Department of Homeland Security
Office of Inspector General

DHS Contracts Awarded Through Other Than Full and Open Competition During Fiscal Year 2009

OIG-10-55

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Office of Inspector General

U.S. Department of Homeland Security
Washington, DC 20528

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Preface

The Department of Homeland Security (DHS) Office of Inspector General (OIG) was established by the *Homeland Security Act of 2002* (Public Law 107-296) by amendment to the *Inspector General Act of 1978*. This is one of a series of audit, inspection, and special reports prepared as part of our oversight responsibilities to promote economy, efficiency, and effectiveness within the department.

This report addresses the strengths and weaknesses of the department's noncompetitive procurement process. It is based on interviews with employees and officials, direct observations, and a review of applicable documents.

The recommendations herein have been developed to the best knowledge available to our office, and have been discussed in draft with those responsible for implementation. We trust this report will result in more effective, efficient, and economical operations. We express our appreciation to all of those who contributed to the preparation of this report.

Richard L. Skinner
Inspector General

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Abbreviations

AAP	Advance Acquisition Plan
CPO	Chief Procurement Officer
DHS	Department of Homeland Security
FAR	Federal Acquisition Regulation
FPDS-NG	Federal Procurement Data System-Next Generation
OIG	Office of Inspector General

OIG

Department of Homeland Security
Office of Inspector General

Executive Summary

Public Law 111-83, *Department of Homeland Security Appropriations Act, 2010* included a requirement that the Department of Homeland Security Office of Inspector General review the department's contracts awarded during fiscal year 2009 through other than full and open competition to determine compliance with applicable laws and regulations. To meet this mandate, we reviewed selected DHS component procurement files, as well as DHS policies, procedures, and management controls, to determine whether acquisition personnel appropriately documented and supported contracting decisions.

In fiscal year 2009, the Department of Homeland Security obligated about $3.4 billion for procurements awarded through other than full and open competition. Based on our review of 39 contract files, with a reported value of more than $196 million, acquisition personnel did not always follow federal regulations when awarding noncompetitive contracts. Award files did not always contain sufficient evidence of market research or adequate acquisition planning. As a result, the department cannot ensure that it received the best possible value on these acquired goods and services.

We are making two recommendations that the department's Chief Procurement Officer strengthen internal controls over other than full and open competition procurements. The Chief Procurement Officer concurred with the intent of Recommendation 1 and fully concurred with Recommendation 2.

Background

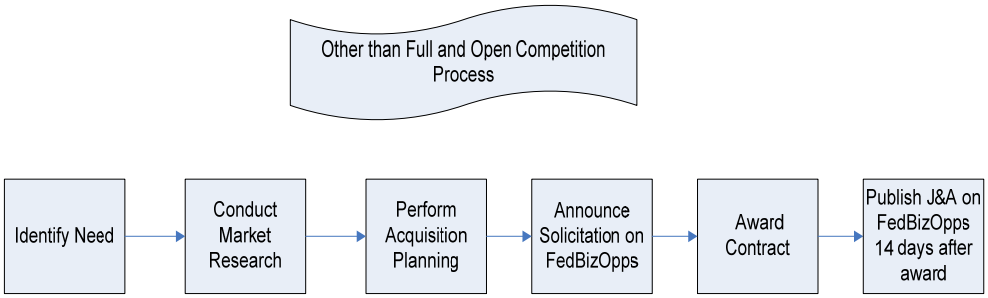
The *Competition in Contracting Act of 1984* requires, with limited exceptions, that contracting officers promote and provide for full and open competition in soliciting offers and awarding United States government contracts. The Federal Acquisition Regulation (FAR) was established to codify uniform policies for acquiring supplies and services by executive agencies.

The Office of the Federal Procurement Policy within the Office of Management and Budget plays a central role in shaping the policies and practices that federal agencies use to acquire the goods and services they need to carry out their responsibilities. The office employs several tools to collect, develop, and disseminate government-wide procurement data for use by federal agencies and the general public, the most significant being the Federal Procurement Data System-Next Generation (FPDS-NG). The Government uses FPDS-NG reported data to measure and assess various elements of procurement performance, including funds obligated and the extent of competition. The Office of Federal Procurement Policy requires that executive agencies annually certify that the data they enter into FPDS-NG is valid and complete.

Competition is desirable because it can result in timely delivery of quality products and services at reasonable costs. It encourages contractors to offer best value proposals for meeting mission needs and requirements when bidding on federal contracts, thereby reducing costs and protecting the interest of taxpayers. According to the FAR, "best value" is the expected outcome of an acquisition that, in the government's estimation, provides the greatest overall benefit in response to a requirement. Competition also discourages favoritism by leveling the playing field for contract competitors and curtailing opportunities for fraud and abuse.

Contract specialists are required to perform certain steps during the other than full and open contracting process. As depicted in the flowchart on page 3, the other than full and open competition process begins when a need is identified. Afterwards, market research is performed to determine the most suitable approach for acquiring, distributing, and managing supplies and services to support the department's mission. Acquisition planning helps ensure that the government is meeting its needs in the most effective, economical, and timely manner. With this assurance,

acquisition personnel announce a solicitation on FedBizOpps, the single, government-wide point of entry for federal procurement opportunities greater than $25,000. Government buyers can publicize their business opportunities by posting information directly to this website. Within 14 days of posting the solicitation, acquisition personnel award the contract and publish the justification and approval document on FedBizOpps, ending the contracting process[1].



The following entities within the Department of Homeland Security (DHS) have a role in managing these procurements:

- The Office of the Chief Procurement Officer – DHS Management Directive 0784, dated December 19, 2005, places responsibility on this office for ensuring the integrity of all acquisitions that support DHS. The office provides policy, procedures, guidance, and training to the department's acquisition workforce. The office also oversees the acquisition of contracted goods and services for DHS through several entities, such as the Acquisition Oversight and Strategic Support Branch, the competition advocates, and heads of contracting activity.

- The Acquisition Oversight and Strategic Support Branch – Within this branch, a staff of employees conducts oversight to verify the integrity of the acquisition practices of DHS and its components. This branch also provides acquisition training, offers consultation services for DHS contracting personnel, and serves as external audit liaison on acquisition-related topics. The Acquisition Oversight Team is responsible for reviewing procurements within

[1] The FAR allows exceptions to the standard process for contracts awarded using the Unusual and Compelling Urgency exception to support other than full and open competition.

specified thresholds to ensure compliance with applicable regulations and policies.

- The DHS competition advocate is responsible for promoting full and open competition; promoting acquisition of commercial items; and removing barriers to full and open competition, such as unnecessarily restrictive statements of work, overly detailed specifications, and burdensome contract clauses. The competition advocate must submit an annual report to the Chief Procurement Office on the components' procurement activities.

- Procuring Competition Advocate is responsible for promoting full and open competition; promoting acquisition of commercial items; and removing barriers to full and open competition, such as unnecessarily restrictive statements of work, overly detailed specifications, and burdensome contract clauses at the component level. Procuring Competition Advocates must submit an annual report to the DHS Competition Advocate on the components' procurement activities.

- Heads of contracting activity directly manage the procurement functions of their respective components. They assist in the execution of acquisition programs by providing all of the necessary resources, facilities, and infrastructure for the acquisition process. The heads of contracting activity also provide procurement data and lessons learned to the Chief Procurement Officer for wider distribution within DHS.

- Contracting officers are responsible for many of the activities leading up to an acquisition for goods or services. This includes ensuring that sufficient funds are available for obligation, requesting offers from as many potential sources as practicable, certifying that all required justifications and approvals are accurate for awarding contracts noncompetitively, and determining that the anticipated cost will be fair and reasonable to the government. Contracting officers are also responsible for timely and accurate reporting of procurement data to the FPDS-NG.

- Program managers within DHS are empowered to make final scope of work, capital investments, and performance acceptability decisions, and are responsible for accomplishing program objectives or production requirements through the acquisition of in-house, contract, or reimbursable support resources, as appropriate. The program managers' duties include developing and updating the acquisition plan, coordinating with other personnel responsible for significant aspects of the plan, obtaining applicable concurrences, and forwarding the plan through the approval process.

- Technical Representatives are responsible for providing and certifying as accurate and complete necessary data to support their recommendation for other than full and open competition.

On October 28, 2009, the President signed Public Law 111-83, *Department of Homeland Security Appropriations Act, 2010*. Section 521(d) of the law directs the Office of Inspector General (OIG) to review the department's contracts awarded during fiscal year 2009 through other than full and open competition to determine departmental compliance with applicable laws and regulations. To meet the requirements of this legislative mandate, we reviewed selected DHS component procurement files for contracts awarded during fiscal year 2009 through other than full and open competition to determine whether all required justifications and other elements were documented and approved at the appropriate level. We selected 39 noncompetitive procurements for review with a total estimated value of more than $196 million. We reviewed DHS policies, procedures, and management controls to determine whether acquisition personnel appropriately documented and supported contracting decisions.

Results of Audit

Our review and analysis of 39 DHS procurement files recorded during fiscal year 2009 as other than full and open competition showed that 33 had missing or inadequate documentation proving compliance with departmental or federal acquisition regulations. FAR § 4.801(b), Government Contract Files requires that contract file documentation be sufficient in order to constitute a complete history of the transactions for the purpose of:

- Providing a complete background as a basis for informed decisions at each step in the acquisition process;
- Supporting actions taken;
- Providing information for reviews and investigations; and
- Furnishing essential facts in the event of litigation or congressional inquiries.

The procurement files reviewed did not always have sufficient evidence of market research or acquisition planning. Acquisition personnel did not always follow regulations, policies, or procedures to support awarding the contracts through other than full and open competition. As a result, the department cannot ensure that it received the best possible value on the goods and services it acquired from these contracts.

Noncompetitive Procurement Justification and Approval

Although competition is the preferred method of acquisition within DHS, FAR §§ 6.302-1 – 6.302-7, permit the following circumstances for other than full and open competition:

- Only one responsible source and no other supplies or services to satisfy agency requirement;
- Unusual and compelling urgency;
- Industrial mobilization; engineering, developmental, or research capability; or expert services;
- International agreement;
- Authorized or required by statute;
- National security; and
- Public interest.

The FAR requires that any agency contracting officer who approves the acquisition of goods or services through other than full and open competitions provides written justification. The justification must have the proper approvals from the appropriate authority based on an established dollar threshold. Depending on the dollar amount of the acquisition, the justification approval requirements may vary. For procurements that require written justification, the contracting officer must sign to certify that the information is complete and accurate. As shown in figure 1, the FAR allows some exceptions to the requirement for written justification for noncompeted procurements.

Figure 1. Exceptions to Written Justification and Approval Requirement for Noncompeted Procurements

1: Agency need for a brand name commercial item for authorized resale.

2: Acquisition from Qualified Nonprofit Agencies for the Blind or other Severely Disabled.

3: Sole source awards under the 8(a) Program.[2]

4: When a statute expressly requires that the procurement be made from a specified source.

5: Sole source acquisitions with an estimated value equal to or less than $100,000 that qualify under the FAR test program for certain commercial items.

6: USCG is exempt from the requirement for written justifications and approvals for contracts awarded citing International Agreement.

Source: FAR Subpart 6.302-4(c); 6.302-5(c)(2); and 13.501(a)(2)(i)

We reviewed 39 noncompetitive procurements from fiscal year 2009, with an estimated value of more than $196 million. Contract data recorded in FPDS-NG showed that 15 of the noncompetitive procurements required justification and written approval. However, based on our contract file review, 2 of the 15 procurements did not have a written justification and approval document. As a result, we were unable to determine whether these two procurements were properly awarded through other than full and open competition or whether they were miscoded in FPDS-NG.

Sole Source Awards Under the 8(a) Program

Of the 39 noncompetitive procurements from fiscal year 2009 that we reviewed, 18 or 46% did not require written justification for the decision to award non-competitively because components awarded them under the Small Business Administration 8(a) sole source program exception listed in figure 1. However, FAR part 10

[2] The Small Business Administration's (SBA) 8(a) Program, named for a section of the Small Business Act, is a business development program created to help small disadvantaged businesses compete in the American economy and access the federal procurement market. Participants are given preferential treatment in federal contracting.

requires that agencies conduct market research for all procurements. Specifically, it requires that agencies perform research to identify the capabilities of small businesses that are available in the marketplace for meeting the requirements of the agency. It further states that agencies shall use this market research to determine whether sources capable of satisfying the agency's requirements exist.

Based on our review of the contract files, 14, or 78% of the 18 small business 8(a) sole source procurement files lacked any evidence that procurement personnel conducted market research. For example, the files for three of the 14 (21%) procurements, worth over $3.9 million, included documentation that public solicitation for the procurements had not been issued to the small business community as a small business set-aside. The documentation further stated that no other public communication had been made regarding the acquisition. This documentation shows that procurement personnel did not consider any other small businesses under the 8(a) program for the procurements.

The Small Business Administration has a partnership agreement with the DHS where it delegates certain contract execution functions for sole source procurements under FAR part 19. This partnership agreement does not exempt procurement personnel from performing market research as required by FAR part 10.

Without proper documentation to support and justify procurement decisions, DHS increases the risk that components are awarding inappropriate procurements. DHS also cannot be certain that components considered alternative contractors for procurements in the Small Business Administration 8(a) Program. Ultimately, the department had no assurance that it was receiving the best possible value on the acquired goods and services.

Market Research

Many of the noncompetive procurement files we reviewed for fiscal year 2009 did not contain sufficient evidence that market research was performed as required by the FAR. FAR § 10.001 requires agencies to conduct market research before (1) developing new requirements documents for an acquisition, and (2) soliciting offers for an acquisition that exceeds $100,000, or is less than

*The FAR defines **market research** as collecting and analyzing information about capabilities within the market to satisfy agency needs.*

$100,000 when adequate information is not available and circumstances justify the cost, or could lead to a bundled contract. Market research should be conducted to ensure that the government is procuring goods and services at reasonable costs, regardless of the status of competition.

We identified deficiencies with market research for 31 or 79% of the 39 fiscal year 2009 noncompetitive procurements. We previously discussed 14 of the 31 procurements under the Sole Source Awards using the 8(a) Program section on page 7. The remaining 17 noncompetitive procurements did not provide sufficient evidence that market research was performed before awarding the funds. We noted that:

- For 7 procurements, the files did not contain evidence that component personnel conducted market research, as required. Five of the seven procurements, valued at $10,874,733, were international agreements between the U.S. and foreign governments. Based on our contract file review, none of the five contract files showed evidence that market research was performed. FAR §§ 6.302-1 – 6.302-7 provide exceptions to full and open competition, but not from conducting market research. According to knowledgeable personnel, the Letter of Offer and Acceptance does not exempt contracting personnel from following standard procurement guidelines, such as conducting market research.

- For the remaining 10 noncompetitive procurements, market research was summarized or mentioned in the files. However, the contract files did not contain sufficient documentation to support the summaries or the activities conducted. For example, six of the 10 procurements, valued at $76,432,906, were from two components and contained no documentation supporting that market research had been conducted. Although market research was mentioned in one report in a file, the file contained no documentation to show that it had been done.

The FAR provides limited guidance on the extent of market research that agencies must conduct and document with procurements. In addition, the *Department of Homeland Security*

Acquisition Regulation and the *Department of Homeland Security Acquisition Manual*, followed during FY 2009, did not provide any further guidance to DHS components than what was in the FAR. This guidance required agencies to conduct market research, but did not require them to validate supporting documentation or assign responsibility to specific personnel. This allows personnel to apply market research requirements inconsistently. For example, some contracts contained a written market analysis, while others contained copies of data compiled from internet searches and cited as market research.

DHS updated its *Homeland Security Acquisition Manual* in October 2009 to include a Market Research Guide in Appendix I. This guide provides additional department-wide guidance to assist Acquisition Teams in determining the most suitable approach to acquiring, distributing, and managing supplies and services to support the department's mission. The Market Research Guide provides policies and procedures for conducting market research. The guide explicitly states that market research:

- Should start as soon as requirements are forecast as part of the acquisition planning and the development of the Advance Acquisition Plan.

- Efforts and results must be clearly documented and included in the contract file.

- Reports should be appropriate to the size and complexity of an acquisition.

The Market Research Guide emphasizes for DHS components that a market research plan is essential to ensure that the research conducted is adequate and appropriate to the requirement. The guide goes further to state that the market research plan should document the overall research techniques the acquisition team will employ, information sources to be used, responsibilities of the team members, decision points in the process, and the timeframe for each task. The guide also provides attachments that list specific resources for market research, rules for meeting with industry representatives, guidelines for one-on-one discussions, and a market research report template.

The publication of such guidance should help DHS correct the market research deficiencies previously noted. By following both

the departmental and federal policy, DHS components can ensure that they obtain the greatest overall benefit in response to procurement requirements.

Acquisition Planning

The DHS components we reviewed either did not prepare or could not provide the acquisition planning documentation required for some procurements awarded in fiscal year 2009. According to FAR §2.101, acquisition planning is the process by which the efforts of all personnel responsible for an acquisition are coordinated and integrated into a comprehensive plan for fulfilling an agency's needs in a timely manner and at a reasonable cost. It entails developing the overall strategy for managing an acquisition. FAR § 7.102 requires that agencies perform acquisition planning and market research to promote and provide for:

- Procurement of commercial or non-developmental items to the maximum extent practicable; and

- Full and open competition; or competition to the maximum extent practicable, with due regard to the nature of the supplies or services to be acquired.

The *Department of Homeland Security Acquisition Manual, Appendix I,* requires DHS to prepare a written acquisition plan for nondevelopmental acquisitions valued greater than or equal to $10 million. One exception is for research and development procurements valued greater than or equal to $5 million, which also require written acquisition plans. For all other acquisitions valued less than $10 million, entry of information into the Advance Acquisition Plan database satisfies the written acquisition plan requirement. The Federal Interagency Database Online, located at www.fido.gov, is DHS' search tool for planned acquisitions for requirements over $100,000.

The Advance Acquisition Plan (AAP) is a DHS plan of all anticipated procurements, including interagency agreements, blanket purchase agreements, and task orders greater than $100,000 for the upcoming fiscal year. Acquisition personnel develop the plans on a fiscal year basis for procurements over $100,000 and less than $10 million ($5 million for research and development) and modify the plans throughout the acquisition cycle using the DHS wide electronic AAP system under

www.fido.gov. AAPs contain the integrated and coordinated efforts of all relevant acquisition personnel in determining acquisition requirements, financing, strategic planning, small business considerations, technical data requirements, contracting, and contract administration.

Of the 39 noncompetitive procurements in our sample, 34 or 87% required an AAP. However, 18 or 53% of the 34 procurements, with a value of $46,618,206, either did not have an AAP, referenced the incorrect AAP number, did not have a printout in the contract file, or component personnel could not provide the AAP numbers to enable us to retrieve the information from the Federal Interagency Database On-Line. Specifically:

- Four of the 18 procurements did not have an AAP created.
- Thirteen of the 18 procurements did not have a printout in the files documenting the AAP number.
- One of the 18 had an AAP number in the procurement file; however, we were unsuccessful in obtaining the AAP because the "Federal Interagency Database On-Line could not locate the AAP number in the current AAP catalog."

There is currently no requirement at the federal or component level to provide AAP numbers in the contract files. However, Procurement Operating Procedure 107, issued by the DHS Office of Procurement Operations on May 22, 2008 directs acquisition personnel to identify and describe program requirements in the Federal Interagency Database On-Line and obtain AAP numbers for their procurements and include the numbers in their purchase requests. For procurements not managed by the DHS Office of Procurement Operations, the guidance allows acquisition personnel to exclude AAP information from the contract files. Without the AAP, supporting documentation is limited to confirm whether personnel adequately performed advanced acquisition planning.

The department needs to place greater emphasis on better planning and documenting its acquisitions and decisions making processes. Making sure each component's acquisition decisions are well documented, integrated, and coordinated in determining requirements, financing, strategic planning, small business

considerations, technical data requirements, contracting, and contract administration, will assist the department in this effort, as well as in ensuring that the goods and services acquired are the best value.

Recommendations

We recommend that the DHS Chief Procurement Officer, in coordination with DHS component heads of contracting activity:

Recommendation #1: Develop or strengthen an oversight review process for current and future other than full and open competition contract awards , including sole source contracts awarded under the 8(a) Program, to ensure component procurement files contain sufficient documentation to show compliance with FAR requirements.

Recommendation #2: Develop and implement guidance at the DHS level to require that acquisition personnel include Advanced Acquisition Plan numbers in procurement files, when applicable based on established dollar thresholds.

Management Comments and OIG Analysis

The Acting Chief Procurement Officer (CPO) provided comments on a draft of this report. A copy of the comments in their entirety is included in appendix B. The Chief Procurement Officer concurred with the intent of Recommendation 1 and fully concurred with Recommendation 2. The CPO also provided technical comments and suggested revisions to sections of our report. As appropriate, we made changes throughout the report in response to the CPO's technical comments and suggested revisions.

Management Comments to Recommendation 1

The CPO concurred with the intent of the recommendation. The CPO agrees that lack of sufficient documentation is an issue for FY 2009 contract files, but believes it has a viable oversight program in place. Currently, the Office of the CPO maintains oversight of procurement actions that exceed specific dollar thresholds, conducts special reviews of specific contracting actions, and follows up on the special reviews. As part of his response, the CPO included a copy of the memorandum of results

of his office's on-site baseline review. The CPO plans to follow up on the results of this review in the first quarter of FY 2011 and plans to issue those results in January 2011. According to the CPO, if the follow up review does not indicate significant improvement in contract file documentation, his office will initiate additional actions to address the issues.

OIG Analysis: Dependent upon completion of the follow up review scheduled for FY 2011 and its results, the CPO's planned actions will satisfy the intent of this recommendation. The recommendation is resolved, but will remain open until the Office of the CPO provides the results of its FY 2011 follow-up reviews and any actions taken because of the reviews.

Management Comments to Recommendation 2

The CPO concurred with the recommendation. The CPO will amend the *Homeland Security Acquisition Manual* to include a requirement that the Advanced Acquisition Plan number be included in the contract file.

OIG Analysis: The CPO's actions are responsive to the recommendation. The CPO's revision of the *Homeland Security Acquisition Manual* to include the Advanced Acquisition Plan number in the contract file shows the department's efforts to place greater emphasis on better planning and documentation of its acquisitions and decision-making processes. This recommendation is resolved, but will remain open until the CPO provides a copy of the updated/amended *Homeland Security Acquisition Manual*.

Management's Technical Comments on Report Content

The CPO also provided technical comments and suggested revisions to sections of our report. We made a number of changes throughout the report in response to these technical comments and suggested revisions. However, we did not make changes in the following areas:

- Noncompetitive Procurement Justification and Approval: The CPO did not agree that 2 of the 15 noncompetitive awards required a justification and approval document. For the two contracts cited in the report, which are competitive procurements, one did not require justification and approval because it was awarded under a Broad Agency Announcement.

The other contract was a Phase II Small Business Research Program award that does not require justification and approval. Phase I was competed among small business concerns.

OIG Analysis: We relied solely on the documentation within the contract file to perform our compliance review. We also relied on the information in FPDS-NG to provide us with correct contract information. The two contracts referenced in this section were included in our contract file review because they were coded as "not competed" in the FPDS-NG system.

- International Agreements: The CPO took exception to our finding regarding five international agreements that did not show evidence of market research. The CPO explained that Letters of Offer and Acceptance are contracts between the U.S. Coast Guard and the foreign government(s) that direct the Coast Guard to purchase a specific asset (identified by manufacturer, model number, etc). In such cases, it is inappropriate and not in the government's best interest to conduct market research.

  OIG Analysis: For the five international agreements cited in the report, the Letters of Offer and Acceptance did not contain requests for specific assets (manufacturer, model number, etc). The Letters of Offer and Acceptance contained various line item numbers, such as the National Stock Numbers for the items ordered, but did not explicitly provide the detail needed as justification for sole source awards. Although the CPO may be correct regarding the exception cited to conducting market research, we did not find the contract files to be as transparent about sole source justification as the CPO asserted in its reply.

On October 28, 2009, the President signed Public Law 111-83, *Department of Homeland Security Appropriations Act, 2010*. Section 521(d) of the law directs the OIG to review the department's contracts awarded during fiscal year 2009 through other than full and open competition to determine departmental compliance with applicable laws and regulations.

To meet the requirements of this legislative mandate, we reviewed applicable federal laws and regulations, as well as DHS and component-specific guidance to identify requirements for noncompetitive contract awards. We examined prior audit reports to identify related work in this regard. We also reviewed DHS procurements in fiscal year 2009 to determine whether selected components' justifications for noncompetitive procurement awards contained required elements and were appropriately approved.

We sampled procurement files for four of eight DHS procurement offices. We selected for review the procurement offices with the highest estimated dollar value of contracts awarded through other than full and open competition, as reported in FPDS-NG. We coordinated our selections with the Government Accountability Office team that performed a similar audit during the same timeframe. Our sample covered procurement offices within the U.S. Coast Guard, Transportation Security Administration, Federal Emergency Management Agency, and the DHS Office of Procurement Operations, which is responsible for acquisitions by the Office of the Secretary and the U.S. Citizenship and Immigration Services.

We reviewed a judgmental sample of 39 noncompetitive based contract procurement files, with approximately 10 files from each selected component that FPDS-NG indicated were awarded through other than full and open competition. We reviewed the procurement files to determine whether they contained the documentation needed to justify the contract awards. Specifically, we determined whether the noncompetitive procurements files contained proper justifications and approvals, adequate market research, and acquisition plans appropriate to the dollar values of the awards. Because there is no assurance that a judgmental sample is representative of the entire universe, our review results should not be projected to all DHS procurements.

We conducted our fieldwork between November and December 2009 at contracting offices in Washington, DC and Emmitsburg, MD. We conducted this performance audit according to generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

Appendix B
Management Comments to the Draft Report

U.S. Department of Homeland Security
Washington, DC 20528

Homeland Security

FEB 02 2010

MEMORANDUM FOR: Anne L. Richards
Assistant Inspector General for Audits

FROM: Richard K. Gunderson
Acting, Chief Procurement Officer
Department of Homeland Security

SUBJECT: CPO Response to Draft Inspector General Report: *DHS Contracts Awarded Through Other Than Full and Open Competition During Fiscal Year 2009*

In response to your memorandum received on January 15, 2010, entitled *Draft Report: DHS Contracts Awarded Through Other Than Full and Open Competition During Fiscal Year 2009*, attached are the comments from the Office of the Chief Procurement Officer (CPO) for inclusion within the management comments appendix of the forthcoming final report.

If there are any questions, please contact Mr. David J. Capitano, Director, Oversight and Strategic Support, at (202) 447-5417 or at david.capitano@dhs.gov.

Attachments:
CPO Response to Draft Report
CPO Memorandum to HCAs: "Results of the OCPO On-Site Baseline Reviews"

Cc:
DHS Undersecretary for Management
DHS Office of the Chief Financial Officer

CPO Response to OIG Draft Report: "*DHS Contracts Awarded Through Other than Full and Open Competition During Fiscal Year 2009*"

Attachment

I. CPO Response to OIG Draft Report Recommendations

The draft IG report includes two recommendations to the Chief Procurement Officer (CPO); specific responses to each recommendation are provided below.

Recommendation 1: "*Develop or strengthen an oversight review process for current and future other than full and open competition contract awards , including sole source contracts awarded under the 8(a) Program, to ensure component procurement files contain sufficient documentation to show compliance with FAR requirements.*"

CPO Response: While CPO agrees that lack of sufficient documentation is an issue for FY09 contract files, we do not believe the solution is to "develop or strengthen an oversight review process." This recommendation implies that the current oversight process is not adequate; CPO disagrees with that implication. Instead, CPO believes that the solution is to continue our existing, effective oversight program in this area and, should the results of our follow-up reviews indicate that improvements are not being made, implement an additional action plan (e.g., increased accountability, more pre-award reviews/approvals by CPO) to address the problem..

The subject recommendation incorrectly suggests that the Department's current oversight review processes are inadequate with respect to other than full and open competition contract awards, including sole source contracts awarded under Section 8(a) of the Small Business Act. We believe that CPO has an effective pre-award and post-award oversight program for noncompetitive contracts.

In regards to pre-award oversight, pursuant to the Homeland Security Acquisition Manual (HSAM), the CPO reviews and/or approves components' acquisition planning documents, sole source justifications, and other administrative aspects of procurement actions conducted under other than full and open competition that exceed specified dollar thresholds. In addition, OCPO conducts post-award oversight reviews of component contract actions, including those awarded via other than full and open competition, without dollar threshold limitations. These reviews occur during the component specific procurement management reviews (each component is reviewed every three years).

CPO also conducts special reviews of specific contracting areas. This includes the recently completed special review of noncompetitive contracts by CPO's Procurement Oversight Branch. The purpose of this special review was to determine whether DHS contracting activities are awarding non-competitive contracts in compliance with the requirements set forth in the Federal Acquisition Regulation (FAR) Part 6.3, the Homeland Security Acquisition Regulations (HSAR), the Homeland Security Acquisition Manual (HSAM), and DHS acquisition policies and guidance. A copy of the draft report findings and recommendations has been sent to the contracting activities for comment. The final draft report, which will be issued sometime in

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CPO Response to OIG Draft Report: "*DHS Contracts Awarded Through Other than Full and Open Competition During Fiscal Year 2009*"

February, 2010, will be provided to the DHS IG. We also will be performing a follow-up review in the first quarter of FY11 related to this special review to determine if (a) the recommendations in our report have been implemented, and (b) whether the implementation of those recommendations has improved compliance by DHS contracting activities with the applicable FAR, HSAM, and HSAR requirements. It is anticipated that the report on the follow-up review will be issued sometime in January, 2011. Should this follow-up review disclose that significant improvements have not been made in the areas where deficiencies were identified in the initial special review, CPO will initiate additional actions (e.g., increased accountability, lower thresholds for CPO and/or HCA approval for pre-award reviews) to address this issue.

It is important to note that the results of both our component oversight reviews and special reviews are submitted to component leadership to assist in targeting training opportunities and emphasizing process enhancements. In addition, in the enclosed September 2, 2009 memorandum to the Heads of Contracting Activities entitled "Results of the OCPO On-Site Baseline Reviews", CPO summarized and emphasized the most prevalent findings of our component specific baseline reviews. This included an emphasis on the need to improve J&A's, acquisition planning, and general file documentation; for example:

> *Justification and Approval (J&A)*: the memorandum addresses contract files that did not contain a required J&A and other cases where the J&A was not signed, and/or lacked an adequate justification for an award on the basis of other than full and open competition;
>
> *Acquisition Planning (AP)*: the memorandum advised HCAs that some contract files did not adequately document the acquisition planning process; and,
>
> *General File Documentation*: the memorandum notes that some contract files were not sufficient to constitute a complete history of the transaction as required by FAR 4.801 and reminded HCAs that contracting personnel must assure that the contract files are sufficient to provide a complete history of every contract or order.

The OCPO oversight branch currently has a thirteen-member staff comprised of senior subject matter government experts with in-depth knowledge and experience in areas of acquisition, procurement, contract pricing and auditing/inspector general support. OCPO's annual oversight program plan delineates the oversight and support functions planned for the year commensurate with the personnel available to perform them. This program plan defines, by quarter, the component, special and follow-up reviews scheduled for the year, as well as the support function and plans to address any prior year backlog activities. All of the various reviews are scoped in advance to define the frequency, methodology and levels of oversight to be provided.

In summary, while CPO agrees that documentation for FY09 noncompetitive awards is an area where improvement is needed, we do not believe the recommended solution ("strengthen oversight") is an appropriate recommended solution. CPO already has an effective oversight program in the area of contract documentation, including the performance of extensive oversight

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reviews, issuance of reports to HCA's, and issuance of a memorandums to all HCA's emphasizing the importance of such documentation. CPO believes the solution is to continue our current oversight efforts, including conducting a follow-up review to our special review on noncompetitive contracts. Furthermore, if this follow-up review indicates that improvements are not being made, CPO will implement an action plan (e.g., increased accountability, more pre-award reviews/approvals by CPO) to address the problem.

Recommendation 2: "*Develop and implement guidance at the DHS level to require that acquisition personnel include Advanced Acquisition Plan numbers in procurement files, when applicable based on established dollar thresholds .*"

CPO Response: CPO concurs with this recommendation. OCPO will amend the HSAM to include a requirement that the Advanced Acquisition Plan number be included in the contract file.

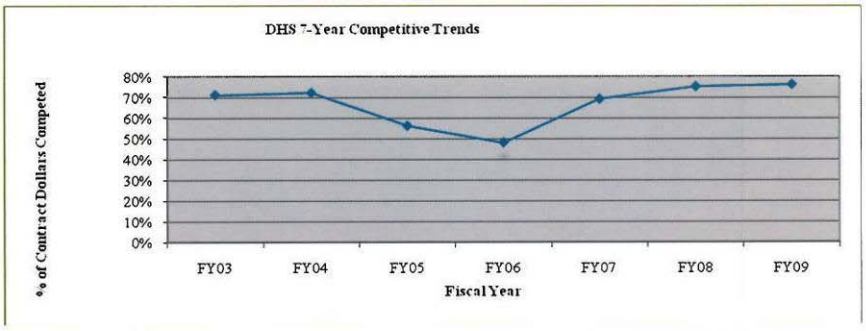
II. CPO General Comments: Contract Competition within DHS

In addition to the negative findings noted in the report, CPO recommends that the report also recognize the significant accomplishments that DHS has made in the area of competition. The percentage of DHS obligations awarded through competitive contract actions increased from 75 percent in Fiscal Year (FY) 2008 (i.e., $9.9 billion in competitive actions awarded from a competition base of $13.2 billion) to 76 percent in FY 2009 (i.e., $10.1 billion in competitive actions awarded from a competition base of $13.3 billion). In addition, seven out of eight DHS Contracting Activities met or exceeded their FY 2009 competition goals. Furthermore, six of the eight DHS Contracting Activities also achieved a competition rate (in terms of competitive obligations) of 70 percent or greater. These outstanding accomplishments contributed to DHS surpassing its FY 2009 competition goal of 72 percent by four percentage points, allowing it to realize a 76 percent level of competition. This success continues a positive 7-year trend for DHS in the area of competition, as illustrated by the chart that follows:

[response continues on next page with Exhibit 2]

CPO Response to OIG Draft Report: "*DHS Contracts Awarded Through Other than Full and Open Competition During Fiscal Year 2009*"

Exhibit 2 – DHS 7-Year Competitive Trends



Data Source for Tables 1 and 2: Federal Procurement Data System- Next Generation (November 30, 2009)

CPO also recommends that the report recognize the effective role played by the DHS Competition Advocate in assuring the Department maximizes competition. The Competition Advocate works with each component to establish annual competition goals, encourages components to attain competition goals, and identifies and resolves barriers to competition. As part of this effort, the DHS Competition Advocate monitors competition data as reported to the Federal Procurement Data System – Next Generation (FPDS-NG) on a monthly basis. Quarterly reports are prepared for Competition Advocate review, and action, as appropriate. Mid-year reports are provided to the Chief Procurement Officer (CPO) and to the Heads of the Contracting Activities (HCAs) regarding year-to-date competitive accomplishments versus established goals. Corrective action plans are requested if mid-year goals/achievements gaps are greater than ten percentage points. Pursuant to the HSAM, each component has designated a Procuring Activity Competition Advocate (PACA). PACAs monitor competition activity, review and approve justifications, ensure compliance with applicable regulations and policies, and prepare annual reports for submission to the DHS Competition Advocate

Since July 2007, the DHS Competition Advocate has maintained the DHS Competition and Acquisition Excellence Awards Program as a means of renewing and increasing acquisition workforce interest in competition and related innovative procurement practices by recognizing and rewarding individuals and teams for outstanding contributions to the enhancement of competition and the use of innovative and best procurement practices. The DHS Competition and Acquisition Excellence Awards Program request for nominations recognizing FY 2009 accomplishments was issued on December 4, 2009.

CPO greatly appreciates the recognition in the report of our new comprehensive DHS Market Research Guide. We also recommend that the report recognize the expanded/revised Acquisition Planning Guide and the Guide for Justification and Approval (J&As) for Other Than Full and

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Open Competition. The J&A guide describes the required review and approval process, which is fully compliant with FAR Part 6. In addition, the HSAR, HSAM, and J&A guide have been updated to include the requirement to publically post J&As to FedBizOpps.gov, consistent with FAR 6.305. DHS also provides public access to the J&As by providing a link to FedBizOpps on the DHS Internet site.

CPO also recommends that the report recognize the Department's increased their use of technology such as FedBid, a web-based reverse auction tool that allows Federal buyers to procure commercial commodity-type requirements to satisfy competition goals. The Office of Procurement Operations (OPO) Acquisition Program Management Branch (APMB) serves as the program manager for FedBid, provides on-call support, and reviews requirements to ensure the tool is used in accordance with the guidance. In FY 2009, OPO successfully awarded over $86 million through FedBid and achieved a savings of 11.5% from the Government estimate. TSA also successfully used FedBid during FY 2009, awarding 172 contracts via FedBid totaling more than $52 million. FLETC routinely uses the on-line e-mail feature of the Central Contactor Registration (CCR) to increase awareness of sources sought solicitation announcements in FedBizOpps by targeting firms. This has proven to be an effective means of increasing competition. The USCG Small Business Specialist (SBS) continues to use the Federal Interagency Databases Online (FIDO) website to provide procurement forecasts to the small business community. All components use the GSA e-buy system, where applicable, to solicit goods and services under FSS. The use of e-buy broadly disseminates solicitation requirements and promotes competition.

III. CPO Comments on Report Content

The following comments are provided in accordance with the draft report sections as specified below.

Executive Summary:

We recommend that paragraph two of the executive summary be revised to read as follows:

> "In fiscal year 2009, the Department of Homeland Security obligated about $3.4 billion for procurements awarded through other than full and open competition. Based on our review of 39 noncompetitive contract procurements, with a total reported value of more than $196 million, acquisition personnel did not always adequately document the files to show that they had complied with applicable federal acquisition regulations when awarding noncompetitive awards. Award files ~~did not always contain written justifications and~~ did not always have sufficient evidence of market research or adequate acquisition planning."

CPO Response to OIG Draft Report: "*DHS Contracts Awarded Through Other than Full and Open Competition During Fiscal Year 2009*"

Section entitled "Background," pages 2 through 5.

CPO notes that within the second paragraph on page 2, the next-to-last sentence incorrectly states that FPDS-NG "*. . . measures various elements of procurement performance . . .*" However, FPDS-NG is a database where contracting officers record various data elements related to their contract actions. Therefore, CPO recommends that this sentence be revised to read:

> "FPDS-NG provides a comprehensive web-based tool for agencies to report contract actions; and FPDS-NG reports provide a means for measuring and assessing various elements of procurement performance, e.g., competition."

Within the third paragraph on page 2, the first sentence states: "*Competition is desirable because it can result in the timely delivery of quality products and services at reasonable costs.*" The first sentence as written implies that sole source procurements do not result in timely delivery of quality products and services at reasonable costs. Therefore, CPO recommends that the sentence be rewritten to read as follows:

> "Competition provides the best assurance that the Government has (a) received a fair and reasonable price, and (b) obtained the most comprehensive input on the technical aspects of the various methods in which the work can best be performed."

CPO notes that on the top of page 3, the description of the flow chart depicted below the first paragraph incorrectly states that: "*Within 14 days of posting the solicitation, acquisition personnel award the contract and publish the justification and approval document on FedBizOpps, ending the contracting process.*" This statement is not entirely accurate. Therefore, CPO recommends that this sentence be revised as follows:

> "After a contract is awarded under other than full and open competition, the FAR requires the agency to make the justification publicly available within 14 days, unless the contract is awarded under the exception for Unusual and Compelling Urgency, which permits public posting within 30 days. The justifications are posted at the Government Point of Entry, FedBizOpps."

Also, CPO notes that the "*Other than Full and Open Competition Process*" chart, on page 3, depicts a standard process for all contracts awarded under other than full and open competition. However, this standard process does not apply in all situations. For example, the exception to other than full and open competition under *Unusual and Compelling Urgency* pursuant to FAR 6.302-2 does not require announcing a solicitation on FedBizOpps. The same is true for procurements authorized or required by statute under FAR 6.302-5, and certain actions related to national security at FAR 6.302-6. FAR 5.202 identifies other reasons for exceptions to the synopsis requirement. Therefore, CPO recommends that the flowchart be changed as follows:

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- 4th block should read: Announce the Solicitation on FedBizOpps unless an exception is authorized;

- 5th block should read: Evaluation and Award;

- 6th (last) block should be revised to reflect both of the required posting timeframes (i.e., 14 days and 30 days) or none at all; and,

- Another block should be added to read: Contract Administration Phase Begins.

With respect to the various defined roles, beginning on page 3 after the flow chart and continuing to page 4, CPO recommends that the additional role of the component Procuring Competition Advocate (PACA) be added. Their role is the same as the DHS Competition Advocate, but at the component level. CPO recommends the following language for the PACA role:

> "The Procuring Competition Advocate (PACA) is responsible for promoting full and open competition; promoting acquisition of commercial items; and removing barriers to full and open competition, such as unnecessarily restrictive statements of work, overly detailed specifications, and burdensome contract clauses at the component level. PACAs must submit an annual report to the DHS Competition Advocate on the components' procurement activities."

In addition, since justifications have to be certified by a Technical Representative (see FAR 6.303-1(b) and DHS J&A Guide), CPO recommends adding a role entitled "Technical Representative" with the following language:

> "Technical Representatives are responsible for providing and certifying as accurate and complete necessary data to support their recommendation for other than full and open competition."

With respect to the "Heads of contracting activity" (HCAs) role described on page 4, CPO recommends that the term "*acquisition functions*" within the first sentence be revised to read "procurement functions" in order to correctly describe the role of the HCAs. HCAs' support the execution of acquisition programs via the procurement process and provide procurement data to the CPO. Therefore, CPO recommends that this bullet be revised as follows:

> "Heads of contracting activity directly manage the procurement functions of their respective components. They assist in the execution of acquisition programs by providing all of the necessary resources, facilities, and infrastructure for the procurement process. The heads of contracting

activity also provide procurement data and lessons learned to the Chief Procurement Officer for wider distribution within DHS."

Finally, within the last paragraph of this section, CPO notes that the fourth sentence, states "*We selected 39 noncompetitive procurements for review with an estimated value of more than $196 million.*" As currently written, this sentence could be interpreted as meaning each of the procurements reviewed were in excess of $196 million, rather than the fact that the total value of the all the procurements reviewed was $196 million. Therefore, CPO recommends that this sentence be revised to read as follows:

"We selected 39 noncompetitive procurements for review with an estimated total value of more than $196 million."

1. **Section entitled "Results of Audit," pages 5 through 10.**

The section entitled "Results of Audit," within the first paragraph, states that 39 DHS procurement files were reviewed and that 33 had missing or inadequate documentation needed to prove compliance with departmental or federal acquisition regulations. We believe this does not provide a complete or accurate review of the report findings, because it groups multiple areas together. To assure a clear understanding by the reader, we recommend that this paragraph be re-written to read as follows:

"Our review and analysis of 39 DHS procurement files awarded during fiscal year 2009, through other than full and open competition, included 21 noncompetitive contract procurements plus 18 sole source contracts with the Small Business Administration (SBA) at TSA, FEMA, USCG, and the Office of Procurement Operations (OPO), with a reported total value of more than $196 million. Of these 39 files, we found the following:

Justification and Written Approvals: 0% (0 of 13) files did not comply with the FAR requirements.

Written Justification for Awards Under the 8(a) Program: 78% (14 of 18) did not comply with the FAR requirements.

Market Research (Other than Awards Under the 8(a) Program): 57% (12 of 21) did not comply with the FAR requirements.

Acquisition Planning: 53% (18 of 34) either did not have the Advanced Acquisition Plan (AAP), referenced the incorrect AAP number, did not have a printout in the contract file, or component personnel could not provide the AAP numbers to enable us to

retrieve the information from the Federal Interagency Database On-Line."

CPO believes the above presentation provides a more accurate summary, and facilitates focus on each of the individual problem areas. Note that the numbers of the J&A's that were noncompliant have been reduced to zero because we believe the two procurements cited as lacking a J&A in the report actually did not require a J&A (see comments below on the subsection entitled "Noncompetitive Procurement Justification and Approval"). In addition, CPO believes the 8(a) awards should not also be included in the market research statistics, since this would represent double-counting and not provide the reader adequate visibility of the findings related to the non-8(a) awards.

In addition, since the percentage of noncompliance was zero in the area of Justifications and Written Approvals, we recommend that the first sentence of the second paragraph of this summary section (Page 5 of the draft report) be rewritten to read as follows:

> "The procurement files reviewed ~~did not always contain written justifications and~~ did not always have sufficient evidence of market research or **[adequate]** acquisition planning".

Subsection: *"Noncompetitive Procurement Justification and Approval,"* pages 6 through 7.

This section of the draft report (first paragraph, Page 7) asserts that 2 of the 15 noncompetitive awards requiring a Justification and Approval (J&A) did not include the required J&A. CPO takes exception to this finding because we do not believe either of these two files required a J&A.

The two files cited by the IG are contracts awarded by our Office of Procurement Operations. The rationale for why a J&A was not required for each of these contracts is provided below:

- HSHQDC-09-C-00118 awarded to SPECTRUM SAN DIEGO: A justification is not required for this contract because the contract was awarded as result of the issuance of Broad Agency Announcement (BAA) #LRBAA 09-05-F021. Awards resulting from the issuance of a BAA are competitive procurements.

- HSHQDC-09-C-00178 awarded to SYNKERA TECHNOLOGIES INC: A justification is not required for this contract. The award to Synkera was made pursuant to the Small Business Innovation Research (SBIR) Program (per FAR 6.203(b)). No separate justification is required to set-aside a contract action for small business concerns under the SBIR program with respect to a Phase II SBIR program award (Phase I was competed among small business concerns).

CPO Response to OIG Draft Report: "*DHS Contracts Awarded Through Other than Full and Open Competition During Fiscal Year 2009*"

Based on the above, CPO recommends that the report be revised to recognize 100% compliance by DHS contracting activities in this area.

Subsection: "*Market Research*," pages 8 through 10.

CPO believes that the findings in this section should include only non-8(a) awards. Including the 8(a) awards in both this subsection and the prior subsection represents double counting, distorts the results of the audit related to non-8(a) awards, and fails to provide the reader any insight into the noncompliance percentage related to the non-8(a) awards. Furthermore, CPO takes exception to the findings that market research was required for the five Letter of Agreements that were international agreements between the U.S. and foreign governments. Therefore, CPO recommends that the second paragraph of this subsection be re-written to read as follows:

> "We identified deficiencies within market research for 12 or 57% of the 21 fiscal year 2009 noncompetitive procurements that were not 8(a) awards, as summarized below:
>
> - For 2 procurements, the files did not contain evidence that component personnel conducted market research, as required.
> - For 10 procurements, market research was summarized or mentioned in the files. However, the contract files did not contain sufficient documentation to support the summaries or the activities conducted. For example, six of the 10 procurements, with a total value of $76,432,906, were from two components and contained no documentation supporting that market research had been conducted. Although market research was mentioned in one report in a file, the file contained no documentation to show that it had been done."

CPO takes exception to the findings for the five LOA's. These were USCG contracts based on international agreements between the U.S. and foreign governments. CPO notes that the Letters of Offer and Acceptance (LOA) are contracts between the USCG and the foreign government(s) that direct the USCG to purchase a specific asset (boats in these cases). FAR Part 10 provides instruction on how to conduct market research and what do with the findings from market research, but in the case of international agreements with an LOA directing the USCG to purchase a specific asset (manufacturer, model number, etc) it is inappropriate to conduct market research and is not in the best interest of the government. As a result, CPO recommends that these five findings be removed from the report.

Furthermore, on page 9, within the first full paragraph, the second sentence states, "*In addition, the Department of Homeland Security Acquisition Regulation and the Department of Homeland Security Acquisition Manual, followed during FY 2009, did not provide any further guidance to DHS components than what was in the FAR.*" This statement is inaccurate. On March 13, 2009,

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the DHS Office of the Chief Procurement Officer issued for comment, and interim use, at the discretion of the component Heads of the Contracting Activity, the Draft Market Research Guide. Comments were received and incorporated in April – May 2009. A final Market Research Guide was released as part of a global DHS Acquisition Manual update on October 1, 2009.

U.S. Department of Homeland Security
Washington, DC 20528

SEP 0 2 2009

Homeland Security

MEMORANDUM FOR: Distribution List

FROM: Richard K. Gunderson
Acting Chief Procurement Officer

SUBJECT: Results of the OCPO On-Site Baseline Reviews

As authorized under Management Directive 0784, dated December 19, 2005, entitled "*Acquisition Oversight Program,*" the CPO is responsible for conducting periodic, comprehensive reviews of each Contracting Activity within the Department of Homeland Security. We have recently completed the field work at all the components for our initial round of comprehensive reviews, which includes issuing six final reports and two draft reports. The purpose of these reviews was to identify component best practices and opportunities for improvement across DHS. The reviews focused on organizational alignment of the acquisition function, procurement management, and human capital. The evaluation of procurement management included a procurement file review of procurement processes, policies, and procedures related to business operations, and compliance with Federal and DHS regulations and policies (e.g., FAR, HSAR, HSAM, and component specific policy).

The subject reviews indicated that the overall acquisition function generally meets mission needs and that contracting personnel are performing their duties at an acceptable level. In addition, the reviews identified a number of acquisition related best business practices. For your information and consideration, these practices are described in the attachment to this memorandum. I recommend that you review those practices to determine if any of them would be a helpful addition to your organization. The attachment includes the particular activity to which each best practice relates, so that you can contact that activity should you decide to pursue any of these practices.

The reviews also disclosed a number of areas that require management attention to maximize our opportunities for improvement, and to assure that procurement policies are consistently followed and contract files are adequately documented. Listed below are the areas of systemic weakness found to be an issue across DHS (i.e., the reviews identified error rates of 10 percent or more for four or more DHS contracting activities). We recommend that you stress each of these areas to your contracting staff (e.g., thru a memorandum to your contracting personnel, training, staff meetings, or some other mechanism).

1

Justification and Approval (J&A): A number of contract files did not contain a required J&A. In other cases, the J&A was not signed, and/or lacked an adequate justification for an award on the basis of other than full and open competition.

FAR 6.303 requires justification, certification and approval in writing for negotiating and awarding a contract without providing for full and open competition. Each justification must contain sufficient facts and rationale to justify the use of the specific authority cited. FAR 6.303-2 provides 12 specific areas that must be addressed in a justification for a sole source procurement.

Acquisition Planning (AP): A number of contract files did not adequately document the acquisition planning. Either the files lacked documentation as to the acquisition staff's intention of how they planned to procure the requirement, did not contain proper reviews, or did not have an approved AP. FAR 7.102 requires acquisition planning for all acquisitions. In accordance with HSAM 3007.103, a written acquisition plan is required for acquisitions that are $10 million or more ($5 million for acquisitions for development). For acquisitions valued less than these thresholds, entry of the information in the Advanced Acquisition Plan Database satisfies the written acquisition plan requirement.

Market Research: A number of contract files did not contain evidence that adequate market research was conducted. Market research should be conducted to collect and analyze information about capabilities within the market, before acquiring goods and services to determine if sources exist to meet the Agency's requirements or whether commercial items or nondevelopmental items are available or could be modified to meet the Government's needs. In accordance with paragraph FAR 10.002(e), the results of market research should be documented in a manner appropriate to the size and complexity of the acquisition.

Justification for Large Business Awards: A number of contract files for large business awards did not document why the award was not made to a small business. In accordance with FAR 19.202, it is DHS policy that contracting personnel use the DHS Form 700-22 to comply with the small business review requirements, and document considerations and recommendations for applicable acquisitions prior to synopsis or solicitation release.

Legal Reviews: A number of contract files that required legal review did not contain documentation that a legal review was obtained. HSAM 3004.7003 requires documentation of legal comments received or a statement from legal counsel that the procurement document has been reviewed and found to be legally sufficient. The contract actions listed in HSAM 3004.7000(a) expected to exceed $500,000 (or an adjusted amount, if agreed to between the HCA and the component legal counsel) are subject to legal review.

Level above Contracting Officer Approval: A number of contract files did not include documentation that the contract file was reviewed at a level above the contracting officer when required. HSAM 3004.7002 requires that all level above reviews, comments, approvals, and resolution of comments be documented in writing and maintained in the contract file.

2

Independent Government Cost Estimate (IGCE): A number of contract files did not include a required Independent Government Cost Estimate (IGCE). HSAM 3015-70 requires an IGCE for proposed negotiated acquisitions, unless exempted. The IGCE must represent the Government's estimate of the anticipated cost, independent of the contractor's proposal. It should reflect how the estimate was derived by delineating such costs as major labor categories, materials, etc., providing any previous cost experience the Government has had in acquiring the same or similar items. The contract file must also document the reasons for significant differences between the IGCE and the negotiated contract price.

Determination and Finding (D&F): A number of contract files did not include an adequate D&F. In some cases, there was no D&F in the file, while in others the D&F was not signed. Furthermore, we found some files that did not adequately document why a T&M contract was appropriate for the effort. The requirements for D&F's are contained at HSAM 3016.601(d). In addition, FAR 16.601 and 16.602 permit use of a time-and-material or labor hour contract only if the contracting officer prepares a determination and findings that no other contract type is suitable. When making the required determination and findings, the contracting officer must use a format substantially the same as that found in Appendix A to HSAM 3016.601.

Price Negotiation Memorandum (PNM): A number of contract files did not include an adequate PNM documenting if and/or to what extent a price or cost analysis was conducted, and how the fair and reasonable price was determined. As stated in HSAM 3015.406-170, the Government's prenegotiation objective shall be in writing and have substance, rationale, and detail sufficient to explain to a third party how the overall reasonableness of the proposed prices were determined and how the objective represents a fair and reasonable amount. In addition, FAR 15.406-3 provides a list of the principal elements of the negotiated agreements that should be documented in the contract file.

General File Documentation: A number of contract files were not sufficient to constitute a complete history of the transaction as required by FAR 4.801. The reviews disclosed various issues related to overall file documentation and organization, including (1) a lack of standardized procedures for contract files, (2) noncompliance with the standard procedures where such procedures did exist, (3) inconsistent use of file indices, and (4) errors, ambiguities, and inconsistencies in the file content. Contracting personnel must assure that the contract files are sufficient to provide a complete history of the contract or order.

Conclusion

Oversight is a process of continuous improvement. As such, it is imperative that each contracting activity develop a follow-up process for constructive monitoring of the policy implementation/execution process, including internal reviews on a periodic basis. We plan to perform follow-up reviews to assess progress in the implementation of actions and effectiveness of that implementation. We have recently begun our second round of tri-annual reviews. These reviews will:

- Employ a set of consistent review criteria across components accompanied by specific areas of interest tailored to individual components;
- Examine and seek to improve underlying procurement processes and policies; and
- Increase our focus on quality, rather than simply evidence that a document exists.

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As part of our procurement support and oversight function, we are also available at your request to provide focused training/consultation on any of the areas noted above, in addition to the contract pricing training/consultation that we are presently providing.

If you have any questions regarding this memorandum, please contact Mr. William Randolph at 202-447-5854 or William.Randolph@dhs.gov.

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Attachment
Page 1 of 3

	Best Practices Identified in OCPO Baseline Reviews.	
1	CBP has implemented an excellent knowledge management system. The "ARMS" (Acquisition Resource Management System) is an easy to navigate web based system. It puts Procurement Announcements, Acquisition Alerts/Advisories, the HSAM/HSAR and several Federal contracting links on one easy to use site.	
2	CBP issues laminated 8 ½" x 11" cards to its contract specialists that provide examples of solicitation and award instrument codes. These sturdy cards provide a visual reminder of the proper instrument code to use, particularly for "F" and "J" type actions.	
3	CBP has developed the Acquisition Improvement Initiative (AI^2) to support strategic goals, objectives and strategies set forth in the CBP Office of Finance's Strategic Plan, as well as those identified in the President's Management Agenda. ARMS is a product of the Knowledge Management team under the Assets work stream.	
4	CBP Procurement actively supports the CBP Budget in the quarterly analysis process which is presented at both the CBP Investment Review Council meeting and then the Investment Review Board meeting with the Deputy Commissioner. Budget and Procurement hold monthly meetings with the Financial Officers and Budget Officers for the CBP mission and mission support offices. As the end of the fiscal year nears, or when DHS is under a continuing resolution, these meetings become weekly reviews of support cost funds still available (both uncommitted and committed).	
5	TSA has established an extensive set of Directives, Instructions and Guidance for contracting personnel to utilize in performing their duties. The documents are sound and thorough in their approach.	
6	TSA has an excellent streamlined Human Capital Program to bring quality personnel onboard. In addition, the TSA HCA has developed a sound career progression program. This program includes Senior-Level, Mid-Level and Entry-Level developmental programs as well as broad ranging communications forums. In addition, the TSA has established various awards programs to recognize individual and team achievements.	
7	TSA has established a solid policies and procedures for acquisition program planning, review and reporting through TSA MD 300.8, *Acquisition Program Planning, Review and Reporting and Review* and TSA MD 300.12, *Program Requirements Review and Approval.* The TSA Investment Review Board process ensures a well coordinated approach which leads to rationale decisions.	

Attachment
Page 2 of 3

8	ICE opened up their communications by establishing weekly procurement leadership meetings, establishing the Acquisition Management Working Group, conducting employee and customer surveys to identify staff and customer needs, and launching an Office of Procurement web page on the DHSOnline Intranet to provide both staff and customers with Office of Procurement information.	
9	ICE demonstrated good use of a performance based acquisition. We found one particular contract with clearly defined metrics/performance standards that was well developed and administered.	
10	ICE has developed a process to collaborate with their Human Capital function, in order to plan and execute initiatives to enhance recruiting and retention. In addition, they have developed staff training and development programs to ensure staff understands their roles and responsibilities and have implemented performance plans with an excellent evaluation/reward system.	
11	SBI files were very well organized and consistently used a checklist which enabled the documents in the files to be located quickly. We identified this as a best practice, which we plan to disseminate to other DHS components for potential use/implementation.	
12	OPO/USCIS Developed CPO Audit Checklist. Form created by USCIS which provided the review team a description of the type of procurement, the FAR Part it purported to have followed, and a point of contact for questions.	
13	OPO/USCIS use of Form G514, Requisition-Materials-Supplies-Equipment. Legacy form which met the requirement for having a procurement request, demonstrating market research, indicating availability of funds and/or providing funding, providing a Government Cost Estimate as well as a Statement of Work/Objective all on one form.	
14	USSS: Although it is not required by the FAR or HSAM, every contract action file contained information that documented FPDS. This information proved helpful during the review process because the analyst was able to locate and verify information contained in the FPDS database, which augmented information in the contract file.	
15	FLETC uses Spot awards that provide meaningful recognition superior work, encourage team work, and contributed to a positive work environment.	

Attachment
Page 3 of 3

16	The National Biodefense Analysis and Countermeasures Center (NBACC) contract file demonstrated excellent contract management and administration in the area of construction contracting.	
17	FLETC's purchase of a unique off road vehicle only manufactured outside of the United States was well researched and executed within the requirements of the Federal Acquisition Regulation (FAR), Homeland Security Acquisition Regulation (HSAR) and Homeland Security Acquisition Manual (HSAM).	
18	All of the files reviewed at the USCG Cleveland location were complete and consistently organized. Documents starting with the initial PR through contract closeout (if appropriate) were in the same place in each contract folder. There was a checklist for each section of the multi-section file folder. The documents in each section were tabbed and filed in order per the checklist for that section. In addition, the checklist for each section was signed off by a supervisor after review.	

Appendix C
DHS Contracts Reviewed

DHS Contracts Reviewed FY 2009	
1	HSCG2309CACP362
2	HSCG2309CHFS001
3	HSCG2309CPBF028
4	HSCG2309CABP001
5	HSCG2309CABA001
6	HSCG2309CAB0001
7	HSCG2309CAB9001
8	HSCG2309CTMY052
9	HSCG2309CE43057
10	HSFEEM09C0412
11	HSFEEM09C0414
12	HSFEHQ09C0064
13	HSFEEM09C0462
14	HSFEHQ09C0888
15	HSFEEM09C0460
16	HSFEEM09C0417
17	HSFEHQ09C1783
18	HSFEEM09C0013
19	HSFEEM09C0327
20	HSHQDC09C00162
21	HSHQDC09C00167
22	HSHQDC09C00149
23	HSHQDC09C00004
24	HSHQDC09C00156
25	HSHQDC09C00090
26	HSHQDC09C00046
27	HSHQDC09C00178
28	HSHQDC09C00118
29	HSHQDC09C00023
30	HSTS0309CCIO610
31	HSTS0409CCT1340
32	HSTS0409CCT1328
33	HSTS0109CHRM023
34	HSTS0109CFIN023
35	HSTS0209CTTC102
36	HSTS0109CFIN008
37	HSTS0109CHRM141
38	HSTS0209CCGO025
39	HSTS0109CRES494

Appendix D
Major Contributors to this Report

Linda Howard, Director
LaParacina Robinson, Audit Manager
Elizabeth Clark, Program Analyst
Jason Kim, Program Analyst
Brian Smythe, Program Analyst
Roger Thoet, Program Analyst
Andrew Smith, Desk Officer

Department of Homeland Security

Secretary
Deputy Secretary
Chief of Staff for Operations
Chief of Staff for Policy
Acting General Counsel
Executive Secretariat
Director, GAO/OIG Liaison Office
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DHS Component Liaison, Office of the Secretary
DHS Component Liaison, OPO
DHS Component Liaison, TSA
DHS Component Liaison, USCG

Office of Management and Budget

Chief, Homeland Security Branch
DHS OIG Budget Examiner

Congress

Congressional Oversight and Appropriations Committees, as appropriate

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