

**DEPARTMENT OF HOMELAND SECURITY**  
**Office of Inspector General**

**Irregularities in the Development of the  
Transportation Security Operations Center**



**Office of Inspections and Special Reviews**

**OIG-05-18**

**March 2005**

*Office of Inspector General*

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



**Homeland  
Security**

## 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 by the OIG as part of its DHS oversight responsibilities to promote economy, effectiveness, and efficiency within the department.

This report addresses the management controls and procurement procedures used during the development of the Transportation Security Operations Center. It is based on interviews with Transportation Security Administration (TSA) employees and contractors involved in the project, as well as a review of applicable documents.

The recommendations herein have been developed to the best knowledge available to the OIG, and have been discussed in draft with those responsible for implementation. It is our hope that 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 cursive script that reads "Richard L. Skinner".

Richard L. Skinner  
Acting Inspector General

# Contents

---

Introduction.....	3
Results in Brief .....	4
Background .....	8
Purpose, Scope, and Methodology.....	10
Findings .....	11
Management Controls.....	11
Acquisition of Art, Plants, and Miscellaneous Office Supplies.....	19
Use of Purchase Cards .....	21
Questions of Impartiality .....	26
Facility Enhancements .....	27
Recommendations.....	32

## Appendices

Appendix A: Management Comments.....	33
Appendix B: OIG Evaluation of Management Comments .....	57
Appendix C: Recommendations .....	61
Appendix D: Major Contributors to this Report .....	62
Appendix E: Report Distribution.....	63

# Contents

---

## Abbreviations

AMS	Acquisition Management System
ATSA	Aviation and Transportation Security Act
CAPPS II	Computer Assisted Passenger Pre-screening System, Second Generation
CFR	Code of Federal Regulations
CMO	Crisis Management Operations
DHS	Department of Homeland Security
FAA	Federal Aviation Administration
FAMS	Federal Air Marshal Service
FPS	Federal Protective Service
GAO	Government Accountability Office
GSA	General Services Administration
OIAPR	Office of Internal Affairs and Program Review
OIG	Office of Inspector General
PCPM	Purchase Card Program Manager
P-card	Purchase Card
SOCD	Systems Operations Control Division
TSA	Transportation Security Administration
TSOC	Transportation Security Operations Center
USC	United States Code

# OIG

*Department of Homeland Security  
Office of Inspector General*

---

## Introduction

In response to the September 11, 2001, terrorist attacks in the United States and to defend against potential future attacks, Congress enacted the Aviation and Transportation Security Act (ATSA),<sup>1</sup> which established TSA. In February 2002, TSA officially assumed responsibility for civil aviation security functions. One step that TSA took to fulfill its mission was to create a crisis management operations (CMO) directorate to prevent and respond to threats against all modes of transportation. TSA assigned a CMO employee to manage the project of locating a building, securing the lease, and developing the space to house the CMO. The project manager located a space to share with the Federal Air Marshal Service (FAMS), which sought a location for its Systems Operations Control Division (SOCD). In February 2003, TSA leased an undeveloped office building to house both the CMO and the SOCD. At the time, the building was simply a shell without interior walls, floors, ceilings, electrical wiring, furniture, or equipment.

The project to develop and outfit the building was completed in July 2003.<sup>2</sup> The building has 55 offices, more than 150 workstations, two watch floors, twelve conference rooms, seven kitchens, and a fitness center. The CMO's space, which is known as the Transportation Security Operations Center (TSOC),<sup>3</sup> has 30 TSA employees and approximately 29 contract employees. The SOCD has 49 employees and approximately 28 contract employees.

In November 2003, TSA's office of internal affairs and program review (OIAPR) began a review of suspicious purchases that were made during the development of the building. OIAPR uncovered improper use of purchase cards (P-card); a \$500,000 expenditure for artwork, silk plants, and miscellaneous supplies; and, unethical and possibly illegal activities by TSOC employees. In May 2004, OIAPR reported its findings to us for further review.

---

<sup>1</sup> Public Law No. 107-71.

<sup>2</sup> The "project" as used in this report includes planning, leasing, constructing, and equipping the building that houses the SOCD and the CMO.

<sup>3</sup> In its conceptual stage, the operations center was originally called the Transportation Security Coordination Center.

---

The scope of our review included:

- An examination of the construction and purchases funded through the facility lease.
- The P-card purchases of equipment and supplies for the building.
- The management and procurement processes that supported the building's acquisition, construction, and outfitting.
- The adequacy of TSA's management controls to ensure that purchases were made according to applicable procurement rules and regulations.

## Results in Brief

### Management Controls

Breakdowns in management controls left the project vulnerable to waste and abuse.<sup>4</sup> The waste and abuse reported here is attributable to wasteful or inappropriate decision-making by individuals who operated with unchecked autonomy that resulted from the determination to complete the project within 90 days. This was a self-imposed deadline. Senior managers, concerned about delaying completion, overrode protests by subordinates, which allowed the project manager to circumvent those rules and regulations.

The acquisition policy that governs TSA encourages management to involve procurement personnel early in the acquisition process.<sup>5</sup> Despite that policy, the project manager, the chief operating officer, and the deputy administrator, did not involve TSA's procurement division in the initial phases of the TSOC project. Procurement managers<sup>6</sup> were not included in developing requirements to define the TSOC's needs,<sup>7</sup> selecting a contract vehicle, selecting a site, or planning office space allotment, in violation of TSA's acquisition policy. When we asked for supporting documentation normally required during the planning stages of an acquisition, one TSA employee said that such

---

<sup>4</sup> The General Accounting Office (GAO) Standards for Internal Control in the Federal Government, GAO/AIMD-00-21.3.1 (Washington, D.C., November 1999) discusses management's key role in demonstrating and maintaining an organization's integrity and ethical values, especially in setting and maintaining the organization's ethical tone, providing guidance for proper behavior, and removing temptations for unethical behavior.

<sup>5</sup> TSA follows the Federal Aviation Administration's Acquisition Management System policy to acquire or procure goods, services, and real estate.

<sup>6</sup> As used in this report, TSA procurement managers include personnel from TSA's real estate services office, the office of acquisition, the chief administrative officer, and the chief systems support officer.

<sup>7</sup> The requirements would have defined the scope of the project and the tenant improvements or reimbursables associated with the project. They would be used for guidance in selecting and developing a site, and forming a budget and a schedule for completing the project.

---

documentation had not been developed; others said they were unable to locate the paperwork. For example, though requested, TSA did not produce paperwork that documented the process or justified the project's \$19 million budget. The omission of such paperwork contravenes TSA's acquisition policy, which is set forth in the Acquisition Management System (AMS). The AMS requires documentation that explains and justifies procurements and business decisions.<sup>8</sup>

Efforts of procurement managers to exercise control and oversight were quashed by the deputy administrator and the chief operating officer. When procurement managers notified senior managers that the project manager was violating procurement policies, the deputy administrator and chief operating officer admonished them to support the project manager. Out of concern that they remained responsible for the project's integrity, but could not enforce procedures to control it, procurement managers sought to shift responsibility for procurement oversight to a project oversight board. The deputy administrator approved the board and its charter, which included the responsibility to ensure that project activities were conducted within applicable procurement regulations and policies. The board first convened in April 2003 and met regularly throughout the construction of the building. Despite its charter, the board did not provide control and oversight to ensure adherence to applicable procurement regulations and policy.

With the oversight board in place and under the deputy administrator's direction to support the project manager, the director of acquisitions negotiated what was called a "hybrid" contracting officer authority with the project manager in April 2003. Under the hybrid arrangement, the real estate contracting officer maintained the authority to ensure competition for purchases, but abandoned the responsibility to review invoices that the project manager submitted, signing each without validating the expenses. To accelerate processing, the real estate contracting officer would sign all forms submitted to him within hours; if he were unavailable, the director of acquisitions would sign for him. There was no policy or regulation granting TSA the authority to create hybrid contracting officer authority. Additionally, the project manager did not have contracting officer or contracting officer's technical representative (COTR) training.

Senior management's failure to enforce procurement regulations and policy, as well as the procurement managers' acquiescence to senior management's pressure, created a culture in which procurement procedures were abandoned, ethical norms slipped, and fiscal responsibility was neglected. This environment fostered improper or questionable purchases and construction

---

<sup>8</sup> AMS § 5.3.10.

---

decisions, as well as disregard for the ethical duty of impartiality, by the project manager and others involved with the project.

### Improper Purchases

The project manager and the facility operating officer improperly purchased decorative and miscellaneous items totaling \$500,000, most of which was spent on furnishing the facility with art and silk plants. They charged the purchase to the construction contract and kept it hidden from the real estate contracting officer responsible for that contract. Representatives from the vendor, a tool company who supplied the art and silk flowers, said that when the tool company submitted a single invoice describing the goods as “enhancements,” the facility operations officer ordered the company to retract the invoice and reissue the amount in three separate invoices with a single descriptive line, “equipment and tools,” thus concealing the true nature of the charges. The tool company had to “manually construct” the invoices because its accounting system could not modify invoices once they had been issued. From the three invoices, \$252,392 was attributable to the purchase of artwork; \$29,032 to an art consultant and an assistant; \$30,085 to the purchase of silk plants; and, \$13,861 to the acquisition of lamps and miscellaneous equipment. The vendor added a 20% markup of \$65,074 and a credit for future purchases of \$26,243. In addition to these charges, the vendor received \$83,313 in overpayments because the facility operations officer insisted that the vendor submit an invoice before final costs had been determined. The facility operations officer never reconciled the final costs against the estimate or attempted to recoup the over payment.

The project manager, facility operations officer, and a TSOC employee routinely violated TSA purchase card (P-card) policies. In contravention of P-card policy, they purchased furniture and personal items, such as loveseats, armoires, leather briefcases, and coffee pots. They discussed with the vendor ways to circumvent the rule that forbids purchases exceeding a \$2,500 limit and that bans “split transactions,” a method for concealing purchases over \$2,500 by splitting them into several credit card transactions. The P-cards were used in ten purchases that ranged in value from \$3,350 to \$47,449. This required 58 separate credit card transactions to complete. Also, the P-card holders failed to maintain logs recording all transactions as required by federal P-card regulations. Last, the project manager, the approving official for the P-card holders, failed to monitor purchases as required by TSA policy.

### Fiduciary Violations

The company from whom the facility operations officer purchased the art, silk plants, and miscellaneous items, as well as to whom he directed the majority of P-card purchases, was a tool company that had never sold such



---

merchandise. The facility operations officer had a prior business and personal relationship with the tool company and its owners. Within weeks of his resignation from TSA, the facility operations officer started a new business with the tool company's owners. He became an officer and employee of the new company, receiving a salary increase of approximately \$34,000 as well as stock shares.

Federal and TSA ethical guidelines require employees to be impartial in their dealings with other entities, not use their position for private gain, and avoid the appearance of ethical violations.<sup>9</sup> The facility operations officer may have breached the requirement to avoid the appearance of ethical violations by directing purchases to the tool company with which he had a prior relationship and by later securing a position with the tool company's owners at a significant increase in pay. He may have violated the requirements mandating impartiality and prohibiting use of a position for private gain, too.

#### Facility Enhancements

The project manager made procurement and construction decisions that appear wasteful. For example, the project manager designed offices and workstations that were larger than TSA or federal standards permit; provided television monitors with commercial cable service in 45 of 55 offices; equipped seven kitchens with numerous kitchen appliances, such as refrigerators, microwave ovens, icemakers, and dishwashers; and developed a 4,200 square-foot fitness center with a towel laundry service for the 79 federal employees located there. There was no documented justification or cost/benefit analysis supporting these expenditures. The real estate contracting officer objected to some of the amenities but was overridden by the project manager.

#### Recommendations

Our recommendations emphasize the need for TSA to adhere to disciplined decision-making processes to ensure that projects are implemented at acceptable costs and that procurement practices are consistent with statutes, regulations, and rules. To improve its management controls and program oversight, we are recommending that TSA:

**Recommendation 1:** Follow its own policy as well as applicable federal regulations when acquiring real estate and procuring goods and services.

---

<sup>9</sup> Key rules for federal employee conduct are contained in *Standards of Ethical Conduct for Employees in the Executive Branch*, 5 C.F.R. § 2635, and more particularly, *Financial Conflicts of Interests*, 5 C.F.R. § 2635 part D.

---

**Recommendation 2:** Ensure that all contracting officers and contracting officers' technical representatives receive training appropriate for those positions.

**Recommendation 3:** Recover the \$83,313 overpayment to the tool company and such other sums for which TSA may have a legal remedy.

## Background

In June 2002, TSA established the Aviation Operations, CMO. Since TSA did not have an operations center, the CMO team worked out of space borrowed from the Federal Aviation Administration (FAA) headquarters' operations center, relying on cellular phones and laptop computers to conduct their work. CMO managers were concerned that inadequate space and technical support would hamper its ability to achieve command and control over aviation security incidents. TSA determined that the CMO needed its own operations center and supporting resources. As a result, TSA senior leadership developed the TSOC concept and adopted an accelerated project completion timeline of 90 days for completing construction. TSA named one of the CMO managers as the project manager for the effort. Although his supervisor was the CMO director, the project manager reported directly to the deputy administrator and chief operating officer on TSOC project matters. The project manager began searching for a site in the fall of 2002.<sup>10</sup>

Coincidentally, as the CMO was looking for suitable space for its operations center in the autumn of 2002, FAMS, which at that time was a component of the FAA, identified a relocation facility for its SOCD. The facility's drawback was that it had 110,000 square feet, more space than FAMS needed. FAMS also had security concerns about sharing the facility with a non-government entity. In November 2002, FAMS was transferred to TSA. It is unclear when the project manager became aware of FAMS' relocation plans, but by December 2002, TSA had decided to co-locate the TSOC at the facility chosen by FAMS for its SOCD operations.<sup>11</sup> The CMO project manager became the manager for developing the facility for both the TSOC and the SOCD.

At the time, the facility was an empty shell, requiring construction of interior walls, floors, ceilings, and electrical wiring. From December 2002 through the spring of 2003, the project manager worked with the proposed construction

---

<sup>10</sup> We could not establish the dates of the initial planning activities, such as conducting a survey, advertising the need, or reviewing specific sites, or whether those routine acquisition activities were actually conducted, because documentation of those efforts was not maintained.

<sup>11</sup> The first space plans for the facility detailing the layout for the CMO and the FAMS SOCD were completed on December 12, 2002.

---

management company and FAMS representatives to design the floor space plan and to discuss cost estimates for the TSOC and SOCD. Because the TSOC and SOCD together did not require the full 110,000 feet of space, TSA solicited other federal agencies and programs to consider sharing the facility. TSA considered co-locating its Computer Assisted Passenger Prescreening System (CAPPS II) program to the facility, but eventually decided not to do so. DHS officials discussed co-locating the department's operations center at the facility, too. However, due to concerns about the facility's physical security, DHS withdrew its consideration.<sup>12</sup> TSA developed the facility for only the TSOC and SOCD, leaving approximately 13,500 square feet undeveloped.

TSA signed the lease for the facility in February 2003 to accommodate FAMS' SOCD and the TSOC. In addition to obligating the government to the rental rate, the lease provided \$5,404,947 in credits, which TSA could spend on developing the building's interior and pay back on an amortized basis over the life of the lease. A March 26, 2003, modification to the lease adjusted the total amount of credit down by \$90,047, bringing the total in available credit to \$5,314,900. TSA planned to use the credits, as well as an additional \$7,247,630, to complete the construction through a management company. An additional \$11,052,370 was budgeted for purchasing furniture, establishing information technology functionality, and providing contractual program management support. The project budget was finalized in May 2003, with total project funding of \$23,614,900, which included the lessor's credits of \$5,314,900 and a TSA direct contribution of \$18,300,000.<sup>13</sup> Construction began in April 2003, and the facility was completed, but for minor repairs, in 97 days. It opened in July 2003.

Thirty TSOC and 49 FAMS federal employees, as well as approximately 57 contract employees, were stationed in the facility. Together, the TSOC and SOCD included 55 offices, more than 150 workstations, two watch floors, 12 conference rooms, seven kitchens, and a fitness center.

In September 2003, after the TSOC/SOCD became operational, TSA issued P-cards to the facility operations officer and another employee to purchase office supplies. In the same month, TSA's purchase card program manager (PCPM) began to notice anomalies in the P-card transactions.<sup>14</sup> The PCPM notified the approving official and P-card holders of the problems and offered to conduct additional training on proper P-card procedures and policy. In

---

<sup>12</sup> Funding for security upgrades was not provided initially. However, prior to the completion of this report, DHS Office of Security installed a complete security package at the TSOC to the Level IV standard.

<sup>13</sup> The \$23,614,900 funded development of FAMS' SOCD and the TSOC. The project's budget was finalized approximately one month after project construction began.

<sup>14</sup> The P-card holders were attempting to use the cards with merchants that were prohibited by TSA P-card policy, but were blocked from completing the transactions.

---

November 2003, the PCPM conducted a review of unusual P-card transactions made by TSOC personnel. The PCPM flagged several transactions as possible split purchases and referred the P-card account to TSA's OIAPR for investigation. The OIAPR investigation not only documented numerous instances of split purchase card activity and other irregular procurement practices, but uncovered an improper expenditure of \$500,000 and possible unethical conduct by personnel involved in the project. OIAPR referred the case to our office for further review.

In acquiring and developing the facility, TSA was governed by the FAA's AMS. The project's development also was subject to General Service Administration (GSA), Federal Property Management, and Federal Records Management rules and regulations, as well as Comptroller General decisions regarding application of those regulations. Those authorities provided a framework for guiding the acquisition process and for governing the suitability of purchases.

## **Purpose, Scope, and Methodology**

The objectives of our review were to determine whether:

- Adequate controls were established for the P-card holders.
- Internal controls existed to govern the project's procurement and payment processes.
- Internal controls provided reasonable assurances that proper procurement regulations were followed.

We interviewed more than 40 managers, program officials, and contractors who supported the project. The majority of our fieldwork was conducted at TSA headquarters. To gain a better understanding of the project, we toured the facility and conducted numerous on-site interviews with those involved in managing the construction of the project. We interviewed the design consultant who was hired by the vendor to purchase and install the facility's artwork, and the vendor, by proxy,<sup>15</sup> who was involved in the questionable purchase activities.

---

<sup>15</sup> After the initial investigation by OIAPR, the vendor retained a law firm to represent its interests. Our site visit was coordinated with the vendor's legal representatives and scheduled a month prior to our inspectors' arrival at the vendor's headquarters. Once our inspectors arrived at the vendor's business, the vendor's attorneys refused to allow us to interview the owners of the company or its employees. However, the owners and employees were permitted to provide information and documentation by proxy through the attorneys.

---

We reviewed documentation pertinent to the project's acquisition and procurement processes, including personnel records, emails, written correspondence, internal memoranda, procurement requests, construction change orders, notices to proceed, building space plans, construction blue prints, and budget sheets. We also reviewed federal regulations such as the Federal Acquisition Regulations, the AMS, the Federal Management Regulations, Comptroller General decisions, the Federal Records Management Act, the Government Accountability Office's (GAO) Principles of Federal Appropriations Law (the "Redbook"), and TSA internal policy and directives related to acquiring and furnishing office space.

We conducted our review between May 2004 and December 2004 under the authority of the Inspector General Act of 1978, as amended, and according to the *Quality Standards for Inspections* issued by the President's Council on Integrity and Efficiency.

## Findings

TSA's deputy administrator and the project manager adopted an accelerated 90-day deadline for completing the project.<sup>16</sup> Although TSA's need for an adequate operation center was critically important given the uncertainty of future terrorist events, TSA did not provide evidence that the decision to accelerate construction arose from a formal, disciplined analysis of requirements and scheduling priorities. Rather, the project manager consulted with the real estate owner's construction management company and subcontractors to determine a project schedule. The resultant schedule allowed 150 days for completing the TSOC and SOCD with a provision for accelerating completion of the project to 90 days at additional cost to the government. This analysis was conducted primarily by the real estate owner's construction contractors. Neither the TSA real estate office nor the contracting officer was included in the meetings between the project manager and construction contractors. They were not provided with a copy of the proposed schedule or given the opportunity to comment on it.

The initial planning of the TSOC was marked by an absence of written plans or specifications.<sup>17</sup> In addition to the omission of a justification for the 90-day deadline was the absence of a discussion of the cost or other consequences of an accelerated schedule.

---

<sup>16</sup> The construction management company was to provide "beneficial occupancy" within the 90-day deadline, which meant that the building was to be ready for occupancy by the end of that period. Minor repairs, or "punch list" tasks, could be finished after the deadline.

<sup>17</sup> We note that this was a time in which TSA also was completing the exceptionally difficult tasks for hiring, training, and deploying approximately 55,600 passenger and baggage screeners and baggage screening equipment to meet Congressionally imposed deadlines.

---

## Management Controls

TSA's office of acquisitions is responsible for administering contracts and awarding business agreements in support of the TSA mission. In addition, it serves as an advisor for developing acquisition strategies, and it establishes and enforces acquisition policies and processes. The office of acquisitions derives its authority from the FAA's AMS, as well as other applicable federal regulations.

Seven TSA employees and two private contractors who were involved in this project said that TSA disregarded procurement procedures in order to achieve the 90-day deadline. One interviewee said the project manager claimed that the deputy administrator told him, "I'll give you the money, just do it," and authorized the expenditure of funds despite the absence of available or budgeted funding.<sup>18</sup> Another person said that TSA's operations office had subjugated the acquisitions office with an attitude of "get it done - it doesn't matter how!"<sup>19</sup> Another person said, "The culture at TSA is that the mission supersedes the process." With regard to the procurement managers' efforts to impose routine procurement procedures, the same person said, "We tried but our hands were tied," and "...Acquisitions had an impossible task. We had the responsibility, but not the authority to manage the project." To complete the project within 90 days, the deputy administrator allowed the project manager to control the project, which often included preempting procurement procedures and overriding the authority of procurement managers.

The AMS encourages agencies to involve real estate acquisition personnel early in the real estate acquisition planning process.<sup>20</sup> Additionally, the AMS instructs contracting officers to be involved in reviewing requirements, developing administrative space standards, and determining the appropriate method of procurement.<sup>21</sup> TSA's real estate procurement managers were not invited to assist in the project until December 2002, after the procurement method had been determined, the site had been selected, and space planning was underway.<sup>22</sup> The real estate contracting officer said, "the deal had already been cooked." Requirements for the TSOC, such as financial limits<sup>23</sup> and

---

<sup>18</sup> The Deputy Administrator said that he did not remember making that statement and doubted that he would have.

<sup>19</sup> The Deputy Administrator said that he told the procurement managers and the project manager to find ways to shorten the processes. He said that when a question arose regarding compliance, he always instructed his subordinates to obey the law.

<sup>20</sup> AMS § 5.3.

<sup>21</sup> AMS § 5.3.2.

<sup>22</sup> FAMS included its procurement managers in the initial SOCD planning until project management shifted to TSA.

<sup>23</sup> The only documentation that TSA produced that could justify the budget was a construction company's cost estimate for developing the facility. However, the deputy administrator recalled a presentation to OMB in which the project funding was approved. Although he suggested a copy of that submission might have been kept at FAMS, we were unable to locate it in follow-up conversations with FAMS officials.

---

infrastructure needs, were never developed, an omission that resulted in questionable facility enhancement decisions and purchases.<sup>24</sup> None of the initial procedures for acquiring the TSOC, such as conducting site surveys or marketing the need for new space, was documented, in violation of the AMS policy that requires justification and explanation for business decisions and procurement actions.<sup>25</sup> The real estate contracting officer never received the space plans or the construction schedules from which to monitor the project's progress.

Once the procurement managers joined the project, consternation arose when they attempted to follow routine procurement procedures. Accordingly, on February 6, 2003, the chief administrative officer convened a meeting with procurement managers, the project manager, and others to clarify the parties' roles and responsibilities during the project. The chief administrative officer referred to that meeting as a "disaster." Commenting further, the chief administrative officer said that the project manager became angry and called the procurement managers "stupid" and referred to them as "obstructionists." The project manager refused to adopt traditional relationships and procedures normal to a real estate acquisition and construction. The chief administrative officer said that, because he was angry at the project manager's words and demeanor, he complained to the deputy director. According to the chief administrative officer, the deputy director told him to support the project manager and not to be an "obstructionist."<sup>26</sup> On February 12, 2003, the deputy director informed the acquisitions office director that it was "absolutely critical" for the project to be completed by the deadline.<sup>27</sup>

Throughout February, issues arose because the project manager preempted the real estate contracting officer's role and responsibilities by negotiating agreements with contractors without the contracting officer's approval. Because the contracting officer maintained responsibility for signing the agreements, the deputy administrator approved of the practice as one that would speed progress without violating the law. In one instance, the project manager directed the construction management firm to prepare an estimate for developing additional space. Upon learning of this, the real estate contracting officer sent an email message to the project manager requesting him to work with the procurement managers to document the new space needs and to allow the contracting officer to broach such issues with the contractor. The project

---

<sup>24</sup> We did receive a draft document entitled, "Draft Working Document, TSA Command Center (TSACC) Requirements," dated July 8, 2002. This document listed, in broad terms, operational capabilities, information technology needs, as well as schedule milestones, with an occupancy estimated to occur in September 2003. It did not contain the details necessary to guide site selection, such as physical security, space, or budgetary requirements.

<sup>25</sup> AMS § 5.3.10.

<sup>26</sup> The deputy administrator did not recall that conversation.

<sup>27</sup> The deputy administrator did not remember that conversation specifically, but does recall telling the acquisitions office director that the team had to "pull out all of the stops" to complete the project.

---

manager replied: “all that administrative stuff will crush the timeline.... I know that workarounds make your life miserable, but there is no choice. We will not do anything illegal, but I will stretch the policies and bureaucracy to their absolute limits.”

Again, the project manager usurped the real estate contracting officer’s authority without repercussion when he began negotiating a contract modification to the lease without involving the real estate contracting officer. The project manager negotiated with the construction management company to change the lease’s fee structure to the lessor’s favor. When the procurement managers learned of the negotiation, they advised against changing the lease because it would be disadvantageous to the government. Although the details of the proposal are complex and eventually were compromised, the following March 14, 2003, email from the acquisition office director to the chief systems support officer is illustrative of the nature of the debate:

We have been asked by [the project manager] on several occasions to renegotiate the lease and raise the fee cap. We were asked by the lessor to reconsider the fee in February. We met with the lessor's representative, [construction management company], listened to their position, and determined to make no change to the current lease.

\* \* \*

[W]e consulted with our outside legal counsel on this issue. They strongly advised against renegotiating only one lease term.

\* \* \*

So our position is to tell [the project manager] we don’t need a meeting because there is nothing to discuss. As soon as we do that, [the deputy administrator], and then you, will get a call I’m sure.

Additionally, the project manager initiated discussions with the construction management company to develop a proposal to accelerate construction in order to complete the building within 90 days. The contracting officer and other procurement managers objected, based on their knowledge that accelerated construction often brings considerably more expensive, time-consuming problems, without a significant gain in the construction schedule. They argued that any advantages accelerated construction might bring would not justify the substantially increased costs. Instead of accepting the contracting officer’s authority to make such determinations, the project manager took the issue to the chief operating officer, who apparently agreed with the project manager. It appears that TSA paid either an additional \$400,000 or \$600,000 to substantially complete the project 30 days in advance



---

of the original schedule.<sup>28</sup> TSA has been unable to locate documentation that confirms the cost, discusses cost and benefit considerations, or authorizes funds for the accelerated construction effort. Additionally, the lease should have been amended to reflect the change to an accelerated schedule. TSA could only produce a lease modification that mentioned a schedule change outlined in an attachment, but the attachment specifying the details was missing.<sup>29</sup>

Concerned about the legality and appropriateness of the actions taken by the project manager and fearing an audit, in mid-February 2003, some procurement managers drafted a delegation memo transferring contracting officer authority to the project manager. They reasoned that if they could not control the project, they should not bear the responsibility for it. The deputy administrator refused to sign the delegation memorandum because the project manager did not have a contracting officer's warrant or the requisite training for that responsibility. The deputy administrator and others said that the project manager was the COTR for the project, despite the fact that the project manager had no training for that position.<sup>30</sup>

In March 2003, a contract employee who provided the project manager with program management support was removed from the project for being an "obstructionist" and uncooperative, according to the project manager. Others, who worked with the contract employee, said that she was removed for insisting that acquisition rules be followed. Later, on April 7, 2003, the real estate contracting officer was removed at the chief operating officer's request. The chief operating officer cited poor response time and poor understanding of the project as reasons for the real estate contracting officer's dismissal. The procurement managers said that the contracting officer was removed because she too attempted to follow regulations and procedures, which necessarily slowed activities.

The procurement managers attempted again to be released of responsibility for the project because they feared that their warrants were in jeopardy due to their inability to control the project's irregular activities. They modified their original delegation memorandum to formally establish an oversight board that would have authority and responsibility for the project.<sup>31</sup> On April 7, 2003,

---

<sup>28</sup> The \$400,000 figure was taken from a schedule provided by the construction management company. However, according to an email message from the TSOC project manager, the accelerated construction costs were \$600,000.

<sup>29</sup> TSA's failure to maintain documentation of key contractual decisions is a violation of the *Federal Management Records Act*, 44 U.S.C. § 3101, and the AMS § 5.3.10.

<sup>30</sup> The TSOC project manager denied that he was the project's COTR and told us that he had never been informed that he was to serve as COTR. Additionally, the deputy administrator said that TSA allowed many people to work as COTRS without COTR training.

<sup>31</sup> According to the memorandum and charter, the oversight board's purpose was to streamline the TSOC's procurement process. However, the procurement managers responsible for drafting the memorandum said that their purpose in creating the oversight board was to shift responsibility for the project to another entity.

---

the same day that the first real estate contracting officer was removed, the deputy administrator signed the memorandum and charter. The memorandum designated the deputy administrator as the chairperson and the chief operating and chief support systems officers as members. Others were to be invited as the board deemed necessary. The charter listed the oversight board's principal roles, which included:

- Approval of the strategy for construction of the facility, including requirements, costs, and schedule.
- Approval of the key decisions related to the lease, including changes to costs, schedule, or requirements.
- Assurance that lease functions are accomplished according to TSA policy and procedures and other applicable regulations and statutes.

Although the oversight board's charter granted many contracting officer responsibilities to the oversight board, the charter did not specifically relieve the contracting officers of their responsibilities for the real estate and the furniture, fixtures, and equipment contracts.

The oversight board first convened on April 10, 2003, and it met at least eight times thereafter. The real estate and the furniture, fixtures, and equipment contracting officers were not invited to any of the meetings. There is disagreement as to whether the acquisitions office director was invited to more than one meeting.<sup>32</sup>

The meetings were held regularly and featured a broad overview by the project manager of the project's progress, budget, schedule, and risk issues. The project manager determined the topics presented to the oversight board; they tended to be high-level or non-controversial issues. For example, the more than 60 construction change orders, and the decision to purchase \$370,000 in art and silk plants were not presented to the board. Of the issues that the project manager presented to the oversight board, almost all were accepted.<sup>33</sup> When we asked the project manager whether the oversight board

---

<sup>32</sup> The acquisition office director and the chief systems support officer said that she was invited to the first meeting but not to any meetings thereafter; the deputy administrator and the project manager said that the acquisitions office director attended other meetings.

<sup>33</sup> Despite the fact that the oversight board met at least nine times, the deputy administrator recalled only one instance when the oversight board rejected a proposed construction plan modification by the project manager. In that instance, the project manager wanted to install a door between the Sensitive Compartmented Information Facility (SCIF) and the TSOC operations center. The oversight board rejected the project manager's proposed modification because if the door had been installed, the entire TSOC operations center would have had to meet SCIF certification standards, which would have been cost prohibitive and unnecessary. The intelligence staff also objected to the plan to install the door.

---

modified or disapproved his plans for the project, he said that “[they] gave me a wink and told me to keep going.”

The oversight board was created to address procurement managers’ concerns that the project manager was violating procurement policy and regulations. Its charter included ensuring that the project activities were conducted according to procurement policy and regulations. The oversight board was ineffective in that it failed to obtain a complete and accurate understanding of the project manager’s decisions and activities, and did not detect or prevent the project manager from violating procurement policies and regulations.

On April 17, 2003, the chief operating officer’s staff director said in an email message to participants in the project that, “[the project manager] is the executive agent/program manager for this project. He is directly responsible to the oversight committee for this entire project (as specifically iterated by [the chief support systems officer] at our oversight meeting last week).<sup>34</sup> It is imperative that he be allowed to meet with vendors, contractors, and any other entity . . . .” The email message was in response to another disagreement regarding whether the project manager should initiate discussions with vendors without involving procurement managers.

Also in April 2003, the acquisitions office director negotiated what was called a “hybrid” contracting officer authority model with the project manager. The chief administrative officer said that the director of acquisitions agreed to the compromised authority in order to break the “deadlock” between the project manager and the procurement managers. There was no statutory, regulatory, or policy statement authorizing the creation of hybrid contracting officer authority, which, in this instance, released the real estate contracting officer from some of his duties. Under the hybrid solution, the real estate contracting officer signed every pay application that the project manager submitted, without validating or questioning its legitimacy.<sup>35</sup> The hybrid authority relinquished the real estate contracting officer’s responsibility to ensure that TSA paid a fair price for work that was acceptable. It obligated the real estate contracting officer to sign the pay applications within hours of receipt to facilitate prompt processing, too. If he were unavailable, the director of acquisitions would sign them instead. Having lost the authority to review requirements, negotiate with contractors, assist with space plans, monitor schedule progress, and validate pay applications, the contracting officer’s sole substantive role in the project was to ensure that purchases were obtained through a competitive process.

---

<sup>34</sup> The chief systems support officer does not recall making this statement.

<sup>35</sup> Pay applications are the forms used to request the contracting officer to pay an invoice. Typically, the invoice and back-up documentation are attached to the pay application so that the contracting officer may confirm that the invoice is legitimate and that the government is obligated to pay it.

---

In June 2003, the real estate contracting officer alerted personnel in the finance office of his concern about project expenses. Almost all project funds had been obligated, and if any change orders were issued, the real estate contracting officer warned that additional funding would be required. In addressing this matter, one finance staff member wrote of the project: “As far as I can tell, there are no milestones set . . . Those are the kinds of questions you can’t get answered in any kind of concrete way.” The TSA finance office had limited insight into this project. Senior management had established the project’s budget, and the finance office employees who we interviewed could not locate documentation justifying the budget or explaining how it was determined. In addition, the finance office was not provided with a construction schedule to measure accrued costs against progress. It was not until August 2003, when the project manager submitted a purchase request<sup>36</sup> for \$574,042 of additional funding that the finance office and the real estate contracting officer learned that the project manager had negotiated and approved construction change orders without notifying them.<sup>37</sup>

The AMS allows only contracting officers to enter into contracts, agreements, and other transactions on behalf of the organization.<sup>38</sup> The project manager violated the AMS by negotiating directly with vendors and by committing TSA to financial agreements with the construction management company. The \$574,042 purchase request described the need for the additional funding as “approved construction change orders,” but did not include any supporting documentation detailing the change orders. The construction management company provided us with a series of spreadsheets that listed the more than 60 change orders. A spreadsheet dated September 8, 2003, which is closest in time to the purchase request, shows change orders that total \$542,586. The difference between the purchase request funding for change orders and the total shown on the spreadsheet was \$31,456. We have been unable to determine what changes this amount represented. The most recent spreadsheet that we obtained is dated October 2, 2003, and lists \$548,637 in change orders, leaving approximately \$25,000 in unaccounted funds.

Subsequent to the project’s conclusion in November 2003, TSA issued a management directive providing policy and procedures for the acquisition and renovation of office space. On April 6, 2004, TSA’s office of acquisition issued an *Internal Guidance and Procedure Memorandum 306* that establishes the acquisition office’s concept of operations and lists contracting officers’ roles and responsibilities. Because the provisions of the directive and the memorandum were not in place during the project, TSA cannot be held to

---

<sup>36</sup> A purchase request is a document used to set aside government funds for a specific purchase. The funds are drawn against it through submission of pay applications.

<sup>37</sup> The change orders brought the project over budget, requiring additional funds to be secured for project tasks that had already been completed.

<sup>38</sup> AMS § 3.1.4.

---

them. However, they do provide a point of contrast. The duties outlined in the detailed documents reflect AMS policy and standard federal acquisition procedures. Despite the procurement managers' attempts to impose many of the procedures listed in the documents, the deputy administrator and chief operating officer allowed the project manager to ignore them.

Senior management's refusal to support the procurement managers' authority and their determination to complete the construction within a self-imposed deadline contributed to numerous instances of blatant disregard for proper procurement processes. This disregard for procurement rules and procedures created a culture of disrespect for those rules. As a result, additional violations, which are described below, occurred.

## **Acquisition of Art, Plants, and Miscellaneous Office Supplies**

In June 2003, approximately one month before the TSOC/SOCD building opened, the project manager decided to decorate the facility. The project manager and the facility operations officer paid \$500,000 to a tool company for artwork, decorative items, and miscellaneous supplies. The agreement to purchase the items was never committed to writing. The facility operations officer insisted that the tool company submit its invoice before the purchases had been finalized. The tool company used its estimated costs to develop the \$500,000 total. TSA was unable to provide us with either the estimated accounting or the final accounting of the items purchased. Upon our request, the tool company provided us with its final list of products delivered under the agreement and information for determining the actual costs for each.<sup>39</sup> Following our line-by-line accounting of the more than 70 items purchased, we determined the actual costs of the items purchased, as follows:

- \$252,392 for artwork.
- \$29,032 for the services of an art consultant and her assistant.
- \$30,085 for decorative silk plants.
- \$13,861 for miscellaneous office supplies.

The agreement included a 20% mark-up, which we calculated to be \$65,074,<sup>40</sup> and a credit of \$26,243 for future purchases.<sup>41</sup> These actual costs totaled

---

<sup>39</sup> The vendor gave us the invoices it received from the providers of goods and services. We reconciled the invoices' products and costs with the vendor's final list of products, such as artwork, plants, and miscellaneous items, to determine the actual costs for each product or service provided under the agreement.

<sup>40</sup> We had to determine the terms of the oral agreement from the parties' recollections during our interviews. The facility operations officer told us that the agreement between the parties was that the vendor would pass the direct costs of the

---

\$414,687. The remaining \$83,313, which is the difference between the tool company's estimated and actual costs, was an overcharge. Neither the tool company nor TSA reconciled the final costs with the invoiced estimated costs. Accordingly, the vendor received an \$83,313 overpayment.

The purchase of approximately \$370,000 for art and silk plants to decorate an office closed to the public and accommodating approximately 79 federal employees was excessive and wasteful.<sup>42</sup> Furthermore, the \$26,243 credit allowed purchases that did not require approval or tracking. Establishing such a credit violates a federal statute prohibiting advance payments.<sup>43</sup> The \$83,313 overcharge is a violation of the same statute, which bans payments exceeding the value of the article purchased.<sup>44</sup>

When a federal entity seeks to decorate new office space, it must devise a plan for decorating the building, which should be approved by the agency.<sup>45</sup> The AMS rules and federal regulations provide that only contracting officers should enter into agreements and contracts<sup>46</sup> and that those agreements should be documented in writing.<sup>47</sup>

The project manager did not form a plan. Instead, without approval, he decided in June that the building should have art on the walls for its July opening. He asked the facility operations officer to obtain the art and purchase it using the real estate construction funding. The facility operations officer said that time constraints did not allow for the competitive bidding process. He spoke with one vendor, but disliked the initial price quoted. He then contacted a former business associate, the owner of a tool company, which became the "vendor." Never had the tool company offered an interior decorating or art supply line of business before. Yet, it agreed to select, purchase, and install the art and plants for the TSOC project. The agreement was never documented. We had to rely, therefore, on the recollections and representations of the facility operations officer and the tool company, which varied. Moreover, the project manager and facility operations officer did not

---

art, silk plants, and miscellaneous items to TSA. The tool company would pay the shipping costs and charge a mark-up fee of 30%. The tool company's attorney told us that the markup fee was 20% based on estimated costs and that the tool company did not charge for labor, overhead, or expenses. He also characterized the agreement as a fixed price contract based on estimated costs.

<sup>41</sup> Eventually, the TSOC expended the credit with purchases of office supplies and furniture.

<sup>42</sup> This figure comprises 49 FAMS and 30 TSOC employees.

<sup>43</sup> 31 U.S.C. § 3324. Advance payments for certain contract financing are permissible under 41 U.S.C. § 255, which permits such payments when they follow certain procedures. However, as far as we can determine, the facility operations officer did not follow the law.

<sup>44</sup> *Ibid.*

<sup>45</sup> 41 C.F.R. § 101-26.103-2 (2003).

<sup>46</sup> AMS § 3.1.4.

<sup>47</sup> 31 U.S.C. § 1501 (a)(1).

---

inform the real estate contracting officer about the agreement to purchase decorative items.

Before all the art was purchased and at the facility operations officer's urging, the tool company submitted an initial invoice for project "enhancements" of \$473,757, which was based on the tool company's estimate of costs. The facility operations officer asked the tool company to withdraw the invoice and instead issue three, which together would total \$500,000. The facility operations officer instructed the tool company to submit the invoices to the construction management company and label the purchases as "equipment and tools." Labeling the purchases as "equipment and tools" would make them appear to be within the scope of the real estate contract when in fact they were outside its scope. The facility operations officer also instructed the vendor that the \$26,243 difference was to be treated as a credit from which TSA could order additional, unspecified items.

Representatives from the tool company said the tool company had to "manually construct" the three new invoices because its accounting system did not have the capability to change invoices after they had been issued. It submitted the three new invoices to the construction management company in the amounts of \$159,000, \$175,000, and \$166,000 for a total of \$500,000. Instead of following the facility operations officer's instruction, the invoices referred to the purchases as "furniture, fixtures, and equipment."

The construction management company initially resisted accepting the invoices and incorporating them into its bill to TSA. Under pressure from the project manager, however, it added the charges to its list of change orders. Although the project manager and construction company completed paperwork documenting each of the more than 60 other changes, change order paperwork for the change order relating to the \$500,000 purchase was not completed. Upon advice from legal counsel, the construction management company did not follow the project manager's suggestion to add its own mark-up to the three invoices, due to the irregularity of the transaction.

The artwork arrived in separate shipments. The pieces were not inventoried, and no one confirmed that all of the pieces that had been ordered were delivered. While it appears that the tool company shipped the complete order, we had difficulty locating all of the art listed on the invoice. Much of it had been removed, especially in the offices, so that the occupants could install their own photographs, art, and memorabilia. In addition, TSA could not give us any records of the purchase, other than the purchase request for change orders submitted by the project manager. TSA did not have copies of the tool company's invoices, the shipping documents, supplier receipts, cost estimates,

---

or email messages documenting purchase selections. We recovered those documents from the tool company.<sup>48</sup>

We found no evidence that TSA independently evaluated the reasonableness of the tool company's price, questioned the suitability of using a tool company to buy art, or ensured that funding was available for this obligation.

## Use of Purchase Cards

The federal purchase card program was initiated in 1985 to streamline procurement of small dollar purchases. In 1994, the program was simplified to exempt "micro-purchases" of \$2,500 or less from the general requirement for competition and other procurement rules, instead allowing them to be obtained with a P-card. TSA adopted the P-card program and produced a manual detailing the policies and procedures for P-card use.<sup>49</sup> The P-card manual permits the purchase of low cost supplies, such as cables, computer keyboards, cell phone batteries, and other inexpensive items.

In August 2003, TSA issued P-cards to two project members: one to the facility operations officer, who had an initial \$35,000 monthly purchase limit; and the other to a TSOC employee who had a \$10,000 monthly limit.<sup>50</sup> The project manager was the approving official for both. The two P-card holders purchased supplies and other items for the TSOC/SOCD. TSA's P-card program management detected anomalies in the project's P-card usage in September 2003. Apparent violations continued in the ensuing months. In November 2003, due to growing concern about possible abuses, P-card program officials referred the project's P-card problems to OIAPR. OIAPR reviewed the situation and in May 2004 submitted its findings to our office for review.

### General P-card Policy Violations

Each P-card holder is monitored by an approving official who is responsible for guarding against P-card abuse, as well as for reporting P-card misuse.<sup>51</sup> A TSA P-card holder must receive prior written authorization for a purchase from the approving official and must maintain a log of purchases for monthly review by the approving official. TSA provided a purchase log template to

---

<sup>48</sup> These omissions in record keeping violated the *Federal Records Management Act*, which requires government employees to maintain records of purchases. 44 U.S.C. § 3101.

<sup>49</sup> We relied upon the TSA Purchase Card Manual (2004) for this information because TSA was not able to locate the 2003 manual. We were able to confirm that the rules cited in the 2004 manual were the same as those listed in the 2003 manual.

<sup>50</sup> Both P-card holders' monthly limits were raised to \$50,000 on September 25, 2003.

<sup>51</sup> TSA Purchase Card Manual (2004).



---

P-card holders to assist them in establishing and maintaining the logs. In addition to issuing prior written authorization for each purchase, approving officials are required to review the purchases each month, ensure that the P-card holders maintain their purchase logs, and report any P-card misuse.<sup>52</sup>

The two P-card holders used their P-cards to purchase \$136,589 in goods from August through January 2003.<sup>53</sup> They did so without obtaining prior authorization from the approving official and without logging their purchases. The approving official did not review their monthly purchases or ensure that they maintained their purchase logs during that period.

---

<sup>52</sup> Ibid.

<sup>53</sup> The facility operations officer left employment with TSA in October 2003. He used his P-card purchases in August through September 2003 only.

---

### Split Purchases

TSA P-card policy prohibits P-card holders from “splitting” purchases, a means for exceeding the \$2,500 limit by breaking the purchase cost of an item of equipment, supplies, or services into smaller amounts and invoicing the amounts separately. The prohibition against split purchases was conveyed to the project’s P-card holders in the online P-card training and through the cover letter that accompanied the P-cards.

Both P-card holders engaged in split purchases with the tool company that had provided the \$500,000 of art, silk plants, and miscellaneous items. The P-card holders not only ordered purchases well in excess of the \$2,500 single purchase limit, but also communicated with the tool company to split the purchases so that numerous credit card transactions would be created, each for under \$2,500, until the total purchase price was achieved. For example, in regard to one large \$47,449 purchase, the tool company sent an email message to both P-card holders asking, “let me know which credit card you want this processed on if the limits are \$2,500 per day I will need to hit the card multiple times.” In an email message one week later about the same purchase, the tool company wrote to the facility operations officer, “Your large order total amount \$47,449,<sup>54</sup> I have ran \$22,422 to date with a balance to run of \$25,025; I have been running a different amount each time.”

Between August 2003 and November 2003, the single purchase amount was exceeded ten times with the tool company splitting the purchases over 58 credit card transactions. The total expenditure for the ten split transactions was \$121,897, and individual purchase prices ranged from \$3,350 to \$47,449. With regard to the latter, the cardholder not only exceeded the \$2,500 limit, but the \$35,000 monthly limit amount, as well.

---

<sup>54</sup> The original order was for \$47,449. Subsequent changes to the order brought its total purchase price to \$47,727.

Date	Purchase Price	Number of Credit Card Transactions	Description
9/2/03	\$7,470	3	Printer toner cartridges
9/9/03	\$47,449	22	Furniture, briefcases, coffee pots, 100 TSOC desk kits
9/25/03	\$13,000	6	2 storage containers
9/26/03	\$3,350	2	Projector and bulbs
10/17/03	\$5,226	3	Furniture, projection screen, office supplies
10/20/03	\$6,886	3	Furniture, general office supplies
10/23/03	\$11,672	5	Printer toner cartridges
11/5/03	\$17,850	10	SOCD desk kits, office supplies
11/5/03	\$4,165	2	Office supplies
11/18/03	\$3,082	2	Office supplies
Total:	\$120,150	58	

**Table 1: Summary of Split Transactions**

Inappropriate, Costly Purchases

TSA P-card policy prohibits the use of P-cards to purchase personal convenience items, such as coffee pots and televisions, unless the item supports TSA mission-related purposes. Only a P-card program official, the organization point of contract, can make exceptions to that rule after receiving written justification of a bona fide need for the items.<sup>55</sup> P-cards may not be used to purchase furniture.<sup>56</sup>

In violation of TSA P-card policy, the two P-card holders used the cards to acquire personal goods, such as 10 coffee pots, 3 leather briefcases, and 52 coffee mugs, from the tool company. The P-card holders did not submit the required written justification to the organization point of contract to obtain authorization for these purchases. They also purchased from the tool company chairs, loveseats, tables, lecterns, and armoires with their P-cards, items expressly forbidden by TSA P-card policy.

The Federal Property Management Regulations require each agency to establish personal property inventory systems to ensure that the total cost of personal property purchases are kept to a minimum.<sup>57</sup> One of the P-card holders ordered, from the tool company, 100 “desk kits,” which cost \$359 each.<sup>58</sup> Because the supplies had to be broken out and assembled into

<sup>55</sup> TSA Purchase Card Manual (2004).

<sup>56</sup> TSA Purchase Card Manual (2004). TSA Real Estate Services Policy Manual, October 23, 2002.

<sup>57</sup> 41 C.F.R. § 101-27.101.

<sup>58</sup> The desk kits included various office necessities such as legal pads, pens, a trashcan, and a stapler.

separately boxed kits, they were more costly than simply purchasing the supplies in bulk and storing them in a central location.

Vendor Choice

From September through January 2003, the P-card holders used their P-cards to purchase \$136,589 in supplies from the tool company.<sup>59</sup> As with the sale of art, the tool company had never before sold office supplies until the facility operations officer asked it to do so for the facility.<sup>60</sup> The facility operations officer told the other P-card holder that the tool company was the preferred vendor for providing the supplies they sought to purchase. The two spent \$3,096 on their P-cards in August 2003; \$2,381 of that amount, or 77%, went to purchases from the tool company. In September, \$77,641 of the \$95,398, or 81%, of their total P-card expenditures went to the tool company; 98% of the money spent on their P-cards went to the tool company in October. In November 2003, 83% of the P-card expenditures went to the tool company. The P-card program office detected split and improper purchases from the tool company in December 2003 and spoke with P-card holder about them. The percentage of money directed to the tool company on P-card purchases declined in December to 24%, and in January it dropped to 7%. The tool company provided us with some of the wholesalers’ invoices for the TSOC supplies. We compared the costs to the tool company as reflected in those invoices with the costs the tool company charged TSA to determine the vendor’s mark-up. The mark-up the tool company received for those purchases varied from 22% to 78%.

P-card holders’ purchases for this period are summarized in Table 2, below:

Month	Purchase Amount with Tool Co.	Purchase Amount with All Other Vendors	Total Purchase Amount for All Vendors	Percentage of Purchase Amount Directed to Tool Co.
August	\$2,381	\$715	\$3,096	77%
September	\$77,641	\$17,757	\$95,398	81%
October	\$27,384	\$651	\$28,035	98%
November	\$26,536	\$5,296	\$31,832	83%
December	\$1,907	\$6,019	\$7,926	24%
January	\$740	\$9,173	\$9,913	7%
Total:	\$136,589	\$39,610	\$176,200	78%

**Table 2: P-card Purchase Summary**

<sup>59</sup> The combined total of artwork, decorative furnishings, and office supplies bought from the tool company was \$620,344.

<sup>60</sup> The tool company eventually created a separate company that offers office supplies through a GSA schedule. The business has grown and serves more than 80 federal, state, and private customers. The art supply line of business was closed after the TSOC project was completed.

---

### P-card Certification Impropriety

The two P-card holders may not have taken the mandatory training and the test necessary to obtain a P-card.<sup>61</sup> A TSA employee reported that a contractor working at the TSOC took the test for the two P-card holders in violation of TSA policy. When questioned about the allegation, one of the P-card holders confirmed that he did not take the test; the other cardholder said that a contractor entered the online test site at the computer while the P-card holder told him which answers to enter. The contractor confirmed the report of the latter P-card holder and said that he entered the answers provided to him by the former P-card holder. Given the frequency and severity of the P-card infractions, it appears that either the P-card holders did not know the P-card rules and passed the P-card test by wrongfully receiving assistance, or they knew the rules and willfully violated them.

## **Questions of Impartiality**

The TSOC facility operations officer had a prior business and personal relationship with the owners of the tool company from which he made the art and silk plant purchases, as well as most of the P-card acquisitions. The tool company's owners had sold merchandise at a store that the facility operations officer had managed before he began working for TSA at the TSOC. Additionally, in September 2002, the tool company owners had offered this person a position with its subsidiary as vice president of global sales. He declined the position. In April 2003, he secured the TSOC facility operations officer position. On the questionnaire for national security positions, a form that federal employees must complete, he listed one of the tool company's owners as a personal reference.

Federal law and the *TSA Guide to Major Ethics Rules* direct employees to act impartially and not give preferential treatment to anyone or any organization.<sup>62</sup> Additionally, employees may not use their public office for private gain.<sup>63</sup> Employees are instructed to avoid any actions that would create the appearance that they are violating legal or ethical standards.<sup>64</sup>

In June 2003, within three months of being hired by TSA, the facility operations officer asked the tool company to supply art, silk plants, and other non-tool related items for the TSOC. Although the tool company successfully provided those items, the decision to contract with them was questionable, in

---

<sup>61</sup> TSA policy requires prospective P-card holders to undergo a GSA web-based training course and test. Upon successful completion of the test, a certificate is issued and TSA secures a P-card for the applicant.

<sup>62</sup> *Financial Conflicts of Interest*, 5 C.F.R. § 2635 part D.

<sup>63</sup> *Ibid.*

<sup>64</sup> *Ibid.*

---

that they had not offered that line of business in the past. Furthermore, the decision was exacerbated because the tool company was not selected as a result of a competitive bidding process, which calls into question the facility operations officer's impartiality. Finally, a purchase agreement between TSA and the tool company was not documented, and the facility operations officer instructed the tool company to describe the purchase inaccurately in its invoice. The facility operations officer's action in that regard suggests that he attempted to conceal the nature of his dealings with the tool company. The facility operations officer's decision to use a company that had no history of providing the services sought; his failure to use a competitive bidding process to select a supplier; and, his apparent attempts to conceal certain transactions raise concerns about adherence to his ethical obligations.

The facility operations officer's motivations are further impugned by his actions a few months later. In September, he asked the tool company to expand its line of business to include providing office supplies. He instructed the other P-card holder that the tool company was the provider of choice for office supplies. Throughout September, he and the other TSOC P-card holder used their cards to purchase items prohibited by P-card policy from the tool company, and they engaged in transactions with the tool company to conceal their violations of P-card policy. Sometime in October 2003, the facility operations officer resigned from his TSA position.<sup>65</sup> Within a few weeks, he started a new business venture with the owners of the tool company, receiving shares of the new company's stock and an annual salary increase of approximately \$34,000.<sup>66</sup>

The facility operations officer violated TSA rules and federal regulations to avoid the appearance of ethical conflicts, and may have violated the requirements to be impartial and not use his public position for private gain. We have referred this matter to the Department of Justice for consideration of further action.

## Facility Enhancements

### Fitness Center

While planning the SOCD, as a component of the FAA, FAMS decided to equip the facility with a fitness center. Subsequently, TSA determined that the TSOC should have a fitness center also. Once it was evident that the organizations would share operational space, FAMS and TSA decided to

---

<sup>65</sup> TSA did not prepare documentation specifying the facility operations officer's actual departure date from TSA employment. TSA was able to confirm that a paycheck was issued to him for the period ending October 30, 2003, but cannot determine how many days he worked during that pay period.

<sup>66</sup> The new business was incorporated on October 23, 2003.

combine fitness centers. Unlike the fitness center project at TSA headquarters, for which an analysis of the requirements was completed and an administrative process was established to guide its development, the project manager did not conduct an adequate analysis or obtain approval to justify building and equipping the TSOC portion of the fitness center. We confirmed that a struggle existed between the procurement managers and the project manager regarding the fitness center. The deputy administrator told us that he had ordered that the fitness center not be equipped. On the other hand, the project manager said that the deputy administrator had supported it. There is no documentation to confirm either account. Despite the concerns of the procurement managers and, perhaps, those of the deputy administrator, a fitness center was built.

The TSOC/SOCD exercise facility is 4,250 square feet. Total construction and equipment costs were approximately \$350,000. There is an additional monthly charge included in the building rent for towel laundry service. At the time it was constructed and outfitted, 30 TSOC and 49 SOCD employees worked at the facility. Of the 49 SOCD personnel, only a few had position descriptions with a mandatory physical fitness requirement.

TSA began construction of a 6,921 square foot fitness center for approximately 2,550 employees at its headquarters building in the fall of 2004. The estimated cost to construct and equip the headquarters' facility is \$650,000.<sup>67</sup> As shown in Table 3, the headquarters fitness center will serve about 2,480 more staff members than TSOC/SOCD's fitness center, yet the headquarters facility is only slightly larger. The disparity in the size and potential serviceability of the fitness centers is evident when comparing the ratio of square footage per user. At the headquarters fitness center, if just 15% or about 380 staff used the center simultaneously, each user would have about 18 square feet of workout space. However, if all 79 TSOC/SCOD staff used the TSOC facility at the same time, an unlikely scenario, each would have about 54 square feet or approximately three times the workout space.

<b>Fitness Center Location</b>	<b># Employees Fitness Center to Accommodate</b>	<b>Total Square Footage</b>	<b>Construction/ Exercise Equipment Costs</b>
Headquarters	2,550	6,921	\$650,000
TSOC/SOCD	79	4,250	\$350,000

**Table 3: TSOC/SOCD and Headquarters Fitness Center Summary**

Federal agencies may provide fitness centers and programs to their employees as a preventative health service under federal regulations.<sup>68</sup> However, both

<sup>67</sup> The headquarters fitness center also will require user fees to support its operations and new equipment needs.

<sup>68</sup> 64 Comp. Gen. § 835 (1985).

---

GAO and Office of Personnel Management policy caution that such expenditures should be carefully monitored.<sup>69</sup> TSA did not carefully monitor fitness center costs, and in comparison to its headquarters fitness center, the TSOC/SOCD's costs and size are wasteful.

### Kitchen Appliances

When the project manager and the construction management company were conducting initial planning for the TSOC/SOCD, estimates to develop the property included \$9,750 for equipping seven kitchens with the following appliances: five refrigerators, three dishwashers, four microwave ovens, and three ice makers. The plans also included an additional refrigerator, microwave oven, dishwasher, and icemaker for the CAPPS II program. After the initial estimate was developed, the CAPPS II program decided not to locate in the building. The space that was to be dedicated to CAPPS II was not developed, including the associated kitchen space. The project manager decided to purchase an additional five refrigerators, two of which were stainless steel Subzero models that cost more than \$3,000 each, one less dishwasher, five additional microwave ovens, and one additional icemaker. The total for the new purchases was \$17,853, almost double the original estimate.

The project manager strayed from the original construction estimate by increasing the number of appliances, thus doubling the cost, without justification or approval from senior management or the real estate contracting officer. The contracting officer disputed the purchase of some of the appliances, but when rebuffed by the project manager, acceded to him.

Federal agencies may provide kitchens for personnel to contribute to the efficiency of the agency's operations and the health of personnel.<sup>70</sup> A recent Comptroller General decision advises that agencies should develop a policy to limit costs, review need for specific equipment, and establish a budget for equipping the kitchens.<sup>71</sup> TSA did not have a policy in place when the project manager provided kitchens for the TSOC/SOCD employees. There was no process or documentation indicating that the number and style of appliances and the number of kitchens for approximately 140 federal and contract employees was warranted.

### Office Space Utilization

---

<sup>69</sup> 70 Comp. Gen. § 190 (B-240371, January 18, 1991); *Principles of Federal Appropriations Law*, Third Edition (2004), Chapter 4, p. 4-247-248.

<sup>70</sup> B-302993 Comp. Gen. (June 25, 2004).

<sup>71</sup> *Ibid.*



In December 2002, TSA senior management finalized the TSOC/SOCD space plans without consulting with the contracting officer, in violation of the AMS.<sup>72</sup> The plan's workstation areas and office sizes appeared to be within acceptable government standards. The project manager approved the space plans and never provided the contracting officer with a copy. The first set of working blue prints used to start construction on the facility was delivered in April 2003. After the permit drawings for the project were delivered in May 2003, the project manager decided, without authorization from senior management or the contracting officer, to modify the original plans by increasing the office sizes and altering most of the workstation sizes. The cost for construction and design changes was \$8,144. The project manager exceeded the scope of his authority by making a unilateral decision to increase the size of workspaces without approval from senior management, and by committing TSA to construction changes, a role that the AMS rules reserve for contracting officers.<sup>73</sup>

The project manager modified all of the offices and many of the workstation sizes to exceed TSA space standards, some by as much as 100%. TSA space standards allow 300 square feet for senior executive offices and 225 feet for executive offices, yet both senior executive and executive offices at the facility are 342 square feet.<sup>74</sup> Supervisors in pay bands L, K, and J are authorized to have 120 square foot offices, according to TSA space standards. Those employees occupy offices up to 240 square feet or twice the size authorized by TSA space standards. TSA standards allot workstations of 64 square feet to pay bands A through G, non-supervisory pay bands L, K and J, and all contractors. The TSOC workstations vary in size from 48 square feet to 96 square feet, some falling within the standard and some exceeding it.

The following table compares TSA standards for workspace sizes and the extent to which the project manager exceeded the standard:

Space Type	TSA Standard Size (sq. ft.)	Maximum TSOC Size (sq. ft.)	Space Exceeding the Standard (sq. ft.)	% Exceeding Standard
Office - Sr. Exec SW01	300	342	42	14%
Office - Executive	225	342	117	52%
Office - Pay Bands L-K, Supervisors	120	240	120	100%
Workstation - Pay Bands L-K, non-supervisory Pay Bands A-G, Contractors	64	96	32	50%

<sup>72</sup> AMS § 5.3.2.

<sup>73</sup> AMS Appendix A, Roles and Responsibilities.

<sup>74</sup> TSA provided us with the square footage of the TSOC/SOCD offices and workspaces.

---

**Table 4: Workspace exceeding TSA Standards**

Additionally, some of the assignments of personnel to TSOC's workspace were questionable or improper. The project manager placed himself in one of the 342 square foot offices, although TSA space standards granted his pay band position a 120 square foot office. Others are currently placed improperly as well. Some non-supervisory pay band K and L employees occupy the 120 square foot offices when TSA space standards allocate 64 square foot workstations to those positions. Similarly, several contract employees should have 64 square foot workstations, but occupy offices that are twice as large. Two of the four largest offices were developed for the TSA Assistant Secretary and the chief operating officer. The permanent offices for those positions are located at the TSA headquarters building. Accordingly, two of the TSOC's senior executive offices are unoccupied.

In addition to increasing the size of offices, the project manager decided to provide cable television service and desktop television monitors in 45 of the 55 TSOC/SOCD offices. The desktop monitors are part of a Unisys Information Technology Management Services contract in which TSA rents these monitors for three years at a total cost of \$63,099. TSA was unable to provide any justification or documentation supporting the need for 45 desktop television monitors. Without the documentation, we could not find a reasonable explanation for the procurement. The number of employees receiving cable televisions seems extraordinarily excessive given the adjacent command and operations center. Moreover, at the end of three years, the televisions belong to the contractor, not to TSA.

#### Surge Capacity

After this report was written in draft, we received comments asserting that the enhanced kitchen and office space capacities were justified because the TSOC was planned as a crisis management facility that would house, and presumably feed, a large contingent of temporary workers responding to a crisis. The argument was supported by examples in which the TSOC was used during National Special Security Events. However, none of our interviews of TSA employees and none of the documents that were provided to us evidence an expectation or plan to overbuild the facility to accommodate such workforce surges. Contemporary planning or mission documents available to us do not indicate that the number of workstations, size of the gym, or the number of kitchens and kitchen appliances was determined on the basis of a plan to handle a surge capacity. In carefully reviewing documents after the surge capacity argument was raised, we found one reference as follows: "Manned 24/7 by a small cadre, *with crisis response cells 'standing-up' when*

---

*required.*” (Emphasis added).<sup>75</sup> Later documents, more proximate to the planning and construction of the TSOC, are not more specific. The building plans, 12.16.02 revision, are not informative. While use of the center for continuity of operations, continuity of government, or crisis situation room may have been roughly contemplated, and while it is clear now that the center has extra space that may house a workforce surge, we found no evidence during our review that would relate such plans to the size of the facility and to the amount of what we called its “enhancements.”

## Recommendations

We recommend that the TSA Assistant Secretary:

**Recommendation 1:** Follow TSA policy, as well as applicable federal regulations, when acquiring real estate and procuring goods and services. The policy and regulations establish procedures to help ensure that funding is spent prudently. Although following the procedures may increase the amount of time necessary to complete purchases, it will protect TSA from wasteful and abusive acts. Specifically, the TSA Assistant Secretary should:

- a) Ensure that TSA procurement personnel coordinate all procurements with their TSA customer.
- b) Ensure that the requirements for all projects are defined, documented, and followed, so that program objectives are met in the most cost-effective manner.

**Recommendation 2:** Ensure that all contracting officers and contracting officers’ technical representatives receive training appropriate for those positions.

**Recommendation 3:** Recover the \$83,313 overpayment to the tool company and such other sums for which it may have a legal remedy.

---

<sup>75</sup> TSA Command Center (TSACC) – Operational Concept – Executive Summary, July 23, 2002 version.”

Appendix A  
Management Comments

---

U.S. Department of Homeland Security  
Arlington, VA 22202



Transportation  
Security  
Administration

MAR 25 2005

Robert L. Ashbaugh  
Assistant Inspector General  
Inspections, Evaluations, and Special Reviews  
Office of the Inspector General  
Department of Homeland Security  
Washington, DC 20528

Dear Mr. Ashbaugh:

The Transportation Security Administration (TSA) has reviewed your draft report, *Irregularities in the Development of the Transportation Security Operations Center*, regarding management controls and procurement procedures that were used in the development of the Transportation Security Operations Center (TSOC) in 2003. We appreciate the opportunity to comment and provide our input. TSA generally concurs with your draft recommendations but does not concur with several significant conclusions of the draft report. In particular, the report does not recognize the absolute criticality of achieving command and control over aviation security incidents as rapidly as possible. The events described in the draft report took place at the end of 2002 and the beginning of 2003. TSA had grown from zero to 60,000 employees during 2002 – the largest federal mobilization since World War II. It had just accomplished the stand-up of a federal screening and security workforce in all major airports. But as the former Deputy Administrator notes in his comments to your report (which are enclosed), “By the end of 2002, TSA’s ability to command and control its resources and operations were completely inadequate. Had there been a real crisis or terrorist attack we would have been in a very poor shape to respond.” In this regard, the original lease of the facility provided for acceleration of the build-out of the facility at a cost of approximately \$400,000. TSA exercised that option to accelerate. According to the Institute for the Analysis of Global Security, the cost of the terrorist attacks of September 11, 2001 was over \$100 billion, plus thousands of lives.<sup>1</sup> Accelerating the construction of the TSOC, and the resultant ability to communicate with Federal Security Directors across the country as well as with the Federal Aviation Administration, the Department of Transportation, and other federal agencies in an era of threatened terrorism is worth every dollar spent. It was also a priority project of the Department of Homeland Security and the White House.

In addition, the draft report fails to acknowledge the full mission of the TSOC. The draft report suggests that TSOC was built as an office building for 79 TSA employees, when

---

<sup>1</sup> See the report at <http://www.iags.org/costof911.html>.

[www.tsa.gov](http://www.tsa.gov)

Appendix A  
Management Comments

---

in fact it was built to provide robust 24x7x365 command and control capabilities, and also serve as a crisis management and continuity of operations center. The draft report states that many of the facility enhancements such as office size and overall capacity are wasteful, but in fact it was structured to house and support a large resident population in the case of a crisis. For example, the all-purpose room converts to a dorm and the kitchens, fitness center, and washrooms are sized to accommodate a surge of resident watch standers and senior managers from across the Federal Government. Further, the report states there were no clear administrative systems to determine physical security enhancements or how to fund them. The administrative system was in place and involved a security survey of the Cabot Tech site followed by a budget request for funding to begin security enhancements. Funding was initially not available in the Office of Security since the Cabot Tech facility was a new requirement.

The TSOC has three fundamental functions. It provides the facilities for TSA and the Federal Air Marshal Service (FAMS) to control their day-to-day operations and maintain operational awareness. The TSOC also hosts the interagency National Capital Region Coordination Center. In addition, the facility is a crisis management facility, built to accommodate a surge of watch standers and managers from multiple agencies and support them in a prolonged crisis. An example of this occurred during the 2005 Inauguration, a National Special Security Event. There was intelligence that there may be an increased terrorist threat during this period. As a result, the facility became the temporary home to the interagency Joint Field Office operations under the supervision of the United States Secret Service. In this regard, the facility hosted personnel from multiple agencies which were responsible for the security of the Inauguration. Finally, the facility provides essential overflow space for training and resource intensive special projects, training exercises and conferences. All of these functions result in a surge of personnel assigned to and using the facility. In fact, we are becoming concerned that the facility as built is insufficient for future operational and continuity of operations requirements and are planning to increase the space.

Finally, the draft report concludes that acquisition personnel were not involved in the original acquisition of the lease or in the build-out, and if they had been involved, the procurement irregularities would not have occurred. While it is certainly true that as TSA has developed a more robust administrative staff and turned its attention to developing more traditional policies and practices, TSA is more able to document the rationale for procurement decisions. TSA has also adopted more formal program management certification and training and experience requirements, and the quality of its acquisitions is improving tremendously. But it should be noted that the FAMS, using its own real estate management and acquisition staff, chose the site, conducted several rounds of negotiations with the lessor, and prepared space plans. Because the facility exceeded the FAMS' requirements, the FAMS proposed to TSA that TSA co-locate with the FAMS. This proposal was very attractive because the extraordinary growth of TSA's operations and responsibilities had far outstripped its command and control requirements. The eventual lease was signed by a TSA contracting officer because of the cost of the facility.

Appendix A  
Management Comments

---

Additionally, there are three areas regarding acquisition in which the draft report is incorrect. First, to the extent that the draft report implies that the procurement director delegated procurement authority to the Program Manager, this is untrue. The procurement director proposed such a delegation, but it was never signed by the Deputy Administrator because of concerns on the part of senior management that the Program Manager lacked procurement training and experience and needed the assistance of the procurement specialists. Second, to the extent that the draft report indicates that the purpose of the Oversight Board was to review routine procurement documents, this is untrue. The purpose of the Oversight Board was to review timelines and major milestones, and to keep the project on track. The senior leaders who participated on that Board were not provided with purchase card invoices or other routine procurement documents and did not review these documents.

Finally, it should be noted that the misconduct described in the draft report, that is, the splitting of purchase card procurements, the use of improper sources by the purchase card holders, the request for false invoices and the potential ethics violations, was done by lower level employees. These employees took steps to hide their misconduct through the splitting of the procurements and request for false documents. In spite of these efforts to hide their misconduct, TSA's Purchase Card Manager first alerted TSA's Office of Internal Affairs about improper card usage. Following a preliminary investigation and with the support of TSA's leadership, Internal Affairs referred the matter to your office. The individuals who participated and directed the improper activities are either no longer at TSA, or are pending disciplinary action. In cases where TSA employees may have been involved in illegal activity, the matter has been referred to the Department of Justice for action. Thus, the checks and balances of a procurement system were in place and resulted in the appropriate investigation and corrective action.

The urgency of the transportation security mission drove the acquisition activities in the stand-up of TSA. We learned important lessons from our experiences on the early contracts, and have steadily progressed towards a strong and robust acquisition environment. The Office of Acquisition is a key indicator of our commitment. When the TSOC lease process was initiated, the Office of Acquisition was buried 3 levels deep in the CFO organization. It is now at the Assistant Administrator level, equivalent to the CFO. In late 2003, the Office of Acquisition stood up an Acquisition and Program Management Support division to focus on certifying, training, and providing day-to-day assistance to and advocacy for TSA's program managers. Well over 1,000 TSA employees have been trained to date in key acquisition topics and the PM certification program is robust. In June of 2004, TSA held an all hands for TSA program managers, to highlight the importance of building good business decisions into mission solutions and following sound acquisition practices. To instantiate best practices into our standard acquisition operating procedures, TSA has drafted a comprehensive set of policies and management directives.

These efforts to strengthen procurement and sound business management at TSA continue. At the beginning of FY05, TSA continued a program to strengthen and mature its acquisition program in four key areas.

1. Continue to support the TSA mission with efficient, expedient, and accurate contracts. We have identified the greatest risk to TSA's support of the mission through contracts as the ability to attract, recruit, and retain qualified acquisition personnel. Initial staffing in the Office of Acquisition was barely adequate to award the contracts in time to meet Congressional deadlines, much less instantiate good business processes. Over the past year TSA has raised the Office of Acquisition's staff ceiling by nearly 30%. Additionally, a percentage of TSA's budget has been earmarked for contract oversight, which includes support from the Defense Contract Audit Agency and Defense Contract Management Command, and independent contractor support.
2. Significantly improve acquisition and program planning. The Office of Acquisition is focused on strengthening the program planning function. The office developed and now coordinates an Investment Review Board process that drives successful program decisions to providing direct subject matter expert support to program managers. Additionally, it provides direct support to program offices to assist them in developing sound acquisition and program strategies.
3. Significantly improve program management and administration. Well-trained, certified program managers are fundamental to robust acquisition programs, but were initially in short supply at TSA. To address immediate knowledge gaps in key areas, the Office of Acquisition rolled out a set of workshops in October 2003. In early 2004, TSA worked with DHS to implement a PM certification program and the first TSA applications were received in June of 2004. Also, the Office of Acquisition developed a Management Directive regarding acquisition planning, review, and reporting that significantly tightens up the overall process.
4. Build and mature the TSA acquisition infrastructure. TSA is focused on three infrastructure areas: human resources, systems, and policies and procedures.

*Human Resources:* In addition to increased staff, the Office of Acquisition is developing a longer-term strategic human capital plan to manage recruitment and retention issues, provide for career development, and succession planning. The plan will provide a roadmap for strengthening the current workforce (training, communication, professional development), as well as outline strategies to recruit highly qualified individuals and manage attrition. Simply put, the strategy will outline a plan to develop the right people with the right knowledge and skills for each of TSA's acquisition programs.

*Systems:* On the systems level, TSA is implementing PRISM, an integrated finance and procurement system which will streamline and strengthen our processes and integrate acquisition with finance and asset management.

*Policies and Procedures:* TSA is exempt from the federal regulations (Federal Acquisition Regulation) that other acquisition organizations use, per legislation. TSA uses the FAA's Acquisition Management System (AMS) instead. Given the lack of local policies and procedures, early business agreements lacked structure and thought processes based on decades of acquisition experience. A set of local policies and procedures has been developed, and is regularly reviewed and improved to guide acquisition at TSA.

Appendix A  
Management Comments

---

TSA has accomplished extraordinary success as a stand-up organization; however, we have transitioned from rollout and need stronger, more mature processes for steady state. As TSA recruits its top managers, public stewardship is a key consideration – and a performance measure for those selected. An Ethics Program has been developed for all employees and is led by the Office of the Chief Counsel. Training is provided to new and incumbent employees, and primarily is designed to ensure that executive branch employees act in the primary interest of the public, and are impartial in the performance of their official duties, including those involving acquisition. Your draft report highlights the potential need for procurement integrity training. While not a specific recommendation, TSA plans to develop and deploy targeted training for procurement integrity within the next 6 months.

The Office of Acquisition has developed and leads a series of workshops on key acquisition processes ranging from statement of work development to interfacing with industry and using Contracting Officer's Technical Representatives (COTRs) effectively (see Enclosure 3). The workshops include segments on legal constraints on acquisition actions; the Office of Acquisition is currently reviewing the training materials for each of the workshops to ensure appropriate emphasis is placed on prudent use of Government property and integrity.

Finally, ongoing communication of my expectations regarding TSA's acquisition and procurement activities is critical. Shortly, I will be releasing a broadcast message to all TSA employees emphasizing the importance of following sound business practices as well as all applicable statutes and regulations (see Enclosure 4). I expect that our acquisition workforce will provide strategic business advice to me and my staff – and that program managers will reach out to the Office of Acquisition to assist throughout the lifecycle.

Integrity is one of our core values, along with innovation and teamwork. I recognize that the overall integrity of our organization depends heavily on the manner in which we execute our acquisition program. As we continue our work to mature the acquisition and procurement function, we will factor this report in our efforts.

Sincerely yours,



David M. Stone  
Assistant Secretary



Appendix A  
Management Comments

---

**Enclosures**

1. **Response to IG Recommendations**
2. **Response from former TSA Deputy Administrator**
3. **Acquisition Workshops**
4. **Broadcast Message**

**Response to Recommendations**

**Recommendation 1:** Follow TSA policy, as well as applicable federal regulations, when acquiring real estate and procuring goods and services. The policy and regulations establish procedures to help ensure that funding is spent prudently. Although following the procedures may increase the amount of time necessary to complete purchases, it will protect TSA from wasteful and abusive acts. Specifically, the Assistant Secretary should:

a) Ensure that TSA procurement personnel coordinate all procurements with their TSA customer.

**Response: Organizational Placement:** Initially, the acquisition function was somewhat buried in TSA's structure at a level that could not coordinate effectively coordinate all procurements – three layers deep in the Chief Financial Officer (CFO) organization. Recognizing that the Office of Acquisition could not coordinate the TSA's acquisition program from that level, much less enforce acquisition policies and statutory law, in the fall of 2004 the office was elevated to the Assistant Administrator level (equal to the CFO, Director of Human Resources, etc.).

**Use of Integrated Teams:** In its day-to-day operations, TSA's Office of Acquisition works closely with program office customers. In fact, a fundamental principle of the Acquisition Management System (AMS) is use of a team concept for managing procurements, including contracting staff, budget and financial staff, technical experts, and the program manager.

**Training:** Realizing that some acquisition challenges arose due to a lack of knowledge and understanding, in the summer of 2003, the Office of Acquisition developed a workshop program for all TSA employees on key areas of acquisition planning and management. The goal of the program was to provide basic knowledge of not only policy, but best practices in acquisition. The workshop list is provided as Enclosure 3, and several workshops reinforce the teaming concept and clearly lay out roles and responsibilities for the process. For example, the Interfacing with Industry and Effectively Using COTRs workshop is designed for all TSA employees who are involved in the acquisition process, especially those in the planning and execution of TSA programs and projects leading to a procurement action. It is an interactive session to discuss required interactions of the program manager, contracting officer, contracting officer technical representative (COTR), industry and other personnel from the organization where an acquisition program resides. The Acquisition Plans workshop provides refresher training on TSA policy for participants in the process, as well as contents of acquisition plans. Nearly 400 TSA employees have participated in these two workshops since rollout out in November of 2003 and May of 2004, respectively. Well over 1000 employees have participated in the workshops.

b) Ensure that the requirements for all projects are defined, documented, and followed, so that program objectives are met in the most cost-effective manner.

**Response: Requirements Development:** While a fundamental tenet of contracting is that requirements definition drives the cost experience, in the rollout phase of TSA contracts the necessary emphasis was on schedule and mission – not robust requirements

Appendix A  
Management Comments

---

Response to Recommendations  
Enclosure 1

and cost control. Unfortunately that sense of urgency diminished the importance of defined, rationalized, and documented requirements. Recognizing this challenge, the Office of Acquisition has been working closely with program offices to develop performance-based requirements that not only meet the mission, but provide for cost control, competitive processes, and access for socioeconomic programs. The TSA and DHS investment review boards and councils provide formal, strategic direction for acquisition of mission requirements.

**Program Management Certification:** One key enabler for better requirements is to select and promote program managers that have training and experience necessary for the size, scope, and complexity of the program. The Office of Acquisition has been working with program managers to ensure that they are trained and certified in accordance with DHS standards, established in its MD 0782.

**Centralized Warrant Authority:** Specifically regarding real estate services, TSA has an MD, or Management Directive that clearly lays out policies for office space and furniture (MD 200.12). The MD was released in November of 2003, and is being updated to reflect organizational realignments and other changes in TSA structure. Further, all contracting officers work in the Office of Acquisition; there are no warrants held in other organizations.

Recommendation 2: Ensure that all contracting officers and contracting officers' technical representatives receive training appropriate for those positions.

Response: TSA has robust training requirements for not only contracting officers but for all contract specialists in the 1102 series. Prior to TSA's incorporation into DHS, training and certification policy was maintained in-house, and current requirements for 1102s and COTRs are documented in DHS MD 0780 and 0781. Warrant requirements for contracting officers are laid out in DHS MD 0740.2. Training and warrants are issued locally, in compliance with these policies, while certification is provided by the DHS Chief Procurement Officer.

Recommendation 3: Review the physical security requirements for the TSOC/SOCD facility with the TSA security officer to determine security vulnerabilities and address corrective measures. In addition, TSA should establish processes to ensure that physical security concerns for all TSA locations are prioritized and addressed, and that funding sources are clearly determined.

Response: The Office of Security has completed the installation of a complete security package at TSOC to the Level IV standard originally planned. The building perimeter has been secured with reinforced fencing and all vehicle gates are protected against crash penetration. A single guard force contract has been completed for TSOC and TSA Headquarters with all Officers at TSOC meeting the standard of US citizen and Secret level security clearance. The TSOC facility is under full access control and the Office of Security has two FTE on site to manage the security program.

Beginning with the FY-04 budget cycle the Office of Security has established and maintained a security budget to serve the needs of the Agency. The security budget for FY-05 is \$7.7 Million, with \$5.9 Million of that attributable to the guard force contract for both facilities.

Appendix A  
Management Comments

---

Response to Recommendations  
Enclosure 1

Recommendation 4: Recover the \$83,313 overpayment to the tool company and such other sums for which it may have a legal remedy.

Response: TSA has already initiated the process to recover any overpayments, in coordination with the Office of Counsel. Any and all overpayments will be recovered.

**Acquisition Workshop Descriptions**

**Improving Statements of Work:** This workshop is designed to be an interactive session with a focus on improving understanding and sharing ideas about how Statements of Work (SOW) can be improved. This workshop is designed for both beginners and experienced SOW writers from program offices and provides tips to ensure the SOW addresses all needed tasks. (Initial offering: October 2003)

**Interfacing with Industry and Effectively Using COTRs:** This workshop is designed for all TSA employees who are involved in the acquisition process, especially those in the planning and execution of TSA programs and projects leading to a procurement action. It is an interactive session to discuss requirements of interactions with potential contractors and common pitfalls that negatively impact program execution. We will cover the required interactions of the program manager, contracting officer, contracting officer technical representative (COTR), and other personnel from the organization where an acquisition program resides. This workshop is intended to be an on-site refresher of existing requirements/guidance. Our intent is to generate workshop interaction and shared experiences of the various organizational elements. (Initial offering: November 2003)

**Preparing Procurement Request Packages:** Learn what is needed to start the procurement process. Answers to such questions as, "Who is involved in the process?", "What documents do I need to prepare?", and "How long will it take?" will all be answered in this energetic informative workshop. (Initial offering: December 2003)

**Investment Review Process:** This workshop guides you through the TSA and DHS Investment Review process, explaining thresholds, defining terminology; and giving you guidance to facilitate the review and hopeful approval of your program. It is designed for program office and contracts personnel who will be involved in the Investment Review Process, and for supervisors and managers who must approve actions to be taken on program tasks. (Initial offering: November 2003)

**Investment Review Board:** This workshop provides you with the origins of the Investment review process, the DHS MD 1400 requirements, and the steps to prepare for an IRB. It includes the investment thresholds that require varying levels of review and the steps a program office needs to take in the review process. You will learn how the Investment Review Board works, the review board membership and an overview of the DHS Acquisition Phases. The workshop is designed for program office personnel who will be assigned to TSA investment programs. (Initial offering: April 2004)

**Program Management Certification:** This workshop discusses the Acquisition Certification Requirements for Program Manager contained in the DHS Management Directive No. 782. It defines an acquisition program and the general responsibilities of a program manager. This workshop clearly describes how to obtain certification and defines the level of certification a program manager must have in order to manage each particular TSA Investment Level program (Levels 1, 2, and 3). Specific experience and

Appendix A  
Management Comments

---

APMSD Acquisition Workshops  
Enclosure 3

training requirements are discussed for each level of certification. (Initial offering: August 2004)

**Acquisition Plans:** All TSA programs with acquisition costs which exceed \$5 million, or which result in contractual actions greater than \$5 million, must prepare an Acquisition Plan. What goes into an Acquisition Plan? How does one put an Acquisition Plan together and get it approved? The answers may be easier than you thought. These and other topics are covered in the Acquisition Planning Workshop. (Initial offering: May 2004)

**Source Selection Process:** This workshop is designed for program office and contracting personnel who are likely to be involved in preparing a Procurement Request Package for soliciting contractor services or products and/or likely to be part of the technical evaluation team responsible for reviewing contractor proposals leading to award of a contract. This workshop focuses on developing evaluation criteria and tips for the evaluation process. It discusses methods of rating proposals, identifying risks, mitigating risks, trade-off analysis, writing clear narrative descriptions, and getting to a best value. (Initial offering: September 2004)

**Introduction to Market Research:** This workshop is designed for program office and contracting personnel who are likely to be involved in preparing a Procurement Request Package for soliciting contractor services or products, and for technical experts who need to be aware of industry trends and changing technologies as it relates to their area of technical expertise. The workshop focuses on teaming to do market research, defining market research, why we do it, when we do it, and who is involved in market research. Participants will be provided guidance on where to find sources for your market research, an example Market Research report, and a template to use as a guide when writing a report. (Initial Offering: February 2005)

**Identifying Program Requirements:** All TSA programs with acquisition costs exceeding \$5 million must be based on a validated need. This workshop describes the Mission Need Statement (MNS), including what goes in a MNS, who prepares it, when, and how it gets approved. Most importantly, the workshop describes common pitfalls and how to avoid them. (Planned for rollout)

**TSA Broadcast Message**

TSA performs a significant amount of its mission in partnership with the private sector under negotiated contracts. While each of you has received ethics training, I'd like to take the opportunity to highlight some integrity/ethics issues that may arise in an integrated government/industry team relationship. Each TSA employee has a responsibility to know the procurement integrity and ethics rules of their position to seek advice of Office of Chief Counsel immediately upon appearance of a potential issue.

**Obtaining and disclosing source selection sensitive information**

- A person may not knowingly disclose or obtain source selection information before contract award except with permission of the contracting officer.
- Source selection information includes contractors' proposals (cost and technical); source selection plans and decisions; technical evaluation plans and decisions; and other information marked "Source Selection Information."
- Violations may result in civil penalties, discipline for TSA employees, and suspension or debarment of contractors.
- TSA employees must ensure that inviting contractors to meetings does not provide the contractor access to source selection information or other proprietary information. If contractors are in attendance at sensitive meetings, all attendees should be informed.

**Providing information about future contracting opportunities to the public**

- As a general rule, information about future contracting opportunities must be released to the public at the same time. With only a few exceptions, it is improper to give information about future contract opportunities to one or a few members of the industry ahead of other members of the industry.

**Requirement to report employment contacts**

- Employees must immediately report an employment contact to the contracting officer and Office of Chief Counsel if an employee is participating personally & substantially in a procurement

**One year ban on accepting compensation from a contractor**

- Employees working in certain positions (i.e. contracting officer, source selection official, source selection or technical evaluation team member or advisor) or make certain types of decisions (decision to award a contract, task or delivery order, settle a claim), on a contract over \$10 million, may not accept compensation from the contractor for 1 year

**Gifts from Contractors**

- With few exceptions (seek advice of Counsel), TSA employees may not accept gifts from contractors or contractor personnel.

**Organizational Conflict of Interest**

- The TSA has a policy to avoid contracting with contractors who have unacceptable organizational conflicts of interest. An organizational conflict of interest means that because of the existing or planned activities, the contractor is or may be unable or potentially unable to provide impartial assistance to the agency, or the contractor's objectivity is or may be impaired, or the contractor has an unfair competitive advantage because of other activities or relationships with the Government.
- A common area where a conflict of interest may arise is when a contractor participates in drafting or reviewing specifications, requirements, or a contract statement of work, and then wants to compete for the contract to perform that work
- Situations that may involve organizational conflict of interest must be brought to the immediate attention of the contracting officer so that an acceptable mitigation plan can be considered.

**Misuse of Government Position and Endorsement**

- In carrying out official duties, TSA employees must ensure that they do not use their official position for their own private gain, or for the private gain of others, or for the endorsement of any product, service or enterprise.
- TSA employees should not sign letters of recommendation or endorsement for contractors. Letters documenting a contractor's performance on a TSA contract should only be signed by the contracting officer or contracting officer technical representative.

**Representation before the Government**

- A TSA employee may not, in his/her personal capacity, represent a contractor before any Federal agency or court, with the intent to influence Government action, on any matter in which the US is a party or has a direct and substantial interest. This could include interceding on behalf of a contractor in a dispute with another TSA employee. This does not prevent a TSA employee from expressing an honest opinion about a matter in dispute as long as the employee acts in the interest of the United States.

The Office of Acquisition is here to help answer any questions or concerns you may have regarding procurement ethics. See our website for general policy information (0300 under the Policies & Directives tab), and if you have a specific question please contact Greg Steigerwald at 571.227.1598.

**Points of Contact**

Ferne Mosley	Ethics Advisor, Office of Chief Counsel	571-227-2705
Tony Washington	Deputy Chief Counsel for Procurement	571-227-2733
Greg Steigerwald	Contracts Policy, Office of Acquisition	571-227-1598



Appendix A  
Management Comments

---

2550 M Street, N.W.  
Washington, D.C. 20037

March 11, 2005

Mr. Tom Blank  
Chief Support Services Officer  
Transportation Security Administration  
601 South 12<sup>th</sup> Street,  
Arlington, VA 22202-4220

Dear Mr. Blank:

Thank you for the opportunity to review and comment on the draft report of the Inspector General titled "Irregularities in the Development of the Transportation Security Operations Center." As I am sure you recognize from your own knowledge of the relevant events, the report is deeply flawed. Although I spoke with the authors at great length, little of what I said is reflected in the draft. I suspect that the same is true for other witnesses as well. The result is a lopsided report that belittles what by any measure was a truly remarkable accomplishment: the creation by an agency then still in its infancy at reasonable cost and in just over 90 days of two first-class operations centers to support critical command and control functions with the flexibility to expand to handle any crisis. Time and again, the Transportation Security Operations Center (TSOC) has proven its worth to TSA, the Federal Air Marshal Service and DHS. I have attached the current, unclassified briefing about the capabilities of this impressive resource to ensure that readers of the report have a more balanced understanding of its true value and the critical place it serves in securing the transportation sector and the homeland.

Almost a year ago, TSA's Office of Internal Affairs (IA) transmitted a report to the Office of the Inspector General (OIG) detailing its findings on a set of narrow allegations concerning improper invoicing and a possible conflict of interest by one of the many people who worked on the project. These allegations had been uncovered by TSA, investigated by IA, and fully briefed to the Acting Administrator and me. We took prompt action by removing the subjects of the investigation from any responsibility for the TSOC until the matter was resolved. As is its prerogative, OIG asked for the matter to be referred to it for review. Now, many months later, the OIG has issued a report which adds little, if anything, to the findings IA made almost a year ago and instead makes a series of unsupportable allegations about the genesis of the project and its oversight.

I assume that you have accorded other current and former TSA officials the same opportunity to comment on the report that you have given me, so, to the extent possible, I will confine my comments to the OIG's conclusions as they pertain to my involvement in the project. Oddly, these conclusions are not clearly set out in the report itself, but are contained in a January 25, 2005 OIG memorandum appended to the front of the report titled "Talking Points." While the purpose of this document is unclear, I note that its wording is far more sensational than anything in the report itself. Because such "talking point" documents have an unfortunate way of shaping public discussion far more than the underlying documents, I believe that it is important to respond both to the allegations in that memorandum as well as the report.

*Site selection, negotiations and space planning*

The first “finding” highlighted in the memorandum is that I, as the then Deputy Administrator, “allowed the project manager to engage in the initial phases of choosing a site, negotiating with the lessor, and developing space plans without involving the acquisitions office.” This is incorrect. In fact, as I recall, the Federal Air Marshals Service (FAMS), using its own real estate management and acquisitions staff chose the site, conducted several rounds of negotiations with the lessor, and prepared space plans.<sup>1</sup>

This was in late 2002, and the FAMS faced a crisis of its own. The Service had grown exponentially since the 9/11 attacks from a handful of air marshals into a major federal law enforcement agency, yet it was still trying to control its operations from the same cramped facilities in New Jersey. Because the FAMS began its ramp up at the direction of Congress before the establishment of TSA and under a separate appropriation, it built its own management staff to control its budget, acquisitions, real estate management and other related administrative tasks. Using this staff, sometime in the summer of 2002, it began a search for a suitable location for a new, much expanded and enhanced operations center. In the fall of 2002, the Director of the FAMS and his staff made a presentation to me and other senior TSA managers in which they detailed their search and informed us that they had narrowed their selection to a small number of sites in Northern Virginia. The preferred site was called Cabot Tech. It was recommended because it was immediately available, new, empty (requiring almost no demolition and minimal site preparation), designed for high technology use, served by two separate electrical supply systems, and readily accessible to large classified and unclassified communications pipes. I was also advised that because the facility had originally been intended for a now defunct (or perhaps much reduced) Internet company, the FAMS’s acquisitions staff believed that they could obtain favorable lease terms. The principal drawback was that at 110,000 square feet, the facility was much larger than the FAMS required. Accordingly, the FAMS and TSA’s Crisis Management Staff proposed that we collocate TSA’s own operations center and some other TSA activities at the same site. This proposal was very attractive because, as I will explain below, the extraordinarily rapid growth of TSA’s operations and responsibilities had far outstripped its command and control capabilities. After briefing the Administrator, we authorized them to continue to explore options for a combined facility, with a focus on Cabot Tech.<sup>2</sup>

Over the next few months, then Administrator James Loy and I continued to receive periodic briefings on the progress of the plans and negotiations for the facility. These briefings were always conducted by representatives of both the FAMS and TSA’s Crisis Management Staff. They were often accompanied by individuals who I understood to be from FAMS planning and acquisitions. Representatives of TSA’s Headquarters Administrative Staff also attended many of the briefings. The briefings were detailed and reflected a great deal of thought and planning, which was

---

<sup>1</sup> At that time, the Service was still a sub-agency of TSA and its procurement staff exercised contracting authority delegated from TSA. Subsequent to the establishment of the Department of Homeland Security in early 2003, the FAMS moved to the newly created Bureau of Immigration and Customs Enforcement (ICE).

<sup>2</sup> The involvement of the FAMS procurement staff may explain why the OIG inspectors report that they could not find documentation at TSA related to the site selection process. Draft Report 9 n.10. By the time they conducted their review, the FAMS was no longer part of TSA.

Appendix A  
Management Comments

---

to be expected given the deep experience with such projects of the individuals responsible for developing the TSOC.

*The 90-day deadline*

Only by completely ignoring everything I told them could the IG Inspectors conclude that the 90-day deadline for completing construction was “artificial,” as alleged in the second finding. There was nothing artificial about it. By the end of 2002, TSA’s ability to command and control its resources and operations was completely inadequate. Had there been a real crisis or terrorist attack we would have been in very poor shape to respond. Completion of the TSOC solved this problem and it was just as important as meeting all of the other deadlines imposed by Congress to restore security to the aviation system.

TSA’s growth during 2002 was explosive. An agency that did not exist on January 1 had over 60,000 employees at the end of the year and well-over 90% of those employees had come on board in the last three months. By then, TSA had employees at almost 500 locations around the nation and around the world. We had front-line operational responsibility for the security of civilian aviation, yet we had almost no capability to monitor our operations 24 hours a day. Our only means of communication with the field was through cell phones, two-way pagers and laptops with dial-up modems. Our situational awareness could only be described as poor.

Three examples out of many should suffice to establish why this situation could not be tolerated for a moment longer than necessary. At 11:30 a.m. (PST) on July 4, 2002, Hesham Mohamed Hadayet, armed with two pistols and a knife, opened fire on passengers and staff at the El Al check-in desk at Los Angeles International Airport (LAX), killing two and wounding four before being shot to death by an El Al security guard. Forty minutes later, at 12:10 p.m. (PST), the media reported that an airplane had crashed into a crowd of holiday picnickers in Los Angeles. For some time it was unclear whether these events were related, and the obvious concern was that they could be the start of another coordinated terrorist attack.<sup>3</sup> Although we viewed July 4<sup>th</sup> as a day of high threat and had planned accordingly, when these events occurred in quick succession, those charged with securing the aviation system were reduced to standing around a speakerphone trying to communicate with the Acting Federal Security Director (FSD) at LAX mostly through his pager and occasionally his cell phone, following television news reports, and attempting to communicate (mostly unsuccessfully) with TSA’s other FSDs around the country through multiple conference calls, so that we could ensure that they were aware of the developing situation and were making appropriate adjustments to their security posture. In our after action review, we readily acknowledged that we did not have adequate command and control of the situation. Shortly thereafter we assembled a Crisis Management Staff that was charged with solving this problem and developing our interim capability until a permanent solution could be found.

Two months later, we faced the first anniversary of the September 11 attacks. Once again, we prepared for what the intelligence community warned was a period of increased threat. Severe restrictions were put in place for the air space around New York, Washington, Shanksville, PA, and other potential targets. Air Marshals were maximally deployed and TSA inspectors and federal and

<sup>3</sup> Eventually, it was determined that the shooting at LAX was an isolated act and that the aircraft crash was an accident.

Appendix A  
Management Comments

---

local law enforcement personnel were deployed in large numbers for the first time to many general aviation airports. Yet we still had ineffective situational awareness and little ability to control our resources. Fortunately, all went according to plan because our capacity to respond to a crisis at a national level was very limited.

At the end of 2002, we faced our last major congressionally-imposed deadline when we were required to start electronically screening all checked baggage for explosives. In the final weeks, we had construction teams ripping up the lobbies and baggage-handling systems at airports across the country as we hired, trained and deployed thousands of brand-new baggage screeners. The predictions of the airports and airlines were dire: during the busiest travel period of the year, we would bring the aviation system to a halt. Despite the critical importance of the test we faced, throughout Christmas week we were almost incapable of getting timely reports from our managers in the field. Instead, we measured our success by the complete absence of news reports of chaos at the airports. Needless to say, this was not a satisfactory way to run a Federal agency with the responsibilities that Congress had placed upon us. The need for fully capable operations centers for the Air Marshals and TSA, flexible enough to rapidly expand to handle any crisis, had become more than critical; Administrator Loy and I concluded that we had no higher priority among our infrastructure needs.

Two White House-driven priorities added to the pressure to build the operations centers as quickly as possible. The first was that we were directed to establish and manage the National Capital Region Coordination Center (NCRCC). This center is responsible for coordinating aviation security around Washington and is staffed by the Air Force, Secret Service, Customs and Border Protection, Capitol Police, FAA, TSA and other agencies. It was stood up on January 27, 2003, in a small conference room next door to the FAA's Air Traffic Control System Command Center in Herndon, VA. While the establishment of this coordination team was a huge step forward in interagency coordination in the Washington region, it was severely hampered by the inadequacy of its operating environment. For the most part, for one agency to understand what another agency was seeing and doing, it was necessary for the agency representative to get up and look over the shoulder of his counterpart. There was no capacity for a common display and no effective interagency communication system other than shouting across the room. Moreover, FAA made it clear that it needed the room back as soon as possible. A permanent, fully functional home had to be found for the NCRCC quickly.

The second White House priority was more complicated to deal with. With the enactment of the Homeland Security Act in November 2002, the White House established a rapidly evolving and growing staff to prepare for the creation of the Department of Homeland Security scheduled for late February 2003. In December 2002, we learned that an informal freeze had been placed on new facilities for agencies that would be moving into DHS while plans for consolidation were developed. At Administrator Loy's direction, I met with Gen. Bruce Lawlor who was assigned to the DHS transition staff and who later became the Department's first Chief of Staff. I briefed him on the critical need for TSA and the Air Marshal's to be permitted to proceed with construction of the TSOC and on the plans that had been developed by that point. He was impressed with our proposal and asked us to develop a concept for turning the TSOC into a command center that could serve all of DHS. He also informed us that, given the imminent creation of the Department, it was desirable for us to be able to build such a center as quickly as possible, preferably in three months. As requested, we developed a plan that did just that. Subsequently, in mid-February, Gen. Lawlor informed us that it had been decided that the DHS operations center should be collocated with the

Appendix A  
Management Comments

---

Department's headquarters. However, because the Department had not yet chosen a site for its headquarters and because our need was recognized as critical, we were permitted to proceed with our plans to build the TSOC.

With the White House's approval after a six-week review, our need for the TSOC had become acute. Nevertheless, we now had a plan under which the TSOC could be built in 90 days from the date the lease was signed and, in fact, the requirements of that plan had been simplified now that it was no longer necessary to include DHS's operational requirements. In addition, we had been advised that, although the lease had not been finalized, the estimates for completion of the project within this time frame were within the funds available from the FAMS and other parts of TSA. At that point, the Administrator directed us to proceed with the project as quickly as possible with the goal of completing it in time for the busy summer travel season.

In sum, the need was critical; indeed, events had shown that TSA was unable to fully execute its responsibilities in the event of a crisis, or even to provide adequate day-to-day oversight of its operations. It would have been an unconscionable dereliction of duty to permit that situation to continue a day longer than necessary. There would have been no acceptable excuse had we faced a crisis and been unprepared to respond because we had been anything other than aggressive in completing the TSOC. We had the funds and a plan to remedy the problem. We were advised that it would take 90 days to execute the plan. That would be 90 days in which we would remain vulnerable and it was clearly not in the public interest to prolong that period of vulnerability. Accordingly, we appointed a project manager who had great prior experience in building operations centers, contracted for project management services to support him, and asked all of the relevant offices in TSA to provide appropriate support to enable us to meet this priority goal. Given the immense accomplishments of TSA during the previous year, I did not believe that this was too much to expect.

***Direction to the Chief Administrative Officer to Support the Project***

Like any big project, building the TSOC under tight time lines and budget constraints was going to be stressful. TSA had been operating under such pressure cooker stress since it began operations a year before and time and again we had overcome seemingly insurmountable obstacles through teamwork and innovation. It should not be surprising, though, that the unrelenting demands had strained some personal relationships. It soon became apparent that personal animosity between some members of the headquarters administrative staff and the project manager and his staff was beginning to hinder progress on the TSOC.

From my vantage point, this manifested itself in complaints on the one hand from the project staff that they were being met with an endless series of seemingly unnecessary bureaucratic hurdles, and on the other hand by complaints by the administrative staff that they were being excluded. At no time did anyone allege to me that any laws or regulations were being broken; instead, the allegations amounted more to the two groups simply not liking the way each went about doing their jobs. As I had done many times successfully in the past, I brought both sides together to emphasize the common goals we shared, air the grievances, and seek accommodations and agreement so that they could leave the personal animosity behind and get on with the job. I am certain that I emphasized again the vital nature of this project and my concerns over TSA's then poor command and control capabilities. I am equally certain that I reminded everyone, particularly the project manager, that we had to comply with all applicable laws and regulations. I am also

Appendix A  
Management Comments

---

certain that I reminded everyone that TSA had accomplished so much in such a short time because people had worked together, not insisting on bureaucratic traditions and prerogatives but looking for new ways to get the job done and to meet the immense challenges we faced. Simply stated, it was a message to work together, obey the law, but do not be bound by traditional bureaucratic thinking and traditions that were so often confused with legal requirements. I say that I am certain of these things, not because I remember a particular conversation on a particular day, but because these were the consistent and constant themes we used to reinforce the teamwork and innovation that were the hallmark of TSA in its first 18 months. In one form or another, I had this conversation a hundred times on a hundred projects and I know that this is the direction I gave to the headquarters administrative staff and to the project management staff responsible for the TSOC.

There is an undertone to the report that implies that adherence to laws and regulations was sacrificed in the name of expediency. Read carefully, however, the report documents no laws and few regulations that were not followed to the letter in the construction of the TSOC, with the important exception of the findings of conflict of interest that TSA IA sent to the OIG a year ago. There is also no allegation that the alleged conflict of interest could or would have been mitigated in anyway however the project was managed, or that the tight deadlines under which the project operated in anyway contributed to the conflict of interest or the alleged improper invoicing. Rather, the report documents instances in which traditional procedures were not followed, and from that implies that laws were broken. For example, the report states that "Procurement managers were not included in developing requirements to define the TSOC's needs, selecting a contract vehicle, selecting a site, or planning office space allotment, in violation of TSA's acquisition policy."<sup>4</sup> In an accompanying footnote, "procurement managers" are defined as "personnel from TSA's real estate services office, the office of acquisition, the chief administrative officer and the chief systems support [sic] officer."<sup>5</sup> In fact, as explained above, the real estate and procurement staffs from the FAMS were involved in the project from the outset and drew up the initial space plans and budgets in full conformity with procurement requirements. While it certainly would have been within the prerogatives of the chief administrative officer and the chief support systems officer to be briefed on the project, there was no TSA acquisitions policy that required such briefings.<sup>6</sup>

The draft report also paints a portrait of a TSA acquisitions staff that was intimidated by the project manager. This portrait bears no resemblance to the staff that I admired and respected during my time at TSA. There was no doubt that the first 18 months of TSA's existence was an extremely challenging period for the contracting personnel. Like all of TSA's administration, they were very understaffed for the demands that were put upon them. I am confident that any study would show that during this period they had the highest dollar value per employee of contracts under management of any procurement staff in government. In those circumstances, they did a

---

<sup>4</sup> Draft Report at 4.

<sup>5</sup> *Id.* n.6.

<sup>6</sup> Elsewhere, the draft report implies that no budget justification was prepared for the project because apparently none was produced for the OIG. I am no longer at TSA, and so I do not know why a copy of the budget justification for the TSOC could not be found. However, I know that a very detailed justification was prepared because it was briefed to and approved by TSA's budget examiner at OMB in late January 2003 before we were permitted to proceed with the project. Once again, it is possible that the justification might be found in the files of the FAMS rather than those of TSA.

remarkable job. At no time, however, did they hesitate to bring to my attention any contract action that would put us in jeopardy or breach of a law or regulation. Indeed, there were many times during TSA's first 18 months when TSA's acquisitions executive came to me to raise such concerns and I supported her every time. Several of TSA's contracting officers can only be described as extremely feisty and the idea that they would allow themselves to be meekly intimidated is, frankly, absurd.

In this regard, the discussion on page 18 of the report of a "hybrid' contracting officer authority model" does not hold up. Although at some time in March, the Assistant Administrator for Finance and Administration proposed delegating all contracting functions to the project manager, the Chief Support Systems Officer and I flatly rejected it because it would have violated the law. The project manager did not hold a contracting warrant and a contracting officer cannot relinquish authority to ensure that a fair price is paid for work performed. Given the high degree of competence of TSA's contracting staff, I am confident that they would not have agreed to do so. Nevertheless, the report states that such a "hybrid" agreement was negotiated between TSA's then acquisitions executive and the project manager in April. If so, I was not aware of it, it would have been done in direct contravention of my direction in March, the diminution of contracting officer discretion alleged to have been contained in the agreement would probably have been unlawful, and I have too much respect for the integrity and professionalism of the acquisitions executive to believe that she would have made such an agreement. For all these reasons, the allegations about such a "hybrid" agreement are simply not credible.

#### *The Role of the Oversight Board*

The report mischaracterizes the role of the Oversight Board. I chaired the Board and its other members were the Chief Operating Officer (who supervised the FAMS, project manager and crisis management staff) and the Chief Support Services Officer (who supervised TSA's administrative staff, including those responsible for acquisitions). After the Administrator, we were the top three officials of TSA. Although all of us were experienced senior Federal managers, none of us were procurement specialists. Board meetings were also attended by representatives from finance, procurement, the Chief Information Officer, project staff, crisis management, FAMS, operations, intelligence, legal and other concerned part of the organization.<sup>7</sup>

The report states, "The oversight board was created to address procurement managers' concerns that the project manager was violating procurement policy and regulation."<sup>8</sup> This is incorrect. The Board was established because we recognized that this was a difficult project operating under tight deadlines. The Board provided a forum for getting prompt executive-level decisions when needed, rather than for waiting for them to work their way slowly through the system. This did not mean, as the report implies, that the procurement staff was removed from responsibility for the project. Their responsibilities and obligations were unchanged. None of the Board members would normally be involved in the approval of contract actions, change orders or

<sup>7</sup> During my interviews with the OIG inspectors, they informed me that the acquisitions executive had attended only one Oversight Board meeting. I told them then that I believed they were mistaken, as I distinctly remember that she participated in a number of meetings.

<sup>8</sup> Draft report at 17.

purchase requests because those activities would generally occur at much lower levels in the organization; establishment of an Oversight Board for this project did not change that. Rather, the purpose of the board was to provide high-level oversight and guidance, and resolve disputes over competing priorities for scarce resources or other matters that could not be solved at a lower level. For example, when the Chief Information Officer was faced with competing demands for computers and computer support, we directed that the TSOC receive priority. At another point, when classified connectivity to the TSOC was being delayed by the slow response of another agency, I agreed to intervene with the other agency to resolve the problem. Accordingly, it is not surprising to me that the OIG found that over 60 change orders were not presented to the Board;<sup>9</sup> given the role of the Board, it would surprise me if any change orders were referred to it. The approval of change orders was a matter properly resolved by the project manager and the contracting officer at a level well below the Board.

*The TSOC Was Not Overbuilt*

At several places in the draft report, the TSOC's permanent staffing numbers are critically contrasted with the size of the facility; the kitchen and fitness facilities are described as excessive; and the square footage of offices and cubicles is questioned. In this regard, the report reveals a stunning lack of comprehension about the purpose of the TSOC and how it is used. The TSOC serves three related purposes:

- It provides a locus for TSA and the FAMS to control their day-to-day operations and maintain operational awareness. It also hosts the interagency National Capital Region Coordination Center. The people assigned to these activities form the "permanent" staff, along with a small management cadre.
- It is a fully equipped and functional crisis management center. It can accommodate a huge surge of watch standers and managers from multiple agencies and support them through a prolonged crisis. Its all-purpose room readily converts into a dormitory; its kitchens, fitness center<sup>10</sup> and washrooms are designed to sustain a large "resident" population; overlarge conference rooms off the main watch floors can be used to provide space for supplemental watch stations; and its offices and conference rooms can accommodate the needs of the highest-level leadership from several agencies at the same time. It is also provided with backup power supplies and a highly flexible IT infrastructure.
- It provides essential overflow space for training and resource intensive special projects, training exercises, and conferences.

The TSOC has admirably fulfilled each of its assigned functions.

---

<sup>9</sup> *Id.*

<sup>10</sup> A fitness center was always included in the plans for the TSOC. However, as noted in the report, we directed that it not be equipped initially in an effort to control costs. I was subsequently informed that despite this direction, the FAMS used additional funds to purchase and install the equipment.



*The Final Result*

The TSOC is an exceptional facility, built quickly and expertly to meet critical homeland security needs. Individuals who have built similarly-capable facilities for other military and civilian agencies have advised me that the overall cost of the facility was very reasonable. Time and again, the TSOC has proven its value. It has solved the day-to-day command and control problems that plagued TSA and the FAMS in the first year. It has provided a first-class facility for the NCRCC allowing for the highest degree of coordination between the various civilian and military agencies responsible for the security of Washington's airspace. In just the past year, it has been used to coordinate security for, among other events:

G8 Summit: Sea Island, GA  
G-8 meeting in Turkey  
President Reagan's Funeral  
DNC: Boston, MA  
RNC: New York, NY  
Orange Level Alert (August)  
Hurricanes: Charley/Frances/Ivan/Jeanne  
National Elections  
55th Inaugural State of the Union  
Superbowl XXXIX

On each occasion it accommodated large influxes of personnel from multiple agencies to handle the heightened security needs. It has provided space for special projects such as clearing backlogs of personnel background checks, clearances for aliens to attend flight training, and countless other tasks. It has been the site of numerous training exercises and conferences. In sum, time and again the TSOC has proven invaluable in allowing TSA and, indeed, DHS to fulfill their missions.

*Conclusion*

In closing, let me reiterate that because I am no longer a Federal official, I have limited my comments only to those parts of the report that involve my actions when I served as Deputy Administrator. My comments should not be read to condone conduct by any individual that might have constituted a conflict of interest or unauthorized purchase.

It is often said that many of the seemingly intractable problems of government could be solved if only public employees were given the freedom to team and innovate enjoyed by employees at America's best companies. After my experience leading the extraordinary public-private partnership that built TSA, I fervently believe that this is true. Allowing people to think outside the box unbound by tradition and bureaucratic organization empowers them to achieve remarkable things. In a federal career spanning 24 years, five Cabinet departments and an independent agency I was privileged to work with and lead many fine public servants on some important and challenging issues. However, the people who helped create TSA from its inception in January 2002 through the completion of the TSOC in the summer of 2003 were the most impressive of all. They were unstinting in their willingness to give everything they had and to overcome every challenge to fulfill

Appendix A  
Management Comments

---

the mission of TSA to restore the freedom of movement that the terrorists had tried to take away from Americans on September 11.

It is this experience that makes the OIG's analysis so disappointing. In their zeal to find fault, the inspectors failed to see what had been accomplished. They failed to take the time to understand the context so that they could comprehend the immense time pressures that we felt to get the TSOC built. Having failed to understand that, they never considered the costs and delays from following traditional processes. Compare the construction of the TSOC in 90 days with the experience of DHS which took 18 months to move its operations center from a couple of conference rooms into a second, albeit larger, *temporary* facility; the planning for a permanent facility has barely begun. OIG fails to recognize the innovation, dedication, careful thought and hard work that brought the TSOC to life. Reports such as this discourage risk-taking and innovation and reward plodding bureaucracy no matter the cost in lost opportunity and increased vulnerability. The draft report offers nothing constructive and, in that, it is disappointing but perhaps not surprising.

Thank you again for the opportunity to review and comment on this draft report.

Sincerely,



Stephen J. McHale

cc: Richard L. Skinner  
Acting Inspector General  
Department of Homeland Security

enc. TSOC Briefing

Appendix A  
Management Comments



Appendix A  
Management Comments



We evaluated TSA's written comments and made changes to the report where deemed appropriate. Below is a summary of TSA's written response to our recommendations and our analysis of those comments.

**TSA Response:** TSA generally concurs with our recommendations for corrective actions but disagrees with several significant conclusions in our report. TSA challenges the report's failure to acknowledge its need to achieve a command and control capability over aviation security incidents as rapidly as possible and the legitimacy of its 90-day construction deadline. Further, TSA asserts that the TSOC possesses a surge capacity that justifies the office space, kitchen, and gym sizes. TSA also questions the report's implication that procurement officials delegated procurement authority to the project manager and the report's description of the Oversight Board's role.

**OIG Evaluation:** It was TSA's contracting officials who objected to accelerating the build-out schedule. Early concept plans and the later actual construction contract provided for a later possible completion date, which suggests that TSA had some discretion in the matter. As reported, we could not find documentation from the time that addressed the question or stated the case for acceleration. In fact, whether the abuses we described occurred as part of a 90-day, or 120-day, or 180-day schedule, they still remain unacceptable and wasteful. The reason why we discuss the 90-day schedule is because of the effect that determination had on management's objections to the issues raised by TSA contracting and real estate personnel and, thus, on the autonomy afforded to the project manager.

TSA also asserted that the report failed to recognize the surge capacity built into the facility. We have added a discussion of that argument in the main body of the report. We do not dismiss TSA's argument; certainly it has some support in terms of the facility's present capacity, but we did not find evidence that it determined the configuration and outfitting of the TSOC at the time those decisions were being made.

With respect to the delegation of procurement authority to the project manager, our report recounts that the deputy administrator refused to sign the delegation. However, the director of acquisitions negotiated a "hybrid" contracting officer authority with the project manager, under which the real estate contracting

officer maintained the authority to ensure competition for purchases, but abandoned the responsibility to review invoices submitted by the project manager. TSA asserts that the Oversight Board only dealt with higher-level issues and was not expected to review individual change orders or equipment purchases. We understand that the Board was not a planned oversight mechanism; it was created to resolve the disputes arising between the project manager and the contracting and real estate offices – the kind of disputes that did involve change orders and purchases. Had it reviewed such transactions, the wasteful and inappropriate expenditures reported might have been blocked.

TSA’s response does not address the substantive issues pointed out in the report regarding “gold plating” of the facility, i.e., the sub-zero refrigerators, furniture, TV monitors, etc., artwork, and other decorative items. In addition, TSA’s assertion that implies misconduct solely by “lower level” employees is incorrect. The decisions to purchase the artwork and other decorative items and to enhance the facility were made by higher-level managers.

**Recommendation 1:** Follow TSA policy, as well as applicable federal regulations, when acquiring real estate and procuring goods and services. The policy and regulations establish procedures to help ensure that funding is spent prudently. Although following the procedures may increase the amount of time necessary to complete purchases, it will protect TSA from wasteful and abusive acts. Specifically, the TSA Assistant Secretary should:

- a) Ensure that TSA procurement personnel coordinate all procurements with their TSA customer.
- b) Ensure that the requirements for all projects are defined, documented, and followed, so that program objectives are met in the most cost-effective manner.

**TSA Response:** In the development of the TSOC, the urgency to complete the facility lessened the importance of defined, rationalized, and documented requirements. Since recognizing this deficiency, the Office of Acquisition has been working with program offices to develop performance-based requirements that meet the mission and provide for cost control, competitive processes, and access for socioeconomic programs. Also, TSA noted that, at the time of the TSOC’s development, Office of Acquisition business agreements lacked structure and thought

processes based on years of acquisition experience. In addition, TSA's acquisition function was obscured three layers deep in the Chief Financial Officer organization. TSA recognized that the Office of Acquisition could not coordinate TSA's acquisition program or enforce acquisition policies and statutory law from that level. Therefore, in the fall of 2004, the office was elevated to the assistant administrator level.

**OIG Evaluation:** The organizational move of the Office of Acquisition can have salutary consequences and the potential for improving the office's coordination of procurements and oversight of policy and statutes. Based on the strengths of the Office of Acquisition initiatives, this recommendation is resolved, but will remain open until all corrective actions included in TSA's response have been completed.

**Recommendation 2:** Ensure that all contracting officers and contracting officers' technical representatives receive training appropriate for those positions.

**TSA Response:** TSA recognized that some acquisition challenges arose due to a lack of knowledge and understanding. To meet those challenges, in October 2003, the Office of Acquisition developed a series of workshops on key acquisition processes. The goal of the workshops was to address the knowledge gaps in key areas of acquisition policy and to share acquisition best practices. Nearly 400 TSA employees have participated in these workshops. TSA has comprehensive requirements for its contracting officers and all contract specialist in the 1102 series. Warrant requirements for contracting officers are specified in DHS MD 0740.2. Training and warrants are issued in compliance with the MD. DHS's Chief Procurement Officer provides certification. In addition, the Office of Acquisition has been working with program managers to ensure that they are trained and certified in accordance with DHS standards established in Management Directive (MD) 0782.

**OIG Evaluation:** The Office of Acquisition appears to have established an aggressive approach to meeting the training needs of the acquisition staff as well as with the program offices that interact with the acquisition staff. This recommendation is resolved-closed.

**Recommendation 3:** Review the physical security requirements for the TSOC/SOCD facility with the TSA security officer to

determine security vulnerabilities and address corrective measures. In addition, TSA should establish processes to ensure that physical security concerns for all TSA locations are prioritized and addressed and that funding sources are clearly determined.

**TSA Response:** DHS Office of Security has completed the installation of a complete security system at the TSOC. The building perimeter has been secured with reinforced fencing and all vehicle gates are protected against crash penetration. The TSOC is under full access control.

**OIG Evaluation:** We acknowledge that security measures that were not in effect at the time of our fieldwork have since been implemented. Therefore, we have adjusted the report to reflect the change in the TSOC's security posture and have withdrawn this recommendation.

**Recommendation 4:** Recover the \$83,313 overpayment to the tool company and such other sums for which it may have a legal remedy.

**TSA Response:** TSA in coordination the Office of Counsel has initiated the process to recover the \$83,313 overpayment to the tool company and any other overpayments.

**OIG Evaluation:** This recommendation is resolved, but will remain open pending the recovery of the \$83,313, as well as any other overpayments made to the tool company.



## Recommendations

We recommend that the TSA Assistant Secretary:

**Recommendation 1:** Follow TSA policy, as well as applicable federal regulations, when acquiring real estate and procuring goods and services. The policy and regulations establish procedures to help ensure that funding is spent prudently. Although following the procedures may increase the amount of time necessary to complete purchases, it will protect TSA from wasteful and abusive acts. Specifically, the TSA Assistant Secretary should:

- a) Ensure that TSA procurement personnel coordinate all procurements with their TSA customer.
- b) Ensure that the requirements for all projects are defined, documented, and followed, so that program objectives are met in the most cost-effective manner.

**Recommendation 2:** Ensure that all contracting officers and contracting officers' technical representatives receive training appropriate for those positions.

**Recommendation 3:** Recover the \$83,313 overpayment to the tool company and such other sums for which it may have a legal remedy.

Appendix D  
Major Contributors to the Report

---

Carlton Mann, Chief Inspector, Department of Homeland Security,  
Office of Inspections and Special Reviews

Aya Johnson, Inspector, Department of Homeland Security, Office  
of Inspections and Special Reviews

Elizabeth Kingma, Inspector, Department of Homeland Security,  
Office of Inspections and Special Reviews

**Department of Homeland Security**

The Honorable Michael Chertoff  
Secretary

Office of General Counsel

Mr. John Wood  
Chief of Staff

The Honorable Randy Beardsworth  
Acting Under Secretary for Border and Transportation Security

The Honorable Janet Hale  
Under Secretary for Management

Mr. Gregory Rothwell  
Chief Procurement Officer

Steve Pecinovsky  
Management OIG Liaison

Brian Besanceney  
Assistant Secretary for Public Affairs

**Office of Management and Budget**

Chief, Homeland Security Branch  
DHS OIG Budget Examiner

**Congress**

Congressional Oversight and Appropriations Committees, as  
appropriate

**Additional Information and Copies**

To obtain additional copies of this report, call the Office of Inspector General (OIG) at (202) 254-4100, fax your request to (202) 254-4285, or visit the OIG web site at [www.dhs.gov](http://www.dhs.gov).

**OIG Hotline**

To report alleged fraud, waste, abuse, or mismanagement, or any other kind of criminal or noncriminal misconduct relative to Department programs or operations, call the OIG Hotline at 1-800-323-8603; or write to the Department of Homeland Security, Washington, DC 20528, Attn: Office of Inspector General, Investigations Division – Hotline. The OIG seeks to protect the identity of each writer and caller.