



# Department of Homeland Security Office of Inspector General

## Transportation Security Administration's Acquisition of Support Services Contracts





# Homeland Security

MAR 25 2010

## Preface

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

This report addresses the Transportation Security Administration's management and oversight in its acquisition of support services contracts. It is based on interviews with employees and officials of relevant agencies and institutions, direct observations, and a review of applicable documents.

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

A handwritten signature in cursive script that reads "Richard L. Skinner".

Richard L. Skinner  
Inspector General

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## Abbreviations

COTR	Contracting Officer's Technical Representative
FAR	Federal Acquisition Regulation
OIG	Office of Inspector General
OMB	Office of Management and Budget
OST	Office of Security Technology
TSA	Transportation Security Administration

# OIG

*Department of Homeland Security  
Office of Inspector General*

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## **Executive Summary**

Since its creation, the Transportation Security Administration has relied on support services contractors to help accomplish its mission. We reviewed support services acquisitions within the Transportation Security Administration's Office of Security Technology, which focuses on security technologies related to air, surface, and maritime transportation. The objective of our audit was to determine whether the Transportation Security Administration provides adequate management and oversight in the acquisition of support services for transportation security programs. In FY 2009, the Office of Security Technology had 29 support services contracts totaling \$662 million. We reviewed all contract administration documentation for the 13 highest-value contracts, which represented 92% (\$609 million) of the total value of all FY 2009 support services contracts.

The Transportation Security Administration did not provide adequate management and oversight of acquisitions for support services for transportation security programs. Contractors were performing inherently governmental functions or roles that closely support the performance of inherently governmental functions, acquisition staff did not follow acquisition guidance, and support services contracts contained vague statements of work. This occurred because the agency did not have an adequate number of properly trained core acquisition staff to administer contracts and oversee support services contractors' performance. As a result, the Transportation Security Administration did not have reasonable assurance that contractors were performing as required, that it contracted for the services it needed, that it received the services it paid for, or that taxpayers were receiving the best value.

We made three recommendations to the Transportation Security Administration to improve management and oversight of acquisitions for support services for transportation security programs. The agency agreed with the recommendations and is implementing changes in its oversight of support services acquisitions to improve accountability and to correct weaknesses identified during our audit.

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## Background

Since its creation, the Transportation Security Administration (TSA) has relied on support services contractors to help accomplish its mission. TSA's decision to contract for services such as acquisition support, invoice review, strategic planning, and administrative support was largely driven by the need to stand up programs and operations quickly after the events of September 11, 2001.

We performed this audit because our earlier audit of TSA's Logistics Center<sup>1</sup> identified potential weaknesses in TSA's support services contracting process that were outside the scope of that audit. During this audit, we reviewed the support services acquisitions within TSA's Office of Security Technology (OST). OST focuses on acquiring security technologies related to air, surface, and maritime transportation. A large portion of OST's work addresses baggage screening, passenger screening, and surface protection tools. The objective of this follow-on audit was to determine whether TSA provides adequate management and oversight in the acquisition of support services for transportation security programs.

TSA's contracting officers and contracting officer's technical representatives (COTRs) provide contract oversight and monitoring. Contracting officers and COTRs are federal employees who represent the government's interests in negotiating and administering contracts. TSA assigns a contracting officer and a COTR to handle each support services contract from contract award to closeout. The contracting officer is responsible for providing contract administration and oversight. Owing to the technical nature of TSA contracts, contracting officers delegate many of their contract administration and oversight responsibilities to COTRs, who serve as technical experts in the contract areas to which they are assigned. Each COTR works with the contracting officer and the program office to oversee and monitor contractor performance and deliverables.

In FY 2009, OST had 29 support services contracts in place with a total value of \$662 million. We reviewed the 13 highest-value contracts, which represented 92% (\$609 million) of the total value of all FY 2009 support services contracts. To determine the level

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<sup>1</sup>*Management of the TSA's Logistics Center*, OIG-10-14, November 2009.

of contract management and oversight, we reviewed all contract administration documentation for these 13 contracts, including contract files; contract statements of work; contract modifications; COTR administration files; and COTR nomination, training, and departmental approval files. We also reviewed contract invoices to identify who was administering invoice payments.

Federal acquisition guidance highlights the risks inherent in service contracting, particularly for support services. According to the Office of Management and Budget (OMB), the closer contractor services come to supporting inherently governmental functions, the greater the risk of their influencing the government's control over and accountability for decisions. Inherently governmental functions require discretion in applying government authority or value judgments in making decisions for the government. A Government Accountability Office panel stated that increasing reliance on contractors to perform services for core government activities challenges the capacity of federal officials to supervise and evaluate the performance of these activities.

According to the Federal Acquisition Regulations (FAR), Subpart 37 and Subpart 7, and the Office of Federal Procurement Policy Letter 93-1, services that tend to affect government decision-making or program management require a greater level of scrutiny and an enhanced degree of management oversight to prevent abuse. Such scrutiny includes assigning a sufficient number of qualified government acquisition staff to provide oversight and ensure that agency officials retain control over and remain accountable for policy decisions, based in part on a contractor's performance and work products.

Prior to June 2008, TSA was not subject to the requirements of the FAR. However, regulatory acquisition criteria in the Acquisition Management system used by TSA are consistent with the FAR, except for the solicitation process, which we did not include in this audit. In addition, since June 22, 2008, TSA is now required to comply with all FAR requirements. TSA has also established internal policy and guidance that augments the FAR and provides specific guidelines for contract administration, oversight, and management.

## Results of Audit

TSA did not provide adequate management and oversight of acquisitions for support services for transportation security programs within the OST. Contractors were performing inherently governmental functions or roles that closely support the performance of inherently governmental functions, acquisition staff did not follow acquisition guidance, and support services contracts contained vague statements of work. This occurred because TSA did not have an adequate number of properly trained core acquisition staff dedicated to perform contract administration and oversee support services contractors' performance. As a result, TSA did not have reasonable assurance that contractors were performing as required, that it contracted for the services it needed, that it received the services it paid for, or that taxpayers received the best value for their tax dollars. TSA is developing and implementing changes in its management and oversight of support services acquisitions to improve accountability and to correct weaknesses identified during our audit.

### **Contractors Are Performing Inherently Governmental Functions**

Contractors performed inherently governmental functions or roles that directly support the performance of inherently governmental functions. (Appendix C contains examples of inherently governmental functions and roles that support the performance of inherently governmental functions.) Although the FAR establishes contract administration as an inherently governmental function, TSA's support services contractors performed contract administration in 3 of the 13 contracts we reviewed. Specifically, these three contractors reviewed invoices to determine whether they were reasonable, correctly charged, and allowable, and then recommended the invoices for approval and payment. These three contracts represented 40% (\$265 million) of the total support services contracts for FY 2009.

In addition, one of these three contractors performed COTR support for its own contract, along with reviewing its own invoices. When we brought this to the attention of TSA management, they took immediate action to correct the problem.

While program officials generally acknowledged that their professional and management support services contracts closely supported the performance of inherently governmental functions, they felt that contracts for such services were common practice

within the government. However, the FAR requires that agency officials retain control over and remain accountable for contract administration, approval, and payment of invoices. Until TSA provides greater scrutiny and enhances management oversight of support services contracts, it will continue to risk transferring government responsibility to contractors.

### **Contracting Officers Are Not Following TSA Acquisition Guidance**

Contracting officers and COTRs did not follow TSA's internal acquisition guidance for contract administration, oversight, and monitoring to ensure that contractors were completing the contracted work. For example, for all 13 contracts, the contracting officers' contract files were missing COTR delegation forms, modifications notifying the contractor of changes in the contracting officer, documentation of suspension and debarment reviews, base contracts, and performance and monitoring reports. COTRs' administrative files were missing invoices, COTR delegation forms, COTR training forms, contract modifications, and other oversight documentation. Although TSA's guidance requires that COTR nomination forms and departmental approval forms be completed before COTRs assume their duties, our review of the contracts showed that 6 (46%) of the 13 contracts did not include the nomination forms and 2 (15%) of the 13 contracts did not include the departmental approval forms before the COTRs began performing COTR duties. Without adequate documentation, there is no assurance that contractors are meeting contract provisions or that TSA is making appropriate payments for services provided.

Although TSA's internal acquisition guidance requires quality assurance plans or surveillance plans with specific measures for assessing contractors' performance, none of the contract or COTR files we reviewed contained specific measures for assessing contractors' performance, plans outlining the specific contract requirements, or measurable outcomes of the support services provided. While TSA documents monthly meetings with contractors to discuss performance, TSA officials did not provide evidence that they independently validated the contractors' progress reports. As a result, TSA could not ensure that contractors were complying with contract performance requirements.



COTRs submitted invoices to the contracting officers for payment without sufficient detail to support payment. We reviewed all of the contractors' August 2009 invoices, which totaled approximately \$6 million for the 13 contracts reviewed. Each invoice listed the contract employee's name and the hours of work performed. However, the invoices did not include a detailed description of the work performed or the project completed. Owing to the lack of specificity in the contractors' invoices, we could not determine whether the correct contract was charged or whether the work performed was required under the contract. Since COTRs cannot provide adequate oversight and monitoring without reviewing detailed invoices that identify the specific work completed, TSA does not have reasonable assurance that contractors are performing as required and that full payment is justified on the invoices received.

### **Contracts Contain Vague Statements of Work**

TSA did not always clearly define the requirements in the statements of work for support services contracts. Nine of the 13 contracts we reviewed contained vague statements of work that did not outline the specific requirements or include key deliverables specifying the activities the contractor needed to complete. These nine contracts represented 79% (\$523 million) of the total support services contracts for FY 2009. Although the FAR requires that contracts contain clearly defined statements of work, TSA program officials acknowledged that the statements of work did not always accurately reflect program needs or the work the contractors actually performed.

The vague statements of work also allowed acquisition personnel to add unrelated tasks to contracts. For example, the statement of work for a \$10 million services contract for strategic planning was so vague that the contracting officer was able to use it to develop a SharePoint (data repository) system for the Passenger Screening Program without completing a separate contract modification. The development of a SharePoint system is unrelated to strategic planning and is not a support service. TSA should have contracted for the system through its Office of Information Technology under a separate contract.

Statements of work should be clearly written to describe the services needed and detailed enough to ensure that personnel use a contract as intended. Without clear statements of work, TSA

cannot be sure that contractors are providing the services needed, nor can it hold contractors accountable for the services they provide.

TSA often needed to create contract modifications to clarify the work it was asking contractors to perform. Table 1 shows that for the 13 contracts we reviewed, TSA executed 97 contract modifications to define more clearly the work the contractors were performing.

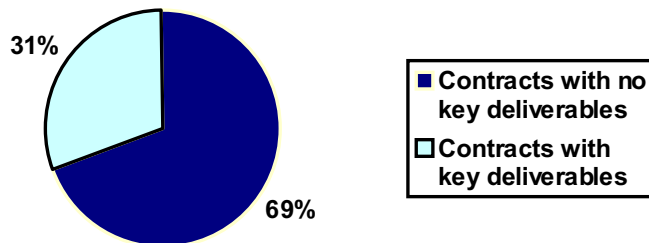
**Table 1: Contract Modifications Made Because TSA Did Not Clearly Define the Requirements in the Statement of Work**

Contract Number	1	2	3	4	5	6	7	8	9	10	11	12	13	Total
Number of Contract Modifications	8	8	11	9	11	17	0	5	2	6	17	2	1	97

Contract modifications require extra work and sometimes add costs to contracts. TSA could have avoided extra costs and work for its already overburdened staff by clearly defining contract requirements before awarding contracts.

Further, contracts were missing key delivery tables that clearly identify the task assignments and delivery dates contractors must meet. Chart 1 shows that 69% (9 of the 13) contracts we reviewed were missing key delivery tables with specific requirements and due dates. Specific contract requirements and task assignments are critical to gauging contractor performance and ensuring that contractors are performing contracted services timely.

**Chart 1: Contract Key Deliverables**



## **TSA Does Not Have a Sufficient Number of Trained COTR Staff**

TSA did not provide sufficient management and oversight for its support services contracts because it did not have an adequate number of dedicated and properly trained COTRs. As a result, TSA has relied on contractors to perform work that is inherently governmental or directly supports the performance of inherently governmental functions.

### **Insufficient COTR Staff**

TSA does not have a core group of acquisition staff to serve as COTRs for support services contracts. TSA assigns COTR responsibilities to staff who are technical experts in the area covered by the contract. However, COTRs remain focused on the program offices in which they normally work and are not available to monitor contractor performance, owing in part to their workload demands. Because of this, TSA relies on contractors to perform many COTR functions, including invoice review and maintenance of the COTR administrative files. According to federal guidelines, some of the COTR duties include inherently governmental functions that contractors should not perform.

TSA should ensure that a core group of technical experts is dedicated exclusively to COTR functions. By maintaining a core group of acquisition experts, TSA would be better able to provide the contract administration, management, and oversight required by OMB and FAR. A core group would also reduce the continual need to train new staff to perform COTR functions.

### **Insufficient Training**

Although COTR training is essential to develop skilled staff for contract administration, COTRs on 85% (11 of the 13) of the contracts reviewed had not completed the required training. To maintain their certifications, TSA requires that COTRs receive 40 hours of COTR training initially, 40 hours of refresher training per 2-year cycle (including a minimum of 12 hours in each year), and annual ethics training. TSA should review the COTR training records to ensure that all COTRs complete the required training. TSA should also tailor COTR refresher training to develop skills in contract administration, management, and oversight.

## **Conclusion**

To improve its ability to manage the risk associated with contracting for support services and help ensure government control and accountability, TSA should define contract requirements more clearly, assess the ability of the government workforce to provide sufficient oversight when using support services, and review contracts for services that are inherently governmental or closely related to inherently governmental functions. TSA must create surveillance plans to ensure compliance with contract performance requirements and internal control standards. Without stronger oversight, TSA will not have reasonable assurance that contractors are performing as required and that full payment is justified under the contracts.

All contracts need to have COTRs assigned who meet the nomination, training, and departmental requirements to perform their role. TSA should review the COTR records annually to ensure that all COTRs have completed the required nominations, training, and departmental approval.

## **Actions Taken by TSA**

TSA is developing and implementing changes in its management and oversight of support services acquisitions to improve accountability and to correct weaknesses identified during our audit. TSA has initiated the following actions:

- The Office of Acquisitions has amended its reviews of contract solicitations to include the review of contract statements of work to ensure that requirements are clearly defined.
- The TSA Head of Contracting Activity will review professional services contracts greater than \$1 million annually to ensure that any proposed contract award or option does not include inherently or nearly inherently governmental requirements or personal services, or impact core functions that must be performed by federal employees.
- The Office of Acquisitions has finalized internal policy on organizational conflicts of interest and procurement integrity for contracting officers to prevent contractors from overseeing their own contracts.

- The TSA COTR program has completed a compliance review of the contracts with deficiencies identified in this report to provide assistance and guidance in the assembly of COTR and contracting files.
- TSA is using new database functionality to provide instant access and reporting on COTR assignment, skills, and certification information for all TSA contracts. This allows TSA to identify all COTRs not in compliance with TSA requirements and contracts without properly delegated COTRs.
- COTR nominations, training, and certifications are being updated to ensure that they are in compliance with TSA requirements.

## Recommendations

We recommend that the Assistant Secretary for TSA:

**Recommendation #1:** Include a contract review of inherently governmental functions as part of contract administration.

**Recommendation #2:** Establish evaluation factors and a review process for requirements identified in the statements of work.

**Recommendation #3:** Assign dedicated, trained, and certified COTRs to manage and oversee the contract administration function.

## Management Comments and OIG Analysis

### **TSA Comments to Recommendation #1:**

**Concur:** TSA recognizes the importance of maintaining control of inherently governmental functions. TSA Head of Contracting Activity (HCA) reviews professional services contracts greater than \$1 million annually to make sure proposed contract awards or options do not include inherently, nearly inherently governmental requirements, personal services, or affect core functions that must be performed by Federal employees. In addition, TSA stated that it would develop policy to require personnel to document analyses that show contracted services are not inherently governmental.

**OIG Analysis:**

The completed actions taken along with TSA's proposed actions satisfy the intent of this recommendation. This recommendation is resolved, but will remain open until the TSA provides us with its new policy.

**Management Comments to Recommendation #2:**

Concur: Office of Acquisition currently has a policy that requires personnel to review all solicitations at least one level above the Contracting Officer. The review includes the SOW to ensure that the statements clearly define the contract requirements. Additionally, OST plans to implement a procurement front-end process that includes the review and approval of procurement documentation, including SOWs. The purpose is to develop a process flow on the OST iShare site to ensure consistency and completeness of procurement packages through out all OST programs. The Electronic Baggage Screening Program includes developing and testing a pilot of the initial workflow within the next six months. TSA plans to implement this workflow process OST-wide once the pilot program is evaluated and refined. This will add another comprehensive review at the Program Manager level prior to the submission of requirements to Office of Acquisition.

**OIG Analysis:**

The completed actions and TSAs proposed actions satisfy the intent of this recommendation. This recommendation is resolved, but will remain open until the workflow process is completed.

**Management Comments to Recommendation #3:**

Concur: The Office of Acquisition initiated efforts to enhance its COTR program, including training plans. TSA also developed a new database that will show COTR assignments, certifications, and skills information and holds quarterly COTR Forums to discuss issues of interest, as well as provide an opportunity to COTRs to share ideas and best practices. In addition, Office of Acquisition plans to offer enhanced COTR training to develop skills in contract administration, management, and oversight. The OST Acquisition Branch implemented an eCOTR file that will provide access to all documentation to assist COTRs in managing contracts and communicating with stakeholders. Within the past year, OST hired four additional personnel to work with the OST Acquisition Branch. One of the goals of this group is to provide centralized oversight support for OST, as well as work with TSA Office of Acquisition. OST will add a link to

the e-COTR files for the COTRs to have access to the OA COTR support iShare site. This OA site provides up-to-date information to COTRs on required training, which will assist TSA in developing current individual training plans for each COTR.

**OIG Analysis:**

The actions taken satisfy the intent of this recommendation. This recommendation is resolved but will remain open until TSA completes all its proposed actions.

**Management Technical Comments:**

We reviewed the Technical Comments provided by TSA and made some changes based on those recommendations. In its comments, TSA did not agree with our conclusion that contractors were performing inherently governmental or nearly inherently governmental work but did agree to initiate corrective actions to address the problem. The FAR establishes contract administration as an inherently governmental function and TSA's support services contractors performed contract administration in 3 of the 13 contracts we reviewed, representing 40 % of the total \$265 million awarded for contracts in FY 2009. We believe that until TSA enhances its management oversight of support service contracts, it will continue to risk transferring government responsibility to contractors by relying on contractors to perform contract administration.

## Appendix A

### Purpose, Scope, and Methodology

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We performed an audit of TSA's acquisition of support services contracts. The objective of our audit was to determine whether TSA provides adequate management and oversight in the acquisition of support services for transportation security programs.

We performed the audit at TSA Headquarters in Arlington, Virginia. Our review included analysis of contract files, COTR files, COTR certification and training files, and invoices, as well as interviews with TSA acquisition staff.

We focused on contracting risks identified in prior Government Accountability Office reports, congressional hearings, and TSA's procedures to mitigate those risks. We reviewed pertinent sections of Office of management and Budget Circulars, the FAR, the Acquisition Management System, the Department of Homeland Security Acquisition Manual and regulations, and TSA internal acquisition policy and guidance. We interviewed various officials in the Office of Security Technology and Office of the Chief Procurement Officer, including contract officers and COTRs responsible for administering contracts. We reviewed and tested internal controls pertinent to our overall objective.

We developed an understanding of internal controls relevant to our audit objective. To accomplish this, we focused on contracting risks identified in prior Government Accountability Office reports, congressional hearings, and TSA's procedures to mitigate those risks. We reviewed pertinent sections of Office of Management and Budget Circulars, the FAR, the Acquisition Management System, the Department of Homeland Security Acquisition Manual and regulations, and TSA internal acquisition policy and guidance. We interviewed various officials in the Office of Security Technology and Office of the Chief Procurement Officer, including contract officers and COTRs responsible for administering contracts. We used this information to plan the audit and determine the nature, timing, and extent of tests to perform. We reviewed and tested internal controls pertinent to our overall objective.

We reviewed 13 TSA support services contracts in the Office of Security Technology. We identified all support services contracts in force for FY 2009 and reviewed all contracts with a dollar value above \$10 million. For all contracts reviewed, the corresponding



## **Appendix A**

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

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contract files, COTR administrative files, COTR certification and training files, and contract invoices for August 2009 were reviewed against Office of Management and Budget requirements, the FAR, the Acquisition Management System, the Department of Homeland Security Acquisition Manual, and TSA internal acquisition requirements.

We used FAR criteria for this audit because TSA is now required to follow all FAR requirements. In 2008, the Office of Management and Budget initiated a change to the FAR, which ended TSA's exemption from the FAR, effective June 23, 2008. Although we reviewed contracts that were awarded prior to the FAR requirements, regulatory acquisition criteria in the Acquisition Management system used by TSA until the exception ended are consistent with those in the FAR, except for the solicitation process, which we did not include in this audit.

We conducted this performance audit between June and October 2009 according to generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient and appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objective. The evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objective.

## Appendix B Management Comments to the Draft Report

MAR 3 2010

U.S. Department of Homeland Security  
601 South 12th Street  
Arlington, VA 20598



Transportation  
Security  
Administration

MEMORANDUM FOR: Richard L. Skinner  
Assistant Inspector General for Audits  
Department of Homeland Security

FROM: Gale D. Rossides *Gale D. Rossides*  
Acting Administrator

SUBJECT: *Draft Report: TSA's Acquisition of Support Services Contracts –  
For Official Use Only*

### Purpose

This memorandum constitutes the Transportation Security Administration's (TSA) formal Agency response to the Department of Homeland Security (DHS), Office of Inspector General (OIG) draft report, *TSA's Acquisition of Support Services Contracts – FOUO* dated December 18, 2009 (Draft Report). TSA recognizes the importance of effective management and oversight of support services contracts, and we appreciate the opportunity to review and provide comments to the Draft Report.

### Background

In 2009, the DHS Office of Inspector General (OIG) commenced an audit (Equipment Audit) of the TSA Logistics Center (TLC). The purpose of the Equipment Audit was to review TSA's management of Transportation Security Equipment (TSE) located at the TLC. The Equipment Audit identified potential weaknesses in TSA's acquisition process of support services and resulted in an additional investigation. OIG reviewed the 13 highest-value support services contracts within the Office of Security Technology (OST). The contracts reviewed under the scope of the subject audit provide a broad range of support to OST in fulfilling its mission.

The Draft Report states that TSA did not provide adequate management and oversight of these contracts. Specifically, the Draft Report concluded that:

- 1) contractors were performing inherently governmental functions or roles that closely support the performance of inherently governmental functions;
- 2) acquisition staff did not follow acquisition guidance;
- 3) contracts contained vague statements of work; and
- 4) TSA did not have an adequate number of properly trained core acquisition staff dedicated to perform contract administration and oversee support services contractors' performance.

## Appendix B Management Comments to the Draft Report

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As a result, the draft report concluded that TSA did not have reasonable assurances that contractors were performing as required, that it contracted for the services needed, that it received the services it paid for, or that taxpayers received the best value for their tax dollars. As OIG notes in its draft report, TSA has developed and implemented changes that will improve the administration and oversight of its support services contracts agency-wide.

### Discussion

TSA appreciates the work of OIG during the course of the audit and will use the information to assist our ongoing efforts to improve the oversight of support services acquisitions. With regard to the Draft Report, TSA disagrees with some of the conclusions and language of the Draft Report and respectfully provides the following comments.

#### **Contractors Are Performing Inherently Governmental Functions.**

OIG asserts that OST contractors “performed inherently governmental functions or roles that directly support the performance of inherently governmental functions” in contract administration. With regard to review of invoices, TSA maintains that obtaining contractor support services for the review of invoices to assess whether charges are reasonable, correctly charged and allowable is not inherently governmental per se, as providing an assessment does not constitute making a “determination” as identified in the FAR. (7.503(c)(12)(vii)). TSA believes that proper administration and oversight by Contracting Officer’s Technical Representatives (COTRs) must be provided to prevent a contractor’s *assessment* and *recommendations* from becoming an actual *determination*. In receiving contractor support for invoice reviews, COTRs must ensure that they have an independent basis for determining whether charges are reasonable, correctly charged, and allowable, and they should not rely solely on contractors recommendations to make this determination.

The Draft Report includes the section “Actions Taken by TSA,” which describes the efforts by TSA to improve contractor oversight, including the creation of internal policy on organizational conflicts of interest (OCI) and procurement integrity for contracting officers to prevent contractors from overseeing their own contracts. The TSA Office of Acquisition (OA) plans to develop OCI training for programs agency-wide. In addition, OA has begun to develop enhanced training that will further develop COTR skills in contract administration, management, and oversight.

#### **Contracting Officers Are Not Following TSA Acquisition Guidance.**

Although OIG did not provide specific information about either the specific contract files or the respective documents that were missing, OA will review all 13 contract files to ensure that any missing documentation is included. OA conducts quarterly compliance reviews of official contract files, one aspect of which is to ascertain whether information is complete and updated. As noted in the Draft Report, OA will continue to work with OST COTRs to identify deficiencies and provide assistance and guidance on proper assembly COTR documentation.

## Appendix B Management Comments to the Draft Report

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Additionally, OST has implemented an electronic COTR notebook on iShare (e-COTR file), which will help ensure consistent and complete content of the COTR files. Initial training on use of the e-COTR file has been provided to all OST COTRs, and OST will work with OA to integrate as appropriate, instruction on e-COTR file into the formal TSA COTR training program.

A benefit of the e-COTR file is that it facilitates easier third-party audit ability. OST will develop an OST-internal surveillance program, to supplement the OA audit program. This will include a peer review program to reinforce OA audits.

### **Contracts Contain Vague Statements of Work.**

TSA agrees that Statements of Work (SOW) must clearly define requirements; however the type of contract may impact the degree of specificity required. For example, with Indefinite Delivery-Indefinite Quantity (IDIQ) contracts, the requisite quantity and frequency of acquired items/services are often not known at the time of contract award, which necessitates the need for an IDIQ contract.

The Draft Report asserts that a great number of contract modifications were executed to clarify the work to be performed, which demonstrates that the contract itself contained vague SOWs. Execution of contract modifications is not necessarily indicative of a vaguely defined scope of work. Contract modifications can be issued for many reasons, including administrative changes, increasing or de-obligating funding, or exercising contract options.

### **TSA Does Not Have a Sufficient Number of Trained COTR Staff**

The Draft Report highlights the significant role COTRs serve and the importance of assigning dedicated, technically proficient COTRs to monitor and administer contracts. The OIG asserted that TSA does not have adequate “core acquisition staff to serve as COTRs for support services contracts.” TSA agrees that dedicated professional COTRs, aligned within the technical organization that owns the requirement and working closely with acquisition staff will provide adequate contract management.

OA has initiated efforts for enhancing its COTR program. OA currently provides outreach support to COTRs and conducts quarterly COTR Forums, which serve to keep the TSA COTR community informed of issues of interest, as well as provide an opportunity to share ideas and best practices. IOA plans to offer enhanced COTR training that will develop skills in contract administration, management, and oversight. This training will include courses in Contract Administration and Corrective Action. As noted in the Draft Report, TSA has developed a new database that will provide functionality to provide instant access and reporting on COTR assignments, certifications, and skills information. Additionally, COTR nominations, training, and certifications for OST COTRs have been updated and validated to ensure compliance with TSA requirements.

Additionally, as part of the annual performance plan agreement between each COTR and his/her respective manager within OST, the manager and COTR will reinforce the COTR training

## Appendix B

### Management Comments to the Draft Report

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requirements as part of the COTR's Individual Development Plan (IDP). Periodic performance review discussions held throughout the year will provide the opportunity to review compliance with COTR training requirements, to supplement the periodic OA review for each COTR. OST and OA will regularly discuss status of certification of COTRs.

Finally, OST has hired four additional personnel to work with the OST Acquisition Branch. One of the goals of this group is to provide centralized oversight support for OST cross-cutting contracts, as well as work with OA to ensure COTR tools are properly utilized.

#### Conclusion

TSA appreciates the work performed by OIG and the contribution of the audit results to further assist TSA in strengthening the management and oversight of contracts. In addition to the specific actions taken reflected in the report, TSA is undertaking additional steps to further address these issues. TSA's responses to the specific recommendations, as well as technical comments, to the Draft Report are attached.

## Appendix B

### Management Comments to the Draft Report

#### United States Department of Homeland Security Transportation Security Administration

#### Response to Draft Recommendations TSA's Acquisition of Support Services Contracts

**Recommendation #1: Include a contract review of inherently governmental functions as part of contract administration.**

**TSA Concur:** TSA recognizes the importance of maintaining control of inherently governmental functions. As reflected in the Draft Report, the TSA Head of Contracting Activity (HCA) reviews professional services contracts greater than \$1 million annually to ensure that any proposed contract award or option does not include inherently or nearly inherently governmental requirements or personal services, or impact core functions that must be performed by Federal employees. In addition, forthcoming policy will require an analysis to demonstrate how contracted services are not inherently governmental.

**Recommendation #2: Establish evaluation factors and a review process for requirements identified in the statements of work.**

**TSA Concur:** OA currently has a policy of solicitation reviews to ensure that all solicitations are reviewed at least one level above the Contracting Officer. This review includes the SOW to ensure that requirements are clearly defined. Additionally, OST plans to implement an OST-wide procurement front-end process that includes the review and approval of procurement documentation, including SOWs. The purpose is to develop a process flow on the OST iShare site to ensure consistency and completeness of procurement packages among all OST programs. The Electronic Baggage Screening Program plans to develop and pilot the initial workflow within the next six months. Once refined, the workflow process will be implemented OST-wide. This will add another comprehensive review at the Program Manager level prior to the submission of requirements to OA.

**Recommendation #3: Assign dedicated, trained, and certified COTRs to manage and oversee contract administration.**

**TSA Concur:** As described above, OA has initiated efforts for enhancing the COTR program, including training. TSA has developed a new database that will provide functionality to access COTR assignments, certifications, and skills information. TSA also provides outreach to COTRs and conducts quarterly COTR Forums, which serve to keep the COTR community informed of issues of interest, as well as an opportunity to share ideas and best practices. In addition, OA plans to offer enhanced COTR training that will develop skills in contract administration, management, and oversight. This training will include courses in Contract Administration and Corrective Action. The OST Acquisition Branch has implemented an e-COTR file, which will include access to all requisite documentation and will facilitate the management of contracts, communication with stakeholders, and records management. Additionally, within the past year, OST has hired four additional personnel to work with the OST Acquisition Branch. One of the goals of this group is to provide centralized oversight support

## **Appendix B**

### **Management Comments to the Draft Report**

for OST cross-cutting contracts, as well as work with TSA OA to ensure COTR tools are properly utilized. OST will add a link to the e-COTR files for the COTRs to have access to the OA COTR support iShare site. This OA site provides up-to-date information to COTRs on required training, which will assist in ensuring that the IDPs for each COTR remain adequate and current.

## **Appendix B**

### **Management Comments to the Draft Report**

#### **United States Department of Homeland Security Transportation Security Administration**

#### **Technical Comments to Draft Report TSA's Acquisition of Support Services Contracts**

Pursuant to previous conversations between OIG staff and TSA staff, TSA also offers the following technical comments to the Draft Report as part of this response:

- ▶ In the Executive Summary section, OIG notes that TSA “did not provide adequate management and oversight of acquisitions for support services for transportation security programs.” This statement should be clarified to reflect that only the OST portfolio of programs related to transportation security technology were reviewed and not all contracts related to the greater TSA mission of transportation security, as is reflected in the within the “Results of Audit” section of the report.
- ▶ The “Background section” reflects that the contracts reviewed had a total value of \$609 million. It should be clarified that this figure represents the total value over multiple contract years.
- ▶ The title of the “Contracting Officers Are Not Following TSA Acquisition Guidance” section should be modified to reflect that “Certain TSA staff are not following acquisition guidance,” since this section also references COTRs. Further, in this section, the statement that documentation was missing for all contracts could be mistakenly interpreted to mean that all required documentation was missing from every file. TSA believes that the intention here was to indicate that the contract files reviewed were missing some of the documentation listed, similar to the reference for COTR files. It would be beneficial to include the number of contracts that were missing the respective documentation, as is reflected for the COTR files.



## Appendix C

### Inherently Governmental and Approaching Inherently Governmental Functions

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FAR section 7.503 provides examples of inherently governmental functions (table C.1) and services or actions that are not inherently governmental, but may approach being inherently governmental functions based on the nature of the function, the manner in which the contractor performs the contract, or the manner in which the government administers contractor performance (table C.2).

**Table C.1: Examples of Inherently Governmental Functions**

1	Directly conduct criminal investigations.
2	Control prosecutions and perform adjudicatory functions other than arbitration.
3	Command military forces.
4	Conduct foreign relations and determine foreign policy.
5	Determine agency policy, including regulations.
6	Determine federal program priorities for budget requests.
7	Direct and control federal employees.
8	Direct and control intelligence and counterintelligence operations.
9	Select individuals for federal government employment.
10	Approve position descriptions and performance standards for federal employees.
11	Determine the disposal of government property.
12	In federal procurement activities with respect to prime contracts, determine the supplies or services acquired by the government; participate as a voting member on any source selection boards; approve contractual documents, including documents defining requirements, incentive plans, and evaluation criteria; award contracts; administer contracts; terminate contracts; determine whether contract costs are reasonable, allocable, and allowable; and participate as a voting member on performance evaluation boards.
13	Approve agency responses to <i>Freedom of Information Act</i> requests.
14	Conduct administrative hearings to determine eligibility for security clearances, or that affect personal reputation or eligibility to participate in government programs.
15	Approve federal licensing actions and inspections.
16	Determine budget policy, guidance, and strategy.
17	Collect, control, and disburse public funds, unless authorized by statute. Does not include the collection of public charges to mess halls, national parks, and similar entities; and routine voucher and invoice examination.
18	Control treasury accounts.
19	Administer public trusts.
20	Draft congressional testimony, responses to congressional correspondence, or agency responses to audit reports.

## Appendix C

### Inherently Governmental and Approaching Inherently Governmental Functions

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**Table C.2: Examples of Roles That May Directly Support the Performance of Inherently Governmental Functions**

1	Involve or relate to budget preparation.
2	Involve or relate to reorganization and planning activities.
3	Involve or relate to analyses, feasibility studies, and strategy options to be used in developing policy.
4	Involve or relate to developing regulations.
5	Involve or relate to evaluating another contractor's performance.
6	Support acquisition planning.
7	Assist in contract management.
8	Provide technical evaluation of contract proposals.
9	Assist in developing statements of work.
10	Support the preparation of responses to <i>Freedom of Information Act</i> requests.
11	Work in situations that may permit access to confidential business information.
12	Provide information regarding agency policies or regulations.
13	Participate in situations where contractors may be assumed to be agency employees or representatives.
14	Participate as technical advisors to source selection boards or as members of a source evaluation board.
15	Serve as arbitrators or provide alternative methods of dispute resolution.
16	Construct buildings intended to be secure.
17	Provide inspection services.
18	Provide legal advice and interpret regulations and statutes for government officials.
19	Provide non-law enforcement security activities that do not directly involve criminal investigations.

**Appendix D**  
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**Appendix E**  
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