DEPARTMENT OF HOMELAND SECURITY

Office of Inspector General

Customs and Border Protection Award and Oversight of Alaska Native Corporation Contract for Enforcement Equipment Maintenance and Field Operations Support

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Office of Inspector General

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

Homeland Security

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Preface

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

Our report addresses Customs and Border Protection's award and oversight of a major maintenance and support contract. 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. It is our hope that this report will result in more effective, efficient, and economical operations. We express our appreciation to all of those who contributed to the preparation of this report.

Richard L. Skinner

Richard L. Skinner
Inspector General

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Abbreviations

CBP	U.S. Customs and Border Protection
CFR	Code of Federal Regulations
Chenega	Chenega Technology Services Corporation
DHS	Department of Homeland Security
FAR	Federal Acquisition Regulation
NAICS	North American Industry Classification System
OIG	Office of Inspector General, Department of Homeland Security
SBA	Small Business Administration

OIG

Department of Homeland Security
Office of Inspector General

Executive Summary

We reviewed the 2003 Customs and Border Protection (CBP) sole source award of an integrated logistics and operations support contract for almost 10,000 pieces of inspection equipment. Before this contract with Chenega Technology Services Corporation (Chenega), four CBP staff managed more than 20 separate contracts for logistics, maintenance, and training on metal detectors, X-ray machines, and explosive trace detectors at land border crossings, commercial airports, and seaports. Our review objectives were to determine whether CBP complied with federal regulations in awarding the contract and performed adequate oversight during implementation.

CBP did not comply with federal regulations when it awarded Chenega the contract under an incorrect industry classification code. Had CBP used the correct classification, Chenega would have been ineligible for the sole source award. This action prevented eligible small businesses from competing for a nearly $475 million contract and might not provide the best value for the government.

CBP did not effectively monitor Chenega's compliance with regulatory and contract limitations on subcontracting. Conflicting evidence prevented us from determining whether Chenega subcontracted more than the 50% allowed by federal regulations and the contract. CBP withheld certifying Chenega's purchasing system. Consequently, CBP must review and consent to each Chenega subcontract that exceeds $100,000. This administrative burden offsets the benefits CBP sought when it replaced numerous small contracts with a national contract.

We are recommending that CBP improve its training and management controls related to NAICS selection and oversight of subcontracting; determine whether exercising additional options in the current contract would be the best value to the government; and certify Chenega's purchasing system after Chenega remediates all deficiencies. CBP generally concurred with our recommendations.

Background

In May 2002, the predecessor to U.S. Customs and Border Protection (CBP) decided to solicit a national contract to provide maintenance, repair, and field operations support for its almost 10,000 pieces of inspection equipment, such as metal detectors, X-ray machines, and explosive trace detectors at land border crossings, commercial airports, and seaports. At the time, four CBP staff managed more than 20 maintenance contracts with numerous vendors (Appendix C). The numerous individual contracts limited CBP's ability to (1) proactively manage logistics, maintenance, and training; (2) establish performance standards; and (3) verify and validate customer satisfaction.

CBP planned to secure a prime integration contractor to whom CBP would outsource the majority of its enforcement equipment maintenance, logistics management, property management, training, repair, and field operations support needs. The single contract would include

- Providing quality logistics, maintenance, and training for CBP front line personnel to operate high-technology enforcement equipment;

- Establishing logistics engineering standards and metrics, and assessing performance;

- Collecting logistics data to enable management to make informed inventory decisions;

- Staffing and operating a 24-hours per day, 7-days per week operations center; and

- Verifying and validating customer satisfaction.

CBP considered using a competitive solicitation to select a contractor, but decided, due to Chenega Technology Services Corporation's self-marketing, to award a sole source, 8(a) Business Development Program, Alaska Native Corporation contract. The 8(a) Business Development Program provides assistance to economically and/or socially disadvantaged business owners. It provides participants access to business development services, including opportunities to receive federal contracts on a sole-source or limited competition basis. For sole source, 8(a) Business Development Program contracts, agencies do not have to prepare the written justifications and approvals normally required for sole source contracts.[1] The Small Business

[1] Federal Acquisition Regulation (FAR) § 6.302-5(b)(4), *Authorized or Required by Statute.*

Administration (SBA) has responsibility for approving 8(a) Business Development Program participants.

Alaska Native Corporations, tribal entities set up in the 1970s following passage of the Alaska Native Claims Settlement Act,[2] have additional benefits in the 8(a) Business Development Program. For example, these corporations may own numerous 8(a) small business subsidiaries and may obtain federal contracts without the $3 million maximum value to which other 8(a) small businesses are limited. Appendix D provides additional examples of advantages Alaska Native Corporations have in federal contracting.

On September 11, 2003, CBP awarded Chenega a cost-plus award fee performance-based service contract, using streamlined procedures, known as Alpha contracting. These procedures emphasize concurrent processing and a close relationship between the government and the contractor. The contract award included nine option years and an estimated full term value of nearly $475 million. Total invoiced costs through February 2007 are about $141 million (Appendix E).

Results of Audit

CBP did not comply with federal regulations when it awarded the contract to Chenega using an incorrect industry classification, thereby potentially precluding other offerors from competing. Had CBP used the correct classification, Chenega would have been ineligible for the sole source award. CBP did not effectively oversee the contract, because CBP did not monitor compliance with federal subcontracting limitations and did not certify Chenega's purchasing system.

Selection of Industry Classification Code

CBP used an incorrect North American Industry Classification System (NAICS) code when it awarded the maintenance and field operations support contract to Chenega. Under the incorrect code CBP used, Chenega qualified for a sole source, 8(a) Business Development Program, Alaska Native Corporation contract. Had CBP used the proper NAICS code, CBP would not have been able to award the sole source contract to Chenega, because it exceeded the revenue limit. Small businesses that would have been eligible under the correct NAICS code lost the opportunity to compete for a nearly $475 million contract. CBP's use of an incorrect industry classification that enabled a sole source award likely did not provide the government the best value.

[2] Public Law 92-203, December 1971.

NAICS classifies business establishments by the types of products or services they make available and assigns a six-digit code to each type. NAICS does not distinguish between small and large or for-profit and non-profit business.

The Small Business Administration (SBA) has an employee or revenue limit for each NAICS that determines which companies qualify for federal small business set-aside contracts. If a business employs more people or earns more revenue than the limits for a given NAICS code, the business may not compete for small business set-aside contracts for those products or services. The SBA limits vary up to 1,500 employees and unlimited annual revenue or up to $32 million annual revenue and unlimited number of employees, depending on the nature of the product or service. In 2003, Chenega had revenue exceeding $170 million and over 1,000 employees.

When an agency sets aside a solicitation for small businesses, the agency designates the solicitation with the NAICS code that best describes the principal products or services to be acquired.[3] For the CBP national maintenance and operations support solicitation, the statement of objectives asked for "a business partner who is a SERVICE PROVIDER. This business partner should be an expert logistics program manager and integrator with focus on customer satisfaction." Appendix F provides additional details from the statement of objectives.

The CBP small business specialist initially assigned NAICS 541614, Process, Physical Distribution, and Logistics Consulting Services, to the solicitation. NAICS 541614 applies to (1) manufacturing operations improvement; (2) productivity improvement; (3) production planning and control; (4) quality assurance and quality control; (5) inventory management; (6) distribution networks; (7) warehouse use, operations, and utilization; (8) transportation and shipment of goods and materials; and (9) materials management and handling. The limit for NAICS 541614 small businesses is $6.5 million or less annual revenue with any number of employees.

When CBP awarded the contract to Chenega, CBP used NAICS 517110, Wired Telecommunications Carriers, which has a small business limit of 1,500 employees and no specified revenue maximum. NAICS 517110 applies to (1) operating and maintaining switching and transmission facilities to provide point-to-point communications via landlines, microwave, or a combination of landlines and satellite linkups; or (2) furnishing telegraph and other non-vocal communications using own facilities. The contract statement of objectives did not include provision of wired telecommunications.

[3] Code of Federal Regulations, Title 13, Section 121.402 (13 CFR 121.402).

The CBP pre-award file includes a statement that NAICS 517110 is appropriate because data management and transmission are integral elements of the contract performance. Additionally, a substantial part of the integration task includes analysis of the manual procedures presently used to provide required logistical support and design, development, and implementation of strategies to convert manual procedures to automated procedures using telecommunications networks, satellite links, and similar telecommunications technologies.

Subsequently, the CBP current contracting officer and project officer told us that in their opinion using NAICS 517110 for this contract was inappropriate. Additionally, none of the subcontractors performing work under the contract use wired telecommunications as their primary NAICS, according to our analysis.

CBP's pursuit of a fast acquisition led it to the sole source, 8(a) Business Development Program, Alaska Native Corporation award. CBP told us this was the only approach it could use to reach the award stage within its target date. It also ensured that CBP would meet its 8(a) contracting goals for 2003. In 2002, the year before the Chenega award, CBP did not meet it small business set-aside target.

Recommendation #1

We recommend that CBP establish training and management controls to ensure that contracting officers select the NAICS that best describes the principal purpose of each procurement.

Recommendation #2

We recommend that CBP determine whether exercising option years on the current contract will provide the government the best value for enforcement equipment maintenance and field operations support, and if not, develop and implement a new acquisition strategy to procure these services.

Management Comments and DHS-OIG Analysis

CBP concurred with Recommendation #1 to establish NAICS training and management controls to ensure that contracting officers select the NAICS code that best describes the principal purpose of each procurement. CBP established March 2008 as the due date to implement the recommendation. CBP did not tell us specifically what actions it intends to take to resolve the recommendation. Therefore, we consider the recommendation unresolved and open. When CBP provides us details on how it will conduct NAICS training and implement management controls, we will consider the recommendation resolved. We will consider this part of the recommendation closed when CBP implements the training and management controls.

In CBP's technical/general comments for this Recommendation #1, CBP commented that SBA concurred with the NAICS selection for the award to Chenega as evidenced by the exchange of offer and acceptance letters. However, SBA's concurrence with CBP's NAICS selection is not an adequate management control to ensure that the best code is selected. Therefore, we did not make any changes to our report to reflect that CBP complied with federal regulations when it awarded Chenega the contract under an incorrect industry classification code.

CBP concurred with Recommendation #2 to determine whether exercising options years will provide the best value to government. CBP commented that it would exercise Option 4 of the contract to provide the time necessary to complete a full cost benefit analysis prior to recompeting the contract. The effort to accomplish a cost benefit analysis and determine the necessity of recompeting the contract will begin during the early part of FY08. The target date for completion is September 2008.

CBP did not provide us enough information to resolve or close this recommendation. CBP provided a due date of September 2008, but did not give us details of what it will accomplish by September 2008. Given that lead times for competitive procurements can take six months or longer to award a contract, CBP needs to provide more specific milestones to resolve and close this recommendation. Consequently, the recommendation is not resolved or closed.

Compliance with Limitation on Subcontracting

CBP did not have management controls in place to assure Chenega's compliance with limits on the ratio of Chenega direct labor costs to subcontractor labor costs. Federal regulations and the Chenega contract require that at least 50 percent of contract personnel costs be expended for employees of the prime contractor.[4] This provision ensures that small businesses do not pass the benefits of set-aside contracting to non-small business subcontractors. Some Chenega subcontractors were not small businesses. Between October 2004 and July 2006, Chenega billed CBP $31.5 million for labor costs, of which $21.1 million (67%) was subcontracted and $10.4 million (33%) was attributable to Chenega employees. CBP officials told us they believed Chenega was not capable of meeting the 50% limitation on subcontracting.

[4] 13 CFR 125.6(a)(2) and contract clause FAR 52.219-14

During our review, the CBP contracting officer was unclear about how to monitor Chenega's compliance. CBP told us that time constraints and lack of resources prevented the contracting officer from performing an adequate review of the requirement.

Federal regulations further provide that, if the government directs a prime contractor to use specific subcontractors, their labor costs are considered material costs and are not considered in calculating the prime contractor's compliance with the subcontracting limitation.[5] Conflicting evidence exists whether or not the government directed Chenega to subcontract with specific companies. SBA was concerned that Chenega would displace the 21 predecessor small businesses that provided equipment maintenance and support before CBP awarded the prime integration contract. In a June 2003, letter to CBP, Chenega said it would voluntarily subcontract with the companies and would make every effort to retain their services throughout the contract, consistent with efficient and cost-effective performance.

By contrast, in a September 2005, letter to CBP, Chenega said it complied with the subcontracting limitation, because the government directed it to use certain companies. Such direction would reduce total labor costs by excluding certain charges and increase Chenega's share. CBP officials told us they did not direct Chenega to utilize the 21 small businesses, and we found no documentary evidence to the contrary. In its November 2005 purchasing system review report, the Defense Contract Management Agency noted that Chenega did not have the required authorization from the government for customer-directed procurements.

Another consideration for determining compliance with the subcontracting limitation is proprietary data rights. If a vendor has proprietary rights to data necessary for performing the contract, the prime contractor must subcontract with the company. In these situations, the subcontractors' labor costs are excluded from calculating compliance with the 50 percent limit. Some predecessor contractors who became Chenega subcontractors owned proprietary data rights on some CBP high technology enforcement equipment. Chenega had to rely on these vendors.

As Table 1 shows, Chenega did not achieve the 50 percent level, with or without the labor costs for subcontractors with proprietary data rights. Counting all subcontractors, total labor costs for the review period were $31.5 million. Chenega's share would have had to exceed $15.75 million to reach 50%, but were $10.4 million or 33%. Excluding subcontractors with proprietary data rights, labor costs for the review period were $25.1 million. Chenega's share would have had to exceed $12.55 million to reach 50%, but were $10.4 million or about 41%.

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[5] 13 CFR 125.6(e)(7)

Table 1: Billed Direct Labor Cost, October 2004 through July 2006

	Chenega and All Subcontractors	*Chenega and Subcontractors Without Proprietary Data Rights*
Total Billed Direct Labor	$ 31.50 million	$ 25.10 million
50 Percent Requirement	$ 15.75 million	$ 12.55 million
Actual Chenega Labor	$ 10.40 million	$ 10.40 million
Actual Chenega Percentage	33.0 %	41.4 %

We cannot conclude whether regulatory or contractual violations occurred, due to the uncertainty about whether CBP directed Chenega to use certain subcontractors. CBP needs to establish proper management controls to determine Chenega's compliance with federal regulations and contract requirements. Without such controls, CBP cannot assure the public that the benefits of a large set-aside contract reach the intended recipients.

Recommendation #3

We recommend that CBP (a) determine and document whether Chenega complied with the federal and contract limitation on subcontracting; and (b) establish training and management controls that ensure on-going oversight of Chenega's compliance with subcontracting limitations.

Management Comments and DHS-OIG Analysis

CBP concurred with Recommendation #3 to determine and document whether Chenega complied with the subcontracting limitations, and commented that it would comply with DHS's Acquisition Alert 07-15, dated June 15, 2007, regarding steps and controls to ensure compliance with subcontracting limitations. CBP also concurred with the audit recommendation to establish subcontracting limitations training.

CBP also wrote that the CBP-Small Business Specialist, DHS-Small Business Representative, and SBA shared concerns about Chenega's inability to comply with the limitations on subcontracting. According to CBP, this concern was partly due to the number of original equipment manufacturer subcontractors with proprietary data rights performing mission critical services under this contract. To correct this imbalance CBP proposed a "get well plan to the program office – Office of Information Technology – to shift large business subcontractors to separate 'stand alone' contracts." CBP wrote that this action "enabled Chenega to meet the limitations . . ."

As discussed above, the cost of subcontractors with proprietary data rights is excluded, by definition, from calculating whether a prime contractor complies with subcontracting limitations. Consequently, whether these companies have direct CBP contracts or perform as subcontractors is irrelevant to determining whether Chenega complies with subcontracting limitations.

CBP provided a March 2008 milestone to close this recommendation. However, CBP did not tell us specifically what actions it intends to take. Therefore, we consider it unresolved and open. We will consider the recommendation resolved when CBP provides an analysis and training plan and will consider the recommendation closed when CBP completes the analysis and training.

Chenega Purchasing System Not Approved

CBP did not approve Chenega's purchasing system in keeping with the Defense Contract Management Agency's findings and recommendations. Consequently, federal regulations require the contracting officer to approve all subcontracts awarded by the prime contractor, offsetting the reduced administrative burden CBP sought when it replaced the numerous contracts with the national maintenance and support contract.

CBP contracted with the Defense Contract Management Agency to review Chenega's purchasing system. On November 22, 2005, the Defense Contract Management Agency concluded that Chenega's purchasing system had weaknesses and recommended revisions (Appendix H). Based on the results, CBP withheld approval of Chenega's purchasing system.

On February 17, 2006, Chenega submitted to CBP its plan to address the identified deficiencies. Chenega's corrective actions involved hiring a subcontracts manager to oversee, review, and improve subcontract processing and procedures. The subcontracts manager trained Chenega's buyers on documenting subcontract files and is drafting a training manual for Chenega' s buyers and operations personnel. CBP reviewed the action plan, but had not certified the purchasing system at the time of our review.

Until CBP approves Chenega's purchasing system, federal regulations require CBP's consent on all cost-reimbursement, time-and-materials, labor-hour, letter contracts, or fixed price subcontracts that exceed $100,000.[6] According to the CBP contracting officer, she had received 15 requests for subcontract consent at the time of our review. The CBP contracting officer told us reviewing and approving such requests is very labor intensive. This additional workload undermines CBP's purpose for replacing individual contracts with a national prime integration contract.

[6] FAR 44.201-1(b)

Recommendation #4

We recommend that CBP (a) ensure that Chenega implements all Defense Contract Management Agency recommendations for Chenega's purchasing system; and (b) after Chenega remediates all deficiencies, certify the purchasing system so that CBP does not have to consent separately to each large subcontract.

Management Comments and DHS-OIG Analysis

CBP concurred with our recommendation and wrote that CBP would approve Chenega's purchasing system after successful implementation of Defense Contract Management Agency recommendations.

At CBP's behest, the Defense Contract Management Agency performed a follow-up review in July 2007, including an on-site visit from July 16, 2007, through July 27, 2007. According to CBP, the Defense Contract Management Agency said unofficially Chenega had satisfactorily implemented corrective action on all previous recommendations.

We consider this recommendation resolved, but open. We will close the recommendation when CBP certifies the purchasing system based on the Defense Contract Management Agency final report.

Conclusions

In federal contracting, full and open competition produces the presumed best value for the government when it is acquiring goods and services. CBP's use of an incorrect industry classification that enabled a sole source award likely did not provide the government the best value. Moreover, small businesses were likely denied the benefits of competing for a large set-aside federal contract. CBP's lack of oversight of Chenega's subcontracting labor costs does not ensure that only small businesses benefit from the set-aside. Finally, without an approved Chenega purchasing system, CBP did not obtain the reduced administrative burden that replacing numerous separate contracts with a national prime integration contract was intended to provide. CBP implementation of our recommendations will address these deficiencies.

Our objectives were to determine whether CBP (1) activities related to 8(a) sole source contracting and identifying the NAICS code comply with applicable federal regulations, and (2) ensured that Chenega performed at least 50% of the labor costs, as required by the contract.

Our fieldwork included interviews with CBP and Chenega officials, site visits, documentation reviews, and data analysis necessary to achieve our objectives. Specifically, we obtained and reviewed the following:

CBP Office of Acquisitions
Contract file – Chenega
Pre-Award file – including NAICS codes
Modifications and amendments to the contract
Contract option execution records
Defense Contract Management Agency report on the contractor's purchasing system
Defense Contract Audit Agency audit reports
Consent to Subcontract

Contracting Officer's Technical Representative
Contracting Officer's Technical Representative Files

Chenega Office
Database of all direct costs claimed for the period October 2004 through July 2006
Subcontracting agreements
Activity Management Reviews
Supporting documentation for selected subcontractor costs claimed by Chenega

Audit fieldwork was performed at CBP Office of Acquisitions in Washington, D.C. and the office of the contracting officer's technical representative in Lorton, Virginia. Also, we reviewed contract files that we obtained from Chenega's office in Alexandria, Virginia.

We limited our review to fit within available resources and time allotted. The period of review was from pre-award and contract activities, from September 2003 through September 2006. The fieldwork conducted was between June 2006 and March 2007 under the authority of the Inspector General Act of 1978, as amended, and according to generally accepted government auditing standards.

U.S. Department of Homeland Security
Washington, DC 20229

U.S. Customs and
Border Protection

September 18, 2007

MEMORANDUM FOR RICHARD L. SKINNER
INSPECTOR GENERAL
DEPARTMENT OF HOMELAND SECURITY

FROM: Director Willie H Hornton
Office of Policy and Planning

SUBJECT: Response to the Office of Inspector General's Draft Report Entitled, "Customs and Border Protection Award and Oversight of Alaska Native Corporation Contract for Enforcement Equipment Maintenance and Field Operations Support"

Thank you for providing us with a copy of your draft report entitled "Customs and Border Protection Award and Oversight of Alaska Native Corporation Contract for Enforcement Equipment Maintenance and Field Operations Support" and the opportunity to discuss the issues in this report. The report identifies measures that U.S. Customs and Border Protection (CBP) can take to enhance oversight and compliance with applicable regulations.

In the report the Office of the Inspector General (OIG) makes four recommendations that are directed to CBP. CBP concurred with all four recommendations in the attached action plan. The first recommendation is that CBP establish training and management controls to ensure that contracting officers select the North American Industry Classification System (NAICS) code that best describes the principal purpose of each procurement. CBP concurs with the audit recommendation and adequate management controls for 8(a) awards are now in place to ensure that the best NAICS code is selected. The NAICS code was discussed with and confirmed by the Small Business Administration (SBA) as evidenced by exchange of offer and acceptance letters. Title 13,Section 124.503 (a)(5)(b) (1) and (2) of Code of Federal Regulation and SBA Stand Operating Procedures dated 20 July 2004, establishes the regulations and responsible parties for verifying classification codes used for SBA awards through the 8(a) program.

CBP also concurs with the second audit recommendation to determine whether exercising option years of the current contract will provide the best value to government. To allow CBP adequate time to correctly determine the best course of action and complete the many projects and tasks that are currently underway and affect mission critical areas, CBP will exercise option year four of the current contract. CBP will then charter an Integrated Technology Project (ITP) team to begin a study to consider the necessity of recompeting this contract. This effort includes a full cost benefit impact study that must be accomplished to fully support the final decision. The study and initial contract requirements will be conducted concurrently due to the time and resources required and the need to possibly transition to a new contract.

Essentially the same Original Equipment Manufacturers (OEM) and support contractors are in place today as were employed by the government through the period September 1998 through August 2003. The Enforcement Technology (ET) equipment is essentially the same since that time, albeit with improvement modifications. The OEMs and their field support technical specialists occupy a unique niche in the high technology equipment sector of the United States manufacturing and technical service field support industry therefore changing the prime contractor will not result in changing the sub-contractors required to perform the logistical support.

Attached are comments specific to all four of the recommendations. A line-by-line, general-technical-sensitivity review of the OIG draft report was conducted by CBP. With regard to the classification of the draft report, CBP has not identified information within the report requiring restricted public access based on a designation of "For Official Use Only."

If you have any questions regarding this response, please contact me or have a member of your staff contact Ms. Janiene Jones, Audit Liaison, Office of Policy and Planning, at (202) 344-2169.

Attachment

2

CBP Response to OIG Draft Report: CBP Award and Oversight of Alaska Native Corporation Contract for Enforcement Equipment Maintenance and Field Operations Support

Recommendation 1: We recommend that CBP establish training and management controls to ensure that contracting officers select the NAICS code that best describes the principal purpose of each procurement.

Response: CBP concurs with the audit recommendation to establish NAICS code training and management controls to ensure that the best NAICS code is selected.

Due Date: March 2008

Recommendation 2: We recommend that CBP determine whether exercising option years on the current contract will provide the government the best value for enforcement equipment maintenance and field operations support, and if not, develop and implement a new acquisition strategy to procure these services.

Response: CBP concurs with the audit recommendation to determine whether exercising option years on the current contract will provide the best value for the government. We believe exercising option year 4 will provide the time necessary to complete a full cost benefit analysis prior to recompeting this contract. The effort to accomplish a cost benefit analysis and determine the necessity of recompeting the contract will begin during the early part of FY08.

Due Date: September 2008

Recommendation 3: We recommend that CBP (a) determine and document whether Chenega complied with the federal and contract limitation on subcontracting; and (b) establish training and management controls that ensure on-going oversight of Chenega's compliance with subcontracting limitations.

Response: CBP concurs with the audit recommendation to determine and document whether Chenega complied with subcontracting limitations. CBP will comply with Department-wide guidance contained in Acquisition Alert 07-15, dated June 15, 2007, regarding steps and controls to ensure compliance with subcontracting limitations. CBP also concurs with audit recommendation to establish subcontracting limitations training.

Due Date: March 2008

Recommendation 4: We recommend that CBP (a) ensure that Chenega implements all Defense Contract Management Agency recommendations for Chenega's purchasing system; and (b) after Chenega remediates all deficiencies, certify the purchasing system so that CBP does not have to consent separately to each large subcontract.

Response: CBP concurs with the audit recommendation to implement DCMA recommendation(s) for Chenega's purchasing system. In accordance with FAR 44.305, the CBP contracting officer will approve the purchasing system after successful implementation of Defense Contract Management Agency (DCMA) recommendations. Such approval will eliminate the requirement for Chenega to provide subcontracting packages for approval.

Due Date: March 2008

3

TECHNICAL/GENERAL COMMENTS TO DRAFT AUDIT REPORT

Page 1, Paragraph 2 - CBP did not comply with federal regulations when it awarded Chenega the contract under an incorrect industry classification code. Had CBP used the correct classification, Chenega would have been ineligible for the sole source award.

CBP Comment: The NAICS code was discussed with and confirmed by the Small Business Administration (SBA) as evidenced by exchange of offer and acceptance letters. Title 13,Section 124.503 (a)(5)(b) (1) and (2) of Code of Federal Regulation and SBA SOP dated 20 July 2004 establishes the regulations and responsible parties for verifying classification codes used for SBA awards through the 8(a) program".

Page 1, Paragraph 3, Lines 1, 2 - CBP did not effectively monitor Chenega's compliance with regulatory and contract limitations on subcontracting.

CBP Comment: Our research indicates that written correspondence between CBP-Small Business Specialist, DHS-Small Business Representative and SBA all shared concern with Chenega's inability to maintain the required limitations on subcontracting. This was partly due to the fact that large business subcontractors with proprietary OEM data rights are performing mission critical services under this contract. To correct this imbalance we proposed a *"get well plan"* to the program office --- Office of Information Technology--- to shift large business subcontractors to separate *"stand alone"* contracts. This realignment enabled Chenega to meet the limitations on subcontracting requirement.

Page 1, Paragraph 3, Lines 4, 5 - CBP withheld certifying Chenega's purchasing system.

CBP Comment: In April 2007 CBP made a decision that the Defense Contract Management Agency (DCMA) will perform a follow-up review of the Chenega's purchasing system. The Contractor Purchasing System Review (CPSR) is needed to evaluate the contractor's current purchasing system, since CBP determined that Chenega has made significant internal controls, procedures, and policies changes to their purchasing manual as well as personnel changes to manage the subcontracting process since the last DCMA review was conducted in 2005. Also, the DCMA November 2005 report recommended a follow-up of the Chenega's purchasing system be conducted in FY 2007.

In June 2007 CBP issued the DCMA an Interagency Agreement (IA) to perform a follow-up CPSR review in July 2007. This on-site visit was conducted from July 16, 2007 through July 27, 2007 at the contractor's facilities in Alexandria, Virginia. The DCMA exit conference was held on July 26, 2007 and DCMA plans to issue an official CPSR report in the latter part of August 2007.

In the interim, CBP was able to obtain the July 26, 2007 unofficial exit conference findings from the DCMA representative which stated Chenega's purchasing management has implemented many corrective actions and made significant improvement to their purchasing system since the November 2005 report. Also, it was the DCMA opinion that Chenega has satisfactorily implemented corrective action on all ten previous 2005 DCMA recommendations.

Following receipt of the official DCMA report on Chenega's purchasing system, the Contracting Officer (CO) will be able to issue an official letter stating that the Chenega purchasing system has been approved per FAR 44.305-2, Notification, and the CO can drop the consent requirement that Chenega provide subcontracting packages to the CO for approval.

4

Vendor	*Procurement Method*
1. Aracor	Blanket purchase agreement
2. Aracor (Eagle maintenance)	Contract
3. Aracor (Eagle operator course)	Contract
4. Arrow Imaging	Blanket purchase agreement
5. A&SE	Blanket purchase agreement
6. A&SE (hardware support)	Contract
7. Autometric (SGI Support)	Contract
8. Campbell	Blanket purchase agreement
9. Campbell (maintenance and repair)	Contract
10. General Health	Blanket purchase agreement
11. Global Calibration	Blanket purchase agreement
12. Instrument Technology	Blanket purchase agreement
13. Ion Track	Blanket purchase agreement
14. J.J Keller	Blanket purchase agreement
15. L3-Communications	Blanket purchase agreement
16. Olympus	Blanket purchase agreement
17. Optim	Blanket purchase agreement
18. OSI (contract support)	Contract
19. Rapiscan	Blanket purchase agreement
20. RUD	Blanket purchase agreement
21. SecTek (guard service)	Contract
22. Sensor Technology	Blanket purchase agreement
23. Van Cleve	Blanket purchase agreement
24. VICI	Blanket purchase agreement

Source: Customs and Border Protection

The 1971 *Alaska Native Claims Settlement Act,*[7] which defined Alaska Native Corporations, and the 1986 legislation that extended the 8(a) Business Development Program to these corporations created strong incentives for federal agencies to contract with Alaska Native Corporations.[8]

Provision	*Alaska Native Corporations*	*Other 8(a) Businesses*
Sole Source Contract Maximum Value	No limit.	$3 million for services; $5 million for manufacturing.
Competition	Procurements need not be competed before being accepted on a sole source basis.	Procurements must be competed whenever possible before being accepted on a sole source basis.
Number Of 8(a) Subsidiaries	No limit, except only 1 per primary industry classification.	1 plus up to 20% ownership of another.
Demonstration of Social and Economic Disadvantage	Deemed so in statute.	Must be a member of a group deemed socially disadvantaged or prove social disadvantaged; and must prove economic disadvantage by meeting certain standards.
Competitive Sourcing, "A-76"	Department of Defense may implement direct conversion without A-76 process, if sole source contracting and cost-effective.	Extensive analysis, submissions, and competition process, which usually takes two years, to show contracting out would be more cost-effective than government employees.

Source: Government Accountability Office, *Contract Management: Increased Use of Alaska Native Corporations' Special 8(a) Provisions Calls for Tailored Oversight*, GAO-06-399, April 2006, page 3.

[7] Public Law 92-203
[8] Public Law 99-272, § 18015

Period of Performance	*Dates*	*Total Invoiced Costs*
Base Year	9/11/03 - 9/10/04	$33,496,146.49
Option Year 1	9/11/04 - 9/10/05	$46,485,148.11
Option Year 2	9/11/05 - 9/10/06	$43,955,461.01
Option Year 3*	9/11/06 - 2/28/07	$16,689,032.04
TOTAL INVOICED**		**$140,625,787.65**

NOTES:
* Currently in progress to September 11, 2008.
** Total Invoiced Costs does not include indirect rates variance and open commitments yet to be billed to the government.

Source: Customs and Border Protection

"C.3 PROGRAM OBJECTIVES

"The purpose of this Statement of Objectives is to secure a prime contractor/business partner to be responsible for implementing the CBP National Enforcement Equipment Maintenance and Repair Program and Field Operations Support.

"This approach acquires, measures, accepts and pays for contract performance outcomes and results. As such, it leaves to the contractor to employ whatever prudent management and operations methods are necessary to deliver the results required by the CBP.

"Implementation of the contract must be scalable. The number of devices, the number of students, and the locations will be increasing for the foreseeable future.

"The business partner shall be responsible for:

"* full program management and controls of the logistics necessary to assure that the user will be presented with a device that will not only meet performance requirements, but which will be expeditiously and economically supported throughout its programmed life-cycle.

"* ensuring the proper planning and integration of all elements of logistics support and logistics support resource funds and management information.

"* ensuring an orderly phase-in at the outset of the contract without compromising instant and scheduled maintenance and training actions.

"* ensuring an orderly phase-out in the event of re-competition or termination. This includes, but is not limited to, ensuring that all data developed during the course of the contract, with the exception of proprietary financial data, can be readily transferred to and utilized by the Government or follow-on contractor at no cost.

"We are seeking to contract with a business partner who is a SERVICE PROVIDER. This business partner should be an expert logistics program implementer and integrator with focus on customer satisfaction.

"Specifically, the business partner shall be responsible for:

"1. Maintaining each crew served [High Technology Enforcement Equipment] prime item at an Operational Availability (Ao) standard of

95% and each product line, or "family" of individually operated HTEE devices at an Ao standard of 95%. (See Attachment J.6)

"1.1. Service records and logbooks.

"1.2. Fluid storage and waste disposal. The business partner is not responsible for storage and/or disposal of nuclear, biological or chemical contraband.

"1.3. Corrosion control.

"2. Training CBP Officers to operate the HTEE. The content of training shall always be up-to-date with respect to the physical configuration of the HTEE and operating recommendations of the HTEE manufacturer.

"3. Implementing post-production support to sustain out-of-production HTEE, maintain configuration control of all equipment changes and project replacement of high maintenance cost HTEE equipment exhibiting wear-out symptoms.

"3.1. Implementing HTEE changes and modifications and exercising change control.

"4. Staffing and operating a 24 hours per day, 7 days per week Operations Center, including customer contact/support Service Desks at a contractor provided Operations center. Providing total asset visibility of the operational condition of all crew served HTEE equipment in CBP inventory in near real time. The Operations center/Service Desks shall be collocated with the NEEMR Activity office.

"5. Relocating HTEE from one CBP location to another.

"6. Recommending, defining and reporting figures of merit so that the government may assess performance of HTEE, the program and of the contractor.

"7. Procuring the [Commercial Off-The-Shelf] components of government specified video and security systems, and maintaining the installed systems.

"8. Program management.

"8.1. Implementing an integrated logistics support program to ensure that maintenance planning, support tools and test equipment, parts, supplies, consumables, material handling, data processing, and packaging, handling, storage, and transportation support elements are available and utilized to yield safe, reliable and mission capable HTEE.

"8.2. Establishing a program management office within 5 miles of the NEEMR facility including the facility for contractor personnel and not more than 8 specified CBP personnel to include but not be limited to managers, Contracting Officers Technical Representative (COTR) and project monitors.

"8.3. Providing sufficient and appropriately skilled and located managers, service center operators, trainers, maintainers and engineering personnel to successfully fulfill the objectives of this Statement of Objectives.

"8.3.1. Applicable and required licenses and Secret level security clearances for all business partner personnel. BCBP will conduct background investigations on all employees.

"8.3.2. Uniforms displaying identifying names/logos/insignia for business partner personnel working in BCBP land border crossings, airports and seaports.

"8.4. Accomplishing the objectives herein at CBP Ports of Entry and other CBP stations and during the hours of operation of the CBP locations; performing the requirements herein during crisis periods declared by the National Command Authority.

"8.5. Compliance with applicable local, city, state and federal laws, rules and regulations and union/management agreements.

"8.6. Financial cost accounting and logistics reporting.

"9. Lubricants and mission components fluids required by the crew served HTEE and support vehicles/equipment.

"10. Physical security for the crew served HTEE during times when CBP Officers are not utilizing the machines.

"11. Adapt to a dynamic environment of increased HTEE as well as increased training requirements. Dynamic means that the number of devices to be supported, the number of CBP Officers to be trained, the number of locations, and the reporting requirements will be increasing at unknown and non-linear rates.

"12. Provide HTEE operators as required.

"Note: Procurement of HTEE devices, i.e. prime items, is not within the scope of this Statement of Objectives."

Source: Customs and Border Protection

Appendix G
Chenega Subcontractors during Option Year Three and Total Proposed Costs

Chenega Subcontractors in Option Year Three	*Total Proposed Costs*
SAIC	$ 16,726,984.00
AS&E	7,105,859.00
General Dynamics (Anteon)	4,696,695.75
Various Vendors	3,393,096.00
Smiths Detection, Inc.	2,811,900.00
Rapiscan Systems	2,347,500.00
Battelle	1,783,834.00
Multiple Vendors	1,272,100.00
SAIC Canada	1,095,500.00
Interos (ROM)	854,098.49
L3-GSI Eval and Minimal Repair	576,175.00
Ferndale	463,100.00
LMI	428,167.00
Mission Critical Solutions	400,000.00
GE/ION Track	324,167.00
Campbell Security	276,000.00
NTMI (Dave Thomas)	181,500.00
Dell	132,000.00
CTSC	100,000.00
TRM	90,000.00
Bio-Imaging Research (BIR)	81,000.00
WX ANALYST	79,500.00
Bickford	70,265.00
Ludlum	45,700.00
Sensor Concepts and Applications (SCA)	41,994.60
Fluke Biomedical	38,000.00
Sensor Technology	33,500.00
SI International	32,480.00
Global Security Professionals	10,000.00
SIMCO	6,250.00
Radiation Safety Academy	6,000.00
National Academy of Railroad Sciences	3,000.00
Lincoln Electric	1,800.00
TOTAL PROPOSED COSTS	**$ 45,508,165.84**

Source: Customs and Border Protection

The Defense Contract Management Agency identified the following weaknesses in Chenega's purchasing system, with respect to one prime contract, HSBP1004C00193.[9]

1. Policies and Procedures: Purchasing system procedures manual needs to be revised and strengthened, effective immediately.

2. Competition: Chenega had not performed competitive awards. Buyers need to make every effort to locate adequate competition and document their efforts in the procurement file.

3. Price/Cost Analysis: Chenega had not effectively accomplished or properly documented its price analysis.

4. Negotiations: Chenega either had not conducted negotiations or failed to document adequately the negotiation.

5. Cost Avoidance: Chenega had the responsibility to ensure all costs being claimed for reimbursement are reasonable, as required by the federal regulations. For example, Chenega should request discounts for cash payments.

6. Single /Sole Source Selection Justification: Chenega had not documented attempts to locate other possible sources and had not documented proper justification in sufficient detail to warrant the lack of competition for non-competitively awarded subcontracts.

7. Pre-award Equal Opportunity Compliance Evaluation: On procurements exceeding $10 million, Chenega did not subject first tier subcontractors to a pre-award compliance evaluation by the Office of Federal Contract Compliance Programs, as required by federal regulations.

8. Internal Audits: Chenega had not developed an internal audit process of the procurement department to ensure it meets government compliance requirements.

9. Documentation: Chenega had not documented the process used to rate vendors approved or disapproved.

[9] Defense Contract Management Agency, *Contractor Purchasing System Review, Initial Review, Chenega Technology Services Corporation*, V-05-005, November 22, 2005.

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