

Department of Homeland Security **Office of Inspector General**

DHS Contracts Awarded Through
Other Than Full and Open Competition
During Fiscal Year 2011





Homeland
Security

JAN 30 2012

Preface

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

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

The 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 black and white image of a handwritten signature, which appears to be "Anne E. Richards".

Anne E. Richards
Assistant Inspector General for Audits

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Abbreviations

APFS	Acquisition Planning Forecast System
DHS	Department of Homeland Security
CPO	Chief Procurement Officer
EPLS	Excluded Parties List System
FAPIIS	Federal Awardee Performance and Integrity Information System
FAR	Federal Acquisition Regulation
FPDS	Federal Procurement Data System-Next Generation
FY	fiscal year
HSAM	Homeland Security Acquisition Manual
OCPO	Office of the Chief Procurement Officer
OFPP	Office of Federal Procurement Policy
OIG	Office of Inspector General

OIG

*Department of Homeland Security
Office of Inspector General*

Executive Summary

The Department of Homeland Security Appropriations Act for Fiscal Year 2012 included a requirement that the Department of Homeland Security Office of Inspector General review the Department's contracts awarded through other than full and open competition during fiscal year 2011 to determine compliance with applicable laws and regulations. We reviewed selected component contract files, as well as departmental policies, procedures, and management controls, to determine whether acquisition personnel appropriately documented and supported contracting decisions.

The Department obligated about \$929 million for noncompetitive contracts during fiscal year 2011. Our review of 40 contract files, with a reported value of more than \$731 million, showed that the Department improved acquisition management oversight by strengthening its guidance and completing reviews of the components to validate compliance with its guidance. We previously reviewed noncompetitive contracting at DHS for contracts awarded during fiscal years 2008, 2009, and 2010, and noted that the Department continued to show improvements during fiscal year 2011 with documenting support for noncompetitive contracting decisions. Specifically, deficiencies with documentation for justification and approval, market research, acquisition planning, and past performance declined over this 3-year period. However, not all contract files contained sufficient evidence of acquisition planning. Also, acquisition personnel did not always document consideration of contractor past performance when performing background research on eligible vendors. As a result, the Department cannot be sure that it received the best possible value on the goods and services acquired through these contracts or that acquisition personnel awarded government contracts to eligible and qualified vendors.

We are making two recommendations to the Department's Chief Procurement Officer to continue efforts to improve acquisition management oversight.

Background

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

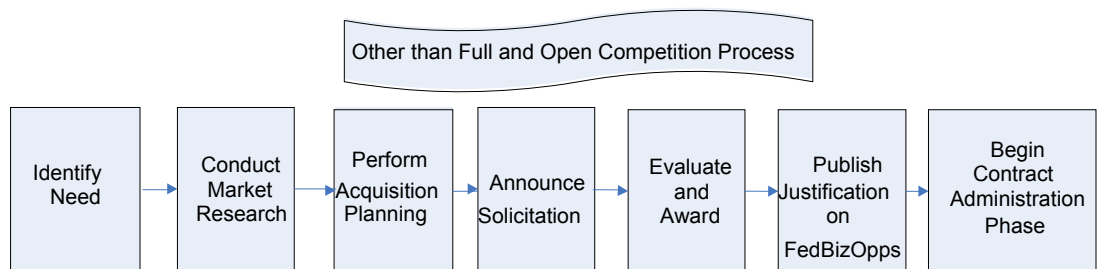
The Office of Federal Procurement Policy (OFPP) in the Office of Management and Budget plays a central role in shaping the policies and practices that federal agencies use to acquire goods and services. The office employs several tools to collect, develop, and disseminate government-wide procurement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

Competition provides the best assurance that the government has received a fair and reasonable price and obtained the most comprehensive input on the technical aspects of the various methods to complete its work. It encourages contractors to offer best-value proposals when bidding on federal contracts, thereby reducing costs and protecting the interest of taxpayers. According to the FAR, “best value” is the expected outcome of an acquisition that, in the government’s estimation, provides the greatest overall benefit in response to a requirement. Competition also discourages favoritism by leveling the playing field for contract competitors and curtailing opportunities for fraud and abuse.

Contract specialists are required to perform certain steps during the other than full and open contracting process. As depicted in figure 1, the process begins when personnel identify a need. Contract personnel perform market research to determine the most suitable approach for acquiring, distributing, and managing supplies and services to support the Department’s mission. Acquisition planning helps ensure that the government is meeting its needs in the most effective, economical, and timely manner. With this assurance, acquisition personnel announce a solicitation on FedBizOpps, the single, government-wide point of entry for

federal procurement opportunities greater than \$25,000, unless the agency authorizes an exception. After the government awards a contract under other than full and open competition, the FAR requires the agency to make the justification publicly available within 14 days, unless the Unusual and Compelling Urgency exception is used, which allows for 30 days. Agencies post justifications on FedBizOpps. The contract administration phase begins after acquisition personnel post the justification and approval to FedBizOpps. Additionally, the Homeland Security Acquisition Manual (HSAM) requires, with some exceptions, that the Department of Homeland Security (DHS) notify Congress when awarding contracts over \$1 million.

Figure 1. The Contracting Process



Source: DHS-OIG generated.

The following entities within DHS have a role in managing these procurements:

- The Office of the Chief Procurement Officer (OCPO) is responsible for ensuring the integrity of all acquisitions that support DHS, according to DHS Management Directive 0784, dated December 19, 2005. OCPO provides policy, procedures, guidance, and training to the Department’s acquisition workforce. OCPO also oversees the acquisition of contracted goods and services for DHS through several entities, such as the Oversight and Pricing Branch, the competition advocates, and heads of contracting activity.
- The Oversight and Pricing Branch supports OCPO’s mission by executing internal procurement oversight responsibility and providing just-in-time procurement support to DHS component contracting activities. Branch personnel perform individual component as well as targeted, stand-alone oversight reviews useful for both internal and external stakeholders. The staff also provides coordination and reviews of high-dollar

acquisition-related support documentation, expert-level pricing support and training, and component-focused procurement guidance.

- The DHS Competition Advocate is responsible for promoting full and open competition, promoting acquisition of commercial items, and removing barriers to full and open competition such as unnecessarily restrictive statements of work, overly detailed specifications, and unnecessarily burdensome contract clauses. The DHS Competition Advocate must submit an annual report to the Chief Procurement Office on the components' procurement activities.
- The Procuring Competition Advocate is responsible for promoting full and open competition, promoting acquisition of commercial items, and removing barriers to full and open competition such as unnecessarily restrictive statements of work, overly detailed specifications, and unnecessarily burdensome contract clauses at the component level. The Procuring Competition Advocate must submit an annual report to the DHS Competition Advocate on the components' procurement activities.
- Heads of Contracting Activity directly manage the procurement functions of their respective components. They assist in the execution of acquisition programs by providing the necessary resources, facilities, and infrastructure for the procurement process. They also provide procurement data and lessons learned to the Chief Procurement Officer for wider distribution within DHS.
- Contracting Officers are responsible for many activities leading up to an acquisition for goods or services. Responsibilities include ensuring that sufficient funds are available for obligation, requesting offers from as many potential sources as practicable, certifying that all required justification and approvals are accurate for awarding contracts noncompetitively, and determining that the anticipated cost to the government will be fair and reasonable. Contracting officers are also responsible for timely and accurate reporting of procurement data to the standard system.
- Program Managers are empowered to make final scope of work, capital investments, and performance acceptability decisions, and are responsible for accomplishing program

objectives or production requirements through the acquisition of in-house, contract, or reimbursable support resources, as appropriate. Program managers' duties include developing and updating the acquisition plan, coordinating with other personnel responsible for significant aspects of the plan, obtaining applicable concurrences, and forwarding the plan through the approval process.

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

The Department of Homeland Security Appropriations Act for Fiscal Year (FY) 2012 directs the Office of Inspector General (OIG) to review DHS contracts awarded during FY 2011 through other than full and open competition to determine departmental compliance with applicable laws and regulations. The act advises OIG, when selecting contracts for review, to consider the following:

- The cost and complexity of the goods and services provided under other than full and open competition contracts
- The criticality of the contracts to fulfilling the Department's missions
- The problems with past performance on similar contracts or by the selected vendors
- The complaints received about the award process or contractor performance¹

DHS obligated about \$929 million for noncompetitive contracts during FY 2011. We reviewed DHS component contract files for contracts awarded during FY 2011 through other than full and open competition to determine whether component personnel included and approved all required justifications and other elements in the contract files. We selected 40 noncompetitive contract awards with a total value of more than \$731 million. We also reviewed DHS policies, procedures, and management controls to determine whether acquisition personnel appropriately documented and supported contracting decisions.

¹ Public Law 112-74, Division D, Section 520(d).

Results of Audit

DHS has made overall improvements in its acquisition management oversight. It completed its planned oversight review and issued updated guidance to strengthen controls over acquisition management in response to OIG audit report recommendations. Its Competition Advocate also requires components to report progress in achieving competition goals.

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

DHS cannot be sure that it received the best possible value on the goods and services acquired through these contracts. In addition, it is uncertain that acquisition personnel awarded government contracts to eligible and qualified vendors.

Acquisition Management Oversight

OCPO has made progress in improving oversight of contracting activities. On June 13, 2011, OCPO issued a followup review of noncompetitive contracting efforts. OCPO reviewed new noncompetitive contracts awarded from August 1 to September 30, 2010, in accordance with Management Directive 0784. OCPO reviewed contract files to determine if the components (1) made contract files available, (2) properly coded contracts in FPDS, (3) had supporting documentation in the contract file, (4) cited authority for the justification, and (5) had adequate justification for the authority cited. OCPO concluded that DHS had improved in all five areas since OCPO's last review in March 2010, which cited these five areas.

Additionally, during FY 2011, OCPO distributed various supplemental directives to component Heads of Contracting Activity to help guide noncompetitive contracting decisions. Specifically, OCPO issued directives containing guidance for justification and approval, market research, acquisition planning, and contractor past performance (see appendix D).

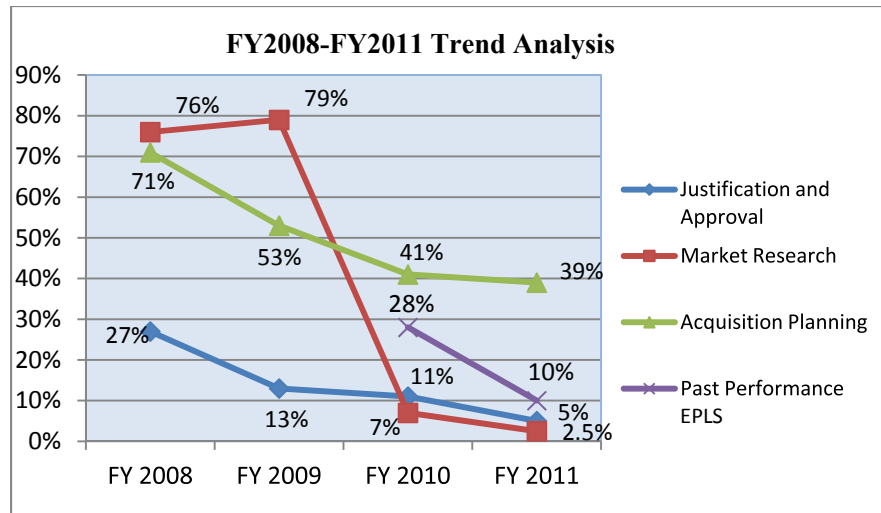
The additional guidance OCPO provided to component acquisition personnel represents the Department's efforts to strengthen documentation and support for contracting decisions and improve accountability within

DHS. However, DHS needs to continue to improve and monitor progress in acquisition planning and to consider contractor past performance.

Improvement Trends

We previously reviewed noncompetitive contracting at DHS for contracts awarded during FYs 2008, 2009, and 2010, and noted that DHS continued to show improvements during FY 2011 with documenting support for noncompetitive contracting decisions. Specifically, deficiencies with documentation for justification and approval, market research, acquisition planning, and past performance declined over this 3-year period. Figure 2 represents by percentage the deficiencies noted in the 40 files we reviewed by oversight area.

Figure 2. Prior OIG Audit Results



Source: DHS OIG analysis. Note: We did not evaluate past performance information in FYs 2008 and 2009. Also, the past performance results in the chart pertain to documentation of checks in the Excluded Parties List System and not deficiencies we identified with checks of the Federal Awardee Performance and Integrity Information System as required by the FAR.

For example:

- Justification and approval deficiencies dropped gradually between 2008 and 2011. The number of deficiencies we noted decreased from 27% in FY 2008 to 13% in FY 2009, then from 11% in FY 2010 to 5% in this year's audit.
- Market research deficiencies rose slightly from 2008 to 2009 but declined sharply between 2009 and 2010. For example, we noted market research deficiencies in 76% of the files reviewed

in FY 2008, and that figure rose to 79% in FY 2009. However, between 2009 and 2010, the number of deficiencies declined to 7% in FY 2010 and to 2.5% of the files reviewed this year. We attribute improvements in these two areas to the Department's increased acquisition management oversight.

- Acquisition planning deficiencies dropped steadily from FY 2008 to 2010, but declined by only 2% between 2010 and 2011. We found acquisition planning deficiencies in 71% of the files reviewed in FY 2008. That number dropped to 53% in FY 2009, then continued to decline to 41% in FY 2010. However, we found acquisition planning deficiencies in 39% of the files reviewed this year, primarily because we did not find evidence in the contract file that acquisition personnel entered advance acquisition plans in the new system. We attribute the acquisition planning deficiencies to the Department's lack of acquisition management oversight of this area.
- Past performance deficiencies also declined between 2010 and 2011. Starting in 2010, we assessed the Department's compliance with documenting checks for contractor past performance in the Excluded Parties List System (EPLS) and noted deficiencies in 28% of the files we reviewed. For FY 2011, that number decreased to 10% of the files reviewed. However, we found that the Department's acquisition personnel were not documenting their checks for past performance information in the Federal Awardee Performance and Integrity Information System (FAPIIS), as required by the FAR, and DHS lacked oversight of this requirement.

DHS showed overall improvement in most areas, but OCPO needs to continue to monitor compliance with regulatory requirements for documenting and supporting noncompetitive contract decisions.

Noncompetitive Procurement Justification and Approval

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

- Only one responsible source and no other supplies or services to satisfy agency requirement
- Unusual and compelling urgency

- Industrial mobilization; engineering, developmental, or research capability; or expert services
- International agreement
- Authorized or required by statute
- National security
- Public interest

The FAR requires that any agency contracting officer who approves the acquisition of goods or services through other than full and open competition provide written justification. The justification must have approvals from the appropriate authority. Depending on the dollar amount of the acquisition, the justification approval requirements may vary. For contracts that require written justification, the contracting officer must sign to certify that the information is complete and accurate. As shown in figure 3, the FAR allows some exceptions to the requirement for written justification for noncompeted contract awards.

Figure 3. Exceptions to Written Justification and Approval Requirement for Noncompeted Contracts

- 1: Agency need for a brand name commercial item for authorized resale.
- 2: Acquisition from qualified nonprofit agencies for the blind or other severely disabled.
- 3: Sole source awards under the 8(a) Program.²
- 4: When a statute expressly requires that the procurement be made from a specified source.
- 5: Sole source acquisitions with an estimated value equal to or less than \$150,000, or acquisitions that qualify under the FAR test program for certain commercial items.
- 6: U.S. Coast Guard is exempt from the requirement for written justifications and approvals for contracts awarded citing International Agreement.

Source: FAR Subpart 6.302-4(c); 6.302-5(c)(2)-(3); 13.500(e); and 13.501(a)(2)(i)

DHS continued to improve documenting justification and approvals for awarding noncompetitive contracts. We reviewed our audit reports from FYs 2008, 2009, and 2010, and compared the number of deficiencies in justification and approval documentation. For the FY 2011 contracts in our sample, we identified only one deficiency in documentation and support for justifications and approvals. In previous years, the number of deficiencies identified in files fell steadily from 27% in FY 2008, to 13% in FY 2009, to 11% in FY 2010.

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

We reviewed 40 noncompetitive contract awards from FY 2011, with an obligated value of about \$731 million (see appendix C). The FAR requires certification for justification and approvals based on the dollar threshold of the contract. For example, contracts valued at less than or equal to \$650,000 require contracting officer certification, while contracts greater than \$650,000 but less than \$12.5 million require the component Competition Advocate's certification.³ Contract data recorded in the standard system showed that 19 of the 40 noncompetitive awards required written justification and approval. Acquisition personnel placed the required justification and approval documentation in these 19 files based upon the FAR guidance. However, the contracting officer did not sign the justification and approval for 1 of the 19 files. We were not able to determine that the Department awarded this contract based on a properly certified justification and approval.

In addition to the above certification requirement, the HSAM requires that DHS notify Congress when awarding contracts over \$1 million. In our sample, 21 of the 40 noncompetitive awards had individual values greater than the \$1 million threshold, therefore requiring congressional notification. We found evidence that DHS notified Congress in 16 of the 21 files reviewed. DHS cannot be assured that Congress was properly notified of the five remaining noncompetitive awards.

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

Market Research

DHS also showed improvement in documenting market research over the 4-year period. In FY 2008, about 76% of the files we reviewed showed deficiencies in market research, in FY 2009 deficiencies increased to about 79%, but in FY 2010, deficiencies declined to about 7%. During FY 2011, market research deficiencies remained low at about 2.5%.

³ Transportation Security Administration Management Directive No. 300.13 requires component Competition Advocate approval of justifications and approvals for contracts valued greater than \$550,000.

FAR § 10.001 requires agencies to conduct market research before (1) developing new requirements documents for an acquisition; (2) soliciting offers for an acquisition that exceeds \$150,000, or is less than \$150,000 when adequate information is not available and circumstances justify the cost; or (3) soliciting offers for acquisitions that could lead to a bundled contract. Agencies should conduct market research to ensure that the government is procuring goods and services at reasonable costs, regardless of the status of competition.

The HSAM also includes department-wide guidance that instructs acquisition personnel to conduct market research that enhances transparency and competition. DHS requires that acquisition personnel clearly document and include in the contract file market research efforts and results. Market research results are a key factor in acquisition related decision-making. Specifically, the acquisition team should use market research information to support price reasonableness determinations. We found evidence to support efforts to determine price reasonableness, such as the following:

- Independent government cost estimates
- Wage determinations
- Cost and pricing data

Further, the HSAM instructs acquisition personnel to check federal contracting databases such as the central contractor registration system, the past performance information retrieval system, and the excluded parties list system when conducting market research.

Of the 40 noncompetitive contracts reviewed, 39 contract files (97.5%) contained evidence that acquisition personnel supported and sufficiently documented market research efforts. However, one contract for computer software and hardware did not include sufficient evidence that acquisition personnel performed and documented the required market research. Therefore, DHS cannot be assured that acquisition personnel conducted the required market research to obtain the best price for goods and services prior to awarding this contract.

Although DHS significantly improved its oversight and direction on adequate market research documentation, it needs to continue performing its management oversight and implement corrective actions to ensure that it receives the best value for goods and services acquired.

Acquisition Planning

Acquisition planning continues to be a challenge for the Department. Components have not complied with DHS policy for documenting advance acquisition plans in the contract file as well as entering these forecasts into the new system for publicizing future contracting opportunities.

According to FAR §2.101, acquisition planning is the process by which the efforts of DHS personnel are coordinated and integrated to forecast procurement needs and fulfill this necessity in a timely manner and at a reasonable cost. Acquisition planning includes developing the overall strategy for managing the acquisition. DHS makes acquisition plans available to the public to allow businesses the chance to identify future contracting opportunities.

The Department of Homeland Security Acquisition Manual, Appendix H, requires DHS to prepare a formal written plan for acquisitions greater than or equal to \$10 million. However, for acquisitions estimated to be valued at less than \$10 million, advance acquisition plans are entered into the Acquisition Planning Forecast System (APFS), eliminating the need for a written acquisition plan. Acquisition personnel should document their efforts to forecast and publicize the contracting opportunities in the contract file.

In accordance with Public Law 100-656, DHS implemented APFS to allow the public access to information regarding future contract opportunities. Prior to February 28, 2011, DHS entered advance acquisition plans in the Federal Interagency Databases Online using DHS-AAP at FIDO.gov. DHS retired this system on February 28, 2011, and notified components of temporary procedural changes to manually complete advance acquisition plans. Once APFS became operational, the Department instructed components to review APFS to ensure that all plans had properly migrated to the new system.

Of the 40 contract files in our sample, 4 (10%) had individual values greater than \$10 million and required a formal written plan. We found formal written acquisition plans in the contract files for these four contracts, with a total value of \$680,374,243. For the remaining 36 contracts, valued at less than \$10 million each and requiring advance acquisition plans, we did not find evidence in the contract files that acquisition personnel prepared plans for 14 (39%) of the contracts, with a total value of \$10,393,001. One component implemented a checklist indicating that it was not necessary to document advance acquisition plans in the contract file if entered into the database (see appendix E). This

guidance contradicts the Department's policy requiring acquisition personnel to place advance acquisition plan information in the contract file.

DHS needs to continue to emphasize better planning and documenting acquisitions to promote and provide for competition and the selection of the appropriate contract type in compliance with federal regulations.

Contractor Eligibility

DHS continues to have compliance challenges when assessing vendor past performance. Acquisition personnel do not always use the required systems when determining contractor responsibility prior to contract award.

FAR 9.105-1 requires contracting officers to consider information from FAPIIS when determining prospective contractor eligibility. This system links information from EPLS and the Past Performance Information Retrieval System to enable users to access one system that captures the consolidated performance history of prospective contractors. In April 2011, the Department issued an acquisition alert requiring acquisition personnel to use data from both EPLS and FAPIIS. DHS also requires acquisition personnel to include evidence in the contract file to support resources used in responsibility determinations.

In 4 (10%) of the 40 files in our sample, valued at \$5,818,064, we did not find evidence that acquisition personnel checked EPLS in accordance with DHS policy. In 36 (90%) of the 40 files, we did not find evidence that acquisition personnel also checked FAPIIS as required. The total value of these 36 contracts is \$715,564,635.

Acquisition personnel must improve documentation of their efforts to establish contractor eligibility prior to awarding contracts. Evidence that acquisition personnel checked resources such as FAPIIS and EPLS provides increased assurance that DHS purchases goods and services from and awards contracts to responsible prospective contractors. Awarding contracts without taking the required steps to access resources containing critical past performance information diminishes the Department's ability to prevent subsequent default, late deliveries, or unsatisfactory performance, resulting in additional contractual costs.

Recommendations

We recommend that the DHS Chief Procurement Officer, in coordination with component Heads of Contracting Activities:

Recommendation #1: Increase acquisition management oversight to ensure that DHS acquisition personnel are following policies for placing evidence of advance acquisition plans in the contract file.

Recommendation #2: Increase acquisition management oversight to ensure that acquisition personnel place evidence in the contract files that they checked the Federal Awardee Performance and Integrity Information System as required by the FAR.

Management Comments and OIG Analysis

The Department provided comments on the draft of this report. A copy of the comments in its entirety is included in appendix B. The Department concurred with the recommendations in the report and indicated planned actions to address the recommendations made within the report.

The Department provided technical comments and suggested revisions to sections of our report. As appropriate, we made changes throughout the report in response to those suggested revisions.

Management Comments to Recommendation 1

DHS concurs. The Department indicated the Chief Procurement Office (CPO) will issue a memorandum to contracting personnel emphasizing the current requirement that evidence of acquisition planning be included in the contract file. The Department also stated that it will modify the checklist used during contracting reviews.

OIG Analysis: The Department's planned actions sufficiently address the recommendation. The recommendation is resolved, but will remain open until the Department provides (1) a copy of the memorandum emphasizing that acquisition personnel place evidence of acquisition planning in the contract file and (2) a copy of the CPO's checklist that enforces compliance with this requirement.

Management Comments to Recommendation 2

DHS concurs. The Department stated that CPO will revise the HSAM to require that contracting personnel include a statement in the contract file that contracting personnel queried FAPIIS and that no adverse information was present.

OIG Analysis: The Department's planned actions sufficiently address the recommendation. The recommendation is resolved, but will remain open until the Department provides (1) a copy of the HSAM revision requiring contracting personnel to place evidence in the contract file that they queried FAPIIS and (2) a copy of the CPO's checklist that includes checks for compliance.

Appendix A

Purpose, Scope, and Methodology

The Department of Homeland Security Act for the fiscal year ending September 30, 2012 directs OIG to review the Department's contracts awarded during FY 2011 through other than full and open competition to determine departmental compliance with applicable laws and regulations.

To answer our objective, we reviewed applicable federal laws and regulations, as well as DHS and component-specific guidance, to identify requirements for noncompetitive contract awards. We also examined prior audit reports to identify related work and to assess trends in deficiencies with documentation and support identified during prior audits.

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

We reviewed a judgmental sample of 40 contracts awarded during FY 2011 pursuant to the seven exceptions enumerated in FAR § 6.302. We selected files for review from each of the five components to determine whether contract files contained adequate documentation and support for noncompetitive contracting decisions to justify the contract awards. Specifically, we determined whether the noncompetitive contract files contained proper justifications and approvals, adequate market research, and acquisition plans appropriate to the dollar values of the awards. We also checked contract files for documentation to support consideration of vendor past performance. Because there is no assurance that a judgmental sample is representative of the entire universe, we did not project our review results to all DHS contracts.

We conducted this performance audit between June and October 2011 pursuant to the *Inspector General Act of 1978*, as amended, and according to generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based upon our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based upon our audit objectives.

Appendix B
Management Comments to the Draft Report

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



**Homeland
Security**

JAN 20 2012

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

FROM: David J. Capitano *DJ Capitano*
Director, Oversight and Strategic Support
Department of Homeland Security

SUBJECT: CPO Response to Draft Inspector General Report: *DHS
Contracts Awarded Through Other Than Full and Open
Competition During Fiscal Year 2011*

In response to your memorandum dated January 5, 2012, entitled "*DHS Contracts Awarded Through Other Than Full and Open Competition During Fiscal Year 2011 – For Official Use Only, OIG Project No.11-119-AUD-DHS,*" attached are the comments from the Office of the Chief Procurement Officer (CPO) for inclusion within the management comments appendix of the forthcoming final report.

If there are any questions, please contact me at (202) 447-5417 or at david.capitano@dhs.gov.

Attachment

cc:
Peggy Sherry, Deputy Chief Financial Officer

Appendix B

Management Comments to the Draft Report

CPO Response to OIG Draft Report: “DHS Contracts Awarded Through Other Than Full and Open Competition During Fiscal Year 2011”

Attachment

I. CPO Response to OIG Draft Report Recommendations

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

General Comments:

While we appreciate the recognition in the Executive Summary that the Department has generally improved our acquisition oversight, we request that this section more fully emphasize the outstanding improvements that DHS has made. DHS believes that the Figure 2 chart on Page 7 of the draft report is a great illustration of the improvement trends that the Department has made since 2008; we recommend that those trends be highlighted in the executive summary. If the trends are not highlighted, then at a minimum, we request the Executive Summary state that CPO has shown significant improvements in the areas of Justification and Approvals, Market Research, and Past Performance (these areas are the ones for which the reduction in noncompliance rates is outstanding, as indicated by Figure 2 on Page 7 of the draft report).

Recommendation 1: *“Increase acquisition management oversight to ensure that DHS acquisition personnel are following policies for placing evidence of advance acquisition plans in the contract file.”*

CPO Response: DHS concurs with this recommendation. CPO will issue a memorandum to contracting personnel emphasizing the current requirement at HSAM 3007.172, Advanced Acquisition Plans, which requires that information entered into the Acquisition Planning Forecast System (APFS), including the plan number, be included in the contract file(s) to provide evidence of acquisition planning. Additionally, review for compliance with this requirement will be included as part of CPO’s oversight checklist for each contracting activity procurement review. If significant improvement in this area is not found during the next twelve months, CPO will evaluate further actions (e.g., additional training, inclusion of the requirement in HCA and/or employee performance plans).

Recommendation 2: *“Increase acquisition management oversight to ensure that acquisition personnel place evidence in the contract files that they checked the Federal Awardee Performance and Integrity Information System as required by the FAR.”*

CPO Response: DHS concurs with this recommendation. CPO will revise the HSAM to require that contracting personnel include, in the contract file, a statement that the contract specialist and/or contracting officer queried the system and that no adverse information was present in FAPIIS as of a specified date/time. In addition, CPO will include a review of this HSAM requirement as part of our oversight checklist for future contracting activity reviews.

Appendix B

Management Comments to the Draft Report

CPO Response to OIG Draft Report: “DHS Contracts Awarded Through Other Than Full and Open Competition During Fiscal Year 2011”

II. CPO Technical Comments

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

Section entitled “Acquisition Management Oversight”

- 1) Pg 7, Figure 2, under Source,” CPO recommends revising “Federal Awardee Integrity Information System” to read: “Federal Awardee Performance and Integrity Information System.”
- 2) Page 9; Figure 3 lists the exceptions to written justification and approval requirements for non-competed contracts. Item #5 reads “[s]ole source acquisitions with an estimated value equal to or less than \$150,000, or acquisitions that qualify under the test program for certain commercial items.” FAR 13.500(e) and 13.501(a)(2)(i) are provided as sources. FAR 13.501(a)(2) does require a written justification. Written justifications are not required solely for sole source acquisitions equal to or less than \$150,000. This is indicated in FAR 13.106-1(b). Therefore, CPO recommends that this item be revised.
- 3) Page 10, 1st full paragraph. While the FAR requires component competition advocate certification of J&As for contracts valued greater than \$650,000, TSA requires competition advocate certification of J&As for contracts valued greater than \$550,000. CPO recommends that OIG make note of this in the report.

Appendix A: “Purpose, Scope, and Methodology”

- 1) The first sentence of the 2nd paragraph states “[w]e sampled contracts files at five of eight DHS procurement offices.” There are nine DHS procurement offices. CPO recommends that number be revised.

Appendix C: “Acquisition Programs Reviewed”

- 1) Page 18, contracts #8 and #9 are listed with erroneous contract prefix numbers. These are CBP contracts, and should be listed as HSBP and not HSPB.

Appendix D: “OCPO Guidance to DHS Components”

- 1) Under “Market Research,” under “Publication Number,” CPO recommends inserting “Market Research Guide.”

Appendix C
DHS Contract Files Reviewed

DHS Contracts Reviewed⁴ FY 2011	
1	HSBP1011C00013
2	HSBP1011C00007
3	HSBP1011C00012
4	HSBP1011C00003
5	HSBP1011C00034
6	HSBP1011C00058
7	HSBP1011C00068
8	HSBP1011C00060
9	HSBP1011C00086
10	FEEM011C0017
11	FEEM011C0023
12	FEEM011C0075
13	HSFEHQ11C0681
14	HSFEHQ11C1099
15	HSFEHQ11C0044
16	HSFEHQ11C0542
17	HSCG2310CP9X001
18	HSCG2311C2DB043
19	HSCG2311CPKY003
20	HSCG2311CPUD613
21	HSCG2311CMMS153
22	HSCG2311CAFR222
23	HSCG2311CARB116
24	HSCG2311CPB6001
25	HSSS0111C0014
26	HSSS0111C0004
27	HSSS0111C0002
28	HSSS0111C0016
29	HSSS0111C0035
30	HSSS0111C0019
31	HSSS0111C0020
32	HSTS0111CHRM904
33	HSTS0111CRES092
34	HSTS0211CTSI002
35	HSTS0211CTTC101
36	HSTS0311CSPP007
37	HSTS0311CCIO684
38	HSTS0111CFIN018
39	HSTS0211COGS022
40	HSTS0211CTTC164

⁴ Contract numbers downloaded from Federal Procurement Data System-Next Generation. We gave each component a list of contracts reviewed with deficiencies noted during our review.

Appendix D
OCPO Guidance to DHS Components

FY 2011 Guidance		
Acquisition Area	Publication Number	Impact
Justification and Approval	OCPO Regulatory Advisory 11-18	New requirement: 8(a) contracts > \$20 million require a justification and approval
Acquisition Planning	Acquisition Alert 11-12, Amendment 2	Status change: APFS fully operational
	Acquisition Alert 11-22	New requirement: Assign component Advance Acquisition Plan Coordinator/ Small Business Specialist
Market Research	OCPO Regulatory Advisory 10-18, Revision 1	Additional requirements for market research
Past Performance	Acquisition Alert 11-6, Amendment 1	Update: Quality checklist for Contactor Performance Assessment Report
	OCPO Regulatory Advisory 11-15	Status change: FAPIIS publicly available
	Acquisition Alert 11-16	New requirement: Contracting Officers must check EPLS and FAPIIS

Source: DHS OIG.

Appendix E
Contract File Checklist

CONTRACT FILE CHECKLIST PRESOLICITATION DOCUMENTS - SECTION 1			
	DESCRIPTION of DOCUMENTS	FAR/HSAR/HSAM reference	Location
1.	Procurement Request Documentation		
	<input checked="" type="checkbox"/> a. Procurement Request and Certification of Funding	FAR 32.702 & HSAM 3032.702	1A
	<input checked="" type="checkbox"/> b. Independent Government Cost Estimate (IGCE)	FAR 15.404-1(b)(2)&(3) HSAM 3015.404-70 & 3014.101-70	1B
	<input checked="" type="checkbox"/> c. Statement of Requirements (PWS/SOO/SOW) (Applies to PBA)	FAR 37.6	1C
	<input type="checkbox"/> d. Section 508 Exception documentation (current as of March 08) Applies to accessibility standards EIT	FAR 39.203(c)(2) & 39.204(e)(2), HASM 3039 & 3053.103 & HSAR 3053.103	N/A
2.	Acquisition Planning Documents		
	a. Advance Acquisition Plan (required over \$100K) <input type="checkbox"/> Yes <input type="checkbox"/> No Note: Does not need to be in the contract file if in FIDO.	HSAM 3007.172	www.DHS.gov www.fido.gov
	<input type="checkbox"/> b. Acquisition Plan with milestones and updates (required > \$5M)	FAR 7.105, FAR 7.102(a) & FAR 8.404(c), HSAM 3007.103(d) & 3007.1	N/A
	<input type="checkbox"/> c. If acquisition involves bundling, documentation of expected benefits and Deputy Secretary's approval (required > \$2M)	FAR 7.107(e) & 7.104(d)(2) HSAM 3007.104 & 107	N/A
3.	Market Research Documentation	FAR 10.002(e) & 12.202 FAR 8.405-1(c) & 8.602(a)	3 HB
4.	Competition, Consideration of Small Business, and Publicizing		
	<input type="checkbox"/> a. Small Business Review (DHS Form 700-22) for competitive actions > \$100K and FSS/MAC/GWAC orders > \$2M	FAR 19.5, 13.003 & 13.102 HSAM 3019.202-271	N/A
	<input type="checkbox"/> b. If acquisition involves bundling, documentation of expected benefits and Deputy Secretary's approval (required > \$2M)	FAR 7.107 HSAM 3007.107	N/A
	<input type="checkbox"/> c. 8(a) Contracting SBA Correspondence (Search and Offering Letters)	FAR 19.8, HSAM 3019.8	N/A
	<input type="checkbox"/> d. OSDBU Director's approval for repetitive acquisition not procured through the 8(a) program	HSAM 3019.804-470	N/A
	<input checked="" type="checkbox"/> e. Justification for Other Than Full & Open Competition Authority (J&A) and Related Correspondence	FAR 6.3 & HSAR 3006.3 HSAM 3006.3 & SOP 8 Aug 08 Sole Source Justification	4E
	<input checked="" type="checkbox"/> f. Fedbizopps Synopsis/Waiver/Exception	FAR 5.202 HSAM 3005.202	4F
	<input checked="" type="checkbox"/> g. Establishing or Maintaining Alternative Sources	FAR 6.202(b)(1)	4G
5.	Contract Type and Quantity Determinations		
	<input type="checkbox"/> a. D&F re: use of Time & Materials Contract (D&F no other contract type is suitable)	FAR 16.601(d), FAR 12.207(b) HSAM 3016.601	N/A
	<input type="checkbox"/> b. D&F re: use of Labor Hour Contract (D&F no other contract type is suitable)	FAR 16.602 HSAM 3016.602	N/A
	<input type="checkbox"/> c. COCO Approval for Firm-Fixed Price Level of Effort contract > \$100,000 (HCA approval, if no COCO is assigned)	FAR 16.207-3(d)	N/A
	<input checked="" type="checkbox"/> d. Determination: Making Multiple Awards if Contract is for USE OF LETTER CONTRACT	FAR 16.504(e)(1)(C) HSAM 3016.6	5D
	<input type="checkbox"/> e. CPO approval for DHS agency-wide contract	HSAM 3007.271	N/A
	<input type="checkbox"/> f. If acquisition involves bundling, documentation of expected benefits and Deputy Secretary's approval (required > \$2M)	FAR 7.107(e) & FAR 7.104(d)(2) HSAM 3007.107	N/A

DHS Contracts Awarded Through Other Than Full and Open Competition
During Fiscal Year 2011

Appendix F
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Appendix G
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