida 32399

Jennifer Erlinger, Esquire  
Office of the Attorney General  
The Capitol, Pl-01  
Tallahassee, Florida 32399

**STATE OF FLORIDA  
DIVISION OF ADMINISTRATIVE HEARINGS**

**In re: Kevin Eugene Beary,**

**Respondent.**

---

**DOAH Case No. 07-1820EC  
Complaint No. 05-105**

**ADVOCATE'S FIRST REQUEST FOR  
PRODUCTION OF DOCUMENTS TO KEVIN BEARY**

Advocate, Florida Commission Ethics, by and through the undersigned counsel and pursuant to Rule 1.350, Florida Civil Rules of Procedure, hereby requests that Respondent, produce and permit the following for inspection and/or copying at the offices of the Attorney General, 107 West Gaines Street, Tallahassee, Florida 32399-1050, within thirty (30) days of receipt of such request.

**INSTRUCTIONS**

1. In answering these requests, furnish all information available to you, including information in the possession of your agents, employees, attorneys, investigators, and all others from whom it may be obtained.
2. Regarding the terms defined herein, all terms used in the singular shall include the plural, and all terms used in the plural shall include the singular.
3. Whenever these requests seek information which is not available to you in the form requested, but is available in another form or can be obtained elsewhere, so state and either supply the data from which the information requested can be obtained.
4. Each request should be construed independently and not with reference to any other request for purposes of limitation, except where so designated specifically.
5. If any information sought by these requests is withheld because you claim that

such information is privileged, state the basis upon which any privilege is founded, and the general subject matter of the information withheld.

### DEFINITIONS

For the purposes of this First Request for Production of Documents, the terms set forth herein shall be defined as follows:

6. As used herein, **"Respondent," "you," or "your"** shall mean the Respondent, or any iteration thereof.

7. **"Advocate,"** refers to, without limitation, Florida Commission on Ethics.

8. **"Document"** means every writing or record of every type and description that is or has been in your possession, custody, or control or of which you have knowledge, including, but not limited to, correspondence, memoranda, tapes, stenographic or handwritten notes, studies, publications, books, pamphlets, pictures, drawings and photographs, films, microfilms, voice recordings, maps, reports, surveys, minutes or statistical compilations, or any other reported or graphic material in any form, including copies, drafts, and reproductions. **"Document"** also refers to any other data compilations from which information can be obtained, and translated, if necessary, into reasonably usable form by you through computer or detection device.

9. **"Produce"** means to make available the documents requested herein for inspection and copying and to separate such documents into categories set forth in this request. If you decline to produce any documents requested hereinafter on the basis of any privilege recognized by law, you shall, at the time of production herein designated, provide Petitioner with the following written information as to each document:

(a) The title or other means of identification of each said document;

- (b) The type document (e.g. letter, memorandum, record, etc.);
- (c) The date of such document;
- (d) The author of each such document;
- (e) The recipient or recipients of each such document, including but not limited to complaint or anyone who purports to represent the complainant;
- (f) The present location of any and all copies of each such document in the care, custody, or control of complainant;
- (g) The names and current addresses of any and all persons who have custody or control of each such document or copies thereof; and
- (h) If all copies of the document have been destroyed, the names and current addresses of the person or persons authorizing the destruction of such document and the date such document was destroyed.

10. If any document(s) described herein has already been produced to Petitioner, identify the corresponding request(s) to which such document(s) relates.

11. Terms used in the singular shall be deemed to include the plural, and terms used in the plural shall be deemed to include the singular.

12. Use of feminine pronouns shall be deemed to include the masculine and neuter, and use of masculine pronouns shall be deemed to include the feminine and neuter.

13. **"Case or Complaint"** refers to Complaint No. 05-108 previously filed with the Commission on Ethics.

14. **"OCSO"** refers to the Orange County Sheriff's Office.

15. **"NDPCI"** refers to the National Domestic Preparedness Coalition, Inc.

### DOCUMENTS TO BE PRODUCED

1. All documents reviewed, referred to be identified in response to Advocate's First Set of Interrogatories.

2. All documents to be utilized or introduced at the final hearing in this matter.

3. Any document consulted prior to denying any numbered request in the Advocate's First Request for Admissions contemporaneously filed with this Request for Production, as identified in interrogatory number 7 A and B of the Advocate's First Interrogatories to Respondent, also contemporaneously served with this Request for Production.

4. Any document identified in Respondent's response to interrogatory number 6 in the Advocate's First Interrogatories to Respondent.

5. All of your Federal and State tax returns and tax return attachments and work papers for years 2002, 2003, 2004, 2005 and 2006, for your personal taxes or taxes for any entity in which you held a 10% or greater ownership interest.

6. All documents of communication regarding HLS-CAM, its predecessor, or NDPCI, between you or the Orange County Sheriff's Office and any of the following (including representatives, officials or employees thereof):

the Florida Department of Law Enforcement ("FDLE") or any present or former FDLE employee or official, including, but not limited to, Mark Zedra, former Commissioner Tim Moore, Dr. Sewell, or others;

one or more of Florida's Regional Domestic Security Task Forces ("RDSTF's"), including, but not limited to, any co-chair thereof,

the United States Department of Defense ("DOD");

the United States Department of Homeland Security ("DHS");

Defense Threat Reduction Agency ("DTRA"),

Ed Dore;

Ken Glantz;

Ricky Ricks;

any other OCSO employees;

the University of West Virginia;

Dr. Julian Bailes;

the West Virginia National Guard;

Col. James Hoyer;

Pete Brown, Jr.;

the Orange County Comptroller's Office; or,

entities who adopted HLS-CAM or received HLS-CAM training.

5. All documents reflecting OCSO resources used in the development or promotion of HLS-CAM or its predecessor, including, but not limited to wages, salaries, compensation, benefits, travel, transportation, accommodations, telephones, office equipment and supplies (including computers, printers, fax machines and paper), office space, utilities, furniture and fixtures.

6. All documents detailing time you spent while being compensated by OCSO which compensation was later reimbursed to OCSO by NDPCI.

7. All documents detailing time Ken Glantz spent while being compensated by OCSO which compensation was later reimbursed to OCSO by NDPCI.

8. All documents detailing time Ed Dore spent while being compensated by OCSO which compensation was later reimbursed to OCSO by NDPCI.

9. All documents detailing time Ricky Ricks spent while being compensated by OCSO which compensation was later reimbursed to OCSO by NDPCI.

10. All documents detailing time OCSO employees (other than you, Ken Glantz, Ed Dore or Ricky Ricks) spent while being compensated by OCSO which compensation was later reimbursed to OCSO by NDPCI.

11. All documents evidencing your request(s) or directive(s) to OCSO officials, employees or contractors to keep records of time spent developing or working on matters related to the HLS-CAM while being compensated by OCSO.

12. All documents evidencing your request(s) or directive(s) to OCSO officials, employees or contractors to keep records of time spent developing or working on matters related to the HLS-CAM during off-duty hours.

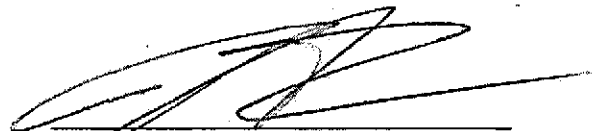
13. All OCSO policies, directives or procedures designed to accommodate the use or training of HLS-CAM or interaction and/or cooperation with NDPCI.

14. Documents reflecting all payments you received from NDPCI.

15. Documents reflecting amounts you have paid to NDPCI.

16. Documents reflecting your education, training or experience with terrorism or infrastructure vulnerability assessments.

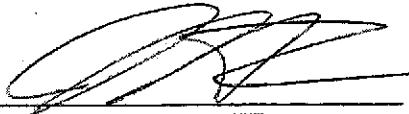
17. *All copies of the HLS-CAM, including the automated software updates.*  
Respectfully submitted this 21<sup>st</sup> day of September, 2007.



JAMES H. PETERSON, III  
Advocate for the Florida Commission  
on Ethics  
Florida Bar No. 473057  
Office of the Attorney General  
The Capitol, PL-01  
Tallahassee, FL 32399-1050  
Tel. No. (850) 414-3300, Ext. 3702  
Fax. No. (850) 488-4872  
[pete.peterson@myfloridalegal.com](mailto:pete.peterson@myfloridalegal.com)

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a true and correct copy hereof has been sent by HAND DELIVERY to Mark Herron, Esq., Messer, Caparello & Self, P.A. 2618 Centennial Place, Tallahassee, FL 32308, and Wayne L. Helsby, Esq., Allen, Norton & Blue, c/o Mark Herron, this 21<sup>st</sup> day of September, 2007.

  
James H. Peterson, III

**STATE OF FLORIDA  
DIVISION OF ADMINISTRATIVE HEARINGS**

**In re: Kevin Beary  
Respondent.**

---

**DOAH No. 07-1820EC**

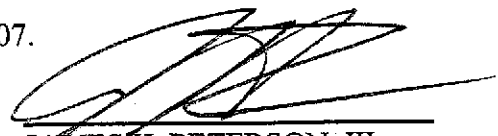
**NOTICE OF TAKING DEPOSITION DUCES TECUM**

**TO: Mark Herron, Esq.  
Messer, Caparello & Self, P.A.  
Post Office Box 15579  
Tallahassee, Florida 32317**

**Wayne L. Helsby, Esq.  
Allen, Norton & Blue, P.A.  
1477 West Fairbanks Ave.  
Suite 100  
Winter Park, Florida 32789**

PLEASE TAKE NOTICE that the undersigned attorney will take the deposition of **Ken Glantz**, in his individual capacity and as an officer or director of **National Domestic Preparedness Coalition, Inc. ("NDPCI")**, at the **Office of Accurate Reporters, 105 East Robinson Street, Suite 301, Orlando, Florida 32771**, on **Wednesday, August 22, 2007**, at 9:00 a.m. upon oral examination before a professional court reporter, a notary public, or any other officer duly authorized by law to take depositions in the State of Florida. The oral examination is being taken for the purpose of discovery, for use at public hearing, or for such other purposes as are permitted under the applicable statutes or rules of court. The deponent is being directed to bring with him to the deposition all documents and information identified on Exhibit "A" attached hereto.

Respectfully submitted this 2<sup>d</sup> day of August, 2007.

  
**JAMES H. PETERSON, III**  
Advocate for the Florida  
Commission on Ethics  
Florida Bar No. 0473057  
Office of the Attorney General  
The Capitol, PL-01  
Tallahassee, Florida 32399-1050  
(850) 414-3300, Ext. 4702

## EXHIBIT "A"

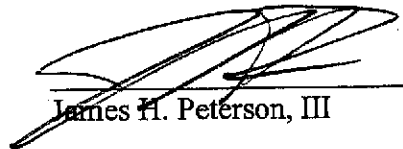
1. Books, Records and documents of National Domestic Preparedness Coalition, Inc. ("NDPCI") from its inception through August 21, 2007, including all:
  - Articles of Incorporation,
  - meeting minutes,
  - resolutions,
  - tax returns,
  - financial statements, and
  - all other documents reflecting the activities of NDPCI.
2. All documents regarding, detailing, or supporting payments by NDPCI to the Orange County Sheriff's Office ("OCSO").
3. All documents regarding, detailing, or supporting payments by NDPCI to current or former NDPCI officers, members or directors.
4. All documents, the ideas from or contents of which were reviewed, considered, utilized or incorporated in the development of the HLS-CAM.
5. All documents of communication between, or reflecting communications between, NDPCI and:
  - Sheriff Kevin Beary (individually or in his official capacities),
  - OCSO,
  - the Florida Department of Law Enforcement ("FDLE"),
  - one or more of Florida's Regional Domestic Security Task Forces ("RDSTF's"),
  - Mark Zedra,
  - the Department of Defense ("DOD"),
  - the Department of Homeland Security ("DHS"),
  - the Defense Threat Reduction Agency ("DTRA"),
  - Ed Dore,
  - Ken Glantz,
  - Ricky Ricks
  - any other OCSO employees,
  - the University of West Virginia,
  - Dr. Julian Bailes,
  - the West Virginia National Guard,
  - Col. James Hoyer, or
  - the Orange County Comptroller's Office.
6. All documents promoting or reflecting the promotion or sale of HLS-CAM or HLS-CAM training.
7. All documents regarding NDPCI grant applications, grant receipts, grant audits, responses to grant audits, grant expenditures, or response to any grant audit issues.

8. All documents regarding payments or reimbursements made by NDPCI to OCSO, the University of West Virginia, or the West Virginia National Guard.
9. All documents reflecting salaries or payments made by NDPCI from its inception through August 21, 2007, to its current or former officers, directors, board members, employees or contractors.
10. All documents reflecting the names of NDPCI's current or former officers, directors, board members, employees or contractors.
11. All documents reflecting money received by NDPCI since its inception.
12. All documents regarding the copyright of HLS-CAM.
13. All contracts or agreements and documents regarding contracts, leases and agreements of which NDPCI is or was a party.
14. Copies of the Homeland Security Comprehensive Assessment Model ("HLS-CAM"), including all versions, from its inception through August 21, 2007.

As used herein, the term "documents" means originals or copies of written materials or matter (whether handwritten, drawn, printed or typed), including, but not limited to, all documents, agreements or contracts (whether executed or not), correspondence, memoranda, notes, ledgers, telephone logs, diaries, books, articles, reports, diagrams, blueprints, charts and maps, and all photographs, motion pictures, video tapes, photostats or photocopies, microfilms, tapes, electrical, electronic or mechanical recordings, and all information in or for data processing machines or computers, and other data compilations in the possession, custody or control of the deponent.

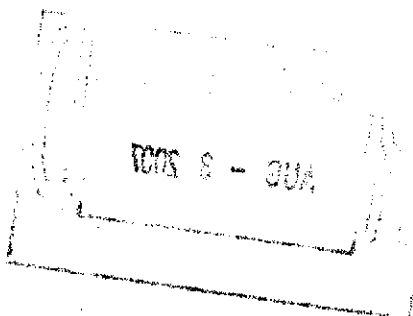
**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a copy of the forgoing Notice of Taking Deposition Duces Tecum has been furnished by facsimile (850) 224-4359 and by U.S Mail to Mark Herron, Esq., Messer, Caparello & Self, P.A., P.O. Box 15579, Tallahassee, FL 32317 and facsimile (407)571-1496 and by U.S. Mail to Wayne L. Helsby, Esq., Allen, Norton & Blue, P.A., 1477 West Fairbanks Ave., Suite 100, Winter Park, Florida 32789, this 22 day of August, 2007.



James H. Peterson, III

**cc: Accurate Reporters**  
**866-886-9728**



**STATE OF FLORIDA  
DIVISION OF ADMINISTRATIVE HEARINGS**

**In re: Kevin Eugene Beary,**

**Respondent.**

---

**DOAH Case No. 07-1820EC  
Complaint No. 05-105**

**NOTICE OF TAKING DEPOSITION  
DUCES TECUM**

**TO: Mark Herron, Esq.  
Messer, Caparello & Self, P.A.  
Post Office Box 15579  
Tallahassee, FL 32317**

**Wayne L. Helsby, Esq.  
Allen, Norton & Blue, P.A.  
1477 West Fairbanks Ave.  
Suite 100  
Winter Park, FL 32789**

**PLEASE TAKE NOTICE** that the undersigned attorney will take the deposition of **Chief Ricky Ricks**, at the **Office of Accurate Reporters, 105 East Robinson Street, Suite 301, Orlando, Florida 32801**, on **August 23, 2007, at 12:30 p.m.** upon oral examination before a professional court reporter, a notary public, or any other officer duly authorized by law to take depositions in the State of Florida.

The oral examination is being taken for the purpose of discovery, for use at a public hearing, or for such other purposes as are permitted under the applicable statutes rules of court.

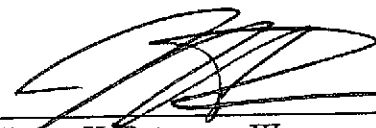
The deponent is being directed to bring with him to the deposition documents which the witness has prepared or compiled regarding time spent working on the development or training for the Homeland Security Comprehensive Assessment Model ("HLS-CAM"). Also, the deponent has been asked to bring a list of HLS-CAM assessments that have been completed for Orange County's critical infrastructure.

Respectfully submitted this 13<sup>th</sup> day of August, 2007.

  
\_\_\_\_\_  
JAMES H. PETERSON, III  
Advocate for the Florida  
Commission on Ethics  
Florida Bar No. 0473057  
Office of Attorney General  
The Capitol, PL-01  
Tallahassee, Florida 32399-1050  
(850) 414-3300, Ext. 4702

**CERTIFICATE OF SERVICE**

**I HEREBY CERTIFY** that a copy of the Notice of Taking Deposition has been furnished by facsimile (850) 224-4359 and by U.S. Mail to Mark Herron, Esq., Messer, Caparello & Self, P.A., P.O. Box 15579, Tallahassee, FL 32317 and facsimile (407) 571-1496 and by U.S. Mail to Wayne L. Helsby, Esq., Allen, Norton & Blue, P.A., 1477 West Fairbanks Ave., Suite 100, Winter Park, Florida 32789, this 13<sup>th</sup> day of August 2007.

  
\_\_\_\_\_  
James H. Peterson, III

cc: Accurate Reporters via Volusia Reporting

STATE OF FLORIDA  
DIVISION OF ADMINISTRATIVE HEARINGS

IN RE: KEVIN BEARY,  
  
Respondent.

Case No. 07-1820EC  
FEC Complaint No. 05-105

---

**MOTION FOR PROTECTIVE ORDER**

Kevin Beary, by and through undersigned counsel, moves for the entry of a protective order pursuant to Rule 28.106-206 Florida Administrative Code and Rule 1.280(c), Florida Rules of Civil Procedure and in support thereof states:

1. The Advocate for the Florida Commission on Ethics has forwarded the "Advocate's First Request for Production of Documents to Kevin Beary." A copy of the "Advocate's First Request for Production of Documents to Kevin Beary" is attached hereto as Exhibit "A."

2. The Advocate made handwritten revisions to the "Advocate's First Request for Production of Documents to Kevin Beary" by adding, as a document requested to be produced: "All copies of HLS-CAM (the "Homeland Security Comprehensive Assessment Model"), including the customized software version." A copy of the handwritten revisions filed in this proceeding is attached hereto as Exhibit "B."

3. Kevin Beary has asserted in the course of these proceedings that the HLS-CAM is confidential and exempt from disclosure pursuant to Section

119.071(3), Florida Statutes. Kevin Beary has a duty and obligation to protect this critical infrastructure assessment instrument from disclosure.

### ARGUMENT

In deciding whether a protective order is appropriate in a particular case, the court must balance the competing interests that would be served by granting discovery or by denying it. *Alterra Healthcare Corp. v. Estate of Shelley*, 827 So.2d 936, 945 (Fla. 2002)(citing *North Miami General Hospital v. Royal Palm Beach Colony, Inc.*, 397 So.2d 1033, 1035 (Fla. 3d DCA 1981) and *Dade County Medical Association v. Hlis*, 372 So.2d 117, 121 (Fla. 3d DCA 1979)).

There are several reasons why, in this case, a protective order should be granted as to the requested documents. The first reason is that the HLS-CAM is exempt from the Florida Public Records Law pursuant to Section 119.071(3), Florida Statutes. Section 119.071(3), Florida Statutes, provides in relevant part:

**(3) Security.**

(a) 1. As used in this paragraph, the term "security system plan" includes all:

- a. Records, information, photographs, audio and visual presentations, schematic diagrams, surveys, recommendations, or consultations or portions thereof relating directly to the physical security of the facility or revealing security systems;
- b. Threat assessments conducted by any agency or any private entity;
- c. Threat response plans;
- d. Emergency evacuation plans;

e. Sheltering arrangements; or

f. Manuals for security personnel, emergency equipment, or security training.

2. A security system plan or portion thereof for:

a. Any property owned by or leased to the state or any of its political subdivisions; or

b. Any privately owned or leased property

held by an agency is confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution.

The HLS-CAM is a confidential "security system plan" as defined in Section 119.07(3)(a)1, Florida Statutes, and include: records, information relating directly to the physical security of a facility or revealing security systems; threat assessments conducted by an agency or a private entity; threat response plans; and manuals for security personnel, emergency equipment, or security training. Thus, any such documents are confidential and exempt from Florida Public Records Law pursuant to Section 119.071(3), Florida Statutes.

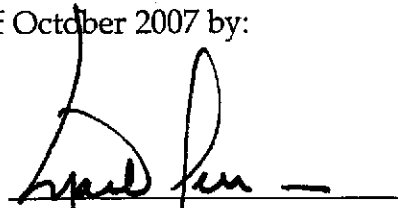
The second reason that a protective order should be granted in this instance is that the documents requested relate to confidential information that, if disclosed, could be harmful to the public safety and welfare. The requested documents, as set forth in the preceding paragraph, directly relate to public safety matters and assessment of infrastructure critical to the public safety and welfare. Making this information accessible could reduce the ability of local and state entities to keep the citizenry safe and would allow any interested person to

access information that would be helpful to planning a terrorist attack. If such information were to be made public, it could be used by terrorists to enhance their capabilities to conduct terrorist activities and hamper the abilities of the public and private sector to prevent such acts of terrorism.

Undersigned counsel and the Advocate for the Florida Commission on Ethics have conferred about the instant motion and they have been unable to reach an acceptable resolution of the issues presented by the sensitive information referenced herein. However, no resolution has been reached.

WHEREFORE, for the foregoing reasons, Kevin Beary respectfully requests the entry of an order protecting him from having to produce "[a]ll copies of HLS-CAM [the "Homeland Security Comprehensive Assessment Model"], including the customized software version."

Respectfully submitted on this 8<sup>th</sup> day of October 2007 by:



Mark Herron  
Messer, Caparello & Self, P.A.  
Florida Bar Number 0199737  
Post Office Box 15579  
Tallahassee, FL 32317  
Tel. No. (850) 222-0720  
Fax. No. (850) 558-0659  
mherron@lawfla.com

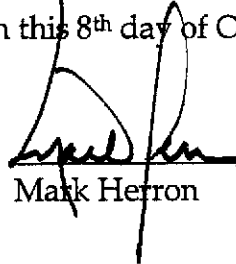
Wayne L. Helsby  
Florida Bar No. 362492  
Allen, Norton & Blue, P.A.  
1477 West Fairbanks Ave. Ste. 100  
Winter Park, Florida 32789

(407) 571-2152  
(407) 571-1496 Facsimile  
whelsby@anblaw.com

Attorneys for Respondent

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a true and correct copy of the foregoing was provided by United States Postal Service to James H. Peterson, III, Advocate for the Commission on Ethics, Office of the Attorney General, Room PL-01, The Capitol, Tallahassee, FL 32399-1050, and a PDF copy was forwarded by email to James H. Peterson, III, Advocate for the Commission on Ethics, at the following address: Pete.Peterson@myfloridalegal.com, on this 8<sup>th</sup> day of October 2007.



---

Mark Herron

STATE OF FLORIDA  
DIVISION OF ADMINISTRATIVE HEARINGS

In re: Kevin Eugene Beary,

Respondent.

---

DOAH Case No. 07-1820EC  
Complaint No. 05-105

**ADVOCATE'S FIRST REQUEST FOR  
PRODUCTION OF DOCUMENTS TO KEVIN BEARY**

Advocate, Florida Commission Ethics, by and through the undersigned counsel and pursuant to Rule 1.350, Florida Civil Rules of Procedure, hereby requests that Respondent, produce and permit the following for inspection and/or copying at the offices of the Attorney General, 107 West Gaines Street, Tallahassee, Florida 32399-1050, within thirty (30) days of receipt of such request.

**INSTRUCTIONS**

1. In answering these requests, furnish all information available to you, including information in the possession of your agents, employees, attorneys, investigators, and all others from whom it may be obtained.
2. Regarding the terms defined herein, all terms used in the singular shall include the plural, and all terms used in the plural shall include the singular.
3. Whenever these requests seek information which is not available to you in the form requested, but is available in another form or can be obtained elsewhere, so state and either supply the data from which the information requested can be obtained.
4. Each request should be construed independently and not with reference to any other request for purposes of limitation, except where so designated specifically.
5. If any information sought by these requests is withheld because you claim that

such information is privileged, state the basis upon which any privilege is founded, and the general subject matter of the information withheld.

### DEFINITIONS

For the purposes of this First Request for Production of Documents, the terms set forth herein shall be defined as follows:

6. As used herein, "Respondent," "you," or "your" shall mean the Respondent, or any iteration thereof.

7. "Advocate," refers to, without limitation, Florida Commission on Ethics.

8. "Document" means every writing or record of every type and description that is or has been in your possession, custody, or control or of which you have knowledge, including, but not limited to, correspondence, memoranda, tapes, stenographic or handwritten notes, studies, publications, books, pamphlets, pictures, drawings and photographs, films, microfilms, voice recordings, maps, reports, surveys, minutes or statistical compilations, or any other reported or graphic material in any form, including copies, drafts, and reproductions. "Document" also refers to any other data compilations from which information can be obtained, and translated, if necessary, into reasonably usable form by you through computer or detection device.

9. "Produce" means to make available the documents requested herein for inspection and copying and to separate such documents into categories set forth in this request. If you decline to produce any documents requested hereinafter on the basis of any privilege recognized by law, you shall, at the time of production herein designated, provide Petitioner with the following written information as to each document:

(a) The title or other means of identification of each said document;

- (b) The type document (e.g. letter, memorandum, record, etc.);
- (c) The date of such document;
- (d) The author of each such document;
- (e) The recipient or recipients of each such document, including but not limited to complaint or anyone who purports to represent the complainant;
- (f) The present location of any and all copies of each such document in the care, custody, or control of complainant;
- (g) The names and current addresses of any and all persons who have custody or control of each such document or copies thereof; and
- (h) If all copies of the document have been destroyed, the names and current addresses of the person or persons authorizing the destruction of such document and the date such document was destroyed.

10. If any document(s) described herein has already been produced to Petitioner, identify the corresponding request(s) to which such document(s) relates.

11. Terms used in the singular shall be deemed to include the plural, and terms used in the plural shall be deemed to include the singular.

12. Use of feminine pronouns shall be deemed to include the masculine and neuter, and use of masculine pronouns shall be deemed to include the feminine and neuter.

13. **"Case or Complaint"** refers to Complaint No. 05-108 previously filed with the Commission on Ethics.

14. **"OCSO"** refers to the Orange County Sheriff's Office.

15. **"NDPCF"** refers to the National Domestic Preparedness Coalition, Inc.

**DOCUMENTS TO BE PRODUCED**

1. All documents reviewed, referred to be identified in response to Advocate's First Set of Interrogatories.

2. All documents to be utilized or introduced at the final hearing in this matter.

3. Any document consulted prior to denying any numbered request in the Advocate's First Request for Admissions contemporaneously filed with this Request for Production, as identified in interrogatory number 7 A and B of the Advocate's First Interrogatories to Respondent, also contemporaneously served with this Request for Production.

4. Any document identified in Respondent's response to interrogatory number 6 in the Advocate's First Interrogatories to Respondent.

5. All of your Federal and State tax returns and tax return attachments and work papers for years 2002, 2003, 2004, 2005 and 2006, for your personal taxes or taxes for any entity in which you held a 10% or greater ownership interest.

6. All documents of communication regarding HLS-CAM, its predecessor, or NDPCL, between you or the Orange County Sheriff's Office and any of the following (including representatives, officials or employees thereof):

the Florida Department of Law Enforcement ("FDLE") or any present or former FDLE employee or official, including, but not limited to, Mark Zedra, former Commissioner Tim Moore, Dr. Sewell, or others;

one or more of Florida's Regional Domestic Security Task Forces ("RDSTF's"), including, but not limited to, any co-chair thereof;

the United States Department of Defense ("DOD");

the United States Department of Homeland Security ("DHS");

Defense Threat Reduction Agency ("DTRA"),

Ed Dore;

Ken Glantz;  
Ricky Ricks;  
any other OCSO employees;  
the University of West Virginia;  
Dr. Julian Bailes;  
the West Virginia National Guard;  
Col. James Hoyer;  
Pete Brown, Jr.;  
the Orange County Comptroller's Office; or,  
entities who adopted HLS-CAM or received HLS-CAM training.

5. All documents reflecting OCSO resources used in the development or promotion of HLS-CAM or its predecessor, including, but not limited to wages, salaries, compensation, benefits, travel, transportation, accommodations, telephones, office equipment and supplies (including computers, printers, fax machines and paper), office space, utilities, furniture and fixtures.

6. All documents detailing time you spent while being compensated by OCSO which compensation was later reimbursed to OCSO by NDPCI.

7. All documents detailing time Ken Glantz spent while being compensated by OCSO which compensation was later reimbursed to OCSO by NDPCI.

8. All documents detailing time Ed Dore spent while being compensated by OCSO which compensation was later reimbursed to OCSO by NDPCI.

9. All documents detailing time Ricky Ricks spent while being compensated by OCSO which compensation was later reimbursed to OCSO by NDPCI.

10. All documents detailing time OCSO employees (other than you, Ken Gantz, Ed Dore or Ricky Ricks) spent while being compensated by OCSO which compensation was later reimbursed to OCSO by NDPCL.

11. All documents evidencing your request(s) or directive(s) to OCSO officials, employees or contractors to keep records of time spent developing or working on matters related to the HLS-CAM while being compensated by OCSO.

12. All documents evidencing your request(s) or directive(s) to OCSO officials, employees or contractors to keep records of time spent developing or working on matters related to the HLS-CAM during off-duty hours.

13. All OCSO policies, directives or procedures designed to accommodate the use or training of HLS-CAM or interaction and/or cooperation with NDPCL.

14. Documents reflecting all payments you received from NDPCL.

15. Documents reflecting amounts you have paid to NDPCL.

16. Documents reflecting your education, training or experience with terrorism or infrastructure vulnerability assessments.

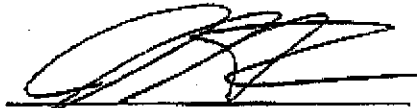
Respectfully submitted this 21<sup>st</sup> day of September, 2007.



JAMES H. PETERSON, III  
Advocate for the Florida Commission  
on Ethics  
Florida Bar No. 473057  
Office of the Attorney General  
The Capitol, PL-01  
Tallahassee, FL 32399-1050  
Tel. No. (850) 414-3300, Ext. 3702  
Fax. No. (850) 488-4872  
[pete.peterson@myfloridalegal.com](mailto:pete.peterson@myfloridalegal.com)

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a true and correct copy hereof has been sent by HAND DELIVERY to Mark Herron, Esq., Messer, Caparello & Self, P.A. 2618 Centennial Place, Tallahassee, FL 32308, and Wayne L. Helsby, Esq., Allen, Norton & Blue, c/o Mark Herron, this 21<sup>st</sup> day of September, 2007.

  
James H. Peterson, III

**STATE OF FLORIDA  
DIVISION OF ADMINISTRATIVE HEARINGS**

**In re: Kevin Beary,**

**Complaint No. 05-105**

**Respondent.**  
\_\_\_\_\_

**DOAH No. 07-1820EC**

**NOTICE OF FILING**

COMES NOW the Advocate and files the last page of the Advocate's First Request for Production, showing handwritten revisions to the Request (a new paragraph 17) provided to Respondent's counsel, Mark Herron on the day the original request was served by hand delivery, Friday, September 21, 2007.

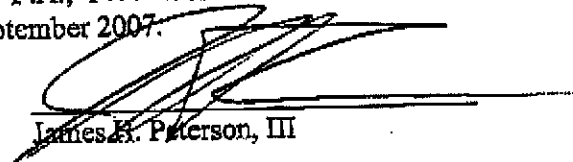
Respectfully submitted,



James H. Peterson, III  
Advocate for the Florida Commission  
on Ethics  
Florida Bar No. 0473057  
Office of the Attorney General  
The Capitol, PL-01  
Tallahassee, Florida 32399-1050  
(850) 414-3300, Ext. 3702

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a copy of the Notice of Filing has been furnished by facsimile (850) 224-4359 and by U.S. Mail to Mark Herron, Esq., Messer, Caparello & Self, P.A., P.O. Box 15579, Tallahassee, FL 32317 and facsimile (407) 571-1496 and by U.S. Mail to Wayne L. Helsby, Esq., Allen, Norton & Blue, P.A., 1477 West Fairbanks Ave., Suite 100, Winter Park, Florida 32789, this 24<sup>th</sup> day of September 2007.



James H. Peterson, III

10. All documents detailing time OCSO employees (other than you, Ken Glantz, Ed Dore or Ricky Ricks) spent while being compensated by OCSO which compensation was later reimbursed to OCSO by NDPCI.

11. All documents evidencing your request(s) or directive(s) to OCSO officials, employees or contractors to keep records of time spent developing or working on matters related to the HLS-CAM while being compensated by OCSO.

12. All documents evidencing your request(s) or directive(s) to OCSO officials, employees or contractors to keep records of time spent developing or working on matters related to the HLS-CAM during off-duty hours.

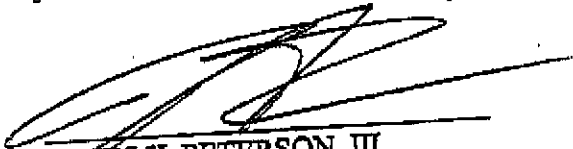
13. All OCSO policies, directives or procedures designed to accommodate the use or training of HLS-CAM or interaction and/or cooperation with NDPCI.

14. Documents reflecting all payments you received from NDPCI.

15. Documents reflecting amounts you have paid to NDPCI.

16. Documents reflecting your education, training or experience with terrorism or infrastructure vulnerability assessments.

17. *All copies of the HLS-CAM, including the automated software version,*  
Respectfully submitted this 21<sup>st</sup> day of September, 2007.



JAMES H. PETERSON, III  
Advocate for the Florida Commission  
on Ethics  
Florida Bar No. 473057  
Office of the Attorney General  
The Capitol, PL-01  
Tallahassee, FL 32399-1050  
Tel. No. (850) 414-3300, Ext. 3702  
Fax. No. (850) 488-4872  
[pete.peterson@myfloridalegal.com](mailto:pete.peterson@myfloridalegal.com)

**STATE OF FLORIDA  
DIVISION OF ADMINISTRATIVE HEARINGS**

IN RE: KEVIN BEARY,  
  
Respondent.

Case No. 07-1820EC  
FEC Complaint No. 05-105

---

**MOTION FOR PROTECTIVE ORDER**

Kevin Beary, Sheriff of Orange County, by and through undersigned counsel, moves for the entry of a protective order pursuant to Rule 28.106-206 Florida Administrative Code and Rule 1.280(c), Florida Rules of Civil Procedure and in support thereof states:

1. The Advocate for the Florida Commission on Ethics has deposed Rickey Ricks. Rickey Ricks is a Chief with the Orange County Sheriff's Office.
2. The Notice of Taking Deposition Duces Tecum directed Rickey Ricks to bring with him and produce at the deposition "a list of HLS-CAM assessments that have been completed for Orange County's critical infrastructure."
3. Production of the requested "list of HLS-CAM assessments that have been completed for Orange County's critical infrastructure" was deferred at the deposition of Rickey Ricks, pending the efforts to resolve this issue. The parties have been unable to successfully resolve this issue.
4. This requested information is an official record of that Orange County Sheriff's Office and it is the position of Sheriff Beary that such a list is

exempt from disclosure under Florida's Public Records Act, pursuant to Section 119.071(3), Florida Statutes.

### ARGUMENT

In deciding whether a protective order is appropriate in a particular case, the court must balance the competing interests that would be served by granting discovery or by denying it. *Alterra Healthcare Corp. v. Estate of Shelley*, 827 So.2d 936, 945 (Fla. 2002)(citing *North Miami General Hospital v. Royal Palm Beach Colony, Inc.*, 397 So.2d 1033, 1035 (Fla. 3d DCA 1981) and *Dade County Medical Association v. Hlis*, 372 So.2d 117, 121 (Fla. 3d DCA 1979)).

There are several reasons why, in this case, a protective order should be granted as to the requested documents. The first reason is that all documents referenced in the Notice of Taking Deposition Duces Tecum, and that would be produced by Rickey Ricks, are exempt from the Florida Public Records Law pursuant to Section 119.071(3), Florida Statutes. Section 119.071(3), Florida Statutes, provides in relevant part:

**(3) Security.**

(a) 1. As used in this paragraph, the term "security system plan" includes all:

- a. Records, information, photographs, audio and visual presentations, schematic diagrams, surveys, recommendations, or consultations or portions thereof relating directly to the physical security of the facility or revealing security systems;
- b. Threat assessments conducted by any agency or any private entity;

- c. Threat response plans;
- d. Emergency evacuation plans;
- e. Sheltering arrangements; or
- f. Manuals for security personnel, emergency equipment, or security training.

2. A security system plan or portion thereof for:

a. Any property owned by or leased to the state or any of its political subdivisions; or

b. Any privately owned or leased property

held by an agency is confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution.

Any documents in the possession of Rickey Ricks relating to "a list of HLS-CAM assessments that have been completed for Orange County's critical infrastructure" that may be responsive to the Notice of Taking Deposition Duces Tecum are confidential "security system plans" as defined in Section 119.07(3)(a)1, Florida Statutes, and include: records, information relating directly to the physical security of a facility or revealing security systems; threat assessments conducted by an agency or a private entity; threat response plans; and manuals for security personnel, emergency equipment, or security training. Thus, any such documents are confidential and exempt from Florida Public Records Law pursuant to Section 119.071(3), Florida Statutes.

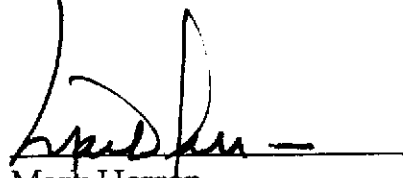
The second reason that a protective order should be granted in this instance is that the documents referenced in the Notice of Taking Deposition

Duces Tecum relate to confidential information that, if disclosed, could be harmful to the public safety and welfare. The requested documents, as set forth in the preceding paragraph, directly relate to public safety matters and assessment of infrastructure critical to the public safety and welfare. Making this information accessible could reduce the ability of local and state entities to keep the citizenry safe and would allow any interested person to access information that would be helpful to planning a terrorist attack. If such information were to be made public, it could be used by terrorists to enhance their capabilities to conduct terrorist activities and hamper the abilities of the public and private sector to prevent such acts of terrorism.

Undersigned counsel and the Advocate for the Florida Commission on Ethics have conferred about the instant motion and they have been unable to reach an acceptable resolution of the issues presented by the sensitive information referenced herein. However, no resolution has been reached.

WHEREFORE, for the foregoing reasons, Kevin Beary respectfully requests the entry of an order protecting Rickey Ricks from having to produce "a list of HLS-CAM assessments that have been completed for Orange County's critical infrastructure."

Respectfully submitted on this 8<sup>th</sup> day of October 2007 by:



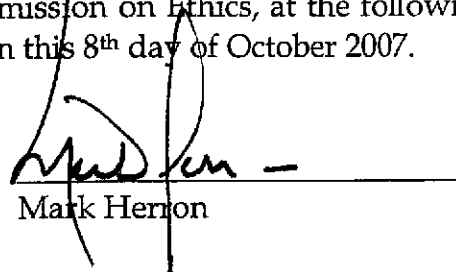
Mark Herron  
Messer, Caparello & Self, P.A.  
Florida Bar Number 0199737  
Post Office Box 15579  
Tallahassee, FL 32317  
Tel. No. (850) 222-0720  
Fax. No. (850) 558-0659  
mherron@lawfla.com

Wayne L. Helsby  
Florida Bar No. 362492  
Allen, Norton & Blue, P.A.  
1477 West Fairbanks Ave. Ste. 100  
Winter Park, Florida 32789  
(407) 571-2152  
(407) 571-1496 Facsimile  
whelsby@anblaw.com

Attorneys for Respondent

### CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was provided by United States Postal Service to James H. Peterson, III, Advocate for the Commission on Ethics, Office of the Attorney General, Room PL-01, The Capitol, Tallahassee, FL 32399-1050, and a PDF copy was forwarded by email to James H. Peterson, III, Advocate for the Commission on Ethics, at the following address: Pete.Peterson@myfloridalegal.com, on this 8<sup>th</sup> day of October 2007.



Mark Herron

STATE OF FLORIDA  
DIVISION OF ADMINISTRATIVE HEARINGS

IN RE: KEVIN BEARY,  
  
Respondent.

Case No. 07-1820EC  
FEC Complaint No. 05-105

---

**MOTION TO QUASH SUBPOENA DUCES TECUM**

Kevin Beary, by and through undersigned counsel, moves for the entry of an order pursuant to Rule 28.106-206 Florida Administrative Code and Rule 1.280(c), Florida Rules of Civil Procedure, quashing in part a subpoena duces tecum issued to a third party in this action and, in support thereof, states:

1. The Advocate for the Florida Commission on Ethics has given notice of his intent to take the deposition of Ken Glantz, "in his individual capacity and as an officer or director of the National Domestic Preparedness Coalition, Inc. ('NDPCI')..." on November 9, 2007. A copy of the Notice of Taking Deposition Duces Tecum directed to Mr. Glantz is attached hereto as Exhibit "A."

2. The Notice of Taking Deposition Duces Tecum directed that Mr. Glantz bring with him to the deposition numerous documents, including "[c]opies of the Homeland Security Assessment Model ('HLS-CAM'), including all versions from its inception through August 21, 2007."

3. Kevin Beary has asserted in the course of these proceedings that the HLS-CAM is confidential and exempt from disclosure pursuant to Section



119.071(3), Florida Statutes. Kevin Beary has a duty and obligation to protect this critical infrastructure assessment instrument from disclosure.

### ARGUMENT

There are several reasons why, in this case, the motion to quash should be granted as to the requested documents. The first reason is that the HLS-CAM is exempt from the Florida Public Records Law pursuant to Section 119.071(3), Florida Statutes. Section 119.071(3), Florida Statutes, provides in relevant part:

#### **(3) Security.**

(a) 1. As used in this paragraph, the term "security system plan" includes all:

- a. Records, information, photographs, audio and visual presentations, schematic diagrams, surveys, recommendations, or consultations or portions thereof relating directly to the physical security of the facility or revealing security systems;
  - ✓ b. Threat assessments conducted by any agency or any private entity;
  - c. Threat response plans;
  - d. Emergency evacuation plans;
  - e. Sheltering arrangements; or
  - ✓ f. Manuals for security personnel, emergency equipment, or security training.
2. A security system plan or portion thereof for:
- a. Any property owned by or leased to the state or any of its political subdivisions; or
  - b. Any privately owned or leased property

held by an agency is confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution.

The HLS-CAM is a confidential "security system plan" as defined in Section 119.07(3)(a)1, Florida Statutes, and include: records, information relating directly to the physical security of a facility or revealing security systems; threat assessments conducted by an agency or a private entity; threat response plans; and manuals for security personnel, emergency equipment, or security training. Thus, any such documents are confidential and exempt from Florida Public Records Law pursuant to Section 119.071(3), Florida Statutes.

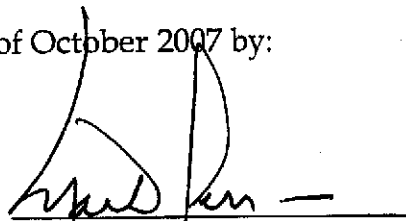
The second reason that a protective order should be granted in this instance is that the documents requested relate to confidential information that, if disclosed, could be harmful to the public safety and welfare. The requested documents, as set forth in the preceding paragraph, directly relate to public safety matters and assessment of infrastructure critical to the public safety and welfare. Making this information accessible could reduce the ability of local and state entities to keep the citizenry safe and would allow any interested person to access information that would be helpful to planning a terrorist attack. If such information were to be made public, it could be used by terrorists to enhance their capabilities to conduct terrorist activities and hamper the abilities of the public and private sector to prevent such acts of terrorism.

Undersigned counsel and the Advocate for the Florida Commission on Ethics have conferred about the instant motion and they have been unable to

reach an acceptable resolution of the issues presented by the sensitive information referenced herein. However, no resolution has been reached.

WHEREFORE, for the foregoing reasons, Kevin Beary respectfully requests the entry of an order quashing that portion of the subpoena duces tecum directed to Ken Glantz requiring that he to produce "[c]opies of the Homeland Assessment Model ('HLS-CAM'), including all versions from its inception through August 21, 2007."

Respectfully submitted on this 19<sup>th</sup> day of October 2007 by:



Mark Herron  
Messer, Caparello & Self, P.A.  
Florida Bar Number 0199737  
Post Office Box 15579  
Tallahassee, FL 32317  
Tel. No. (850) 222-0720  
Fax. No. (850) 558-0659  
mherron@lawfla.com

Wayne L. Helsby  
Florida Bar No. 362492  
Allen, Norton & Blue, P.A.  
1477 West Fairbanks Ave. Ste. 100  
Winter Park, Florida 32789  
(407) 571-2152  
(407) 571-1496 Facsimile  
whelsby@anblaw.com

Attorneys for Respondent

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a true and correct copy of the foregoing was provided by United States Postal Service to James H. Peterson, III, Advocate for the Commission on Ethics, Office of the Attorney General, Room PL-01, The Capitol, Tallahassee, FL 32399-1050, to Denis Volkerson, Registered Agent for the National Domestic Preparedness Coalition, Inc., 111 2<sup>nd</sup> Avenue, Suite 900, St. Petersburg, FL 33701, and to the National Domestic Preparedness Coalition, Inc., 50 South County Commons, Suite E6, South Kingston, Rhode Island, 02879; and that a PDF copy thereof was forwarded by email to James H. Peterson, III, at the following address: Pete.Peterson@myfloridalegal.com on this 19<sup>th</sup> day of October 2007.

  
Mark Herron

**STATE OF FLORIDA  
DIVISION OF ADMINISTRATIVE HEARINGS**

**In re: Kevin Beary,**

**DOAH CASE NO. 07-1820EC  
Commission on Ethics No. 05-105**

**Respondent.**

---

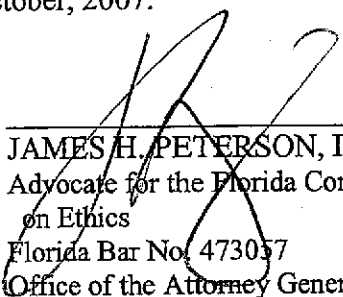
**ADVOCATE'S RESPONSE  
TO RESPONDENT'S MOTION TO QUASH**

The Advocate for the Florida Commission on Ethics, pursuant to Rule 28-106.204, Florida Administrative Code, files this Response to Respondent's Motion to quash Advocate's sought in the Advocate's Subpeona Duces Tecum of witness Ken Glantz and in support hereof states:

The Advocate requests that Advocate's Response to Respondent's Motion for Protective Orders and Advocate's Request for an Order with Guidelines filed on 10/19/07 be incorporated as argument in response to the Respondent's Motion to Quash Subpoena Duces Tecum.

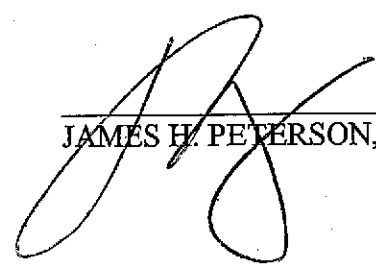
WHEREFORE, the undersigned respectfully requests the entry of an Order by the Administrative Law Judge in this case denying Respondent's Motion to Quash Subpoena Duces Tecum and providing Guidelines as requested in the Advocate's Response to Respondent's Motions for Protective Orders and Advocate's Request for an Order with Guidelines filed on 10/19/07.

Respectfully submitted this 29<sup>th</sup> day of October, 2007.

  
\_\_\_\_\_  
JAMES H. PETERSON, III  
Advocate for the Florida Commission  
on Ethics  
Florida Bar No. 473057  
Office of the Attorney General  
The Capitol, PL-01  
Tallahassee, FL 32399-1050  
Tel. No. (850) 414-3300, Ext. 3702  
Fax. No. (850) 488-4872

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the forgoing was provided to Mark Herron, Messer, Caparello & Self, P.A., Post Office Box 15579, Tallahassee, FL 32317 and Wayne L. Helsby, Allen, North & Blue, P.A., c/o Mark Herron by facsimile and U.S. Mail on this 29<sup>th</sup> day of October 2007.

  
\_\_\_\_\_  
JAMES H. PETERSON, III

**STATE OF FLORIDA  
DIVISION OF ADMINISTRATIVE HEARINGS**

**In re: Kevin Beary,**  
**Respondent.**

---

**DOAH CASE NO. 07-1820EC  
Commission on Ethics No. 05-105**

**ADVOCATE'S RESPONSE  
TO RESPONDENT'S MOTIONS FOR PROTECTIVE ORDERS  
AND  
ADVOCATE'S REQUEST FOR AN ORDER WITH GUIDELINES**

The Advocate for the Florida Commission on Ethics, pursuant to Rule 28-106.204, Florida Administrative Code, files this Response to Respondent's Motions seeking protective orders on documents sought in the Advocate's First Request for Production of Documents to Kevin Beary and the Advocate's Notice of Taking Deposition Duces Tecum directed to Rickey Ricks, and in support hereof states:

1. Respondent's Motions for Protective Orders referenced above seek protective orders from having to produce "[a]ll copies of HLS-CAM [the 'Homeland Security Comprehensive Assessment Model], including the customized software version" and from having Rickey Ricks (in conjunction with a Subpoena Duces Tecum) produce "a list of HLS-CAM assessments that have been completed for Orange County's critical infrastructure," respectively.

2. Respondent has put the value, uniqueness and quality of the HLS-CAM at issue in this case. Respondent's Response to the Report of Investigation in this case claims that "HLS-CAM was the first uniform model in the country to integrate and prioritize critical threat and vulnerability assessments to prevent, deter, and respond specifically to terrorist attacks." Response to ROI, p. 4. Further, the Respondent's Response to the Report of Investigation

asserts, "In fact, NDPCI prioritized and assessed over *seven hundred assets* in Orange County at no charge, services valued at over \$500,000. That Sheriff Beary's purpose of making the public safer is all but certain." Response to ROI, p. 13. [Respondent's Response to ROI is attached under Tab 2 of the Advocate's pending Motion to Strike or Dismiss Respondent's Amended Motion to Invalidate Agency Action Based on [an Alleged] Unpromulgated Rule filed in this action on July 30, 2007].

3. The undersigned has conferred with Respondent's counsel, but attempts by counsel for the parties to resolve these issues have been unsuccessful and Respondent's counsel opposes the relief sought herein.

4. As a reminder, this case is about Respondent's alleged doing business with his own agency, alleged contractual or employment conflicts, alleged misuse of office, and alleged misuse of information, all related to the development and marketing of HLS-CAM at public expense and Respondent's relationship with and receipt of a \$43,000 payment from National Domestic Preparedness Coalition, Inc. ("NDPC") that copyrighted HLS-CAM while Respondent was Sheriff of Orange County, co-chair of the Regional Domestic Security Task Force for FDLE Region 5, and board member of NDPCI.

5. Most materials sought from Respondent and Rickey Ricks are in the possession of the Florida Department of Law Enforcement ("FDLE"). In fact, the automated version of the HLS-CAM document that is most relevant to the issues in this case is held by FDLE on its computer system in Tallahassee.

6. The automated HLS-CAM held by FDLE is the version it acquired from NDPCI for use by "FDLE, the Florida Regional Domestic Security Task Forces and their partners, in their efforts to improve the Florida's critical infrastructure readiness and protection and to

conduct physical security audits and vulnerability assessments” pursuant to a contract originally signed on March 8 and 9, 2004. A copy of the contract is attached hereto as Exhibit “A.”

7. Many of the assessments conducted using the automated HLS-CAM provided to FDLE and the Regional Domestic Security Task Forces within the seven FDLE regions are in an FDLE database.

8. In retrospect, perhaps the undersigned Advocate should have sought the requested documents and information from FDLE instead of Respondent and Rickey Ricks. However, the fact that FDLE is another source (and probably a better source) for the documents and information does not moot the need for judicial oversight over the production of the documents and information sought by the Advocate that are the subject of Respondent’s Motion for Protective Orders.

9. FDLE has taken the position that review of the issues in this case should not be hampered by the failure of one side or the other to provide relevant materials and has agreed to provide the requested documents and materials as long as certain protections can be maintained.

10. In particular, FDLE, through its General Counsel, Michael Ramage, has agreed to allow the Advocate and his expert, Thomas W. Carney, president of CAFM, Inc., to review the automated HLS-CAM, HLS-CAM users and training materials and processes, and a representative HLS-CAM assessment from Orange County from which identifying information has been redacted, provided that the confidentiality of the documents and information is protected and that any proceedings in this case discussing specifics about the documents and information be protected by in camera proceedings or other appropriate means approved by the Administrative Law Judge. A copy of the letter from FDLE General Counsel Michael Ramage outlining FDLE’s position is attached hereto as Exhibit “B.”

WHEREFORE, the undersigned respectfully requests the entry of an Order by the Administrative Law Judge in this case on Respondent's Motions for Protective Orders and this Advocate's Response with the following guidelines:

The Florida Department of Law Enforcement ("FDLE") shall provide an opportunity for Thomas W. Carney (Advocate's expert) to come to FDLE headquarters in Tallahassee and sit with an FDLE member familiar with the operation of HLS-CAM at a computer terminal in which HLS-CAM is operative and view the HLS-CAM automated assessment tool;

In conjunction with the FDLE representative, the operation of HLS-CAM will be demonstrated, and the Advocate's expert will have the ability to ask questions or determine whether the automated HLS-CAM can perform certain functions;

Samples of assessments may be provided to the Advocate's expert for review and demonstration purposes, but may have identifying information deleted to maintain the overall security of the facility that is the subject of the assessment;

Determination whether and to what extent actual assessment material will be provided for viewing by the Advocate's expert remains at FDLE's discretion;

The Advocate's expert will not be provided the underlying details of how the database is constructed, "code" revealing the functionality of the database, or any information that would place FDLE in violation of its obligation to the HLS-CAM copyright holder to protect the underlying computer code and structure resulting in the operational product known as HLS-CAM;

In effect, the Advocate's expert will be allowed to see HLS-CAM in operation as it would be viewed by any person using HLS-CAM to conduct an assessment;

The Advocate's expert will be allowed to view, but not copy, HLS-CAM user and training materials;

A determination of whether individual computer "screen shots" can be duplicated for the Advocate's expert to carry away from FDLE will be made on a case-by-case basis, with the FDLE representative's decision being final;

A small sampling of actual assessments may be provided for viewing by the Advocate's expert at FDLE's option;

If actual assessments of facilities in Florida are viewed, they will not be available for copying unless approved by FDLE and unless identifying information can be edited in a way to not jeopardize the security of the information contained in the assessment itself.

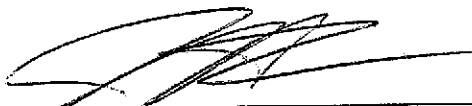
The Advocate's expert shall not reveal to third parties outside the subject litigation any sensitive information he may come across during his review of the HLS-CAM system. The Advocate's expert shall sign a nondisclosure agreement with FDLE prior to viewing any HLS-CAM materials or the system in operation.

In short, FDLE shall allow the Advocate's expert to view the HLS-CAM automated system in operation as it would be utilized by someone conducting an assessment with the system, but will not be allowed to retain confidential or security-sensitive information related to actual sites in Florida or actual assessments performed.

Further, the methodology utilized by HLS-CAM is considered sensitive information by FDLE and any discerned information regarding that methodology shall be held in confidence by the Advocate's expert, to be revealed only in the context of the litigation at hand. The expert shall sign a nondisclosure agreement with FDLE that allows him to discuss his observations with the Advocate, and to not reveal them in any other context or forum other than in the actual litigation of this matter as structured by this Order.

If any information or materials that have been revealed to the Advocate's expert by FDLE under the terms of this Order must be discussed in the actual litigation and are claimed by FDLE to be sensitive or confidential or exempt from public records, such information or materials shall be subject to review in camera by the Administrative Law Judge prior to disclosure. Thereafter, if the Administrative Law Judge determines that such information or materials are confidential or subject to a public records exemption, the proceedings, whether at the final hearing or deposition, shall be closed to the public and only revealed to the Administrative Law Judge, the parties to the litigation, counsel to the parties, and the parties designated experts as approved by the Administrative Law Judge, and they shall all maintain the confidentiality and prevent disclosure of such information and materials to the public. Unless such protections are in place, the parties and their counsel shall not inquire into those areas in these proceedings.

Respectfully submitted this 19<sup>th</sup> day of October, 2007.



JAMES H. PETERSON, III  
Advocate for the Florida Commission  
on Ethics  
Florida Bar No. 473057  
Office of the Attorney General  
The Capitol, PL-01  
Tallahassee, FL 32399-1050  
Tel. No. (850) 414-3300, Ext. 3702  
Fax. No. (850) 488-4872

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the forgoing was provided to Mark Herron, Messer, Caparello & Self, P.A., Post Office Box 15579, Tallahassee, FL 32317 and Wayne L. Helsby, Allen, North & Blue, P.A., c/o Mark Herron by HAND DELIVERY on this 19<sup>th</sup> day of October 2007.



JAMES H. PETERSON, III



**CONTRACT FOR SERVICES & PRODUCT LICENSE**

State of Florida  
County of Leon

**THIS CONTRACT** is made by and between the following, collectively referred to as the "Parties" herein: The Florida Department of Law Enforcement, (hereafter referred to as "FDLE" or the "Department"), an agency of the State of Florida, with its principal office located at 2331 Phillips Road (Post Office Box 1489), Tallahassee, Florida, 32308 (32302), and the National Domestic Preparedness Coalition, Inc., (hereafter referred to as the "Contractor", the "Contracting Party", or "NDPCI"), a Florida non-profit corporation, with its principal office located at 604 Courtland Street, Suite 145, Orlando, Florida 32804.

**WHEREAS**, the Contractor, responding to the need for a uniform, efficient and accurate method of performing threat, criticality, and vulnerability assessments, developed the Homeland Security Comprehensive Assessment Model (HLS-CAM™), which the Contractor represents to be the first uniform model to integrate and prioritize critical threat and vulnerability assessments to prevent, deter and respond to terrorist attacks;

**WHEREAS**, to enhance timely availability, effectiveness, interoperability and multi-dimensional use of HLS-CAM™, the Contractor worked with its subcontractor, Intelligorg, Inc. (Intelligorg), to automate the HLS-CAM™ model through advanced technologies, resulting in the production of the Automated HLS-CAM™ system, a system to which Intelligorg, Inc., holds an exclusive contract from NDPCI to automate the HLS-CAM™ methodology and to create derivatives thereof;

**WHEREAS**, the Florida Department of Law Enforcement (FDLE) is required by Florida Statutes to coordinate the ongoing assessment of Florida's security vulnerabilities, including assessments of publicly owned and leased buildings, as well as critical infrastructures, and recommendations for security "best practices", as part of Florida's domestic security strategy;

**WHEREAS**, the Contractor and its subcontractor, Intelligorg, Inc., desire to make the HLS-CAM™ and Automated HLS-CAM™ methodology and system available to FDLE, the Florida Regional Domestic Security Task Forces and their partners, in their efforts to improve the Florida's critical infrastructure readiness and protection and to conduct physical security audits and vulnerability assessments;

**WHEREAS**, the FDLE recognizes the value of using the HLS-CAM™ methodology and the Automated HLS-CAM™ system and their vulnerability assessments, and requires the creation of a Florida Critical Infrastructure Database (FCIDB) which will integrate a customized version of the Automated HLS-CAM™ with FDLE's existing domestic security and counter-terrorism database, "ThreatNet", and other critical infrastructure components which are owned and operated by FDLE and its domestic security partners; and

**WHEREAS**, the relationship between the Department and the Contractor will be mutually beneficial to each other and the citizens of Florida; and

**WHEREAS**, pursuant to Legislative authority, the Florida Public Service Commission, a State agency, provided funding to FDLE for domestic security purposes, and such funding has been identified as an appropriate source for the purchase of the contractual services and license contemplated by the Parties in this Contract,

**NOW THEREFORE**, in consideration of these premises, terms and conditions set forth herein, the Parties agree to the following:

1. The Contractor agrees to perform services and provide deliverables pursuant to the terms of this Contract.
  2. FDLE agrees to pay the Contractor for services rendered and deliverables provided by Contractor pursuant to the terms of this Contract.
-

3. Addendum A to this Contract, also referred to as "Exhibit 1", is attached hereto and incorporated herein by reference. The provisions of said addendum shall be controlling notwithstanding any other provision of the Contract.
  4. Addendum B to this Contract, NDPCT's Proposal for Creation of the Florida Critical Infrastructure Database and the Customization, Deployment and Maintenance of "Automated HLS-CAM™" (hereafter called "Proposal"), is attached hereto and incorporated herein by reference.
  5. The Contractor has subcontracted with Intelliorg, Inc., which is the exclusive service provider of HLS-CAM™ automation and related technology development, to assist the Contractor in the provision of services and deliverables to FDLE required of the Contractor in this Contract. However, the Contractor agrees that it is solely responsible for the provision of services and deliverables required by this Contract and that it shall require the subcontractor to comply with the terms of this Contract.
  6. The Contractor warrants that, in consideration of its above-referenced subcontract with Intelliorg, Inc., Intelliorg, Inc., has authorized and granted full legal rights to the Contractor to provide the licensed use of the deliverables required by this Contract to FDLE, the Florida Regional Domestic Security Task Forces and their partners, pursuant to the terms of this Contract.
  7. The Contractor shall indemnify and save harmless FDLE from liability of any nature or kind, including cost and expenses for or on account of any claim by a third party that the services or deliverables used by the Parties or provided to FDLE pursuant to this Contract violate a copyrighted, patented, or unpatented invention, process or article. Further, if such claim is made or is pending, the Contractor may, at its option and expense, procure for FDLE the right to continue use of, replace or modify the article to render it noninfringing.
  8. The Contractor and FDLE agree that ownership and rights to use, reproduce, modify, and distribute the completed Florida Critical Infrastructure Database and Automated HLS-CAM™ and the related products and materials are to be in accordance with the terms set forth in Section C.1.4 of the Proposal entitled, "Intellectual Property."
  9. The Contractor shall perform the services and provide the deliverables required pursuant to this Contract in a good, workmanlike manner, and in accordance with the requirements of this Contract and related product documentation. The Contractor agrees to correct any defects in workmanship in deliverables and documentation for a period of one year from the date of Final Project Acceptance by FDLE, as defined in the Contract. The Contractor agrees to correct such defects, unless the defects are caused by changes to the deployed final system made or caused by FDLE which are not approved by the Contractor.
  10. As required by law, the Contractor shall take out and maintain during the life of this agreement, Workers' Compensation Insurance for all of his employees connected with the work of this project and, in case any work is sublet, the Contractor shall require the subcontractor similarly to provide Workers' Compensation Insurance for all of the latter's employees unless such employees are covered by the protection afforded by the contractor. Such insurance shall comply fully with the Florida Workers' Compensation law. In case any class of employees engaged in hazardous work under this contract at the site of the project is not protected under the Workers' Compensation statute, the Contractor, as required by law, shall provide, and cause each subcontractor to provide, adequate insurance, satisfactory to the Purchaser, for the protection of his employees not otherwise protected. The Contractor must submit a Certificate of Insurance indicating worker's compensation insurance coverage.
  11. The Contractor at all times, agrees to indemnify, save free, and hold harmless FDLE and its agents and employees and assigns from all costs, loss, damage, liability, expense, claim, demand, judgments, courts costs and attorney's fees, which may arise from or be claimed against the FDLE by any person(s) for any injuries or death or damage to property, or damage of whatever kind or character consequent upon or arising from any neglect or fault of the Contractor or its subcontractor(s), to comply with all laws, statutes, rules and regulations of the State of Florida and the United States of America, now or thereafter in force, or to comply with the terms
-

of this contract; and if suits or proceedings shall be brought against FDLE, or its agents or employees, that the Contractor, upon request of FDLE, shall defend the same and will pay whatever judgment(s), including attorneys' fees, which may be obtained against FDLE, its agents and/or employees.

12. The Contractor warrants that, to the best of Contractor's knowledge, there is no action, suit, proceeding, inquiry or investigation at law or equity, before or by a court, governmental agency, public Board or body, pending or, to the best of the Contractor's knowledge, threatened which would in any way prohibit, restrain or enjoin the execution or delivery of the Contractor's obligations or diminish the contractor's obligations or diminish the Contractor's financial ability to perform the terms of this Contract. During the term of this Contract, if any of the afore-mentioned events occur, the Contractor must immediately notify FDLE, Office of General Counsel, of same in writing.
  13. The Contractor agrees not to divulge any information exempt from the Public Records Law, Chapter 119, Florida Statutes, which it may obtain in the course of performing this Contract, without the express written permission of FDLE. Each party may have access to confidential information made available by the other. Each party agrees to protect such confidential information in the same manner as it protects its own confidential information of like kind. Disclosure of any confidential information received by the State of Florida will be governed by the provisions of the Florida Public Records Act, Chapter 119, *Florida Statutes*.
  14. The Contractor shall maintain such records and accounts, including financial records, as are deemed necessary to assure a proper billing procedure is followed. These records will be made available upon request for audit purposes to FDLE. Such records must be maintained by Contractor for a period of not less than three (3) years following termination of the Contract.
  15. Pursuant to 216.347, F.S., the Contractor, its employees, officers, and subcontractors, may not expend any funds from this Contract for the purpose of lobbying the Legislature, the judicial branch, or a state agency.
  16. No Contractor advertising or promotion is allowed unless the Contractor receives prior written permission from FDLE. The Contractor shall not use FDLE's name or any other identifying marks or property for advertising or promotional purposes unless the Contractor receives prior written approval from FDLE.
  17. The Contractor shall maintain good standing as a Florida corporation, authorized to transact business pursuant to the laws of this State and any other applicable law, and shall ensure that all subcontractors of the Contractor assisting in the provision of services or deliverables pursuant to this Contract comply with this provision.
  18. Any dispute between parties hereto shall be referred to the Executive Director of FDLE for resolution, before pursuing other relief.
  19. Requirements of this Contract relating to copyright and trademark protection, public records, warranty of services and deliverables, and confidentiality, shall continue after termination of this agreement, unless otherwise stated herein.
  20. The Contract Manager for FDLE shall be Chief of Investigations Mark Zadra, and for the Contractor shall be Lt. Ken Glantz, Program Manager.
  21. This contract shall bind the successors, subcontractors, assigns and legal representatives of the Contracting Party and of any legal entity that succeeds to the obligations of FDLE.
  22. The Contractor agrees to disclose the name of any officer, director, or agent who is also an employee of the State of Florida, or any of its agencies. In addition, the Contractor also agrees to supply the name of any State employee, or recently employed State employee who owns, directly or indirectly, an interest of five percent (5%) or more in the Contractor.
-

23. This Contract and its Addendums contain all the terms and conditions agreed upon by the parties. No oral agreements or representations shall be valid or binding upon FDLE or the Contractor, unless expressly contained herein or by a written amendment to this Contract.

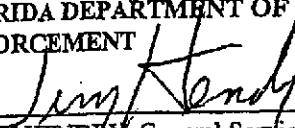
WHEREFORE, the Parties hereto sign below, acknowledging that they have read, understand, and agree to all the terms of this Contract, and they have the full legal authority to sign on behalf of and to bind their respective entities.

NATIONAL DOMESTIC PREPAREDNESS  
COALITION, INC.

  
KENNETH GLANTZ, Secretary

March 8, 2004  
Date

FLORIDA DEPARTMENT OF LAW  
ENFORCEMENT

  
JERRY HENDRY, General Services Administrator

3/9/04  
Date



**ADDENDUM A****(EXHIBIT 1)**

to

**CONTRACT FOR SERVICES & PRODUCT LICENSE  
(FDLE Contract #C9520A)**State of Florida  
County of Leon

THIS ADDENDUM is made by and between the following, collectively referred to as the "Parties" herein: The Florida Department of Law Enforcement, (hereafter referred to as "FDLE" or the "Department"), an agency of the State of Florida, with its principal office located at 2331 Phillips Road (Post Office Box 1489), Tallahassee, Florida, 32308 (32302), and the National Domestic Preparedness Coalition, Inc., (hereafter referred to as the "Contractor", the "Contracting Party", or "NDPCP"), a Florida non-profit corporation, with its principal office located at 604 Courtland Street, Suite 145, Orlando, Florida 32804, and is attached to and incorporated by reference in the above-referenced Contract for Services & Product License.

NOW THEREFORE, in consideration of these premises, terms and conditions set forth herein, the Parties agree to the following:

The following provisions added to, or deleted from, the contract shall be included as a part of the attached contract, and shall be controlling notwithstanding any other provision of the contract. Contracting Party, as used herein, includes one or more parties, and means contractor, consultant, licensor, or other party contracting or entering into an agreement with the Florida Department of Law Enforcement (hereinafter "the Department") as the case may be.

1. There shall be no automatic renewal of this contract.
2. This contract shall terminate after each party hereto has performed its obligations hereunder, and in any event, not later than one (1) year from the date of Final Project Acceptance as defined in this Contract, without prior notice to each party hereto.

The Contractor agrees to complete all services and provide all deliverables required by this Contract and pursuant to the terms of this Contract to FDLE before 5 p.m. on July 31, 2004, with the exception of the year of Maintenance & Customer Support which shall begin on the date of Final Project Acceptance as described in this Contract. If the Contractor does not meet the July 31, 2004, deadline due to the fault of the Contractor, its employees, officers, or subcontractors, FDLE shall have the option to, at any time, terminate or extend the Contract. Pursuant to Section 287.057(13), Florida Statutes (2003), an extension of a contract for contractual services shall not exceed six (6) months and shall be subject to the same terms and conditions set forth in the initial contract, and there shall be only one (1) extension of a contract unless the failure to meet the requirements for completion of the contract is due to events beyond the control of the contractor.

The perpetual right (license) to use the customized product purchased by FDLE pursuant to this Contract shall be continual and without further cost to FDLE, with the limitations specified in Addendum B, Proposal, Section C. Terms and Conditions.

Contracts procured on an emergency or single source basis may not be renewed. This Contract was procured on a single source basis.

3. The Contracting Party shall be an independent contractor, and not the agent or servant of the Department and shall not be entitled to any benefits granted employees of the State of Florida. Such Contracting Party shall have complete supervision and control over its own subcontractors, agents, servants and employees.
4. In the performance of such services, the Contracting Party agrees not to discriminate against any employee or applicant for employment on grounds of race, creed, color, sex, age, national origin, or disability.
5. The Department shall not be deemed to assume any liability for the acts, omissions to act and negligence of the Contracting Party, its agents, subcontractors, servants and employees; nor shall the Contracting Party exclude liability for its own negligence to the Department or any third party, except as allowed by law and agreed to by the Department. The Department is without authority to indemnify or hold harmless the Contracting Party.

6. The Department is self-insured for its torts to the extent provided in Section 768.28, Florida Statutes, to cover bodily injury, death and property damage arising as a consequence of the acts and omissions to act of its officers, subcontractors, employees, and agents. The Department is without authority to insure the contracting party in any way.
7. It is mutually understood and agreed that any communications, promises, representations or agreements, not included in writing in this contract, shall not be binding upon any party and that the contract may not be altered, modified or otherwise changed at any time except with the written consent of each of the parties hereto.
8. The Contracting Party shall not assign or transfer any right, duty or interest in this contract without prior written approval by the Department.
9. All matters, whether sounding in tort or contract, relating to the validity, construction, interpretation, performance and enforcement of this contract shall be determined by the laws of the State of Florida. Any dispute concerning this contract will be brought in the Florida State Court System and venued in Leon County Florida.
10. The State of Florida's performance and obligation to pay under this contract is contingent upon an annual appropriation by the Legislature.
11. Contracting Party represents that it and its subcontractor(s) who will be participating in the performance and completion of this Contract have to the best of the Contracting Party's knowledge complied with all applicable laws and regulations of the State of Florida and of the City and County in which it does business and performs this contract.
12. Change of address, as well as, any other notice(s) required by this contract shall be delivered to the Department of Law Enforcement for the attention of the Office of General Services, Post Office Box 1489, Tallahassee, Florida, 32302 and to the Contracting Party for the attention of Lt. Kenneth Glantz, Program Manager, National Domestic Preparedness Coalition, Inc. (NDPCI), 604 Courtland Street, Suite 145, Orlando, Florida 32804.
13. Any provision of this contract in violation of the laws of the State of Florida shall be ineffective to the extent of such violation, without invalidating the remaining provisions of this contract.
14. If either party shall fail to keep any agreement hereunder, the other party by giving the party in default written notice, may cancel and terminate this contract 30 days after such notice is deposited by Certified Mail, Return Receipt Requested, in the United States mail or deposited with a private carrier express mail service. If the Department terminates this contract for failure to perform or other breach, or if the Contracting Party terminates for reasons other than failure to perform or other breach, the Department will not be responsible for costs or noncancellable obligations for which the Department has not received a commensurate benefit, and the Department will have no obligation to pay for work not accepted by the Department. If the Department terminates this contract for reasons other than failure to perform or other breach, or if the Contracting Party terminates this contract for failure to perform or other breach, the Contracting party will be compensated for all reasonable costs incurred, including noncancellable obligations, through the date of termination.
15. If this contract includes maintenance or support services for which the Department pays in advance, in the event the system or systems for which maintenance or support is contracted become inoperative or unable to perform any essential function as determined by the Department for a period of 24 consecutive hours or more by reason of the Contracting Party's failure to maintain or support such system or systems as required by the contract, then the Department shall be entitled to a credit against any future maintenance or support payment, or a refund, at the Department's option, of a pro rata portion of the maintenance or support fee paid for the period in which such failure occurred.
16. It is further understood and agreed that no employee of the Department who exercises any functions or responsibilities in connections with the planning and implementation of this project shall have any personal financial interest, direct or indirect, in this contract.
17. The State of Florida cannot make deposits or pay for goods and/or services in advance unless approved under rules issued by the Comptroller of Florida. Therefore, payments by the Department covering goods and/or services will be due and payable within 30 days after the receipt of a proper invoice and actual receipt of goods and/or services. The

Department is not authorized to pay to Contracting Party any deposit for services to be rendered or equipment to be purchased in the future.

18. The Contracting Party recognizes that the State of Florida, by virtue of its sovereignty, is not required to pay any taxes on the services and/or goods or equipment purchases as an incident to such service.
19. Unless authorized by law and agreed to in writing, the Department shall not be liable to pay attorney fees, interest, late charges and service fees and/or costs of collection.
20. This contract may be canceled by the Department upon giving 30 days written notice by Certified Mail, Return Receipt Requested or by private carrier express mail service.
21. All invoices or bills for fees, or other compensation for services, or expenses shall be submitted with reasonable detail for a proper preaudit and postaudit thereof, to comply with Section 287.058(1)(a), Florida Statutes. Whenever this contract is terminated with or without cause, all amounts due shall be pre-rated. The Contractor shall send the invoice(s) for such services and deliverables to: Florida Department of Law Enforcement, Office of Finance and Accounting, Post Office Box 1489, 2331 Phillips Road, Tallahassee, Florida 32302.
22. All bills for any travel expenses that are authorized by Section 112.061, Florida Statutes, shall be submitted and paid in accordance with the rates specified in Section 112.061, Florida Statutes, governing payments by the State for travel expenses.
23. Payment shall be made in accordance with Section 215.422, Florida Statutes, which states the Contractor's rights and the Department's responsibilities concerning interest penalties and time limits for payment of invoices. A Vendor Ombudsman has been established within the Department of Banking and Finance. The duties of this individual include acting as an advocate for vendors who may be experiencing problems in obtaining timely payment(s) from a state agency. The Vendor Ombudsman may be contacted at 850/410-9724 or by calling the automated system at 850/413-7269.
24. No delay or omission to exercise any right, power or remedy accruing to either party upon breach or default by either party under this contract, shall impair any such right, power or remedy of either party; nor shall such delay or omission be construed as a waiver of any such breach or default, or any similar breach or default thereafter occurring; nor shall any waiver of single breach or default be deemed a waiver of any subsequent breach or default. All waivers must be in writing.
25. Whenever notice is required to be given by Certified Mail, Return Receipt Requested or private carrier express mail service, it shall be deemed to have been given on the date shown on the return receipt, or date of actual delivery, whichever is earlier.
26. This contract shall be effective when signed by the Contracting Party and the Department. Where the effective date of this contract is different from the actual receipt and acceptance of the goods and/or services contracted for, the later date will be used to mark the contract performance period.
27. This contract shall bind the successors, subcontractors, assigns and legal representatives of the Contracting Party and of any legal entity that succeeds to the obligations of the Department.
28. This contract shall be unilaterally canceled by the Department for refusal to allow public access to all documents, papers, letters or other material subject to the provisions of Chapter 119, Florida Statutes, and made or received in conjunction with the contract.
29. A person or affiliate who has been placed on the convicted vendor list following a conviction for a public entity crime may not submit a bid, proposal or reply on a contract to provide any goods or services to a public entity, may not submit a bid, proposal or reply on a contract with a public entity for the construction or repair of a public building or public work, may not submit bids, proposals or replies on leases of real property to a public entity, may not be awarded or perform work as a contractor, supplier, subcontractor, or consultant under a contract with any public entity, and may not transact business with any public entity in excess of the threshold amount provided in Section 287.017, for CATEGORY TWO for a period of 36 months from the date of being placed on the convicted vendor list.
30. As required by Section 287.134, Florida Statutes, an entity or affiliate which has been placed on the discriminatory vendor list may not submit a bid, proposal or reply on a contract to provide any goods or services to a public entity,

may not submit a bid, proposal or reply on a contract with a public entity for the construction or repair of a public building or public work, may not submit bids, proposals or replies on leases of real property to a public entity, may not be awarded or perform work as a contractor, supplier, subcontractor, or consultant under contract with any public entity, and may not transact business with any public entity.

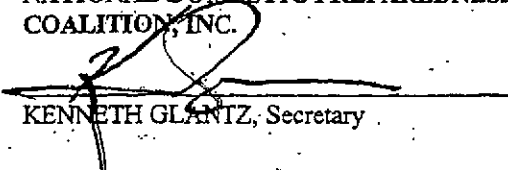
31. The Department shall consider the employment by any contractor of unauthorized aliens a violation of section 274(e) of the Immigration and Nationalization Act. Such violation shall be cause for unilateral cancellation of this contract.
32. The Department's Contract Manager for this contract shall be Mark Zadra, Chief of Investigations, Office of Statewide Intelligence.
33. The performance of additional work or the incursion of additional expense by the Contracting Party beyond that expressly authorized in the written contract document will not be accepted or approved for payment by the Department unless previously authorized in a written amendment to the contract signed by the Department's Program/Regional Contract Manager.
34. Whenever necessitated by legitimate concern for reasonable security precautions as determined by the Department and without regard to the identity of any individual, the Department will require the Contracting Party(ies) and/or employees and subcontractors of the Contracting Party(ies) to submit to, and successfully pass, an appropriate security background investigation prior to being allowed access to any of the Department's facilities to perform those services as set forth in this contract.

The additional terms indicated in #35 and #36 are applicable if the attached contract pertains to equipment maintenance:

35. No repairs, replacements of parts or equipment that will result in extra charges not covered by this contract shall be performed by the Contracting Party without first submitting a written estimate of cost of same, and securing written approval from the Department.
36. In the event any machine or equipment is subsequently purchased, the type of which is covered by this contract, such machine or equipment may, at the Department's discretion, be added to this contract at the established rate and under the same terms and conditions. Any machine or equipment covered by this contract may, at the Department's discretion, be deleted therefrom and the compensation contracted for proportionately reduced at anytime, provided 30 days written notice is given to the Contracting Party.

WHEREFORE, the Parties hereto sign below, acknowledging that they have read, understand, and agree to all the terms of this Contract, and they have the full legal authority to sign on behalf of and to bind their respective entities.

NATIONAL DOMESTIC PREPAREDNESS  
COALITION, INC.

  
KENNETH GLANTZ, Secretary

Date

March 8, 2004

FLORIDA DEPARTMENT OF LAW  
ENFORCEMENT

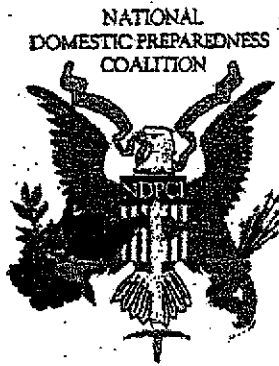
  
JERRY HENDRY, General Services Administrator

Date

3/9/04



**ADDENDUM B**  
to  
**CONTRACT FOR SERVICES & PRODUCT LICENSE**  
**(FDLE Contract #C9520A)**



**Proposal for the Customization, Deployment and  
Maintenance of**

**"Automated HLS-CAM™"**

**Creation of the  
Florida Critical  
Infrastructure  
Database**

**Submitted to:**  
Phil Ramer  
Director of Statewide Intelligence  
Florida Department of Law Enforcement (FDLE)  
2331 Phillips Road  
Tallahassee, FL 32308

**For the National Domestic Preparedness Coalition (NDPCI):**  
Lt. Kenneth Glantz  
Program Manager  
National Domestic Preparedness Coalition  
604 Courtland Street, Suite 145  
Orlando, FL 32804

**Rev. Date:**  
March 8, 2004

**Distribution of this proposal or its contents is subject to Terms and Conditions Section of this  
proposal.**

---



March 8, 2004

Phil Ramer  
Director of Statewide Intelligence  
Florida Department of Law Enforcement (FDLE)  
2331 Phillips Road  
Tallahassee, FL 32308

Dear Mr. Ramer:

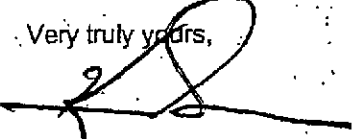
Please find enclosed a proposal addressing the creation of the Florida Critical Infrastructure Database and the customization, deployment and maintenance of Automated HLS-CAM™, a system that automates the Homeland Security Comprehensive Assessment Model (HLS-CAM), including the Vulnerability Assessment portion of this methodology.

The National Domestic Preparedness Coalition (NDPCI) has been working with Intelliorg, Inc. (Intelliorg) during the past year to produce the Automated HLS-CAM™ system based on the HLS-CAM methodology created by NDPCI. Intelliorg holds an exclusive contract from NDPCI to automate such methodology and create derivatives thereof. The Automated HLS-CAM™ system has already been created. Therefore, this proposal addresses the customization, deployment and maintenance of the HLS-CAM™ system in conjunction with the creation of the Florida Critical Infrastructure Database. NDPCI will oversee this process, and as such, it will be the primary point of contact to FDLE for this contract.

Specific efforts proposed consist of creating the Florida Critical Infrastructure Database and customizing, deploying and supporting the existing Automated HLS-CAM™ system to meet FDLE's objectives for HLS-CAM methodology implementation. The specific focus of our technical effort is addressed in **Section A**, the **Technical Section** of the concept paper, under the "**Statement of Work**" (SOW) heading. **Section B**, the "**Cost and Pricing**" section, addresses the fee breakdown. **Section C**, the "**Terms and Conditions**" section, addresses particular conditions applicable to our business relationship, and incorporates FDLE's Exhibit 1. This section includes an **Acceptance Form** that must be signed by an FDLE authorized representative to enable the project start date. For easy document reference and navigation, references and the **Table of Contents** are "hyper linked" to and throughout the document.

Please feel free to contact me with your perspectives regarding the enclosed proposal. Our goal is to deliver a valuable solution to you and to tailor our services to your needs and stated budget as much as possible. We look forward to supporting FDLE in this critical mission.

Very truly yours,



Lt. Kenneth Glantz  
Program Manager  
National Domestic Preparedness Coalition (NDPCI)

---

**Table of Contents**

---

| TOPIC                            | PAGE   |
|----------------------------------|--------|
| A. Technical Section             | xii    |
| B. Cost/Pricing Section          | xxiii  |
| C. Terms and Conditions          | xxiii  |
| Appendix A. Exhibit 1            | i      |
| Appendix B. Relevant Biographies | xxviii |

---

## A. Technical Section

---

### A.1. Background and General Objectives

September 11, 2001 and the subsequent threats and use of weapons of mass destruction against the U.S. authenticated the need to reevaluate our nation's security capabilities. Responding to the need for a uniform, efficient and accurate method of performing threat, criticality, and vulnerability assessments, the National Domestic Preparedness Coalition, Inc. (NDPCI) developed the Homeland Security Comprehensive Assessment Model (HLS-CAM™). The HLS-CAM™ is the first uniform model to integrate and prioritize critical threat and vulnerability assessments to prevent, deter and respond to terrorist attacks. The timely use and application of the HLS-CAM™ becomes increasingly critical in light of the imminent terrorist threats.

To enhance HLS-CAM™ timely availability, effectiveness, interoperability and multi-dimensional use, NDPCI has worked with Intelliorg, Inc. (Intelliorg), a subcontractor, for the past year to define baseline requirements to automate the HLS-CAM model through advanced technologies. The resulting effort is the Automated HLS-CAM™ system, which has been completed.

The Florida Department of Law Enforcement (FDLE) recognizes the value of using Automated HLS-CAM™ and its vulnerability assessment, and it is therefore seeking to make this system available for use by FDLE, the Florida Regional Domestic Security Task Forces and their partners. FDLE's plan calls for the creation of the Florida Critical Infrastructure Database (FCIDB) which will integrate a customized version of the Automated HLS-CAM™ with the existing domestic security and counter-terrorism database "ThreatNet" and other critical infrastructure components which are owned and operated by FDLE and its domestic security partners.

This proposal describes the creation of the FCIDB and the customization, deployment and maintenance of the Automated HLS-CAM™ system to enable the implementation of the HLS-CAM methodology created by NDPCI. The Statement of Work (SOW) section below addresses the FCIDB and the Automated HLS-CAM™ tool in more detail. Performance Timeframe and Deliverables are addressed in Section A.3. Section A.4 discusses the Technical Competence to properly fulfill the project. Section B of this proposal addresses Cost/Pricing structure for the proposed efforts.

### A.2. General Summary

#### HLS-CAM™ Methodology

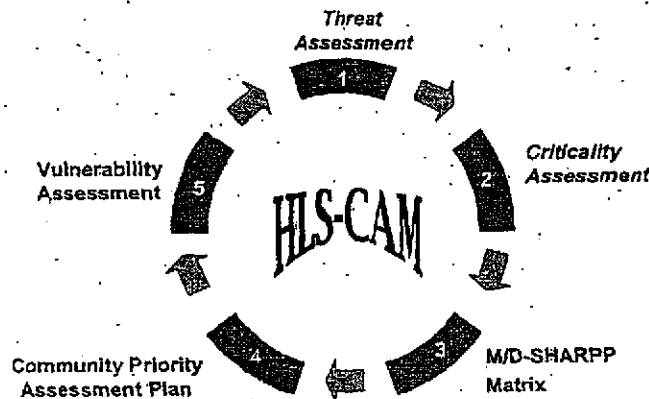
The NDPCI HLS-CAM™ methodology is a working model to be used by those organizations charged with protecting citizens, facilities, and infrastructure from terrorism and hostile criminal activity.

Depicted in Figure A1, the HLS-CAM™ process involves five steps:

1. The **Threat Assessment** determines the likelihood that, given the current intelligence or designated federal, state, or local threat levels, a specific target will be subject to terrorist or hostile criminal attack.
2. The **Criticality Assessment** determines the overall impact of a terrorist attack on a given target.
3. The **M/D-SHARPP** matrix is used to analyze criminal and/or terrorist targets that have been identified through the Community Threat Assessment and Criticality Assessment.

4. The **Community Priority Assessment Plan** is derived from the **Criticality Assessment** and the **M/D-SHARPP Matrix** and is used to determine the order of priority for the vulnerability assessment of critical facilities, infrastructure, and events as identified during the **Community Threat Assessment**.
5. The **Vulnerability Assessment** provides security observations to unveil facility security vulnerabilities.

## HLS-CAM Process



The NDPCI HLS-CAM™ process is implemented through the above five steps, by collecting and analyzing information in pre-defined format to yield actionable intelligence to enable the necessary analysis and decision making to prevent, deter and respond to disasters, including terrorist acts.

### Florida's Critical Infrastructure Readiness

Following the tragic events of September 11, 2001 the State of Florida undertook an immediate assessment of the State's capability to prevent, mitigate and respond to a terrorist attack. Included within the assessment results were 26 major recommendations, which became the basis for the State's original domestic security strategy. Primary among them were efforts to improve the State's critical infrastructure readiness and protection and the undertaking of physical security audits and vulnerability assessments. FDLE by law is specifically charged with coordinating the efforts in the ongoing assessment of Florida's vulnerabilities including vulnerability assessments of publicly owned and leased buildings, as well as critical infrastructure, with recommendations for security "best practices." The term critical in this context refers to the likelihood that potential threat elements may target a facility and that a successful attack will have a significant effect in either loss or disruption of life. Specific security assessments of a building or facility owned by a private entity were also authorized upon request of that entity.

Because of the large number of sites defined by the term buildings and facilities owned or leased by state agencies or local governments, a means to identify and prioritize the most critical sites was sought by the Regional Domestic Security Task Forces (RDSTFs). It was also desired to identify a methodology that would ensure consistency in application and allow for the resulting information to be entered into the statewide Domestic Security and Counter Terrorism Database or ThreatNet. Detailing the critical infrastructure facility information within ThreatNet allows for integration and correlation of

generated and collected intelligence regarding threats and suspicious and/or surveillance activities associated with the specific infrastructure.

FDLE's Office of Statewide Intelligence (OSI) in conjunction with the RDSTFs examined several emerging methodologies for assessing critical infrastructure and identified and selected the Homeland Security Comprehensive Assessment Model (HLS-CAM™) created by the National Domestic Preparedness Coalition (NDPCI).

#### Creation of the Florida Critical Infrastructure Database

The overall plan for Critical Infrastructure Assessment within the state is the creation of the Florida Domestic Security Infrastructure Database (FCIDB). The FCIDB will incorporate a customized version of the automated HLS-CAM™ methodology, allowing utilization of field technology (i.e., tablet PCs) for assessment completion, the existing Terrorism Protection Manual and Protective Measures Database and an interface to ThreatNet. Essentially, the RDSTFs will utilize the initial four stages of the HLS-CAM™ assessment tool (Threat, Criticality, M/D-SHARPP and Community Priority) to identify and prioritize those critical infrastructures (both public and private within the identified Critical Infrastructure Sectors previously identified). Utilizing the results of the various assessments, the RDSTFs will begin on-site vulnerability assessments of the "Critical of the Criticals" (those identified as priority via the initial four steps.) The RDSTFs utilizing multiple disciplines and partners will conduct the field assessment and collect information utilizing the automated HLS-CAM™ tool in conjunction with a field device such as a tablet pc. The collected information will then be uploaded directly to the FCIDB and subsequently to ThreatNet through a data interface built as part of this contract.

The other public and private infrastructures identified via the HLS-CAM™ assessments but not assessed on-site by the RDSTF, will be invited to participate in self-assessments. After providing the required profile information, which will be loaded into the FCIDB and ThreatNet, the entity will be able to utilize the automated assessment form, which can be downloaded from the FCIDB via a provided user name and password. Upon completion, the entity will have the option of sharing the results of their assessment with the RDSTFs. In addition to the HLS-CAM™ automated form, the entities will also have the option of utilizing two other non-automated assessment tools (already developed) that are purposefully not as comprehensive in methodology or assessment. Realizing that not all publicly owned buildings and facilities meet the designated critical infrastructure sectors; and that the RDSTFs are not able to physically assess all structures, FDLE's Office of Domestic Security in conjunction with a vendor created the Terrorism Protection Manual and Protective Measures Database. These instruments provide a basis for decisions by local governments, state agencies, and private entities to conduct, at a minimum, a self-assessment of risk, and, given a known national threat level, to determine measures recommended for the protection of the facilities. Although non-automated, these instruments will be incorporated into the FCIDB within a resource library and available to local jurisdictions and state agencies upon invitation via the FCIDB system as part of the customization requirements of this contract.

### A.3. Statement of Work

The basic concept is summarized below including characteristic features for enhanced functionality inherent to the existing Automated HLS-CAM™ system and the creation of the Florida Critical Infrastructure Database.

#### A.3.1. Characteristic Functionality of Automated HLS-CAM™ and Florida Critical Infrastructure Database

##### A.3.1.1. *Accessibility and Portability = Access "Anywhere, Anytime"*

- a) Accessible via Intranet and Internet
- b) Accessible via field technology, such as Tablet systems
- c) Portable as a stand-alone, able to upload and download forms for work on a PC or stand-alone system without being connected to a central Automated HLS-CAM™ system (Sync capabilities)
- d) Access can be further enhanced with advanced technology (optional, additional upon request), e.g.,
  - Voice recognition
  - Image recognition
  - Global Positioning System (GPS) interfacing for real-time image uploading of maps

##### A.3.1.2. *Enhanced Decision Support and User Friendliness*

- a) **Menu Driven Interface and Automated Help.** Advanced software design features "walk" user through methodology and provide added information to help ensure proper use of the tool and enhanced decision support. e.g.,
  - User interface through visual map or drop down menus
  - Access to applicable regulatory guidelines, such as hazardous materials or fencing requirements (e.g., FM119). (Other manuals or references provided as optional modules, upon request)
- b) **Individual Analysis/Nested Approach.** Facilities belonging to larger complexes can be analyzed independently, while still being related to the larger unit or complex. e.g., multiple-building complexes, such as universities or airports, can be broken down into smaller units for optimal analysis, and still be related to the main complex to which they belong.

##### A.3.1.3. *Reusability, Compatibility and Security*

- a) **Reusable.** Information entered into the database by FDLE, the Florida Regional Domestic Security Task Forces and their partners does not fall within any restrictions within this contract on the use of the customized version of the Automated HLS-CAM or the Florida Critical Infrastructure Database. Such information can be reused by said entities for other applications.
  - Information in database can be fed into different/multiple reports for other applications, such as contact lists, priority lists, facility lists, reference lists, etc.
  - The Database can be queried for other purposes
- b) **Compatible.** The Automated HLS-CAM™ system can interface with other (internal) systems and databases, in addition to ability to "Sync" with Tablet and other field devices.

- c) **Upgradable.** The Automated HLS-CAM™ system will be dynamic and is designed to function with other/new Automated HLS-CAM™ knowledge modules that will enhance existing decision-support. e.g., reference regulatory guidelines.
- d) **Security.** The system will be protected by built-in security access levels, passwords and security framework internal to the Automated HLS-CAM, its customized version, and the Florida Critical Infrastructure Database. FDLE is responsible to maintain the security of its servers and systems.

#### A.3.2. Technologies Employed

The Automated HLS-CAM™ system and Florida Critical Infrastructure Database designs employ technologies consistent with the desired features described above.

##### *A.3.2.1. User-Interface Technologies:*

- a) Digital Media and information visualization technologies enhance the user's ability to interface with the tool. Benefits include:
  - Enhanced user-friendly navigation
  - Allows for seamless system integration with multi-agency databases and systems
  - Provides enhanced visual interface
  - Provides enhanced scalability
  - Provides enhanced database access

##### *A.3.2.2. Supporting technology architecture:*

- a) SQL Architecture (robust and scalable, yet cost effective)
- b) *Alternative:* Oracle technology is available in place of/in addition to SQL technology for an additional fee. However, this technology may not be as cost effective as SQL.

#### A.4. Tasks, Timeline and Deliverables for Automated HLS-CAM™ Customization, Deployment and Maintenance and the Creation of the Florida Critical Infrastructure Database

Figure A2, below, shows the project's performance timeline representing the work breakdown and correlating the tasks, milestones and deliverables for the first three months of the project. The maintenance and support aspect of this project will last until one (1) year after the Automated HLS-CAM™ system is customized and deployed to the client site and incorporated with the created Florida Critical Infrastructure Database.

##### A.4.1. Tasks and Deliverables

The tasks to perform this project (and deliverables associated with them) are as follows:

*A.4.1.1. Creation and Customization Requirements Analysis for the project; Deliverable- a requirements document and demonstration. (This task is estimated to take 2-4 weeks) – Requirements Analysis A deliverable = First twelve hours of JAD Sessions completed as described below; Requirements Analysis B deliverable = All other requirements noted below in this section.*

- a) This task consists of sufficient Joint Application Design (JAD) Sessions during which discussions and meetings of identified subject matter experts and client designated personnel are held to further define tool customization, deployment and support features, and training requirements that would add value to users.
- b) Once the Customization Requirements Analysis is completed, a Requirements Analysis Document will be created and a demonstration will be provided to the client to ensure the tool customization and deployment will meet client specifications.

*A.4.1.2. Customization and Deployment (This task is estimated to take 4-6 weeks); Deliverable- Customized Automated HLS-CAM™ system, including the portable version thereof, and creation of the Florida Critical Infrastructure Database, including the data interface with the Automated HLS-CAM™ system and the interface with ThreatNet.*

- a) This task will ensure that the Automated HLS-CAM™'s user interface is FDLE-customized to system specifications (e.g., the tool's user interface and the knowledge structure is consistent with customer requirements).
- b) This task includes the development of the Florida Critical Infrastructure Database.
- c) This task includes the customization of the portable version of the Automated HLS-CAM™. This portable version will be able to interface with the main Automated HLS-CAM™ system and the Florida Critical Infrastructure Database.
- d) This task includes the development of a data interface to transfer data from the Florida Critical Infrastructure Database to ThreatNet.

*A.4.1.3. Test and Validation (This task is estimated to take 4 weeks and will continue for 30 days after the "Go Live" stage described below)*

- a) During this task, the customized Automated HLS-CAM™ system and Florida Critical Infrastructure Database will be tested and validated to meet requirements analysis.
- b) This process will continue 30 days after the tool is deployed and "goes live" to ensure successful operation.
- c) Test results will be shared by and between the Contractor and FDLE.

*A.4.1.4. Training, Technical Manual, and User Guide*

- a) In preparation for the tool to "go live" the client receives:
  - Training (Train the Trainer and User) for tool use and maintenance (specific requirements pursuant to the above-reference Requirements Analysis)
  - Technical Manual and User Guide

*A.4.1.5. Go Live*

- a) When the Automated HLS-CAM™ system is customized and deployed, the Florida Critical Infrastructure Database is created, it is ready to "Go live." At this point, it can be used by the client.
- b) Testing and validation to support the Automated HLS-CAM™ system and Florida Critical Infrastructure Database will continue for 30 days after it "goes live."
- c) Final Project Acceptance will occur only after the Contractor's completion of all of the above-required services and provision of related deliverables, including this Go Live service and its above-specified testing and validation period, and FDLE's acceptance of said services and deliverables.

*A.4.1.6. Maintenance, Customer and Technical Support*

- a) NDPCI will provide customer support and maintenance of the Automated HLS-CAM™ system and Florida Critical Infrastructure Database hosted by FDLE on its servers for one (1) year after Final Project Acceptance, pursuant to the terms as described herein; at no additional cost to FDLE.
- b) Maintenance and customer and technical support including a dedicated client "hotline" and onsite assistance will be provided.
- c) All support calls will be first addressed at the regional level by trained Regional Domestic Security Task Force members. If the issue cannot be resolved at this level it will be elevated to FDLE support personnel in Tallahassee. If the issue cannot be resolved at this level, one of three FDLE members will call the Contractor for assistance.
- d) In the event that the support members in Tallahassee are unavailable, each of the seven regions will have one member that can optionally call the Contractor.
- e) The names and contact numbers of the three Tallahassee support members and seven regional support members will be provided to the Contractor at Final Project Acceptance.
- f) The services to be provided by the Contractor shall be performed only during the hours of 9:00 a.m. through 5:00 p.m., Eastern Standard Time, Monday through Friday, (excluding State holidays).

*A.4.2. Status Meetings*

- a) All deliverables will be examined and approved by the FDLE designated parties.
- b) Status meetings will occur bi-weekly, or as needed, with designated parties. This continuous communication and interaction will ensure that the Automated HLS-CAM™ customization and deployment process and creation of the Florida Critical Infrastructure Database meets FDLE's expectations.

*A.4.3. Acceptance Criteria*

- a) Requirements Analysis Document
  - The Requirements Analysis Document must be complete and delivered to FDLE for approval.
  - The requirements in the Requirements Analysis Document must be documented with sufficient specificity to ensure an adequate blueprint for the system.

- The Requirements Analysis Document must be comprehensive to the scope of the project.
- b) Florida Domestic Security Infrastructure Database (FCIDB)
  - A database schema must be provided to FDLE for acceptance.
  - The database security, constraints, permissions, and normalization must comply with the agreed design from the proposed JAD session.
- c) Acceptance Criteria Document
  - After the Requirements Analysis Document is delivered to FDLE, an Acceptance Criteria Document will be created by FDLE based on the established and agreed upon requirements.
  - This document will be used by FDLE as a tool for Final Project Acceptance.
  - This Acceptance Criteria Document will be incorporated into this contract as a written amendment signed by both parties.
- d) Security
  - System password policies must meet or exceed FDLE's password policy, to be provided during the proposed JAD session.

## A.5. Technical Competence

### A.5.1. Company History and Past Performance

- National Domestic Preparedness Coalition (NDPCI) (<http://www.ndpci.org>)

The National Domestic Preparedness Coalition, Inc. (NDPCI) is a non-profit, public/private partnership, whose leadership includes the West Virginia University School of Medicine and the Orange County Sheriff's Office, Orange County, Florida, among others.

NDPCI created the HLS-CAM™ methodology after recognizing the need for federal, state, county, local and private organizations charged with protecting citizens, facilities, and infrastructure from terrorism and hostile criminal activity, to have a uniform, comprehensive, and holistic method of performing assessments. NDPCI is working closely with other law enforcement organizations, such as the Florida Regional Task Force for Domestic Security, the Florida Department of Law Enforcement (FDLE), other state and local governments, such as Pennsylvania and West Virginia, and academic institutions, such as the University of West Virginia, to ensure timely and proper HLS-CAM process training and application at a national level.

NDPCI has utilized Intelliorg, Inc. (Intelliorg) as its subcontractor to develop and support the Automated HLS-CAM™ system because the company is well equipped to meet the purpose, objective and scope of this project, as shown in the subsequent sections. Not only has Intelliorg been working with NDPCI during the HLS-CAM methodology development, but the company conceptualized the HLS-CAM automation to enhance the methodology application and information sharing. Intelliorg's technical qualifications result from the company's history, resources and past performance, backed up by a unique level of experience and skill that the professionals assigned to this project possess.

Intelliorg's technical expertise is augmented by the company's level of investment in automating HLS-CAM during the past year, which includes their own technical, analytical and financial investment, as well as being selected by NDPCI as the exclusive service provider for HLS-CAM automation and related technology development.

- Intelliorg, Inc. (<http://www.intelliorg.net>) (Subcontractor)

#### ***Corporate Background***

Intelliorg, Inc. is woman- and Hispanic-owned small business founded in June 2001 in Orlando, Florida, USA. The company focuses on technology and security and specializes in information pattern recognition, biometrics, information security, risk analysis/crisis management, modeling and simulation and related services to enhance decision support. Our markets include homeland security, defense, law enforcement, health, law and financial, among others.

Intelliorg is committed to community service and exists to create products and services that make societal contributions. The company has been honored with a 2003 ITFlorida award for Government Technology Leadership and with a 2003 Don Quijote Award for Small Business of the Year.

Intelliorg is certified as a Minority Business Enterprise (MBE) by the State of Florida, as a HUBZone by the Small Business Administration (SBA) and it is currently pursuing its SBA 8(a) certification. Intelliorg is also a client of the University of Central Florida Technology Incubator.

### ***Core Competencies***

**Security.** Intelliorg's security division delivers products and services to address needs in the areas of homeland security, business continuity/disaster recovery, information protection, threat and vulnerability analysis, risk analysis, and penetration testing, among other areas.

**Information Technology.** Intelliorg's IT division enhances and supports other Intelliorg divisions with necessary technology solutions. It also provides information technology solutions to clients in the areas of web-design, programming, database architecture, network architecture and infrastructure, system integration and information security. In addition, Intelliorg has created "**Intelliorg Interactive**"<sup>TM</sup>, a division focusing on high-quality web-development; computer graphics, interactive and creative design.

**Quality Assurance.** Intelliorg's Quality Assurance practice provides QA services in a diversity of areas, including: Assessments, Business Process Improvement, TQM Programs, Testing, Computer Systems and Software Validation & Verification, Audit Readiness programs, as well as Corporate and Regulatory Compliance throughout various industries and across all technologies.

**Research and Development** Focuses on the Technology Transfer of intelligent technologies that enhance information pattern recognition and information analysis, visualization and dissemination. Some of these advanced technologies involve cognitive systems, artificial intelligence and modeling and simulation. Intelliorg has agreements with Universities and other parties to promote and commercialize selected technologies.

**Training and Education.** Intelliorg offers training in diverse areas, including security, threat and vulnerability assessment training. We also offer training for our products and create customized training for our clients in a diversity of areas.

**Professional Services.** Intelliorg provides government and commercial clients with services that complement its technology offerings. For example, under its Security Practice, the company's consulting offerings extend to OPSEC or security solutions directed to unveiling potential threats and organizational vulnerabilities and creating mechanisms to eliminate them, strengthening its clients' critical business and technical infrastructure.

### ***Our Vision***

"Through advanced technology solutions and services, Intelliorg, Inc. transforms data into intelligence to enhance critical decision-making in information-intensive environments.

We are committed to social responsibility through technology and services that help people make better decisions, faster, accurately and efficiently."

### ***General Operation and Expertise***

Intelliorg's success is brought by highly qualified and reliable employees, subcontractors and consultants engaged on projects based on the skill required. The senior members of Intelliorg have over 20 years of combined experience in engineering, technology, science, legal, regulatory, policy and creative design.

### ***Ethics and Corporate Responsibility***

Intelliorg not only abides by legal frameworks, but also by ethical codes. We are sensitive to our client's objectives and privacy. We are also committed to community values.

**Intelliorg's Project Team.** Intelliorg's President & CEO is Yasmin Tirado-Chiodini. She is supported by a competent team of business professionals and a technical team of computer analysts,

programmers and senior scientists. Intelliorg's technical team is skilled in applications architecture, systems integration, digital media, modeling and simulation, semantic modeling, computer image recognition, computer forensics/intrusion detection, cognitive systems, intelligent systems, among others.

To customize and deploy Automated HLS-CAM™, Intelliorg has selected a team led by a program liaison, a program manager, and computer systems analysts. The team will be supported by additional Intelliorg developers, technical writers, trainers, computer engineers, customer service personnel and subject matter experts, as needed.

**Program Liaison-- Yasmin Tirado-Chiodini**  
**Program Manager -- Mark Crandall**

The NDPCI team will work hand-in-hand with Intelliorg to enable a successful project. **Team Biographies are attached in Appendix B** for your information.

## B. Cost/Pricing Section

---

### B.1. Cost/Pricing Section

Our budget breakdown for this project is summarized on Table B1 below. This breakdown is based on experience and history of previous contracts and industry standards. The costs are identified as follows:

#### *Cost Breakdown and Terms*

##### *A. Contractor*

- (1) The Florida Critical Infrastructure Database and the FDLE version of Automated HLS-CAM™ will be created, customized, deployed, and maintained as described in this proposal and per the Terms and Conditions in this proposal, for the listed fee.
- (2) Recurring costs within the first year of use are included in the listed total fee. Training and support will be provided during the first year of use. Additional services not contracted for herein can be provided for the listed rates and shall be added to this contract in the form of an amendment agreed to and signed by both parties prior to the services being rendered.
- (3) A yearly option for maintenance of the system version herein is offered for application after Year 1 ends. This option may be purchased in advance. Thereafter it may be revised for inflation costs.

##### *B. Florida Department of Law Enforcement*

- (1) The Automated HLS-CAM™ system and Florida Critical Infrastructure Database will be hosted by FDLE on its servers, due to the sensitivity of the information that will reside in the system. The Contractor will facilitate the installation of the such system and database on FDLE's servers in conjunction with FDLE pursuant to the Customization Requirements Analysis.
  - (a) FDLE will have appropriate computer system resources and personnel to host the Florida Critical Infrastructure Database and Automated HLS-CAM™ system during the term of this contract.

The Contractor will provide the customized Automated HLS-CAM™ system, the Florida Critical Infrastructure Database, and other services and deliverables required by the Contract, for a total cost of \$200,000.00, pursuant to the terms of the Contract. The Contractor represents that this is at a discount of \$49,481.00. The Contractor is able to offer the listed discount because of Intelliorg's investment in the HLS-CAM™ system development and provides such discount to FDLE because it recognizes the critical need for Automated HLS-CAM™ and the desire of NDPCI to successfully support this project with minimal cost impact to FDLE. There will be no investment of FDLE funds in the actual design and production of the original Automated HLS-CAM™ system, since it has already been developed. Funds expended by FDLE pursuant to this Contract are for the customization of the Automated HLS-CAM™ system, the development of the Florida Critical Infrastructure Database, and other related services and deliverables.

***Additional Costs***

Additional or recurring costs are not anticipated. However, additional costs for tasks not stipulated for in this proposal and requested by FDLE will be offered at the discounted rates below:

| Labor Category                       | Discounted Rate per hour |
|--------------------------------------|--------------------------|
| Program Manager                      | \$115.20                 |
| Subject Matter Expert I              | \$115.20                 |
| Network Architect/Design Engineer I  | \$92.16                  |
| Systems Analyst I                    | \$60.16                  |
| Senior Technical Writer              | \$52.48                  |
| Senior Creative Designer/Illustrator | \$53.76                  |
| Instructor                           | \$57.60                  |
| Customer Support                     | \$44.80                  |

Additional services shall be added to this contract in the form of an amendment agreed to and signed by both parties prior to the services being rendered.

**System Updates**

Updates or new versions of the Automated HLS-CAM™ core system may be issued yearly by NDPCL. The Contractor agrees to provide FDLE with all such updates and new versions when issued, at no further cost to FDLE. Any needed or requested customization by FDLE of the new version or update or deployment will incur costs based upon a requirement analysis with FDLE and paid according to the rates listed under Additional Costs.

## C. Terms and Conditions

### C.1. In General

**C.1.1. Main POC:** FDLE's main point of contact for the project will be Inspector Larry Shaw, Office of Statewide Intelligence. The alternate point of contact will be Inspector Sheila Skipper. Lt. Kenneth Glantz is the main point of contact for NDPCI and for questions regarding the actual HLS-CAM methodology. Intelliorg will be the main point of contact for Automated HLS-CAM™ and for all technical aspects of the project. Yasmin Tirado-Chiodini is the primary point of contact for Intelliorg. A designated Intelliorg program manager and customer service points of contact will be assigned post-contract signature.

**C.1.1. Best Efforts Policy:** A "best efforts" policy applies to this project. This means that all efforts possible, within legal and ethical constraints, will be undertaken to ensure the proper completion of the project as forecasted. The completion timeframe for the project is an estimate based on similar projects and past experience, and, although it is very likely that the project will be completed by the timeframe provided herein, the project's timely delivery depends on the availability of the client to satisfy the requirements analysis and its availability to work with our requests during the performance timeline.

**C.1.1. Intellectual Property.** At a result of the proposed purchase, FDLE and the Florida Regional Domestic Security Taskforces and their partners will enjoy perpetual use (license) of the customized version of the Automated HLS-CAM™ system and its related documentation and the Florida Critical Infrastructure Database subject to the following provisions:

a) **HLS-CAM, Including Vulnerability Assessment:**

- The HLS-CAM™ methodology, documentation, forms, including vulnerability assessment, and derivatives, are protected by Copyright and Trademarks owned by the National Domestic Preparedness Coalition (NDPCI).
- The Automated HLS-CAM™ system, documentation, look and feel and derivatives are protected by Copyrights and Trademarks owned by Intelliorg, Inc.
- Through the contract resulting from this proposal, FDLE obtains the indefinite right to use the customized version of the Automated HLS-CAM™ system and the Florida Critical Infrastructure Database for any designated number of users within FDLE and the Florida Regional Domestic Security Task Forces and their partners, within the scope of this agreement.
- In the event of dissolution of the NDPCI, FDLE, the Florida Regional Domestic Security Task Forces and their partners retain the right to continue using the then current version of the Automated HLS-CAM™ system and the Florida Critical Infrastructure Database.
- FDLE, the Florida Regional Domestic Security Task Forces and/or their partners shall not modify, transfer, sell or allow use of the Automated HLS-CAM™ system and the Florida Critical Infrastructure Database by/to other parties (non-FDLE or Florida Regional Domestic Security Taskforces parties or partners) without prior written approval by NDPCI and Intelliorg.

b) **Intelliorg, Inc.'s Proprietary Technology:**

- In creating the final Automated HLS-CAM™ tool, Intelliorg, Inc. may have used its own additional proprietary technology. Through the resulting contract with FDLE, FDLE and the Florida Regional Domestic Security Taskforces and their partners are authorized

perpetual use of this proprietary technology in conjunction with the Automated HLS-CAM™ tool, but not independently thereof. Intelliorg, Inc. technology shall not be transferred or sold without prior written approval by Intelliorg, Inc.

### C.1.1. Other Terms and Conditions.

- a) **Confidentiality.** FDLE agrees to notify the contractor prior to the release of any information contained within this proposal pursuant to any public records request under Chapter 119, FSS so that the contractor may seek any lawful remedies.
- b) **Implementation and Modification by Others.** Because of the proprietary nature of HLS-CAM™ and Automated HLS-CAM™, this proposal may not be used to implement this project internally within FDLE, solicit similar services from another service provider, or for causing other service provider(s) to compete with NDPCI for such services.

### C.2. Acceptance: HLS-CAM Automation and Florida Critical Infrastructure Database

#### C.2.1. Payment of Deliverables

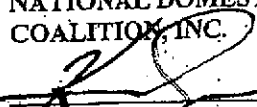
##### a) Payments

The contract services and deliverables are listed below with the associated payment amounts. Payment for each of the contract services and deliverables listed will be made in arrears of the acceptance of the respective service/deliverable by FDLE, except that the payment associated with the service/deliverable "Go-Live" will be made in arrears of a) the acceptance of the "Go-Live" service/deliverable by FDLE, and b) the Final Project Acceptance by FDLE. All payments will be made pursuant to the terms of this Contract. Payment shall be made to NDPCI and either directly deposited to the corporate bank account (to be provided separately) or mailed to NDPCI at 604 Courtland Street, Suite 145, Orlando, FL 32804.

| Payment # | Proposal Section # | Service/Deliverable                      | Payment amount     |
|-----------|--------------------|------------------------------------------|--------------------|
| 1         | A.4.1.1            | Requirements Analysis – Part A           | \$10,000           |
| 2         | A.4.1.1            | Requirements Analysis – Part B           | \$35,000           |
| 3         | A.4.1.2            | Customization & Deployment               | \$90,000           |
| 4         | A.4.1.3            | Testing & Validation                     | \$30,000           |
| 5         | A.4.1.4            | Training, Technical Manual, & User Guide | \$15,000           |
| 6         | A.4.1.5            | Go-Live*                                 | \$20,000           |
| N/A       | A.4.1.6            | Maintenance & Customer Support           | No additional cost |
| N/A       |                    | <b>TOTAL</b>                             | <b>\$200,000</b>   |

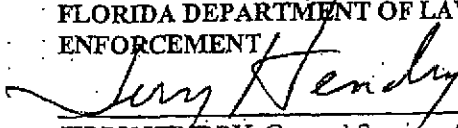
WHEREFORE, the Parties hereto sign below, acknowledging that they have read, understand, and agree to all the terms of this Contract, and they have the full legal authority to sign on behalf of and to bind their respective entities.

NATIONAL DOMESTIC PREPAREDNESS  
COALITION, INC.

  
KENNETH GLANTZ, Secretary

Date

FLORIDA DEPARTMENT OF LAW  
ENFORCEMENT

  
JERRY HENDRY, General Services Administrator

Date

**Appendix A. Exhibit 1**  
**(See Addendum A to Contract for Services and Product License)**

## Appendix B. Relevant Biographies



**KENNETH M. GLANTZ**  
**Program Manager**

---

Lieutenant Glantz is a Program Manager for the National Domestic Preparedness Coalition (NDPC). Lt. Glantz is the primary author of the Homeland Security Comprehensive Assessment Model (HLS-CAM), a methodology designed to prevent, deter and respond to terrorist threats on critical infrastructure.

In addition, Lt. Glantz is the Deputy Director of the Orange County Sheriff's Office Homeland Security Section, the first local law enforcement Homeland Security Section in the nation. Lt. Glantz was instrumental in the creation of this section. As the Deputy Director of the Homeland Security Section, Lt. Glantz commands the Homeland Protection Unit, Emergency Management Unit, Critical Incident Management Team, Florida Sheriff's Statewide Taskforce and the Orange County Interagency Security Committee.

Lt. Glantz has over 17 years of law enforcement experience; five years were spent as a patrolman with the Barrington Police Department in Barrington, Rhode Island. As an Orange County Deputy, he has supervised and worked in a multitude of law enforcement units. Lt. Glantz also served in the United States Navy.

On July 15, 2002, Lt. Glantz testified before the Congressional Committee on Government Reform, Sub Committee on Civil Service, Census and Agency Organization, field hearing regarding "Strengthening America's Borders: Should the issuing of visas be viewed as a diplomatic tool or security measure?"

Lt. Glantz holds a Master of Arts Degree in Security Management and earned the honor of distinguished graduate from Webster University in 1996. He earned a Bachelor of Arts Degree in Criminal Justice and Biology from Rhode Island College in 1990. He is a graduate of the Southern Police Institute Command Officer Development Course, University of Louisville in 2001.

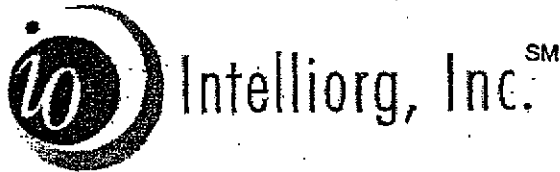
Lt. Glantz is a Certified Protection Professional (CPP), board certified in Security Management by the American Society for Industrial Security (ASIS, International). He has attended numerous courses in the area of terrorism and emergency management. He has been an invited speaker on issues relating to terrorism.

---

**National Domestic Preparedness Coalition (NDPC)**

604 Courtland Street, Suite 145 • Orlando, FL 32804

Phone: (407) 628-7008 • [kenneth.glantz@ocfl.net](mailto:kenneth.glantz@ocfl.net)



**Yasmin Tirado-Chiodini**  
President & CEO

Yasmin Tirado-Chiodini founded Intelliorg, Inc., a technology and security firm in Orlando, Florida, in 2001. Ms. Tirado-Chiodini has over eighteen years of international experience in areas involving science and engineering, information technology, aerospace and defense, business, and law.

As Manager of Market and Competitive Analysis for Anser, Inc. a Washington, D.C. homeland security public research institute (1997-2000), Ms. Tirado-Chiodini designed the corporate business intelligence IT infrastructure, directly participated in building the Homeland Security business infrastructure, and conducted research in information technology and systems relevant to the intelligent agent detection of criminal activity in open sources. As a former Associate Director of Global Manufacturing for the top international corporate research and analysis firm, Fuld & Company, Inc. (2000-2001), Ms. Tirado-Chiodini consulted for Fortune 500 companies globally and expanded the firm's aerospace, defense, and Latin American business.

While a Senior Space Shuttle Project Engineer with The Bionetics Corporation, a NASA contractor at Kennedy Space Center (1990-93), Ms. Tirado-Chiodini managed teams of Space Shuttle engineers, scientists, and technicians for flight operations and participated in the design and maintenance of payload ground and flight experiment hardware. She also provided critical management and operational engineering support for physiological, engineering and human factors experiments conducted on astronauts during launch and landing. She is also a former Executive Consultant, to Lockheed Martin Corporation (1996-97) in the company's X-33 and Reusable Launch Vehicle Programs, where she contributed in a diversity of areas, including program management and integration, prototype development scheduling, and business model development.

Ms. Tirado-Chiodini's experience in artificial intelligence and information systems extends through a diversity of areas. Her work includes research, theoretical and experimental study in image pattern recognition as part of her M.S. thesis in Biomedical Engineering, under the sponsorship of Boston University's Department of Mathematics, Center for Adaptive Systems, supported by a Ford Foundation Fellowship. There, she developed computer modeling and simulations of visual patterns to conduct research in human visual perception. Ms. Tirado-Chiodini also conducted research in visual processing, neural networks and artificial intelligence under the sponsorship of Boston University's Intelligent Systems Laboratory.

While a Fellow of the Massachusetts Institute of Technology (MIT) Center for Advanced Engineering Studies, Ms. Tirado-Chiodini conducted neuro-vestibular research at the MIT Man-Vehicle Laboratory, Department of Aeronautics and Astronautics. There, she designed the experiment protocol, computer software, experiment hardware, and conducted research on human subjects under simulated weightlessness conditions.

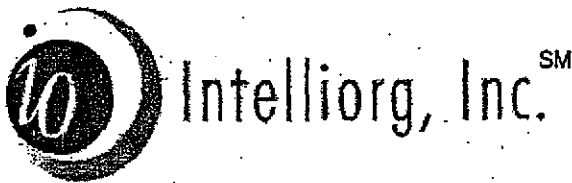
In addition to her practical and research experience, Ms. Tirado-Chiodini is an attorney licensed by the State of Florida, focusing on business and technology law. She is also President of the Homeland Security Industries Association, FL Chapter and Southeastern Regional Center. She holds a Juris Doctor from The George Washington University Law School (1996), a M.S. in Biomedical Engineering from Boston University (1989), and a B.S. in Chemistry from the University of Puerto Rico (1985), and has performed graduate study towards a M.S. in Space Operations Systems at the Florida Institute of Technology (1991-93).

Ms. Tirado-Chiodini is also an Adjunct Professor at the Rollins College Crummer Graduate Business School, where she teaches "Legal, Ethical and Social Issues of Business" and "Negotiations" to MBA students. She has made a number of public appearances, including an appearance on the ABC television program 20/20 with John Stossel. She has been recognized by the Edyth Bush Foundation for her community service and has recently been selected by the Orlando Business Journal as one of the top ten "Women Who Mean Business" in Central Florida. Intelliorg, Inc. was recently recognized with a 2003 ITFlorida Government Leadership award and invited to participate in a national 35-member "think tank" reporting to Mr. Donald Rumsfeld, US Secretary of Defense, to increase Hispanic business representation in DoD. In addition, Intelliorg was recently honored with a Don Quijote "Small Business of the Year" award.

Ms. Tirado-Chiodini serves on the Board of Advisors of the Disney/SBA National Entrepreneurship Center and is a member of the Florida Bar.

**Intelliorg, Inc.™**

37 North Orange Ave., Suite 810, Orlando, FL 32801 • P.O. Box 780306, Orlando, FL 32878  
Phone: (407) 277-7400 • Fax: (407) 277-9858 • e-mail: [info@intelliorg.net](mailto:info@intelliorg.net) • Web: [www.intelliorg.net](http://www.intelliorg.net)



**Mark Crandall**  
Program Manager

Mark Crandall is a Program Manager with Intelliorg, Inc. He has over ten years of experience with project management, specifically in the areas of software development and business intelligence. He has a proven track record gathering and analyzing requirements, translating requirements into efficient design implementation projects, and managing the initiatives through the development life cycle to achieve streamlined business processes.

Mr. Crandall was educated at the University of Florida, studying Materials Science Engineering and Business Administration as an undergraduate. He was accepted to University of Florida's Masters Program in Decision and Information Sciences (DIS), where he completed the coursework for selective Ph.D. program in DIS. In lieu of a Ph.D. thesis, Mr. Crandall entered the business sector to consult small and medium sized businesses full time.

Subsequently, Mr. Crandall held the position of CEO/Owner of Crandall Technologies, a consulting firm in Gainesville, FL (1996-2000), serving small to medium sized businesses with focus on Business Process Re-engineering, Technical Architecture, Data Mining, and Business Intelligence. His engagements included the development of a Content Management System and the automation of a Claims System for Tower Hill Insurance Group in Gainesville, FL.

Mr. Crandall then joined Breakaway Solutions, a Full Service Provider, as a Management Consultant (2000-2001). In this position, Mr. Crandall was responsible for leading technical teams and engaging clients in the development of strategy and the gathering of requirements. During his tenure with Breakaway, Mr. Crandall's engagements included Technical Lead/Project Manager at Credit Suisse, leading a team of business analysts to understand and document the complex and manually-applied business rules that govern eligibility for named and numbered bank accounts. Directing the design and development team, Mr. Crandall created the successful proposal for the automation of the steps for pre-qualification, including management of proper citizenship documentation, tailored checklists of mandatory steps prior to account opening, automated distribution of required formalities, and consumer qualification for the different products offered by the institution.

Mr. Crandall was then offered the position of Director of Consulting Services with a firm in Denver, CO. At smart!soluxions, Mr. Crandall was responsible for managing smart!soluxions' consulting arm, developing business opportunities, new strategic business partner alliances, and investigating potential new practice areas for smart!soluxions' business. One of the many engagements that Mr. Crandall managed included directing a twenty-person team commissioned by the CIO to replace a legacy system of twenty years with a system that required little maintenance and utilized updated technologies. Against an aggressive timeline and budget constraints, Mr. Crandall introduced the more powerful and flexible system to users with an extremely slight learning curve. This system became smart!soluxions' flagship product for delivering Business Intelligence to middle and upper management to better run their businesses.

Mr. Crandall is affiliated with the Project Management Institute (PMI) and has qualified for the Project Management Professional exam.

---

**Intelliorg, Inc.™**

37 North Orange Ave., Suite 810, Orlando, FL 32801 • P.O. Box 780306, Orlando, FL 32878  
Phone: (407) 277-7400 • Fax: (407) 277-9858 • e-mail: [info@intelliorg.net](mailto:info@intelliorg.net) • Web: [www.intelliorg.net](http://www.intelliorg.net)

STATE OF FLORIDA  
COUNTY OF LEON

AMENDMENT #1 OF CONTRACT #C9520A

WHEREAS the FLORIDA DEPARTMENT OF LAW ENFORCEMENT, hereafter referred to as "Department," and, National Domestic Preparedness Coalition, Inc, hereafter referred to as "Contractor," entered into Contract #C9520A, dated March 9, 2004.

WHEREAS the parties to such contract are desirous of having all provisions of Contract #C9520A, dated March 9, 2004 hereto remain in full force and effect except those amended hereby,

NOW, THEREFORE, in consideration of the premises and promises contained herein, the above stated contract is amended as follows:

Amendment shall change the following:

1. Addendum A (Exhibit 1) to Contract for Services & Product License (FDLE Contract #C9520A), Section 2, paragraph 2 is amended to extend the completion date for the services and deliverables required under this contract from July 31, 2004 to November 30, 2004.
2. All other terms and conditions of this contract remain unchanged, except for those changes made specifically by this Amendment.

IN WITNESS WHEREOF, the parties hereto have executed this amendment on the date set below their names.

NATIONAL DOMESTIC PREPAREDNESS  
COALITION, INC.

Edward J. Dore

NAME: Edward J. Dore

TITLE: Treasurer

DATE: 7/30/04

FLORIDA DEPARTMENT OF LAW ENFORCEMENT

Jerry Hendry *for*

NAME: Jerry Hendry

TITLE: General Services Administrator

DATE: 7/30/04

*8/10/04  
7/30/04*

B



Florida Department of  
Law Enforcement

Gerald M. Bailey  
*Commissioner*

Office of General Counsel  
Post Office Box 1489  
Tallahassee, Florida 32302-1489  
(850) 410-7676  
[www.fdle.state.fl.us](http://www.fdle.state.fl.us)

Charlie Crist, *Governor*  
Bill McCollum, *Attorney General*  
Alex Sink, *Chief Financial Officer*  
Charles H. Bronson, *Commissioner of Agriculture*

October 18, 2007

Mr. James H. Peterson, III  
Office of the Attorney General  
PL-01 The Capitol  
Tallahassee, Florida 32399-1050

Dear Mr. Peterson:

You have asked the Florida Department of Law Enforcement (FDLE) to make its automated version of HLS-CAM available to your expert for review as part of Florida Ethics Commission matter before the Division of Administrative Hearings (Case Number 07-1820EC). FDLE believes that the determinations to be made in this case should be based upon the facts and matters as fully disclosed to both parties as possible. At the same time, FDLE recognizes that the assessments derived by use of HLS-CAM and the actual assessment process itself is sensitive information related to the State's homeland security that should not be made public.

In order to facilitate the disclosure of facts and matters to assist the administrative court in determining this matter, FDLE agrees to the following, provided they are implemented by reason of an order of the Administrative Law Judge:

--FDLE will provide an opportunity for your expert to come to FDLE headquarters in Tallahassee and sit with an FDLE member familiar with the operation of HLS-CAM at a computer terminal in which HLS-CAM is operative and view the HLS-CAM automated assessment tool;

--In conjunction with the FDLE representative, the operation of HLS-CAM will be demonstrated, and the representative will have the ability to ask questions or determine whether the automated HLS-CAM can perform certain functions;

--Samples of assessments may be provided for review and demonstration purposes, but may have identifying information deleted to maintain the overall security of the facility that is the subject of the assessment;

--Determination whether and to what extent actual assessment material will be provided for viewing by your expert remains at FDLE's discretion;

--Your expert will not be provided the underlying details of how the database is constructed, "code" revealing the functionality of the database, or any information that would place FDLE in violation of its obligation to the HLS-CAM copyright holder to protect the underlying computer code and structure resulting in the operational product known as HLS-CAM;

--In effect, your expert will be allowed to see HLS-CAM in operation as it would be viewed by any person using HLS-CAM to conduct an assessment;

--Your expert will be allowed to view, but not copy, HLS-CAM user or training materials;

--A determination of whether individual computer "screen shots" can be duplicated for your expert to carry away from FDLE will be made on a case-by-case basis, with the FDLE representative's decision being final;

--A small sampling of actual assessments may be provided for viewing by your expert at FDLE's option;

--If actual assessments of facilities in Florida are viewed, they will not be available for copying unless approved by FDLE and unless identifying information can be edited in a way to not jeopardize the security of the information contained in the assessment itself.

--The Order must oblige your expert to not reveal to third parties outside the subject litigation any sensitive information he may come across during his review of the HLS-CAM system. He will be asked to sign a nondisclosure agreement prior to viewing any HLS-CAM materials or the system in operation.

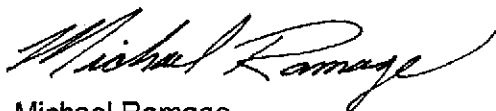
In short, FDLE is agreeing to allow (by administrative court order) your expert to view the HLS-CAM automated system in operation as it would be utilized by someone conducting an assessment with the system, but will not allow that expert to retain confidential or security-sensitive information related to actual sites in Florida or actual assessments performed.

The methodology utilized by HLS-CAM is considered sensitive information and any discerned information regarding that methodology must be held in confidence by your expert, to be revealed only in the context of the litigation at hand. We will ask your expert to sign a nondisclosure agreement that allows him to discuss his observations with you, and to not reveal them in any other context or forum other than in the actual litigation of this matter as structured by the administrative judge.

If any sensitive or confidential or public records exempt information must be discussed during the actual litigation, you will seek review of that information in camera by the court prior to its disclosure. If the court refuses to provide a method assuring the information's continued confidentiality and to prevent its disclosure in public, you have agreed to voluntarily defer from inquiring into those areas. FDLE reserves the right to take whatever action necessary in the administrative litigation to assure sensitive, confidential or exempt information does not become public during the court hearings or via depositions.

I believe this represents an effective balance between FDLE's concerns to protect the sensitive information and your desire to have an expert review the HLS-CAM automated version in operation. As stated initially, FDLE believes it is important that information either party in this matter believes is relevant and important be provided to the greatest extent FDLE can do so while maintaining appropriate protection of sensitive, confidential or exempt information.

Sincerely,



Michael Ramage  
General Counsel

MRR/

**STATE OF FLORIDA  
DIVISION OF ADMINISTRATIVE HEARINGS**

IN RE: KEVIN BEARY,

Case No. 07-1820EC  
FEC Complaint No. 05-105

Respondent.

---

**RESPONSE IN OPPOSITION TO "ADVOCATE'S  
REQUEST FOR AN ORDER WITH GUIDELINES"**

Kevin Beary, by and through undersigned counsel, responds pursuant to Rule 28.106-204(1), Florida Administrative Code, to the "Advocate's Request for An Order With Guidelines," and states as follows:

**Procedural Posture of "Advocate's  
Request for Order with Guidelines"**

1. In conjunction with a "Response to Respondent's Motions for Protective Orders,"<sup>1</sup> the Advocate, on October 19, 2007, included "Advocate's Request for an Order With Guidelines" which seeks an order permitting inspection of documents and things at the Florida Department of Law Enforcement (FDLE) by the Advocate's expert witness under specified conditions.

2. FDLE is not a party to this proceeding.

---

<sup>1</sup> See Beary Motion for Protective Order as to documents sought from Rickey Ricks via deposition duces tecum filed October 8, 2007; and Beary Motion for Protective Order as to documents sought by the Advocate's First Request for Production of Documents filed October 8, 2007. The Advocate has sought similar information from Ken Glantz via deposition duces tecum filed October 8, 2007 to which Kevin Beary has filed a motion to quash that portion of the subpoena duces tecum on October 19, 2007.

3. The "Advocate's Request for an Order With Guidelines" is a motion as that term used in Rule 28.106-204(4), Florida Administrative Code, permitting a response in opposition.

#### **Improper Discovery**

4. Section 120.569(2)(f), Florida Statutes, provides that the administrative law judge may "effect discovery on the written request of any party by any means available to the courts and in the manner provided in the Florida Rules of Civil Procedure." Rule 28.106-206, Florida Administrative Code, provides as follows:

After commencement of a proceeding, parties may obtain discovery through the means and in the manner provided in Rules 1.280 through 1.390, Florida Rules of Civil Procedure.

5. The "Advocate's Request for Order and Guidelines" is in effect a request seeking inspection of documents or things from a third-party, FDLE, that is not a party to this proceedings. As presented, it is not in compliance with Rule 1.351, Florida Rules of Civil Procedure.

6. Rule 1.351, Florida Rules of Civil Procedure, provides the means available to seek inspection and production of things from person or entity that is not a party to these proceedings.

7. The procedure contemplated by the order appears designed to avoid the requirements of Rule 1.351, Florida Rules of Civil Procedure, that if an

objection is raised by a party to the production under Rule 1.351, relief may be obtained pursuant to Rule 1.310, Florida Rules of Civil Procedure.<sup>2</sup>

8. The "Advocate's Request for an Order With Guidelines" precludes Respondent's participation in the process, contrary to Rule 1.310, Florida Rules of Civil Procedure. The contemplated order specifically provides that "the Advocate's expert will have the ability to ask questions or determine whether the automated HLM-CAM can perform certain functions..." without Kevin Beary having the ability to participate, cross-examine, or otherwise object to such inquiries.

#### **Substantive Objections**

9. FDLE's position with respect whether the HLS-CAM methodology should be made public is consistent with the position of Kevin Beary: "*FDLE recognizes that the assessments derived from the use HLS-CAM and the actual assessment process itself is sensitive information related to the State's homeland security that should not be made public.*" (Emphasis added).<sup>3</sup>

10. This is consistent with Kevin Beary's position that the HLS-CAM is exempt from public disclosure pursuant to Section 119.071(3), Florida Statutes, which provides in relevant part:

---

<sup>2</sup> While FDLE's efforts "to facilitate the disclosure of facts and matters to assist the administrative court in determining this matter" are noteworthy, the administrative law judge's authority to effect discovery is limited to the "means available to the courts and in the manner provided in the Florida Rules of Civil Procedure...." See Section 120.569(2)(f), Florida Statutes.

<sup>3</sup> See letter to the Advocate dated October 18, 2007 which is attached as Exhibit "B" to the "Advocate's Request for an Order With Guidelines,"

**(3) Security.**

(a) 1. As used in this paragraph, the term "security system plan" includes all:

- a. Records, information, photographs, audio and visual presentations, schematic diagrams, surveys, recommendations, or consultations or portions thereof relating directly to the physical security of the facility or revealing security systems;
- b. Threat assessments conducted by any agency or any private entity;
- c. Threat response plans;
- d. Emergency evacuation plans;
- e. Sheltering arrangements; or
- f. Manuals for security personnel, emergency equipment, or security training.

2. A security system plan or portion thereof for:

- a. Any property owned by or leased to the state or any of its political subdivisions; or
- b. Any privately owned or leased property

held by an agency is confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution.

11. The HLS-CAM is a confidential "security system plan" as defined in Section 119.07(3)(a)1, Florida Statutes, which includes: records, information relating directly to the physical security of a facility or revealing security systems; threat assessments conducted by an agency or a private entity; threat response plans; and manuals for security personnel, emergency equipment, or

security training. Thus, any such documents are confidential and exempt from Florida Public Records Law pursuant to Section 119.071(3), Florida Statutes.

12. Neither the Advocate nor FDLE is permitted to waive the requirements of Florida's public records to facilitate discovery in a manner inconsistent with the requirements of the Rules of Civil Procedure.

#### **Terms and Conditions of Proposed Order**

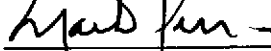
13. The terms and conditions of the proposed order are inadequate. Thomas W. Carney is the President of CAFM, Incorporated, a company that holds itself out to the public as providing security and vulnerability assessment services. HLS-CAM is protected by copyright held by the National Domestic Preparedness Coalition, Inc. (NDPCI). Mr. Carney has made statements to the effect that he views NDPCI as a competitor of CAFM, Inc. The proposed order opens the product of NDPCI to the president of the commercial enterprise which views itself as a competitor. The proposed order in that respect is inadequate. *See Seta Corporation of Boca Inc. v. Office of the Attorney General*, 756 So. 2d 1093, 1094 (Fla. 4<sup>th</sup> DCA 2000) ("[C]ourts can order disclosure of trade secrets so long as protections are taken to see that they are not disclosed to competitors."); *Grooms v. Distinctive Cabinet Designs, Inc.*, 846 So. 2d 652, 655 (Fla. 2<sup>nd</sup> DCA 2003) (recognizing that trade secrets can be produced if disclosure is "carefully regulated to ensure no improper use of the information.")

14. Moreover, NDPCI is not a party to this proceeding and the Advocate's is seeking an order impacting its interests without notice to it or without it otherwise being able to object in this proceeding.

15. Mr. Carney is fact witness in this case, as well as the Advocate's expert. He has alleged that the Orange County Sheriff's Office has not made one assessment; that it has overcharged Orange County five to ten times for assessments made; and that FDLE has "white-washed" its contract with NDPCI. Permitting Mr. Carney access to the automated version of HLS-CAM and assessment data in FDLE's system relating to assessments made in Orange County, even at the discretion or option of FDLE, will deprive Kevin Beary of any meaningful opportunity to cross-examine Mr. Carney as to several statements and assertions that he has made with respect to this case.

WHEREFORE, for the foregoing reasons, Kevin Beary respectfully requests that the "Advocate's Request for an Order With Guidelines," which seeks an order permitting inspection of documents and things at the Florida Department of Law Enforcement (FDLE) by the Advocate's expert witness under specified conditions, be denied.

Respectfully submitted on this 23<sup>rd</sup> day of October 2007 by:



Mark Herron  
Messer, Caparello & Self, P.A.  
Florida Bar Number 0199737  
Post Office Box 15579  
Tallahassee, FL 32317  
Tel. No. (850) 222-0720  
Fax. No. (850) 558-0659  
mherron@lawfla.com

Wayne L. Helsby  
Florida Bar No. 362492  
Allen, Norton & Blue, P.A.  
1477 West Fairbanks Ave. Ste. 100  
Winter Park, Florida 32789  
(407) 571-2152  
(407) 571-1496 Facsimile  
whelsby@anblaw.com

Attorneys for Respondent

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a true and correct copy of the foregoing was provided by United States Postal Service to James H. Peterson, III, Advocate for the Commission on Ethics, Office of the Attorney General, Room PL-01, The Capitol, Tallahassee, FL 32399-1050, and a PDF copy was forwarded by email to James H. Peterson, III, Advocate for the Commission on Ethics, at the following address: Pete.Peterson@myfloridalegal.com, on this 23<sup>rd</sup> day of October 2007.



Mark Herron

BUY™

SELL™

SHOP™



Downloaded From  
[www.TextBookDiscrimination.com](http://www.TextBookDiscrimination.com)



**SELL YOUR OWN SAMPLES**

(help others get the justice that they deserve)



**BUY™**

**SELL™**

**SHOP™**

[www.TextBookDiscrimination.com](http://www.TextBookDiscrimination.com)

Get ***Booked Up*** on Justice!

© TBD Corporation. All Rights Reserved.