



Alliance of the Ports of Canada, the Caribbean, Latin America and the United States

AMERICAN ASSOCIATION OF PORT AUTHORITIES

1010 Duke Street • Alexandria, VA 22314

Phone: (703) 684-5700 • Fax: (703) 684-6321

Testimony of Captain John M. Holmes

**Deputy Executive Director of Operations
Port of Los Angeles**

**Before
The United States House of Representatives
Appropriations Committee
Subcommittee on Homeland Security
2358-A Rayburn**

***“Budget Hearing - Federal Emergency Management Agency –
Director and State & Local Witnesses”***

March 7, 2012

Thank you for this opportunity to testify on behalf of the American Association of Port Authorities (AAPA). AAPA represents the leading public port authorities in the Western Hemisphere, and today my testimony focuses on the experiences of the Port of Los Angeles (LA) and AAPA’s U.S. members. I am Captain John Holmes, Deputy Executive Director of Operations for the Port of Los Angeles, where I oversee the Port Police, Port Pilots, Emergency Preparedness, Wharfinger, and Homeland Security divisions. LA is the largest container port in the United States and works closely with other AAPA members to promote enhanced port security.

Since 9/11, port security has become a top priority for U.S. ports, including the Port of Los Angeles. Safe and secure seaport facilities are fundamental to protecting our borders and moving goods. Protecting the people and freight that move through seaports and surrounding communities is essential to keeping seaports safe and open for business. With 99.6 percent (by volume) of overseas trade flowing through U.S. ports, a terrorist incident at a port could have a drastic impact on the U.S. economy.

In the decade since 9/11, a key component of our nation's effort to harden the security of seaports has been the Port Security Grant Program, currently managed by FEMA. The Port of Los Angeles alone has spent more than \$250 million to upgrade its security, over \$100 million of which was provided through grant funding. These upgrades would not have been possible if it were not for the Port Security Grant Program.

As is the case in Los Angeles, Port Security Grant funds have helped port facilities and port areas to strengthen facility security and work in partnership with other agencies to enhance the security of the region. In the Port of Los Angeles, Port Security Grant funding has been used to procure equipment such as vessels and vehicles, install detection systems such as cameras and sensors, and provide equipment maintenance for the systems recently installed. Port Security Grant funds have also been used to harden port IT infrastructure, and most recently this funding has been used to fill a serious training gap -- Maritime Security Training for State and Local police officers.

Under the SAFE Port Act, the Port Security Grant program is authorized at \$400 million. Unfortunately, in the last few years, the funding for this program has decreased, currently standing at a dangerously low level. The current level of \$97.5 million is 75 percent less than the authorized level, and it is currently at one of the lowest funding levels ever for this program. As costs of systems, maintenance and equipment continue to rise, this level of funding will bring into question the sustainability of the protection levels we have worked so hard to build over the last decade.

As you know, for FY 2012, this Committee decided to bundle all FEMA State and Local grant programs, cut the combined programs by 40 percent, and give DHS the authority to determine funding levels for individual programs. AAPA has long been wary of efforts to bundle programs, fearing that traditional homeland security grants would be given a higher priority. DHS was given the authority to make the funding decisions, and last month, our fears became reality. The FY 2012 funding level represents a 59 percent cut from the prior year and 75 percent less than the authorized level. This will harm our ability to expand protection of our maritime assets, carry out Port-Wide Risk Management Plans and fund federal mandates such as installation of TWIC readers.

In a constantly changing threat environment, this level of funding will make it difficult to maintain our current capabilities at the Port of Los Angeles, much less meet new and emerging concerns in such areas as infrastructure protection, continuity of services such as power and water, protection of our information technology capabilities and response to the ever-growing cyber threat. At the Port of Los Angeles, Port Security Grant funding has been a critical component in our efforts to build a resilient port, and we would hate to see a degradation of these efforts as a result of grant funding reductions.

There were other adverse changes to the FY 2012 grants as well. First, the term of performance has been changed from three years to two years in an effort to get money spent more quickly. Although we appreciate the need to move projects along, we are concerned that such a move will shift the focus to buying “stuff,” rather than developing technological solutions, most of which are part of Port-Wide Risk Management Plans, which have been well vetted to address current and future vulnerabilities. This will result in a repeat of early grant funding efforts where ports bought hardware because it was fast and easy to procure. Ports, in working closely with each other and the Department of Homeland Security, have spent a great deal of time to identify system-wide vulnerabilities and develop holistic solutions. The past period of performance made it difficult to execute many of these solutions; the current period may make it nearly impossible.

As your Committee knows, there have been challenges in getting grant money disbursed. This is a complex issue that has been made even more complex due to an ever-changing grant environment. First, it may take months to get final approval from FEMA to execute funding, and once this approval is secured, it is only the start of a complex process that involves design efforts, which in most cases only begin when the funding is approved. Once these design efforts are complete, state, local and federal procurement processes come into play. For a complex system this often requires the issuance of a Request for Qualifications (RFQ), followed by a Request for Proposals (RFP), responding to questions by vendors, evaluation of the proposals, and the contract process.

Once a contract is in place, a complex project may need to get state and local environmental clearances, and clearances from the Historical Society if a Historical Building or site may be involved. In one extreme case at the Port of Los Angeles, we had to put a camera system on hold during the nesting season of a particular migratory bird. In another case, it took over three years for the funding to be cleared and environmental and historical clearances to be obtained. This left a very short period of time to design, solicit, contract, and complete a sophisticated technology project. At the Port of Los Angeles, grant management has become so complicated that we had to establish a separate grant management unit for cradle-to-grave tracking of grants. Despite this effort, we are continually under the gun to execute grant funding. I have no idea how a smaller port handles these responsibilities.

Cost-share requirement have also been an obstacle. Although I appreciate that it is effective for a grantee to have “skin in the game,” it is often overlooked that the “skin” that the port provides is the ongoing operations and maintenance costs of the system. This is particularly true with technology solutions where the annual operating costs can be as high as 10 percent of the cost of the project. At this rate the port exceeds a 25 percent cost-share in current dollars a little more than two years after the completion of the project. In ports such as Los Angeles where in-house design often occurs, the port’s contribution is larger due to the fact that port personnel costs are not refunded by the grants.

As indicated above, how projects are funded has some peculiarities as well. Some ports prefer to use in-house labor, either by choice or due to labor agreements. Unfortunately this puts the port at a financial disadvantage because in-house labor is not reimbursable under the grants. An excellent example of this is that the Port of Los Angeles is undergoing a project to expand our canine facility. Because we have a commitment to use port employees whenever possible, the labor cannot be reimbursed through the grant. A similar situation exists with respect to training. If an in-house trainer can give the course, no reimbursement can be given, even if the course is being offered to multiple agencies.

Although I agree that a number of challenges exist with respect to grant funding and administration, it seems that there is often not a clear recognition that many projects may be underway if one views only the total of unspent funds. Many ports have procurement policies that only allow them to seek reimbursement after a project is completed, and in many cases billing is not conducted until the project is complete. It may appear that nothing has been done on a project when it is complete or nearly complete and as a result, the financial reporting may not provide an accurate picture.

FEMA and ports are working hard to resolve this draw-down problem. Two key things that could speed spending are providing a uniform cost-share waiver and further streamlining the FEMA Environmental and Historic Preservation (EHP) review process. As you know, some years there is a cost-share requirement, and other years it is waived and grantees must go to DHS for a project-based waiver. This significantly delays the use of funds and some grantees wait to see if they can get cost-share-waived funds before undertaking a project. AAPA strongly endorses a uniform waiver of cost-share for all past grants to stimulate quicker use of past funds.

Another hurdle is the EHP review within FEMA. While other FEMA programs must go through these reviews, there isn't the threat of a loss of funds, because there is no timetable associated with these other programs. Therefore, the EHP reviews are not processed or prioritized in a way to reflect grant time limitations. Additionally, FEMA EHP reviews could be streamlined by taking into account state and local environmental reviews for a facility. While EHP has streamlined some of their reviews, they still are a major reason why many of the grant projects require an extension.

The FY 2012 grant announcement also includes some improvements to the program, like expanding the use of funds for maintenance and allowing limited use of grants for personnel. These are changes for which AAPA has long advocated. AAPA was also pleased to see that despite the drastic cut in funding, all ports continue to be eligible for funding. Restricting funding to the highest-risk ports would be bad public policy because it would leave a soft underbelly of underprotected ports that terrorists could exploit.

In regards to the future of this program, in February, the FEMA Grants Directorate released a vision document that outlined its plan to consolidate 16 separate grant programs into one National Preparedness Grant program starting in FY 2013 that would send the money to the states for distribution. AAPA believes this would make port security programs an even lower priority and urges your Committee to keep the program separate as you do for Firefighter Assistance grants.

Port Security Grants are managed quite differently than other homeland security grants. Priorities are set locally, based on the risks and vulnerability of the local port area. Other homeland security grants have a list of core capabilities, which all grantees try to attain. This capabilities list is based more on movable and shared assets rather than set facilities. There is no such list of core capabilities for port security grants and the ones developed for other grant programs were not developed with ports in mind. Additionally, ports have certain federal mandates, such as TWIC readers, that they must comply with, and the cost of those requirements will not be fully felt until Coast Guard issues its final regulations.

Moving the funding to the states is also a big concern for AAPA. Port security is focused on protecting international borders. This is a federal responsibility, not a state responsibility. Many States don't have the personnel or expertise to evaluate maritime risks or determine how ports should be prioritized against other homeland security priorities in the state. The risk evaluations for ports are made at the federal level by the U.S. Coast Guard and other federal agencies. We are also concerned that this would increase the complexity in grant management and slow a process that is already recognized as cumbersome.

Not only does a second or potentially third pass-through layer (the State or municipal government, respectively) mandate its own sets of compliance requirements on top of Code of Federal Regulations and Office of Management and Budget Circulars, it also creates unnecessary cogs in the administration that slows down our ability to spend, execute, and deliver. Moving funds to the states would compromise program efficiency and effectiveness. If, however, a decision is made to consolidate the program and move it to the states, AAPA strongly urges your Committee to allocate a set amount of funding for the program to ensure that funding for port security is not diluted further.

We appreciate the willingness of DHS to work with the ports on Port Security Grant issues. We have and will continue to work with them to improve the program. Positive changes have been made, and we hope that these changes will continue. We do feel that over time external pressures and the "pile-on" effect of new and continuing requirements has had a significant negative impact on the program. We also believe that it is an appropriate time for a DHS/Grant User Group to conduct a review of the Port Security Grant Program and identify areas of improvement and recommend changes that will address these areas.

For Fiscal Year 2013 and beyond, we strongly urge the Committee to:

1. Restore port security funding to its earlier level;
2. Keep the funding separate, similar to Firefighter Assistance Grants;
3. Maintain current federal control over program, or if funds are moved to the States, appropriate a set amount for our nation's ports;
4. Consider a uniform cost-share waiver of past grant funds; and
5. Establish a joint DHS/Port group to continually streamline the process.

In order to continue to be effective, the grant process must evolve in conjunction with port needs and vulnerabilities. Working with DHS, efforts have been made to keep pace with this evolution. We fear that if ports are "lumped" into the larger Homeland Security equation, efforts to date will be marginalized and the focus on ports will be lost. The separation of Port Security Grant funding served to highlight the need to focus on a component of the nation's critical infrastructure that was largely ignored prior to the tragic events on 9/11. We have a significant fear that this focus will be lost if the Port Security Grant Program does not remain separate and fails to continue to evolve to meet emerging security needs.