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**Congress of the United States**  
**House of Representatives**  
**Washington, DC 20515-5400**

May 13, 2015

The Honorable Ray Mabus  
Secretary  
Department of the Navy  
1000 Navy Pentagon  
Washington, DC 20350-1000

Dear Secretary Mabus:

I write to memorialize my concerns regarding the course of action that has been proposed by the Department of the Navy with respect to employment of security guards at the Relocatable Over-the-Horizon Radar (ROTHR) facility in Vieques, Puerto Rico. I believe the Navy has the clear legal authority to ensure that residents of Vieques who are currently employed as security guards at the facility can continue to perform this job, either as contract employees (like they are now) or as civilian employees of the Navy. I respectfully ask the Navy to exercise this authority.

The Vieques ROTHR facility has been in operation for 15 years. In that time, security has always been provided by contract employees. Two months ago, with minimal notice to my office, the Navy advertised on the USAJOBS.gov website for 15 security guard positions for full-time temporary employment at the facility not to exceed one year. These positions were advertised at the GS-05 pay level and the Naval Air Station Jacksonville Security Detachment is listed as the hiring organization. My understanding is that these new civilian hires would begin work on August 1, 2015. The application period lasted 11 days.

The 23 employees who currently provide security at the facility under contract applied for these positions. All of these employees reside in Vieques and most have performed this job for the entire 15 years in which the facility has operated. Nonetheless, all received disqualification notices from the Navy, informing them that they are not eligible for these new civilian positions. One of the employees, on behalf of himself and his co-workers, contacted my office. I have looked into this matter carefully, and have had extensive conversations with the Navy's Office of Legislative Affairs, various Navy lawyers, Raytheon (the operation and maintenance contractor at the facility), Murray Guard, Inc. (the subcontractor for security guard services at the facility that currently employs the 23 guards), staff from the House Armed Services Committee, and lawyers and analysts from the Congressional Research Service.

The Navy's proposed decision to convert these security guard positions from contract positions to Navy civilian positions constitutes an abrupt change in longstanding practice. The contemplated change will disrupt an arrangement that is working perfectly well from a security

standpoint, and that has enabled over two dozen Vieques residents to be employed in positions in which they take great pride.

I believe this proposed change is unnecessary and unwise. Navy officials have advised me that the Navy is compelled to make this change because of a statute, 10 U.S.C. §2465, which prohibits the Department of Defense from contracting for the performance of “firefighting or security-guard functions at military installations or facilities.” This prohibition first appeared in the early 1980s in laws making appropriations to the Department of Defense, and in November 1986 was enacted as Section 1222 of the *National Defense Authorization Act for Fiscal Year 1987* (P.L. 99-661).

Since its enactment, the prohibition has not applied to contracts “carried out on a Government-owned but privately operated installation.” See 10 U.S.C. §2465(b)(2). Indeed, in August 2011, the Army, acting on behalf of the Navy, awarded a contract to a private company (Choctaw Ikhana Laboratory Services, which partnered with Murray Guard) to perform security at the Vieques ROTH facility. The Mission and Installation Contracting Command at Ft. Buchanan, Puerto Rico wrote that solicitation, but the Navy wrote the Performance Work Statement. Likewise, contracts for security guard services at the Vieques ROTH facility that predate the 2011 contract were also processed and awarded. In January 2013, upon the expiration of the August 2011 contract, a reevaluation of this contractor arrangement was made for reasons that have not been fully explained. In the course of that reevaluation it was apparently determined that the Navy would not rebid the security guard contract. Instead, the Navy made a modification to the operation and maintenance contract with Raytheon, enabling Raytheon to subcontract with Murray Guard to provide security at the facility. Murray Guard retained all 23 security guards.

I firmly believe that the Navy can continue to contract for security guard services at the Vieques ROTH facility pursuant to the exception provided in 10 U.S.C. §2465(b)(2). The facility can reasonably be characterized as a government-owned but privately operated installation, based on the plain meaning of that term. The contractor has stewardship responsibility for the government-furnished property (equipment) that the contractor designed and built and that it has been maintaining and operating at the facility for 15 years. The data captured by the equipment is transmitted to an operations control center in Chesapeake, Virginia, where it is reviewed by employees of the contractor to determine if it meets criteria to send to the Joint Interagency Task Force South (JIATF South). The contractor has security cognizance of that operations control center. There are no Navy employees that report on a daily basis to the Vieques ROTH facility or that are regularly protected by the security guards at the facility.

In sum, I believe the ROTH facility fits comfortably within the “government-owned but privately operated installation” exception to the broad prohibition codified at 10 U.S.C. §2465. Therefore, the Navy can lawfully use contract employees to provide security at the facility. However, if the Navy continues to assert that the ROTH facility does not qualify under the (b)(2) exception, and to insist (contrary to longstanding practice) that it must hire civilian employees to conduct security at the facility, then I believe it is imperative for the Navy to re-advertise the positions, and to do everything it can within legal limits to ensure that the positions are filled by individuals who live in Vieques or are prepared to relocate to Vieques. I have

confirmed that, as a practical matter, security guards must live in Vieques in order to effectively perform their duties. Commuting between the main island of Puerto Rico and Vieques, by ferry or plane, is not feasible in the case of the former and not cost effective in the case of the latter. If the Navy has been advised otherwise, that advice does not reflect reality.

In conclusion, the current security arrangement is working. The law does not require that it be disturbed, because the facility fits comfortably within exception (b)(2) to 10 U.S.C. §2465. If the Navy reaches a different conclusion, it should re-advertise the positions and take all reasonable steps to ensure that these positions are filled by residents of Vieques, in recognition of the reality that it is not possible to perform this job effectively unless the applicant resides on the island or is willing to move there.

Thank you for your attention to this matter, which is important to both the Navy and my constituents in Vieques.

Sincerely,



Pedro R. Pierluisi  
Member of Congress