



Department of Homeland Security Office of Inspector General

DHS Contracts Awarded Through Other Than Full and Open Competition During Fiscal Year 2010





Homeland
Security

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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 DHS Office of the Chief Procurement Office. It is based on interviews with employees and officials of relevant agencies and institutions, direct observations, and a review of applicable documents.

The recommendation herein has been developed to the best knowledge available to our office, and has 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.

A handwritten signature in black ink that reads "Anne L. Richards".

ANNE L. RICHARDS

Assistant Inspector General for Audits

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Abbreviations

CPO	Chief Procurement Officer
DHS	Department of Homeland Security
FAR	Federal Acquisition Regulation
FY	Fiscal Year
HSAM	Homeland Security Acquisition Manual
OCPO	Office of the Chief Procurement Officer
OIG	Office of Inspector General

OIG

*Department of Homeland Security
Office of Inspector General*

Executive Summary

Senate Bill S.3607, Report No. 111-222, dated July 19, 2010, included a requirement that the Department of Homeland Security, Office of Inspector General review the department's contracts awarded through other than full and open competition during fiscal year 2010 to determine compliance with applicable laws and regulations. We reviewed selected component contract files, as well as departmental policies, procedures, and management controls, to determine whether acquisition personnel appropriately documented and supported contracting decisions.

The department obligated about \$1.3 billion for noncompetitive contracts in fiscal year 2010. Our review of 40 contract files, with a total reported value of more than \$100 million, showed that the department generally improved acquisition management oversight by strengthening its guidance and conducting reviews of the components to validate compliance with its guidance. However, not all contract files contained sufficient evidence of justification and approval, market research, and acquisition planning. Also, acquisition personnel did not always document consideration of contractor past performance when performing background research of eligible vendors. As a result, the department cannot be sure that it received the best possible value on the goods and services acquired through these contracts or that acquisition personnel awarded government contracts to eligible and qualified vendors.

We are making one recommendation to the department's Chief Procurement Officer to continue efforts to improve acquisition management oversight.

The Chief Procurement Office agreed with our recommendation and has already begun to take actions to implement the recommendation. The agency's response to our recommendation is summarized and evaluated in the body of this report and included in its entirety as Appendix B.

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 U.S. government contracts. The Federal Acquisition Regulation (FAR) codifies uniform policies for acquiring supplies and services by executive agencies.

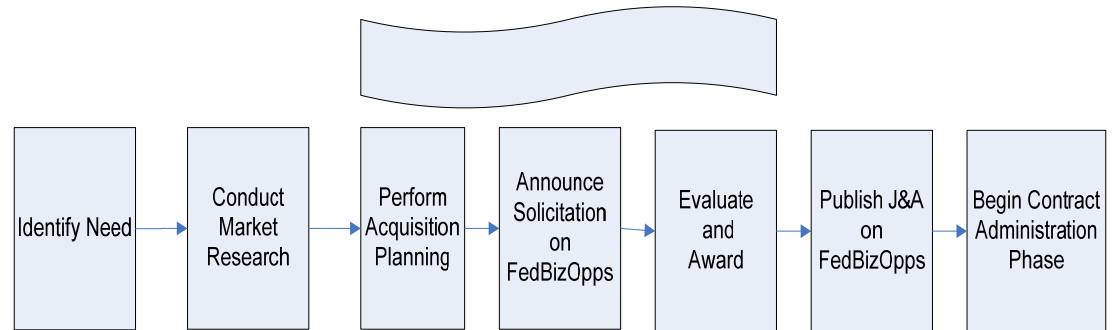
The Office of the Federal Procurement Policy within the Office of Management and Budget plays a central role in shaping the policies and practices that federal agencies use to acquire goods and services. The office employs several tools to collect, develop, and disseminate government-wide procurement data for use by federal agencies and the general public, the most significant being the Federal Procurement Data System-Next Generation. The government uses these 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 executive agencies to certify annually that the data entered into this standard system are accurate and complete. We relied on data in this system as our source to identify noncompetitive contracts.

Competition provides the best assurance that the government has received a fair and reasonable price and obtained the most comprehensive input on the technical aspects of the various methods to complete its work. It encourages contractors to offer best value proposals 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 figure 1, the process begins when personnel identify a need. Contract personnel perform market research 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, unless the agency authorizes an exception. After the government awards a contract under

other than full and open competition, the FAR requires the agency to make the justification publicly available within 14 days, unless the Unusual and Compelling Urgency exception is used, which allows for 30 days. Agencies post justifications on FedBizOpps. The contract administration phase begins after acquisition personnel post the justification and approval to FedBizOpps.

Figure 1. The Contracting Process



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, makes this office responsible 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 –**
Staff of this branch conduct 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 specified thresholds to ensure compliance with applicable regulations and policies.

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- 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 unnecessarily burdensome contract clauses. The DHS Competition Advocate must submit an annual report to the Chief Procurement Office on the components' procurement activities.
 - The 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 unnecessarily burdensome contract clauses at the component level. The Procuring Competition Advocate 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 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.
 - Contracting Officers are responsible for many of the activities leading up to an acquisition for goods or services. Responsibilities include ensuring that sufficient funds are available for obligation, requesting offers from as many potential sources as practicable, certifying that all required justification 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 standard system.
 - Program Managers 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 necessary data to support their recommendation for other than full and open competition as being accurate and complete.

On July 19, 2010, the U.S. Senate introduced a bill to amend the *Department of Homeland Security Appropriations Act of 2007*, which provides appropriations for the fiscal year (FY) ending September 30, 2011. Section 522(c)(2)(d) of the bill directs the Office of Inspector General (OIG) to review the department's contracts awarded during FY 2010 through other than full and open competition to determine departmental compliance with applicable laws and regulations. The bill advises the OIG, when selecting contracts for review, to consider the following:

- The cost and complexity of the goods and services provided under other than full and open competition contracts
- The criticality of the contracts to fulfilling the department's missions
- The problems with past performance on similar contracts or by the selected vendors
- The complaints received about the award process or contractor performance

We reviewed DHS component contract files for contracts awarded during FY 2010 through other than full and open competition to determine whether component personnel included and approved all required justifications and other elements in the contract files. We selected 40 noncompetitive contract awards with a total value of more than \$100 million. We also reviewed DHS policies, procedures, and management controls to determine whether acquisition personnel appropriately documented and supported contracting decisions.

Results of Audit

The department has made improvements with its acquisition management oversight. The department completed numerous oversight reviews and issued updated guidance to strengthen controls over acquisition management in response to recent Government Accountability Office and OIG audit report recommendations. Component personnel also created additional guidance for personnel to follow when performing acquisition management.

Department and component actions improved the overall process; however, the department must do more to ensure accuracy and completeness of contract file documentation. Although deficiencies decreased in justification and approval of noncompetitive contracts and market research compared to previous years, contract files did not always have sufficient evidence of acquisition planning and consideration of vendor past performance history. These deficiencies occurred because contracting personnel did not include adequate documentation in the contract files to support the use of other than full and open competition.

The department cannot be sure that it received the best possible value on the goods and services acquired through these contracts. The department also cannot be sure that acquisition personnel awarded government contracts to eligible and qualified vendors.

Acquisition Management Oversight

The department's Office of the Chief Procurement Officer (OCPO) has made progress in improving oversight of contracting activities by conducting eight baseline reviews between June 2007 and June 2010. These oversight reviews assessed components' compliance with applicable federal regulations, departmental acquisition manuals, guidance, regulations, and policies. The reports, which were provided to each component's head of contracting activity, contained findings and recommendations for improving accuracy and completeness of data and support for justifications and approvals, market research, and responsibility determinations.

The OCPO also issued a special review of contracts awarded noncompetitively¹ that contained recommendations for opportunities to improve the availability and accessibility of contract files, accurately code contract file information into the standard system, properly cite the

¹ DHS-OCPO, *CPO Special Procurement Oversight Review of Noncompetitive Contracts* (Report No. 10-001-S, March 2, 2010).

authority to award a contract noncompetitively, and ensure that adequate rationale exists to support justification and approvals.

In response to prior OIG audit report recommendations, the department made numerous changes to strengthen controls over acquisition management. In October 2009, the department updated the Homeland Security Acquisition Manual (HSAM) to provide additional guidance on noncompetitive justification and approval documents. It also issued an additional appendix to the HSAM, which specifically addressed market research. The department also issued new guidance requiring documentation of vendor eligibility before contract award and some components implemented “best practices” to guide acquisition personnel in improving data integrity, contract file completeness, market research efforts, and vendor eligibility. The department also issued HSAM Notice 10-08, dated August 23, 2010, which requires personnel to include advanced acquisition plan numbers in their contract files.

These department and component-level measures have contributed to the department’s overall improvement in completing and documenting justification, approvals, and market research.

Noncompetitive Procurement Justification and Approval

Although competition is the preferred method of acquisition within the federal government, 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
- Public interest

The FAR requires that any agency contracting officer who approves the acquisition of goods or services through other than full and open competition provide written justification. The justification must have approvals from the appropriate authority. Depending on the dollar amount of the acquisition, the justification approval requirements may vary. For contracts that require written justification, the contracting officer must sign to certify that the information is complete and accurate. As shown in figure 2, the FAR allows some exceptions to the requirement for written justification for noncompeted contract awards.

Figure 2. Exceptions to Written Justification and Approval Requirement for Noncompeted Contracts

- 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 or acquisitions that qualify under the FAR test program for certain commercial items.
- 6:** U.S. Coast Guard 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)-(3); 13.500(e); and 13.501(a)(2)(i)

The department, through its components, showed improvement in the contracting files for supporting documentation of justification and approval. We reviewed our audit reports from FY 2008 and FY 2009 and compared the number of contract files that were deficient in documentation that supported justification and approvals to support noncompetitive contracting methods. We identified deficiencies in about 27% of the files in FY 2008 and about 13% in 2009. In FY 2010, about 11% of the contract files showed deficiencies.

We reviewed 40 noncompetitive contract awards from FY 2010, with an obligated value of about \$100 million (see appendix C). Contract data recorded in the standard system showed that 18 of the 40 noncompetitive awards required written justification and approval. However, 2 of the 18, with an awarded value of about

² The Small Business Administration's 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.

\$1.8 million, did not have an approved, written justification and approval. As a result, we were unable to determine whether contracting officials properly awarded these two contracts using noncompetitive procedures.

Although the department has made significant improvement in providing oversight and direction on adequate justification and approval documentation, it needs to continue performing its management oversight and implement corrective actions where reviews and audits continue to identify deficiencies.

Market Research

The department also showed improvement in documenting market research over the 3-year period. In 2008, about 76% of the files we reviewed showed deficiencies in market research, and in 2009 deficiencies increased to about 79%. By contrast, the number of deficiencies declined to about 7% of the files we reviewed in 2010.

FAR § 10.001 requires agencies to conduct market research before (1) developing new requirements documents for an acquisition; (2) soliciting offers for an acquisition that exceeds \$100,000, or is less than \$100,000 when adequate information is not available and circumstances justify the cost; or (3) soliciting offers for acquisitions that could lead to a bundled contract. Agencies should conduct market research to ensure that the government is procuring goods and services at reasonable costs, regardless of the status of competition.

Of the 40 noncompetitive contracts, 37 contract files (93%) contained evidence that acquisition personnel supported and sufficiently documented their market research. For example, one contract, which was an international agreement, contained an analysis of prices in the commercial market place to support market research efforts. However, three files (7%) did not include sufficient evidence that acquisition personnel performed market research. In October 2009, the department updated its HSAM to include requirements for acquisition personnel to document any market research performed.

The HSAM also includes 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 publication of the market research guidance helped the department correct the market research deficiencies noted during previous years' audit reports. By following federal regulations and departmental guidance, the department can be better assured that it received the best value for goods and services acquired.

Best Practices

Some components implemented additional guidance on noncompetitive contract awards. These actions address a number of weaknesses identified in previous audit reports. For example—

- One component instituted a quality control checklist that provided two levels of review of documentation in support of noncompetitive award decisions.
- One component created a market research questionnaire to guide acquisition personnel through their market research efforts.
- One component included Dun & Bradstreet printouts in some contract files to support checks for the vendors' fiscal and business integrity.

Acquisition Planning

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. Acquisition personnel did not adequately document and support acquisition planning for contracts awarded during FY 2010.

The Department of Homeland Security Acquisition Manual, Appendix H, requires the department to prepare a written plan for acquisitions greater than or equal to \$10 million. For acquisitions valued less than \$10 million entering information into the Advance Acquisition Plan database satisfies the written acquisition plan requirement. The Advance Acquisition Plan database, www.fido.gov, is the department's search tool for planned acquisitions for requirements over \$100,000. Advance acquisition plans 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. In August 2010, DHS issued an

HSAM Notice requiring components to maintain proof of the advance acquisition plan from www.fido.gov in the contract files.

Of the 40 contracts in our sample, 34 or about 85% required an advance acquisition plan. However, 14 or about 41% of the 34 contracts, with a total value of about \$29.9 million, did not have documentation in the contract file or component personnel could not provide evidence that they had entered the plans into www.fido.gov.

Of the 40 contract files in our sample, 5 had individual values greater than \$10 million and required a formal written acquisition plan. Four of the five had a written plan. For the remaining contract, component personnel were not able to provide us with evidence that they developed a written acquisition plan.

The department needs to continue its emphasis on better planning and documenting its acquisitions and decision-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.

Contractor Eligibility

Although the department improved with acquisition management oversight, acquisition personnel did not always document in the contract files their support for vendor responsibility determinations and consideration of past performance prior to contract award.

FAR § 9.105-2(b)(1) was updated on March 23, 2010, to address determinations and documentation of prospective contractor eligibility. The department issued HSAM Notice 2010-05 in April 2010 to update HSAM Chapter 3009.105-2, Determinations and Documentation, and requires contracting officers to document their consideration of the Excluded Parties List. The Excluded Parties List System contains information on contractors that have been suspended, disbarred, or otherwise deemed ineligible to contract with the federal government.

DHS had documentation to support review of the list in 29 of the 40 contracts that we reviewed for FY 2010. However, 11, or about 28%, of the contract files did not have evidence that component contracting offices

considered the list prior to contract award. Fortunately, none of the contractors in our sample were currently on the list.

Without considering the Excluded Parties List, contracting officers increase the risk of awarding contracts to vendors not eligible to enter into contracts with the government.

Recommendation

We recommend that the DHS Chief Procurement Officer, in coordination with component contracting activities:

Recommendation 1: Complete the planned FY 2011 follow-up review of noncompetitive contracting to assess components' corrective actions and, as necessary, develop corrective action plans.

Management Comments and OIG Analysis

The Chief Procurement Officer (CPO) provided comments on the draft of this report. A copy of the comments in its entirety is included in Appendix B. The CPO concurred with the recommendation in the report and noted that efforts are underway to address the recommendation made within the draft report.

The CPO 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 and suggested revisions.

Management Comments to Recommendation 1

CPO concurs. The CPO noted that the department is currently conducting the FY 2011 follow-up oversight review to its initial special review on noncompetitive contracting. This follow-up review will assess whether components have implemented recommendations from its initial special review and whether implementation of those recommendations improved compliance with applicable federal and departmental acquisition requirements. The CPO plans to conduct this follow-up review during the second quarter of FY 2011 and issue a final report by the third quarter FY 2011. The CPO also indicates that it will implement an action plan if the report does not show significant improvements with deficiencies found during its initial special review.

OIG Analysis: Once final, the CPO's actions should sufficiently address components' corrective actions. The recommendation is resolved, but will remain open until the department provides the results of the FY 2011 follow-up review to the OIG along with any corrective action plans it developed.

Management Technical Comments on Report Content

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

Executive Summary: The CPO requested that we add a footnote to clarify that one of the contracts we included in our review of 40 FY 2010 contracts was a FY 2003 contract that U.S. Customs and Border Protection (CBP) changed, by administrative modification, to a FY 2010 contract number.³

OIG Analysis: We used data extracted from the Federal Procurement Data System (FPDS) to select contracts awarded in FY 2010, and excluded modifications to existing contracts. On September 11, 2003, CBP awarded Chenega Technology Services Corporation a sole-source contract to maintain enforcement technology equipment.⁴ On February 1, 2010, CBP awarded a contract to Chenega (HSBP1010C00023) for \$21.8 million. CBP entered this action in FPDS as a FY 2010 noncompetitive contract, and not a modification to the original 10-year, nearly \$475 million contract (HSBP1004C00193) with Chenega. We out-briefed CBP officials at the conclusion of fieldwork and explained to CBP officials that because CBP represented the action as a contract awarded in FY 2010, we could not remove the contract from our sample.

In 2009, the OIG issued an audit report and recommended that CBP assess whether continuing to exercise options on the 2003 contract would provide the best value to the government.⁵ U.S. Customs and Border Protection concurred with this recommendation and responded that it had completed a best-value analysis and was developing an acquisition strategy to replace the contract. In its 90-day status update to the recommendation, dated

³ CPO Comments on Draft Report Content, CPO Response to Draft Inspector General Report: *DHS Contracts Awarded Through Other Than Full and Open Competition During Fiscal Year 2010*, January 13, 2011.

⁴ OIG-09-18, *Customs and Border Protection Award Fees for Enforcement Equipment Maintenance and Field Operations Support Contract*, February 2009.

⁵ *Id.*

August 2010, CBP informed the OIG that it had not finalized the approved acquisition strategy required to close the recommendation. However, in July 2010, CBP approved an increase in the 2003 contract ceiling through the end of option year 6 (September 29, 2010) because the contract was approaching its original 2003 ceiling of almost \$475 million. This increase in funding raised the contract value to \$505 million. In September 2010, CBP approved option year 7 of the 2003 contract to provide services from September 2010 to September 2011. The total value of the contract, upon exercising option year 7, was \$593 million, with a total value for award fees of over \$32 million.

Results of Audit, Subsection: Noncompetitive Procurement

Justification and Approval: CPO believed that we incorrectly included CBP contract HSBP1010C00023 as requiring justification and approval documentation.

OIG Analysis: The CBP transposed the last two numbers of the contract file in their response. We included CBP contract HSBP1010C00032 as requiring justification and approval documentation, not HSBP1010C00023. CBP assigned HSBP1010C00023 to the Chenega contract.

Results of Audit, Contractor Eligibility: CPO did not agree that two contract files did not contain evidence that acquisition personnel checked contractor eligibility prior to contractor award.

OIG Analysis: On November 1, 2010, the U.S. Coast Guard provided additional evidence to support market research, acquisition planning, and award documentation deficiencies, and we amended the draft report. However, the U.S. Coast Guard did not include additional contractor eligibility evidence for these two files in their November 1, 2010, submission.

Appendix A

Purpose, Scope, and Methodology

On July 19, 2010, the U.S. Senate introduced a bill to amend the *Department of Homeland Security Appropriations Act of 2007*, which provides appropriations for the fiscal year ending September 30, 2011. Section 522(c)(2)(d) of the bill directs the OIG to review the department's contracts awarded during FY 2010 through other than full and open competition to determine departmental compliance with applicable laws and regulations.

To meet the requirements of this legislative amendment, 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. We also reviewed DHS contracts in FY 2010 to determine whether DHS appropriately approved selected components' justifications for noncompetitive contract awards and whether the justifications contained required elements.

We sampled contract files at four of eight DHS procurement offices. We relied on data reported in Federal Procurement Data System-Next Generation and selected files for review based on location, cost, complexity, and criticality to the DHS mission. Our sample covered procurement offices within the Federal Emergency Management Agency, U.S. Coast Guard, U.S. Secret Service, and U.S. Customs and Border Protection.

We reviewed a judgmental sample of 40 contracts awarded during FY 2010 pursuant to the seven exceptions enumerated in FAR § 6.302. We selected 10 files for review from each of the four components to determine whether contract files contained adequate documentation to justify the contract awards. Specifically, we determined whether the noncompetitive contract files contained proper justifications and approvals, adequate market research, and acquisition plans appropriate to the dollar values of the awards. We also checked contract files for documentation to support consideration of vendor past performance. Because there is no assurance that a judgmental sample is representative of the entire universe, we did not project our review results to all DHS contracts.

We conducted our fieldwork in October 2010 at contracting offices in Washington, DC. We conducted our review under the authority of the *Inspector General Act of 1978*, as amended, and according

Appendix A
Purpose, Scope, and Methodology

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.

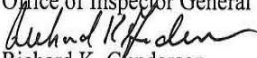
Appendix B
Management Comments to the Draft Report

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



JAN 13 2011

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

FROM: 
Richard K. Gunderson
Deputy, 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 2010*

In response to your memorandum dated December 14, 2010, entitled "*Draft Report: DHS Contracts Awarded Through Other Than Full and Open Competition During Fiscal Year 2010 – For Official Use Only, OIG Project Number: 10-139-AUD-MGT,*" 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

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

**DHS Contracts Awarded Through Other Than Full and Open Competition
During Fiscal Year 2010**

Appendix B Management Comments to the Draft Report

CPO Response to OIG Draft Report: "DHS Contracts Awarded Through Other Than Full and Open Competition During Fiscal Year 2010"

Attachment

I. CPO Response to OIG Draft Report Recommendations

The draft IG report includes one recommendation to the Chief Procurement Officer (CPO); a specific response to this recommendation is provided below.

Recommendation 1: *"We recommend that the DHS Chief Procurement Officer, in coordination with component contracting activities: Complete the planned FY 2011 follow-up review of noncompetitive contracting to assess components' corrective actions and, as necessary, develop corrective action plans."*

CPO Response: CPO concurs with this recommendation. OCPO is currently conducting the follow-up oversight review on noncompetitive contracting to determine if (a) the recommendations in our initial report were implemented, and (b) whether the implementation of those recommendations has improved compliance by DHS procurement activities with the applicable FAR, HSAR, and HSAM requirements. It is anticipated that the follow-up review will be conducted during the second quarter of fiscal year 2011, with a final report issued during the third quarter of fiscal year 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 implement an action plan to initiate additional measures (e.g., increased accountability, lower thresholds for CPO and/or HCA approval for pre-award reviews) to address this issue.

II. CPO General Comments: Contract Competition within DHS

In addition to the positive findings already noted in the draft report regarding improvements made in acquisition management oversight, CPO recommends that the report also recognize the significant accomplishments that DHS continues to make in the area of contract competition. For example, the percentage of DHS obligations awarded through competitive contract actions increased from 76 percent in fiscal year 2009 to 86 percent in fiscal year 2010, by far the highest percentage ever achieved by the Department. In addition, all eight DHS Contracting Activities exceeded their fiscal year 2010 competition goals. Furthermore, seven of the eight DHS Contracting Activities also achieved a competition rate (in terms of competitive obligations) of 79 percent or greater during fiscal year 2010.

III. CPO Comments on Report Content

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

Appendix B Management Comments to the Draft Report

CPO Response to OIG Draft Report: “DHS Contracts Awarded Through Other Than Full and Open Competition During Fiscal Year 2010”

Section entitled “Executive Summary,” Page 1.

1. Within the second paragraph of this section, and likewise later within the draft report within pages 5, 8, 9, 11, and 13, OIG makes reference to the review of 40 contract files, ostensibly awarded during fiscal year 2010; however, CPO notes that U.S. Customs and Border Protection (CBP) contract HSBP1010C00023, included within the review, was actually awarded during fiscal year 2003. CPO believes that this contract file was selected by OIG because the contract number was changed from its former fiscal year 2003-based contract number to a fiscal year 2010 procurement identification number, via an administrative contract modification, to accommodate a change in CBP’s electronic procurement system. Therefore, CPO requests that OIG include a footnote to this paragraph that clarifies the fact that this contract was awarded during fiscal year 2003, as a competed contract under the Small Business Administration’s 8(a) Program.
2. Within the second paragraph of this section, CPO notes that the second sentence states: “*Our review of 40 contract files, with a reported value of more than \$100 million, showed that the department generally improved acquisition management oversight by strengthening its guidance and conducting reviews of the components to validate compliance with its guidance.*” As currently written, this sentence could be interpreted as meaning each of the procurements reviewed were in excess of \$100 million, rather than the fact that the total value of the all the procurements reviewed was more than \$100 million. Therefore, CPO recommends that this sentence be revised to read as follows:

“Our review of 40 contract files, with a total reported value of more than \$100 million, showed that the department generally improved acquisition management oversight by strengthening its guidance and conducting reviews of the components to validate compliance with its guidance.”
3. Within the second paragraph of this section, CPO notes that the fifth sentence states: “*As a result, the department cannot be sure that it received the best possible value on the goods and services acquired through these contracts or that acquisition personnel awarded government contracts to eligible and qualified vendors.*” As currently written, this sentence, when presented in the context of the executive summary section of the draft report, may lead readers of the “Executive Summary” of the report to believe that over \$100 million dollars was spent by DHS in a manner that resulted in unsatisfactory performance, or, that awards of contracts were made to ineligible vendors (which the report later states, on page 11, did not happen). Therefore, CPO requests that this sentence be revised to present a fair summary of the IG’s findings, when considering the complete assessment of the facts presented by its audit fieldwork; for example, the inclusion of a statement that clarifies the fact that the majority of the contract files reviewed by OIG were in compliance with the FAR.

Appendix B Management Comments to the Draft Report

CPO Response to OIG Draft Report: "DHS Contracts Awarded Through Other Than Full and Open Competition During Fiscal Year 2010"

Section entitled "Background," pages 2 through 5.

4. CPO notes that page 3, Figure 1, entitled "The Contracting Process," depicts a chart labeled "*Other than Full and Open Competition Process*," that shows 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. Also, FAR 5.202 identifies other reasons for exceptions to the synopsis requirement. Therefore, CPO recommends that the flowchart be changed as follows:
 - 4th block should read: Announce the Solicitation on *FedBizOpps*, unless an exception is authorized (for "brand name" buys, the J&A must also be published, per FAR 5.102(a)(6));
 - 5th block should read: Evaluation and Award; and,
 - 6th block should be revised or footnoted to reflect both of the required posting timeframes (i.e., 14 days and 30 days).

Section entitled "Results of Audit," pages 6 through 12.

5. On page 6, within the third paragraph, the second sentence states: "*The department also cannot be sure that personnel awarded government contracts to eligible and qualified vendors.*" CPO notes that the audit fieldwork, per page 11 of the draft report, actually found that all 40 OIG reviewed contracts were awarded to eligible and qualified vendors; therefore, this sentence may lead readers to believe that contracts were awarded to vendors on the excluded parties list. As such, CPO requests that this sentence be changed as follows:

"The department's acquisition personnel did not always adequately document contract files to show that the excluded parties list was reviewed to ensure that ineligible vendors did not receive contract awards."

"Results of Audit," Subsection: Noncompetitive Procurement Justification and Approval, pages 7 through 9.

6. On page 8, within Figure 2, entitled "*Exceptions to Written Justification and Approval Requirement for Noncompeted Contracts*," Item 5 states: "*Sole source acquisitions with an estimated value equal to or less than \$100,000 or acquisitions that qualify under the FAR test program for certain commercial items.*" CPO notes that, beginning with "...or acquisitions that qualify under the FAR test program for certain commercial items," OIG should include

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clarification explaining that FAR Part 13 is exempt from FAR Part 6; however, FAR 13.501(a)(1)(i) does require a written justification and approval. Therefore, CPO recommends that Item 5 within Figure 2 be revised or footnoted in order to provide this clarification.

7. On page 8, within the third paragraph, the second and third sentences make reference to 18 DHS contracts that required written justification and approval documents to support their noncompetitive awards; and, that 2 of those 18 contract files lacked the required justification and approval document. CPO notes that one of the two contracts cited within sentence three as requiring a justification and approval document, U.S. Customs and Border Protection (CBP) contract HSBP1010C00023, was actually awarded as a competed contract under the Small Business Administration's 8(a) Program. Therefore, CPO requests that, where necessary, this subsection be modified to correct the cited number of deficiencies with respect to contract files that did not include required justification and approval documentation for noncompetitive awards.

"Results of Audit," Subsection: "Acquisition Planning," pages 10 through 11.

8. CPO notes that on page 10, within the second paragraph, the first sentence refers to Appendix I of the Department of Homeland Security Acquisition Manual (HSAM). The reference to Appendix I is apparently a typographical error; Appendix H is the correct appendix within the HSAM with respect to acquisition planning guidance.

"Results of Audit," Subsection: "Contractor Eligibility," pages 11 through 12.

9. On page 11, within the bottom or third paragraph of the subsection entitled "*Contractor Eligibility*," the first two sentences state that 29 contract files included evidence that the contracting offices checked the excluded parties list and that 11 contract files did not include such evidence. CPO notes that 2 of the 11 referenced files, located at the Coast Guard, cited by OIG not to include evidence that the contracting office reviewed the excluded parties list, actually did contain such evidence. Specifically, Coast Guard contract files HSCG2310CPC1242 and HSCG2310CPTYA14, both contained evidence that the excluded parties list was checked prior to contract award (CPO verified that the source documents from these files have been provided to the OIG audit team). Therefore, CPO requests that the first two sentences of this paragraph be revised as follows:

"DHS had documentation to support review of the list in 31 of the 40 contracts we reviewed for FY 2010. However, 9, or about 22%, of the contract files did not have evidence that component contracting offices considered the list prior to award."

10. On page 12, the last sentence of the subsection entitled "*Contractor Eligibility*" states: "*Without considering the Excluded Parties List, contracting officers increase the risk of awarding contracts to vendors not eligible to enter into contracts with the government.*"

Appendix B

Management Comments to the Draft Report

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CPO notes that the placement of this sentence at the end of this subsection, and without any explanation of how it fits within the context of the IG’s preceding explanation of its findings, may confuse readers of the report; and, deflects from the actual discovered issue: that not all contract files reviewed by the audit team included evidence that the excluded parties list was checked prior to contract award. As such, CPO requests that this sentence be revised as follows, in order to more accurately portray the fieldwork findings of the OIG audit team:

“The Department’s contracting offices must improve their contract file documentation practices in order to ensure that every contract award file clearly provides evidence that the Excluded Parties List System was checked prior to the award of the contracts.”

Appendix C
DHS Contract Files Reviewed

DHS Contracts Reviewed⁶ FY 2010	
1	HSBP1010C00056
2	HSBP1010C00023
3	HSBP1010C00026
4	HSBP1010C00111
5	HSBP1010C00071
6	HSBP1010C00015
7	HSBP1010C00030
8	HSBP1010C00074
9	HSBP1010C00032
10	HSBP1010C00060
11	HSFEHQ10C0260
12	HSFEHQ10C0433
13	HSFEHQ10C0410
14	HSFEHQ10C0895
15	HSFEHQ10C0456
16	HSFEHQ10D0394
17	HSFEHQ10D0666
18	HSFEHQ10C0102
19	HSFEHQ10C0113
20	HSFEHQ10C1102
21	HSSS0110C0002
22	HSSS0110C0015
23	HSSS0110C0009
24	HSSS0110C0063
25	HSSS0110C0011
26	HSSS0110C0001
27	HSSS0110D0002
28	HSSS0110C0024
29	HSSS0110C0067
30	HSSS0110C0036
31	HSCG2310CPLP002
32	HSCG2310CPCI404
33	HSCG2310CMCX004
34	HSCG2310CPE6002
35	HSCG2310CMAV586
36	HSCG2310CPTI000
37	HSCG2310CPCI242
38	HSCG2310CPTYA14
39	HSCG2310DMMN817
40	HSCG2310DPPC333

⁶ Contract numbers downloaded from Federal Procurement Data System-Next Generation. We gave each component a list of contracts reviewed with deficiencies noted during our review.

Appendix D
Major Contributors to This Report

Linda R. Howard, Director
Beverly H. Bush, Audit Manager
Dawn E. Pizarro, Auditor
Victoria Phan, Program Analyst
Duane Albert, Referencer

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