



# Department of Homeland Security Office of Inspector General

## The Science and Technology Directorate's Processes for Funding Research and Development Programs





Homeland  
Security

July 8, 2009

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 processes that the DHS Science and Technology Directorate uses to fund its research and development efforts. It is based on interviews with key directorate officials and staff as well as senior leaders of relevant agencies and institutions 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 who contributed to the preparation of this report.

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

Richard L. Skinner  
Inspector General

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## Abbreviations

BAA	Broad Agency Announcement
CFR	Code of Federal Regulations
DHS	Department of Homeland Security
DOE	United States Department of Energy
FAR	Federal Acquisition Regulation
FFRDC	Federally Funded Research and Development Center
FY	Fiscal Year
GAO	Government Accountability Office
IA	Interagency Agreement
IPA	<i>Intergovernmental Personnel Act</i>
OMB	Office of Management and Budget
OPO	Office of Procurement Operations
R&D	research and development
RFP	request for proposal
S&T	Science and Technology Directorate

## **Executive Summary**

This report is responsive to two congressional requests, one from the Honorable Tom Davis, then-Chairman of the House Committee on Government Reform, and the other from the then minority staff of the House Committee on Homeland Security. The requests directed us to review the methodology used by the Science and Technology Directorate to award funding for research and development.

Despite a change in leadership and new management controls in 2006, the directorate engaged in competitive and noncompetitive procurements that initially raised concerns of impropriety. In four competitive procurements, Science and Technology Directorate staff appeared to provide an unfair advantage to specific individuals or companies. Upon examination, the companies did not receive an unfair advantage, but staff members' actions were not appropriate. Also, a company responding in an open solicitation obtained source selection information. However, the disclosure did not taint the competition because the company was disqualified for other reasons. Similarly, we identified what appeared to be misuse of interagency agreements to award project funds to organizations with which staff had professional or personal contacts. Although these situations did not violate federal ethical rules, we could not determine whether the awards were in the best interest of the government because the rationale for making the awards was not documented. Additionally, some directorate staff members used interagency agreements solely to process procurements faster or more conveniently. The statute governing these awards requires a determination that the award would be in the best interest of the government in addition to being faster or more convenient. We highlighted these situations because they illustrate vulnerabilities and provide opportunities to strengthen controls.

Recently, Congress gave the Science and Technology Directorate more responsibility for preparing interagency agreements. In response, the directorate is developing more rigorous oversight processes and is improving the documentation for interagency agreements. We are making five recommendations to help the directorate develop procedures to ensure strict compliance with federal statutes and regulations and to award funding to the most deserving performers.

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## Background

Following the events of September 11, 2001, Congress passed the *Homeland Security Act of 2002* establishing the Department of Homeland Security (DHS) and within it, the Science and Technology Directorate (S&T).<sup>1</sup> Among other things, the Act entrusted S&T with “conducting basic and applied research, development, demonstration, testing, and evaluation activities that are relevant to any or all elements of the [d]epartment....”<sup>2</sup> To fulfill these duties, S&T identifies and selects research and development (R&D) projects that will provide technologies to advance homeland security needs. We examined S&T’s processes for selecting projects in our August 2008 report, *The Science and Technology Directorate’s Processes for Selecting and Managing Research and Development Programs*, OIG-08-85. This report examines the procedures that S&T uses to fund the projects it selects.

With the exception of some field activities, such as the DHS-funded and -operated Transportation Safety Lab and Plum Island Animal Disease Center, S&T does not use its staff to conduct R&D. Rather, its funds are directed to other R&D organizations, which conduct the work. The *Homeland Security Act* states that the private sector, national laboratories sponsored by the United States Department of Energy (DOE),<sup>3</sup> federally funded research and development centers (FFRDCs),<sup>4</sup> university centers of excellence for homeland security,<sup>5</sup> and other federal entities<sup>6</sup> are appropriate recipients of these funds.

S&T does not have contracting authority. To award its R&D funds, S&T relies on contracting officers from another DHS Division, the Office of Procurement Operations (OPO), within the Management Directorate. The OPO contracting officers have the authority to obligate government funds, and the responsibility to ensure that procurement decisions comply with federal contracting regulations. They may assist S&T project managers in planning their procurements, and they may overrule their procurement-related decisions. Historically, OPO was unable to provide S&T with enough contracting officers, which slowed procurement activities. In response, S&T staff members frequently used other agencies’ procurement services and contracting officers to award its projects. Currently, OPO

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<sup>1</sup> 6 U.S.C. § 181.

<sup>2</sup> 6 U.S.C. § 182(4).

<sup>3</sup> 6 U.S.C. § 189(e).

<sup>4</sup> 6 U.S.C. § 185.

<sup>5</sup> 6 U.S.C. § 188(c)(2).

<sup>6</sup> 6 U.S.C. § 391(a)(2).

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has 27 contracting officers and specialists to support S&T, but seeks a staff of 35.

This shared procurement process begins when S&T determines that it has a requirement such as procuring R&D services for a particular project. The project manager initiates the procurement request paperwork, assisted by S&T financial analysts. The paperwork is reviewed by one or more S&T officials, depending on the type of procurement and amount of funding. Once it passes through the S&T approval chain, the paperwork is submitted to the contracting officer for review, approval, and action. Other officials in OPO and in the office of the associate general counsel for S&T also review procurement packages, depending on the type of funding vehicle and amount of funding.

Federal statutes, the Federal Acquisition Regulation (FAR), and a DHS management directive establish a preference for awarding contracts through full and open competition. When conducting competitive procurements, S&T works with OPO or other agencies' contracting officers to solicit proposals by means of Broad Agency Announcements (BAAs), Requests for Proposals (RFPs), and grant announcements. The FAR establishes the BAA solicitation tool for basic and applied R&D that is not related to the development of a specific system or hardware procurement.<sup>7</sup> In the past, S&T issued individual BAAs for every area of program interest. Currently, it has compiled all areas of interest into one long-term BAA.

#### **Difference Between RFPs and BAAs**

RFPs provide a common statement of work that establishes specific tasks that must be conducted. Responsive proposals compete against each other, with cost, price, or best value often being the deciding factor.

BAAs describe the agency's research interests, either for specific program areas or more broadly defining the full range of research requirements. BAAs are a competition of ideas with well-defined evaluation criteria. Individual proposals need not be compared to each other, but must be evaluated against a common set of evaluation criteria. BAAs are considered full and open competition under the FAR implementation of the Competition in Contracting Act. See FAR 6.102(d)(2)(i).

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<sup>7</sup> FAR § 35.016.

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The individual and long-term BAAs for S&T program areas instruct interested organizations to submit initial white papers summarizing their R&D approach to the problem. Organizations that submit the most promising white papers are asked to submit a full proposal. Single, multiple, or no awards may be made under a BAA, as each proposal is considered a separate procurement.<sup>8</sup> The organizations that win competitive solicitations may receive the funding by means of contracts, interagency agreements (IA), grants, cooperative agreements, and other transactions authority instruments.

In addition to using BAAs, S&T uses the competitive RFP tool. Unlike BAAs, RFPs provide an explicit statement of work. Responses to RFPs vary in cost, price, or best value, but not in the solution proposed.

Although competition is the preferred method for awarding federal funding, in certain circumstances federal statutes allow for noncompetitive awards such as sole source contracts and IAs issued under the *Economy Act of 1932*, as amended.<sup>9</sup> Sole source contracts are available when an organization submits an independent proposal that meets certain FAR requirements. The *Economy Act* permits federal entities to award funds to other federal organizations without a competition. Under the Act's authority, S&T provides R&D project funding to federally funded laboratories and research organizations. S&T also uses the Act to award R&D project funds by adding task orders to another agency's existing contracts with private industry. At times, S&T uses the *Economy Act* to engage another agency's contracting staff to award a new contract competitively. When awarding funding under the authority of the *Economy Act*, S&T pays the servicing agency an administrative fee, except when the servicing agency is a DOE laboratory.

#### Examples of *Economy Act* IAs

- S&T transfers funds to the Department of the Interior for its procurement services (assisted acquisition).
- S&T transfers funds to the National Geospatial-Intelligence Agency to pay for the services of a private sector company already under contract with the agency (leveraging contracts of servicing agency).
- S&T transfers funds to the National Institutes of Health to use their staff and lab facilities to conduct the research.

S&T reported that in FY 2007, it awarded \$307 million, or 46%, of its \$676.7 million R&D budget by means of IAs to other federal entities. In

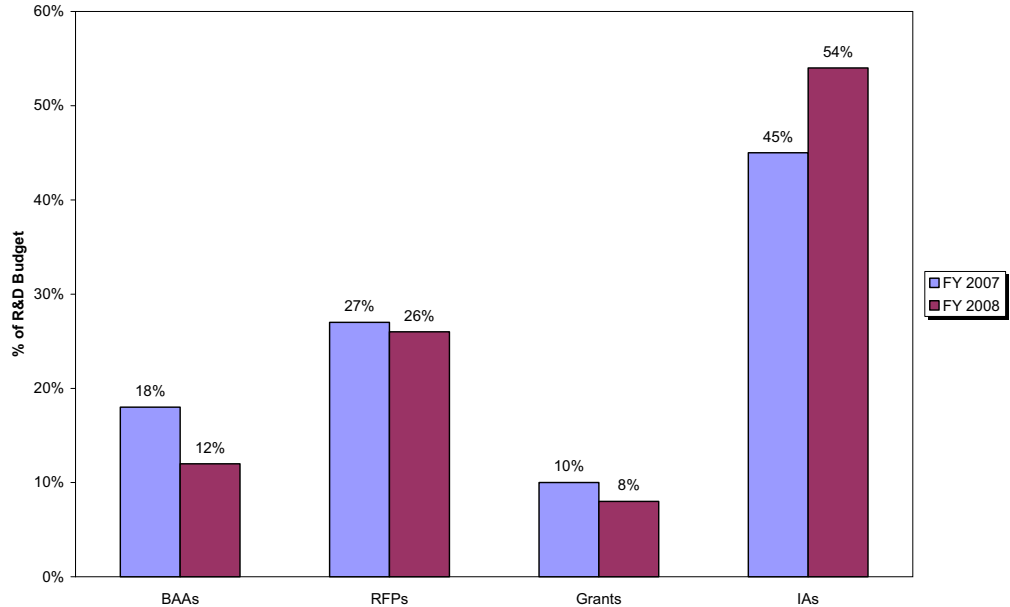
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<sup>8</sup> FAR § 3.104-1(5).

<sup>9</sup> 31 U.S.C. § 1535.

FY 2008, the percentage increased to 54%, although the amount of R&D IA awards in that fiscal year was \$265 million because S&T's R&D budget was smaller than it was in FY 2007.

S&T FY 2007 and 2008 R&D Funding Awards



Award Type	FY 2007	FY 2008
BAAs	\$123,613,019	\$61,369,065
RFPs	\$182,449,367	\$128,360,223
Grants	\$63,561,652	\$39,702,792
IAs	\$307,025,578	\$265,273,364

S&T has faced criticism for the speed and manner in which it acquires R&D services. In the FY 2006 appropriations, Congress rescinded \$20 million of unobligated balances from prior year appropriations<sup>10</sup> and another \$125 million in the FY 2007 appropriation<sup>11</sup> because of the slow rate at which S&T and OPO obligated S&T's funds. Critics also accused S&T and OPO of not awarding funding through the competitive bidding process often enough and, instead, awarding the funds through noncompetitive IAs to organizations with which S&T staff members had personal or professional contacts.

<sup>10</sup> PL 109-90, § 546.

<sup>11</sup> PL 109-295, § 529.



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## Results of Review

### **Improper Communications and Familiarity With Organizations Seeking Awards Threatened the Integrity of Some Competitive Procurements**

In 2007, circumstances surrounding four procurements created an appearance that staff members intentionally directed funding to specific acquaintances, though further review indicated that S&T staff did not violate conflict of interest or other ethical rules. Inappropriate communications in two competitive procurements raised concerns that S&T staff sought to award R&D funding to individuals or companies with whom they were familiar. The problems were detected in time for S&T to modify and preserve the integrity of those two procurements. In another competitive procurement, a company somehow obtained procurement-sensitive information, which violated the *Procurement Integrity Act*.<sup>12</sup> In a fourth procurement, an S&T employee who formerly worked for another federal agency served on the source selection board of a procurement in which the employee's former employer competed. However, when attorneys for S&T were alerted, they directed the employee to recuse himself. These situations indicate the need for better understanding of or regard for procurement standards. The rules for communicating during the procurement process were established to prevent competitors from gaining an unfair advantage and ensure that the government reaps the benefits of competition. S&T should train its staff in competitive procurement and ethical rules, and S&T management must model and enforce those rules.

#### **Procurement Integrity Statutes and Regulations**

The *Competition in Contracting Act of 1984*<sup>13</sup> and the FAR<sup>14</sup> establish a preference for using competitive methods for federal procurements. DHS Procurement Operating Procedure 201 (Interim) requires the department to use competition, except when doing otherwise would be in its best interest.

Government officials must be careful when conducting any procurement. The FAR emphasizes the need to maintain the public's trust in federal procurements. To do so, each member of the procurement system must act with "integrity, fairness and openness."<sup>15</sup> Similarly, DHS Management Directive 0480.1 directs employees to act impartially and avoid appearances of violating the law or ethical standards.

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<sup>12</sup> 41 U.S.C. § 423.

<sup>13</sup> 41 U.S.C. § 253.

<sup>14</sup> FAR 1.102-2(a)(5); FAR 6.101.

<sup>15</sup> FAR 1.102-2(c)(1).

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Other rules require specific actions to preserve the integrity of procurements. Conflict of interest statutes and regulations prevent federal employees from engaging in acts that would financially benefit their family members or themselves.<sup>16</sup> Also, to prevent enriching former employers, the Code of Federal Regulations (CFR) requires that an employee who has been employed within the last year by another party must disclose that relationship to the current federal employer and receive authorization to participate in any matter with the former employer.<sup>17</sup> Finally, federal employees are prohibited from using their position to benefit others for personal reasons.<sup>18</sup>

Other rules address the content and timing of communications between the federal government and the organizations seeking award of procurement funding. The FAR encourages federal agencies to interact with interested parties, including industry, early in the acquisition process to define requirements and acquisition strategy.<sup>19</sup> However, the FAR cautions that the contracting officer should attend one-on-one meetings with industries when the meetings are “substantially involved with potential contract terms.”<sup>20</sup> If the government discloses specific information about a proposed acquisition to one potential award winner, it must disclose that information to other potential award winners as soon as possible in order to avoid creating an unfair competitive advantage.<sup>21</sup> The *Procurement Integrity Act* prohibits any disclosure of contractors’ bids, proposals, and source selection information before the procurement is awarded.

An August 2006 OPO memorandum provides guidance on communicating with the private sector. It states that communications are appropriate for determining that the commercial marketplace can or cannot support a procurement need. It warns that it is inappropriate to communicate specifics of an upcoming procurement or request a price proposal. The memorandum directs that DHS staff must first contact the contracting office before engaging in ongoing communications with private industries, especially those with one or a limited number of vendors, to ensure that the communications are appropriate.

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<sup>16</sup> 18 USC 208; 5 CFR 2635.502.

<sup>17</sup> 5 CFR § 2635.502 (b)(iv).

<sup>18</sup> 5 CFR § 2635.701.

<sup>19</sup> FAR 15.201.

<sup>20</sup> FAR 15.201(c)(4).

<sup>21</sup> FAR 15.201(f).

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## **S&T Procedures To Ensure Compliance**

S&T has established procedures to guard against conflicts of interest that might arise in competitive procurements. Source selection evaluation board members assessing the responses to competitive solicitations must sign a nondisclosure agreement. Only government personnel may vote on the board; contractors may only provide advice. Experts assigned to S&T via the *Intergovernmental Personnel Act (IPA)*<sup>22</sup> must sign an IPA Disqualification Agreement when participating on a source selection evaluation board. This document reminds the IPA staff of the conflict of interest rules and secures their commitment to abide by those rules.

**Individual Nondisclosure Agreement**  
“The integrity of the acquisition process requires that offerors be treated fairly and that neither conflicts of interest nor the appearance of impropriety taint the consideration of proposals.”

## **Improper Communications Almost Tainted Two Competitive Procurements**

Although S&T developed safeguards to ensure that staff did not award project funding improperly, during our FY 2007 fieldwork we learned that staff made mistakes when issuing competitive awards. S&T modified two competitive procurements because of inappropriate communications with companies that were submitting proposals to BAA solicitations. In the first instance, a professional acquaintance of a senior S&T official represented a company seeking to win project funding for an R&D project it informally proposed. This representative contacted the S&T official monthly to market the company’s idea. The official responded and shared those communications with staff. The official decided to initiate a competitive procurement for an R&D project that resembled the company’s concept, despite staff misgivings about the project’s technical merit. The official gave the new project a name that incorporated the name of the company’s representative. While S&T staff members were drafting the BAA for the new project, the official encouraged other S&T staff to meet with the representative. The official eventually scheduled a meeting with the representative after the BAA was published and invited the project’s source selection authority, who invited the contracting officer. When the contracting officer arrived, the contracting officer directed the source selection authority to leave the meeting and instructed the others not to discuss the BAA.

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<sup>22</sup> 5 U.S.C. § 3371-3376.

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These actions led the chairperson for the project's source selection board to think that the senior official was implicitly directing the board to award the project funding to the company. Source selection board chairs lead the board's efforts to assess organizations' competitive proposals and recommend those that should receive funding awards. After interviewing the senior official, we concluded that the official did not intend to direct the procurement award to an acquaintance. However, the official's communications were inappropriate because they appeared to convey an attempt to influence the source selection chairperson, and they could be perceived by others as unfairly influencing a federal procurement. Once S&T decided to use a competitive process to award funds for a similar project, the senior official should have discontinued communications with the representative in order to comply with the OPO memorandum on communications.

We alerted the contracting officer to the communications, and the contracting officer then addressed these issues with the senior official and the associate general counsel for S&T. Soon after that meeting, S&T directed OPO to withdraw the BAA. The associate general counsel for S&T and the contracting officer responsible for the BAA briefed S&T personnel on procurement integrity rules at an all-hands meeting a few weeks after the BAA was withdrawn.

In another situation, an S&T project manager received a briefing from an organization that had already submitted a proposal to an open BAA. The company mentioned aspects of its proposal during the meeting. The contracting officer and the associate general counsel for S&T learned of the situation and recommended modifying the BAA to allow all interested organizations an opportunity to meet with S&T to exchange information. S&T and OPO changed the BAA to allow all interested parties to make oral presentations. Thus, S&T avoided giving one company an unfair advantage.

Although oversight functions detected and resolved these problems before unfair advantage tainted the procurements, S&T should take steps to decrease the likelihood of similar problems. S&T should ensure that all staff understand and respect the federal and DHS-specific rules about communications and maintaining impartiality. Senior S&T officials should model strict adherence to ethical rules and ensure that their actions do not appear to favor any organization or individual. All staff members should consult with contracting officers before engaging with organizations or people with whom they are acquainted about competitive procurements.

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**Inadvertent but Improper Communication and Disclosure of Procurement-Sensitive Information Did Not Provide a Competitive Advantage in One Procurement**

In 2007, two senior S&T officials unwittingly met with a representative of a company that had submitted a proposal to an open BAA. During the meeting, the company presented information related to its proposal, but the senior officials did not realize it. A contracting officer was not present at the meeting. After the meeting, other S&T staff reviewed the presentation materials and determined that they were related to the company's proposal to the BAA.

Section 15.201 (f) of the FAR requires that a contracting officer be the point of contact for communications after a solicitation has been issued. By discussing the merits of technology the company had included in its proposal without including a contracting officer, S&T could have given the company an unfair advantage. However, S&T did not have to modify the BAA to allow other companies to make oral presentations because S&T rejected the company's proposal for failing to present required cost information. Consequently, the company did not receive a competitive advantage as a result of the meeting with S&T.

It is appropriate for S&T to encourage interest in its programs by meeting with industry representatives. However, the informal manner in which S&T scheduled meetings led to this situation. To help staff respond properly to industry inquiries, S&T has distributed questions for its staff to ask organizations' representatives before scheduling meetings with them. The questions elicit information as to whether organizations have submitted or plan to submit proposals to competitive procurement solicitations in S&T or other federal organizations. This tool should help S&T vet organizations, and S&T should require staff to use it.

Of greater concern is another inappropriate communication that arose from this procurement. It occurred after S&T decided to reject the company's proposal for failure to provide necessary information, but before the contracting officer informed the company. A representative from the company telephoned the contracting officer responsible for the procurement and said that he had learned that the company's proposal would be rejected because it failed to include the required cost information. The contracting officer asked the representative to identify the source of that information. The representative obliquely referenced an S&T staff member. That S&T employee did not recall any such conversation and had no record of it. The decision to accept or reject a proposal and the underlying reasons for the decision constitute source selection information. Disclosing this information violates the

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*Procurement Integrity Act.* S&T should ensure that training for S&T staff addresses appropriate handling of source selection information.

**A Competitive Procurement Was Almost Undermined by a Source Selection and Evaluation Board Member Who Had Contacts With an R&D Organization**

In a separate competitive procurement in 2007, a member of the S&T source selection evaluation board for a BAA was previously employed by one of the organizations that responded to the BAA. The former employer was another federal agency that conducts R&D work. The contracting officer learned of the situation and alerted the general associate general counsel for S&T removed the employee from the source selection board.

Conflict of interest rules do not apply when a former employer is a federal agency. S&T's Individual Non-Disclosure statement reflects that exception to the rule banning awards to former employers:

I will not participate in the evaluation of any proposal as to which I or any member of my immediate family has an actual or reasonably perceived conflicting financial interest or a **non-Government** relationship which would cause a reasonable person having knowledge of the relevant facts to question my impartiality, unless I have been given permission [emphasis added].

However, while not illegal, familiarity with a former agency or a spouse's agency could taint the employee's objectivity when evaluating the proposal and undermine the competitive process. The S&T chairperson for the source selection and evaluation board selects the board members. When vetting prospective members, the chairperson should determine whether any have a relationship with the organizations that have submitted proposals. The chairperson should consider not using individuals who have current or former relationships with private or public organizations submitting proposals.

Since we started our review, S&T has sought to ensure that its project managers have contracting officer technical representative training and its staff members receive basic acquisition training regularly. In 2007, S&T staff completed 25 acquisitions-related courses. The number rose to 38 in 2008. In 2008, 32 staff members received project manager certifications as DHS acquisitions officials, up from 19 in 2007. Acquisition and program management training should help S&T avoid inappropriate communications. However, senior management must show its commitment to the rules in order to develop a culture of compliance at S&T.

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## Recommendations

We recommend that the Under Secretary for Science and Technology:

**Recommendation #1:** Implement a procedure requiring S&T chairpersons for source selection boards to determine whether prospective board members have any employment, familial, or other connections with organizations whose proposals they review. When such contacts exist, the chairpersons should consider not asking those persons to serve on the board.

**Recommendation #2:** Ensure that S&T staff members are aware of OPO's 2006 memorandum on communications, instruct staff through training or other methods to consult with a contracting officer prior to engaging in regular communications with industry, and require staff to ask preliminary questions before engaging in any communications with industry.

## Management Comments and OIG Analysis

In its comments to our draft report, S&T agreed to fulfill recommendations #1 and #2 by working with OPO and the associate general counsel for S&T to ensure compliance with DHS source selection policies and by providing training to S&T employees by July 1, 2009. The training will include the provisions of the OPO 2006 memorandum on communications and the second chapter of a DHS document, *A Practical Guide to Source Selection*, April 2008. The directorate's comments also said that the directorate would recommend that DHS include this information in its training programs.

We concur with S&T's decision to follow the *A Practical Guide to Source Selection* for purposes of resolving conflict of interest and related procurement integrity issues. We note, however, that the Forward to the guide states that the document should not be used for proposals that respond to BAAs. Some aspects of the guide do not apply to R&D contracting, such as determining a competitive range and requiring a common cut-off date. However, the terms of chapter two, which address ethical considerations, apply to R&D contracting, and would be useful guidance for S&T.

We recommended that S&T's source selection board chairpersons ensure the source selection board's integrity because S&T had expressed concerns about program staff disclosing personal information to contracting officers. By relying on *A Practical Guide to Source Selection*, it appears that S&T has overcome those concerns. The guide directs contracting officers to ensure that people who are

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involved in source selection have received training with respect to procurement integrity and personal conduct. It also directs the contracting officer to resolve potential and actual organizational conflicts of interest and procurement integrity issues.

S&T should work with OPO to develop a procedure for ensuring that S&T employees provide contracting officers with information related to employment, familial, or other connections between people and organizations involved in a source selection process. It also must ensure that its personnel cooperate fully with contracting officers in compliance with the procedure. We consider recommendation #1 resolved/open, and will close this recommendation when S&T provides documentation of this new procedure.

We consider recommendation #2 resolved/open and will close this recommendation when S&T provides documentation of the training materials, the dates the training was administered, and confirmation that all S&T employees received the training.

## **Processes for Awarding Noncompetitive Interagency Agreements Require Further Improvements**

S&T has improved how it provides funding through IAs, although more work is needed. In 2005 and 2006, the Office of Management and Budget (OMB), members of Congress, and the Government Accountability Office (GAO) noted problems in the use of IAs throughout the federal government. In response, S&T made some improvements. However, in 2007, S&T project managers used stock language to document their reasons for using IAs. Because we could not identify the reasons for using an IA from the documentation, we asked project managers and contracting officers to explain the reasons. Sometimes project managers used IAs primarily to obligate money quickly. It also appeared that some project managers used IAs to direct funds to organizations with which they had personal connections. Although none of these procurements violated conflict of interest rules, we were concerned that without documentation of specific reasons for directing funds via the IA, project managers could have awarded funds that did not provide the best value to the government.

In the summer of 2008, DHS issued a new management directive and instructions on the use of IAs. S&T is changing its processes in response and already has made some improvement in the quality of the documentation that justifies the use of the IA. Also, the Acting Under Secretary said that he will create a new oversight mechanism for IAs to ensure that they provide the best value for the government. We applaud S&T's efforts and recommend that it continue to improve management oversight, require better documentation for IAs, and train its staff to understand the appropriate uses of IAs.



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## **Statutory and Regulatory Requirements for Using Noncompetitive Interagency Agreements**

According to 41 U.S.C. 253, the government should use full and open competition to procure goods and services. However, the statute allows exceptions when other laws provide for noncompetitive procurement methods. Likewise, DHS Procurement Operating Procedure 201 (Interim) states that the department should use competitive means to acquire supplies and services but may rely on IAs when it is in the department's best interest. The FAR reaffirms 41 U.S.C. 253, which says that contracting officers shall promote and provide for full and open competition when awarding government contracts.<sup>23</sup> It recognizes exceptions, such as using another federal agency under the *Economy Act*.<sup>24</sup> The FAR also states that the government should subject commercial activities to the forces of competition, but perform inherently governmental activities with government personnel.<sup>25</sup>

S&T and other federal entities may use the *Economy Act* to procure goods and services noncompetitively when circumstances meet the Act's criteria, which require the following:

- The servicing agency is able to provide the goods and services or obtain them by contract;
- The requesting agency cannot procure the goods or services by competition as “conveniently” or “cheaply”; and
- Procuring the goods or services noncompetitively would be in the government's best interest.

The FAR specifies procedures for using *Economy Act* IAs. It states that agencies must prepare a “Determination and Findings,” which explains how agencies meet the criteria for each IA they issue.<sup>26</sup>

DHS incorporates rules for using IAs in Procurement Operating Procedure 201 (Interim), “Inter-/Intra-Agency Agreements (IAs), Responsibilities and Procedures.” The procedure instructs DHS personnel to acquire supplies and services by competitive means, but allows noncompetitive IAs when they would be in the department's best interest. Personnel must complete an Analysis of Alternatives if they want to use an *Economy Act* IA. When we analyzed IAs in 2007, DHS Management Directive 0710: Reimbursable Agreements was in place. It provided a template for the Analysis of

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<sup>23</sup> FAR 6.101.

<sup>24</sup> FAR 17.5.

<sup>25</sup> FAR 7.302.

<sup>26</sup> FAR 17.503.

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Alternatives (see appendix C). In the summer of 2008, DHS rescinded Management Directive 0710 and provided updated policy and instructions. We discuss the effects of the change in subsequent sections of this report.

S&T project managers complete Part A of the Analysis of Alternatives with the assistance of an S&T financial analyst, and contracting officers complete Part B. The first sentence in the Analysis of Alternatives template states that the document will “(1) identify and evaluate various methods of obtaining needed goods and services; (2) determine which alternative is the most advantageous to the government; and (3) document the cost/price analysis.” The remaining items in Part A require a description of the project and an analysis of alternative solutions, which should include the following:

- In-house resources
- Servicing agency in-house resources
- Existing DHS contracts
- Existing servicing agency contracts
- New contracts

The template instructs that the project manager should “Identify all feasible alternatives for accomplishing the stated objective.... Identify all known costs and describe the benefits and disadvantages of each alternative.” Part A also requires a discussion of the rationale for selecting an interagency agreement, which should explain why the IA is in the best interest of the government. The contracting officer completes Part B of the template, which simply requires the contracting officer to analyze the cost/price advantages and disadvantages of the IA compared to the other procurement options.

### **S&T Did Not Use Noncompetitive Interagency Agreements Properly in the Past**

Several OMB and GAO reports noted that the federal government in general, and DHS in particular, have not always used IAs appropriately. OMB reported in 2005 that the federal government as a whole issued IAs that did not represent the best value to the government.<sup>27</sup> OMB urged federal chief acquisition officers and senior procurement executives to ensure that IAs are used properly and strategically.

In its December 2005 report, *DHS Needs to Improve Ethics-Related Management Controls for S&T*, GAO-06-206, GAO expressed concerns

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<sup>27</sup> Memorandum from Robert A. Burton, Associate Administrator, OMB InterAgency Acquisition Working Group, to Chief Acquisition Officers Agency Senior Procurement Executives (Nov. 21, 2005).

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about how IPA staff members at S&T were awarding R&D funding to the home laboratories. GAO recommended that all IPA staff receive specialized ethics training to reflect the vulnerability of their position to conflicts of interest. The report also noted that DHS should finalize a process for determining where R&D funds are directed and document the rationale for those decisions. The report said that without such a process, IAs could be used to reward friends or acquaintances.

In 2006, GAO issued another report that concluded that DHS did not always follow the criteria of the FAR or the *Economy Act* when making these awards. In GAO-06-996, *Interagency Contracting: Improved Guidance, Planning, and Oversight Would Enable DHS to Address Risks*, GAO reported that the benefits of speed and convenience, and not total value to the government, often drove DHS decisions to choose interagency contracting vehicles such as IAs.<sup>28</sup> None of the contracting officers interviewed by GAO said that they chose to use interagency contracts because they provided good value to DHS. GAO concluded that if DHS had considered the fees charged by the servicing agency in some cases, it would have determined that the IAs were not a good value. Furthermore, GAO noted that when IAs are used to award funds noncompetitively, funds may be directed to an organization that does not provide the best value to the government. Given these concerns, GAO concluded that DHS management should evaluate the cost and performer value before deciding to use an IA to award R&D funding without competition. It recommended that DHS develop comprehensive guidance and criteria to consider in deciding to use an IA. DHS concurred with the report's recommendations.

### **S&T Improved Some Processes for Awarding Interagency Agreements to National Labs**

In response to OMB's and GAO's concerns, S&T drafted guidance for its employees for safeguarding the integrity of IAs issued to national labs under the *Homeland Security Act*. The guidance requires IPA employees to complete a financial disclosure form, a conflict of interest briefing, and an ethics briefing. It also states that an IPA employee must not be personally involved in handling or participating in any proposal, award, research activity, or other matter that involves his or her parent organization. Furthermore, an IPA employee must obtain permission from the office of the associate general counsel for S&T before participating in any matter involving specific parties if a reasonable person with

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<sup>28</sup>*Interagency Contracting: Improved Guidance, Planning, and Oversight Would Enable DHS to Address Risks*, GAO-06-996, September 2006.

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knowledge of the relevant facts would question the employee's impartiality in the matter.<sup>29</sup>

**2007 Fieldwork Indicated That S&T Needed To Document *Economy Act* Interagency Agreements Better**

Although S&T improved procedures to safeguard IPA use of IAs, during our 2007 fieldwork we found that procedures were not being followed, which could result in S&T funding R&D options that do not provide the best value to the government. The documentation for the rationale for using an IA instead of other methods, specifically the Analyses of Alternatives, did not reflect the reasons for using each IA. Rather, S&T project managers used stock language in every document we examined. In the "Project Description" section, the project managers provided information specific to the project they sought to fund. However, the nine Analysis of Alternatives documents we reviewed each stated:

- In-house Resources: Resources and expertise required is not available in-house;
- Servicing Agency In-house Resources: [the servicing agency] has the resources to complete these tasks;
- Existing DHS Contracts: There are no existing DHS contracts to provide this service;
- Existing Servicing Agency Contracts: DHS currently has other interagency agreements with [the servicing agency] to provide services for various aspects of DHS requirements; and
- New Contracts: A new contract is not feasible at this time and would delay this project.

Appendix D contains an example of a 2007 Analysis of Alternatives that we reviewed. When we asked one project manager what that language in the "New Contracts" part of the analysis meant, he said that the word "feasible" was probably inaccurate. Five S&T officials and contracting staff members confirmed that S&T project managers regularly insert this statement in the Analysis of Alternatives documents. These formulaic statements do not meet DHS Management Directive 0710's instruction to identify all feasible alternatives, their costs, and to describe the benefits and disadvantages of each.

Likewise, each Analysis of Alternatives we reviewed contained identical language in Part B, which documents the "Cost/Price Reasonability" and is signed by the contracting officer. Each stated:

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<sup>29</sup> Id.

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[The servicing agency] has expertise in services that is not found within DHS. Entering into an interagency agreement with [the servicing agency] will be in the best interest of the Government, as [the servicing agency] has the expertise to provide these services in a cost effective and efficient manner.

It is unclear how the contracting officers concluded that the IA was in the best interest of the government based on these statements alone. Contracting officers said that to confirm the stock language and attest to it with their signatures, they relied on the project managers' assurances that the IA was in the best interest of the government. Contracting officers and S&T program staff said that contracting officers did not have the subject matter expertise to question the project managers' decisions related to the suitability of R&D performers.

Three project managers and four contracting officers said that the project managers know or are comfortable with other federal agencies and feel confident doing business with them. They believe that their familiarity with the marketplace provides an adequate basis for analyzing alternatives. Accordingly, the project managers did not conduct market research for alternative methods such as using a competitive method or choosing a different federal agency to provide the service.

*Procurement Operations Procedure 201* directs project managers and contracting officers to identify and evaluate various methods for obtaining services and to determine which is most advantageous. However, the Analyses of Alternatives that we reviewed did not list the alternatives, their terms, or why they would not be in the best interest of the government. There is no underlying documentation of the project managers' or contracting officers' rationale for making the stock statements.

Five contracting officers said that they occasionally identified cut-and-paste errors in the Analysis of Alternatives and Determinations and Findings documents, indicating that S&T senior staff members did not conduct a thorough review to ensure that the documents met the FAR and *Economy Act* criteria. One Analysis of Alternatives document that we reviewed exemplified the problem. The "Cost/Price Reasonability" section stated that the servicing agency had expertise in grant administration services that was not found within DHS. However, the IAs were for research-related tasks, not grant administration services (see appendix D). That project managers made mistakes in completing the template is not a serious concern, but the mistakes indicate that S&T staff members were not attentive when reviewing and approving the

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documents. These documents should be thoroughly checked to ensure they not only are accurate, but that they exhibit sufficient inquiry and analysis that the IA will provide the best value to the government

Foregoing reliance on stock language would require the project managers to evaluate carefully the options for selecting a method for awarding project funds. It would also provide the S&T, OPO, and associate general counsel for S&T staff reviewing the package with a basis for asking questions and approving appropriate awards. Without such documentation, S&T may be neglecting the intent of the *Economy Act* and not getting the best value for its investment. In addition, the absence of a substantive review enables project managers to award funding noncompetitively for other improper purposes. Though we did not confirm any ethical violations, in 2007 S&T had not eliminated the past concerns of Congress and GAO. S&T project managers awarded IAs to organizations with which they were familiar and to speed up the obligation of R&D funds. Without meaningful Analysis of Alternatives documents, we could not confirm that these IAs were in the best interest of the government.

#### **S&T Used Some *Economy Act* Interagency Agreements To Award Funds Quickly and Conveniently in 2007**

Five contracting officers expressed concerns that S&T used IAs solely to award funding quickly to meet the aggressive deadlines for obligating funds. One S&T project manager said that she might have to use a noncompetitive IA in the future because she did not have sufficient staff and was overburdened. Using an IA required less time and effort than preparing a competitive procurement. In its 2006 report, GAO noted that DHS justified the use of IAs with a need to obligate funds quickly, and it concluded those reasons alone were not appropriate.

The *Economy Act* allows goods and services to be acquired quickly and conveniently, but it also requires that the IA be in the best interest of the government. Speed and convenience do not necessarily result in an award that is in the best interest of the government. There may be times when fast solutions are critical and in the government's best interest, but without an analysis that determines that speed and convenience outweigh the benefits of competition, S&T may be foregoing the advantages of competition in order to meet challenging procurement goals. Approving program officials and contracting officers should ensure that they have sufficient supporting documentation and analysis for any proposed *Economy Act* IA with another federal entity in order to assess whether the IA is the best procurement method.

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### **In 2007, Some S&T Staff Used Interagency Agreements To Fund Individuals and Organizations With Whom They Had Contacts**

We reviewed several IAs in 2007 that appeared to provide R&D funding to personal or business acquaintances of S&T staff. We did not identify any violations of ethical rules and standards, but we determined that S&T used IAs to award funding to organizations that they used in the past and with which they were familiar. Past performance is an important factor to consider, but project managers should not award simply to continue friendly or comfortable contacts. When deciding to award R&D funding by means of an *Economy Act* IA, project managers should assess whether other organizations might provide a better value for the government.

The CFR and a DHS management directive bar federal employees from using their government employment to assist friends. The ethics rules in 5 CFR 701, et seq., prohibit a federal employee from using his or her position for the benefit of family, friends, or others with whom the employee is acquainted outside of government. Likewise, DHS Management Directive 0480.1: “Ethics/Standards of Conduct,” directs employees to act impartially and “not give preferential treatment to any private organization or individual.”

Although we did not learn of any procurement that violated those standards, some procurements initially appeared to favor a friend, family, or former employer. In one IA award, S&T was able to access a contract between another agency and a private consortium. An S&T staff member contacted this firm and suggested that it employ the person who had suggested the project to S&T and who was a personal and business acquaintance of a senior official at S&T. The firm hired this person after it determined that she was as well qualified as any other candidate.

Because S&T did not document the reasons why this award would be better for the government than using other funding methods, this award appeared to violate the ethics rules established by the CFR and the DHS management directive. However, S&T did not violate the rules because its staff did not pressure the firm to hire the candidate, and the firm felt that the candidate was as well qualified as any others. However, we could not determine whether the IA was in the best interest of the government.

Five contracting officers said that they believed S&T project managers initiated IA awards to organizations with which they felt comfortable or to access individuals with whom they were familiar without assessing the alternatives. The contracting officers felt that they did not have the subject matter expertise to overrule the project managers’ choices, despite their suspicions. We learned of other situations in which S&T project

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managers used *Economy Act* IAs to direct work to federal agencies with which the project managers had ties. These IAs involved the following:

- An S&T project manager directed funding by means of noncompetitive IAs to a federal laboratory that had employed her less than a year before the IA was awarded.
- An S&T project manager who was detailed from another agency awarded funding via a noncompetitive IA to the agency from which he was detailed and to which he would return when his detail ended.
- Two S&T project managers used or sought to use an IA to secure contracting support from another agency to conduct an R&D procurement. The project managers were related to contracting officers at the other agencies.

These IAs did not violate federal ethics rules and standards. There were no conflicts of interest as defined by 5 CFR § 2635, because federal funding may be transferred from one agency to another without regard for conflicts of interest. Likewise, 5 CFR § 701, et seq., and DHS Management Directive 0480.1 are not applicable because they prohibit preferential treatment for entities outside of government, but not within it.

While these situations did not violate federal regulations, they suggest that S&T awarded the IAs because the project managers had a level of comfort or familiarity with the recipients, not because it would be in the best interest of the government. Without documentation of the analysis supporting a best value determination, it is not possible to determine whether S&T selected a funding method that provided a better investment.

### **OMB and DHS Change Interagency Agreement Procedures in 2008**

In June 2008, OMB issued guidance for using certain types of IAs, and DHS management responded with new instructions and guidelines to implement the changes. OMB's guidance emphasized the *Economy Act's* provision that agencies determine that an IA would be in the best interest of the government before issuing it. The IAs subject to the guidance were those that sought to access another agency's extant contracts or use another agency's procurement services. On June 11, 2008, the DHS chief procurement officer released a memo requiring all components to support decisions to use IAs with best interest determinations in accordance with the OMB guidance.

On August 15, 2008, DHS released Directive 125-02 on Interagency Agreements, which rescinded the former DHS directive on IAs, Management Directive 0710.1. Three days later, DHS published



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Instruction 125-02-001, *Instruction Guide on Interagency Agreements*, which states that DHS components must make a best interest determination for all IAs used to outsource DHS procurement functions or to obtain goods or services from another federal agency. They instruct that “Lack of proper acquisition planning should never be used as the justification for a specific acquisition process or as a basis for selecting a Servicing Agency.” This language seems to state that insufficient staff or a need to obligate funds quickly would not, by itself, justify using an IA.

The instructions also provide a template for the Analysis of Alternatives, which is quite similar to the one previously used. One significant change, however, is that the project managers must include the following statement: “I have determined that executing the Interagency Agreement is in the best interest of the government.”

In February 2009, we reviewed 22 Analyses of Alternatives supporting *Economy Act* IAs that S&T project managers signed after the new instruction was established. None of them used the new template, and none included the above statement. Six, or 27%, of the Analyses contained the same stock language as those we reviewed in 2007. However, six of the documents showed marked improvement in the Analyses. Each of those contained information that was specific to the procurement. Some key examples are as follows:

- “[Servicing Agency] has unique facilities.... Nor is it expected that a public announcement will improve the performance costs.”
- “Ongoing work associated with this contract is necessary to support associated operational program....”
- “No commercial entity can satisfy this requirement conveniently or economically.”
- “A majority of the expertise in toxic chemical characterization resides within the [Servicing Agency].”

S&T should require project managers to use the new Analysis of Alternatives template and use project-specific language to justify use of an *Economy Act* IA in lieu of competition.

Most of the recent Analyses of Alternatives continued to rely on the need to avoid slow obligation as a reason for using an IA. Four, or 18%, cited the need for fast procurement as the sole reason for an IA, and used language such as, “If a contract was pursued outside of this IA, it could delay this project and the timely development of the [program name].” Eleven others, or 50%, cited a need to avoid delay as one of the reasons for using the IA.

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Federal statutes, regulations, and a DHS management directive state that competition is the preferred method of procurement. As the recent OMB and DHS policy emphasized, to use the *Economy Act* instead of competition, the awarding agency must find that using that tool would be in the government's best interest. Generally, using the *Economy Act* will provide a faster procurement than using a competitive method. Sometimes, awarding funding as quickly as possible is in the government's best interest. For example, when the government learned of the terrorist threat to use liquids to smuggle explosives onto airplanes in the summer of 2006, S&T used an IA to award funding to a national lab to quickly develop countermeasures. That new and imminent threat justified using an IA instead of competition. However, in the absence of similar exigent circumstances, faster procurements are not necessarily in the best interest of the government, in view of the advantages that result from competition. When considering and documenting the alternatives, S&T project managers should analyze whether the "delay" caused by competition would be so harmful as to override the government's interest in procuring goods and services through competitive means. S&T management should work with OPO and the associate general counsel for S&T to develop guidance to help project managers make these determinations.

In our followup discussions, the Acting Under Secretary for S&T said that S&T has been increasing its staff and improving its procurement planning processes. In addition, he will be developing more thorough oversight of IA use. As a result, project managers are under less pressure to rush procurements and will be required to submit more a substantive Analysis of Alternatives to justify an IA. The OPO S&T division director agreed that the Analyses of Alternatives have improved. Both the Acting Under Secretary and the director said that low staffing in OPO continues to slow S&T procurement processing, but may be mitigated by changes to IA processes mandated by Congress, as explained below.

#### **Additional Changes to Processing Interagency Agreements Under Way as S&T Assumes More Control**

As we were writing this report, the processes for using IAs for S&T R&D needs were changing again in response to an explanatory statement associated with the House of Representatives approval of the DHS appropriation for FY 2009. The statement provided for a 2-year pilot program in which S&T would assume more responsibility for its procurements, although OPO would continue to conduct "appropriate" reviews. Our draft report did not include the fact that S&T and OPO were planning the pilot program and shifting responsibility for preparing some IAs to S&T. An OPO headquarters staff member would approve the

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documents, but not be involved in developing them. Assisted acquisitions would not be affected by these changes.

S&T project managers may react in several ways to these changes. When S&T takes more responsibility for the IAs, the OPO S&T Division contracting officers should have more time to devote to competitive procurements and the assisted acquisition IAs that they still process. If they can complete those procurement actions more quickly, S&T project managers may start to use competitive methods more frequently and may use OPO contracting officers more often, rather than using other agencies' contracting services. These changes would have a positive impact on S&T's procurements. Alternatively, the pilot program may result in project managers using IAs more often in order to avoid working with OPO contracting officers. Given that the FY 2008 rate of IA usage for R&D awards was 54%, increasing usage rates would have a negative impact on S&T procurements. The Acting Under Secretary for S&T agreed that this could happen. He said that he will establish a more robust IA oversight mechanism to ensure that IAs are used properly and not to bypass OPO. He also plans to establish a task force to develop processes and an oversight mechanism to ensure that IAs are used appropriately.

#### **New S&T Oversight Mechanism Should Prevent Problems With Noncompetitive Interagency Awards**

Since 2007, S&T gradually has improved its IAs. It established safeguards to prevent IPA staff from misusing the IA to award funding to the institutions that employed them. More recently, some S&T managers have begun using more precise reasoning in the Analyses of Alternatives to document the reasons for not using competitive methods. The Acting Under Secretary has confirmed that S&T will develop procedures and oversight methods to ensure that IAs are used appropriately.

As S&T develops its new IA processes, it should ensure that project managers conduct research to determine which award alternative provides the best value for the government. The structure must ensure that project managers do not use IAs simply to expedite budget obligations or to award IAs to organizations with contacts to S&T staff. The advantages of competition should not be foregone for these reasons alone. In addition, IA oversight should ensure that S&T project managers use the new Analysis of Alternatives template and enter project-specific reasons justifying the use of an IA.

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## Recommendations

We recommend that the Under Secretary for Science and Technology:

**Recommendation #3 (revised):** Continue to develop processes for using IAs appropriately and for drafting adequate Analyses of Alternatives.

**Recommendation #4:** Continue efforts to develop an oversight mechanism for using IAs to award R&D funding. The oversight mechanism should ensure that S&T staff members: (1) use the new Analysis of Alternatives template provided in DHS Instruction 125-02-001, *Instruction Guide on Interagency Agreements*; and (2) provide project-specific reasons for using each IA that justify a determination that the IA is in the best interest of the government.

**Recommendation #5:** Train project managers in the appropriate use of IAs, the Analysis of Alternatives template, and new procedures.

## Management Comments and OIG Analysis

S&T agreed with recommendations #3, #4, and #5. However, it suggested that we delete the second sentence of recommendation #3, which read: “Work with OPO and Office of General Counsel to craft guidance on when using an IA solely for the purpose of speed overrides the advantages of competition.” In the comment, S&T stated that a need for overarching guidance regarding the speed factor is not necessary because recommendation #4 requires the directorate to ensure that each IA is in the best interest of the government. S&T also stated that it will develop general guidance and provide training to ensure that program managers and division directors understand the value of competitive procurements and properly document decisions to use IAs instead. In addition, the division directors will review the analyses of alternatives to ensure they provide adequate justification, and the chief financial officer’s staff will review them for completeness.

We agree with S&T’s comments, and revised recommendation #3. This recommendation is resolved, but open pending delivery of documentation that S&T has developed processes and general guidance for using IAs appropriately.

With regard to recommendation #4, S&T’s proposal to have division directors and staff from the Office of the Chief Financial Officer review the analyses of alternatives is not a significant change from the former practice, in which a review was conducted by staff from the office of the chief financial officer and a division designee, who was the division

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director in the samples that we examined. Using the same staff to review the analyses of alternatives will suffice, if their review ensures that the project manager used the new analysis of alternatives form and the form provided project-specific reasons supporting the conclusion that the IA is in the best interest of the government.

We consider recommendation #4 resolved/open. To close the recommendation, S&T should provide the OIG documentation showing that the division directors and Chief Financial Officer's staff have been directed to include these considerations in their review of IAs.

With regard to recommendation #5, S&T's commitment to develop guidance and train all division heads and program managers in the value of competition and the use of interagency agreements will fulfill recommendation #5. We consider recommendation #5 resolved/open, pending S&T's delivery of the training documents covering those topics and written confirmation that it has trained the staff.

## Appendix A

### Purpose, Scope, and Methodology

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This report is responsive to two congressional requests, one from the Honorable Tom Davis, then-Chairman of the House Committee on Government Reform, and the other from the then minority staff of the House Committee on Homeland Security. The requests directed us to review the methodology that S&T uses to distribute its funds between national laboratories, academia, and the private sector. The report is based on information obtained from interviews and documents, as well as a review of applicable laws, regulations, and policies.

We began our fieldwork in January 2007 and were summarizing the results in February 2008, when we were diverted from the review. Until that time, we had conducted more than 125 interviews of S&T officials and staff, OPO and office of the associate general counsel for S&T personnel, and the DHS designated agency ethics official. We had reviewed and analyzed extensive documentation provided by S&T, which included guidelines, procedures, and financial documents. We also had studied related laws, regulations, executive orders, DHS management directives, and legal opinions related to federal procurements and ethics. We examined reports from GAO, OMB, and Congress, as well as relevant speeches, testimony, and news articles.

We resumed our fieldwork in January 2009 to refresh our information and conclusions. From January through March 2009, we conducted eight additional interviews and reviewed and analyzed additional documents, including the June 2008 OMB report *Interagency Acquisitions*, new DHS instructions for implementing the report, training data, and e-mails.

This review was conducted under the authority of the *Inspector General Act of 1978*, as amended, and according to the *Quality Standards for Inspections*, issued by the President's Council on Integrity and Efficiency.

## Appendix B

### Management's Comments to the Draft Report

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Deputy Under Secretary for Science and Technology  
U.S. Department of Homeland Security  
Washington, DC 20528



**Homeland  
Security**

May 26, 2009

Mr. Carlton I. Mann  
Assistant Inspector General for Inspections  
Office of the Inspector General  
Department of Homeland Security  
Washington, D.C. 20528

Dear Mr. Mann:

The Department of Homeland Security's Science and Technology (S&T) Directorate appreciates the opportunity to review and comment on the Office of the Inspector General's (OIG) draft report titled "The Science and Technology Directorate's Processes for Funding Research and Development Programs."

I believe the draft report fairly describes the facts within the scope of the review. I also believe the review would have been of more value if it had included an assessment of the entirety of the procurement process, including the oversight responsibilities of the contracting officers in ensuring procurement decisions are made in the best interest of the government. S&T program managers are the technical subject matter experts, and are responsible for properly executing the technical aspects of the program including the initiation of the procurement; contracting officers are procurement subject matter experts, and are responsible for the proper execution of procurements. The review focused only on the S&T program managers' procurement responsibilities without any assessment of the role of the contracting officer. Reviewing the entire procurement process might have been more valuable and provided additional insight into the root causes of some of the identified deficiencies.

Although a very small fraction of the hundreds of procurement actions processed during the period of the review raised concerns, I am committed to the absolute integrity of the procurement process both in substance and in perception at all levels of the Directorate. I appreciate your support in ensuring S&T is mindful of the critical importance of good stewardship of public funds in pursuing a broad range of activities aimed at identifying, developing and transitioning new homeland security capabilities to our customers, the operating components of DHS and our Nation's first responder community.

I agree with the recommendations contained in the draft report, and propose only one minor change to Recommendation # 3. This proposal as well as action I have taken or plan to take on your recommendations is enclosed.

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

**Appendix B**  
**Management's Comments to the Draft Report**

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

Sincerely,



Bradley I. Buswell  
Under Secretary for Science and Technology (Acting)

Enclosure: a/s



## Appendix B

### Management's Comments to the Draft Report

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*Recommendation #1: Implement a procedure requiring S&T chairpersons for source selection boards to determine whether prospective board members have any employment, familial, or other connections with organizations whose proposals they review. When such contacts exist, the chairpersons should consider not asking those persons to serve on the board.*

*Recommendation #2: Ensure that S&T staff members are aware of OPO's 2006 memorandum on communications, instruct staff through training or other methods to consult with a contracting officer prior to engaging in regular communications with industry, and require staff to ask preliminary questions before engaging in any communications with industry.*

Response: S&T will work closely with the Office of the General Counsel (OGC) and the Office of Procurement Operations (OPO) to ensure compliance with Chapter 2 of the DHS source selection guidance document entitled *A Practical Guide to Source Selection*, dated April 2008. This chapter addresses Organizational Conflict of Interest and Integrity issues and outlines the roles and responsibilities of the contracting officer, the selection chair and committee members, and advising attorney. S&T will also include these topics and the OPO 2006 memorandum on communications in a special training session for all personnel to be completed by July 1, 2009. Further, S&T will request that this information be included in DHS's indoctrination ethics training required of new employees, and in the DHS's mandatory annual ethics training required of all federal employees.

*Recommendation #3: Continue to develop processes for using IAs appropriately and for drafting adequate Analyses of Alternatives. Work with OPO and Office of the General Counsel to craft guidance on when using an IA solely for the purpose of speed overrides the advantages of competition.*

*Recommendation #4: Continue efforts to develop an oversight mechanism for using IAs to award R&D funding. The oversight mechanism should ensure that S&T staff members (1) use the new Analysis of Alternatives template provided in DHS instruction 125-02-001, Instruction Guide on Interagency Agreements, and (2) provide project-specific reasons for using each IA that justify a determination that the IA is in the best interest of the government.*

*Recommendation #5: Train project managers in the appropriate use of IAs, the Analysis of Alternatives template, and new procedures.*

Response: S&T recommends deleting the second sentence in Recommendation #3. The decision regarding the procurement method to be used to accomplish the goals of the program should be made based on the best value to the government, as highlighted in Recommendation #4. Urgency of accomplishment is just one factor considered. The S&T Directorate is fully committed to using the IA process appropriately and fully agrees that IAs should not, and will not, be used with the intention to circumvent competition.

The Directorate will work with OPO and OGC to craft guidance and training for all Division Heads and Program Managers (PM's) to ensure that the value of competition is recognized and future Analyses of Alternatives (AoA) are substantially sufficient and documented in a fashion

## Appendix B

### Management's Comments to the Draft Report

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that supports the decision to use the IA. To support acquisition planning for Fiscal Year 2010, S&T will provide refresher training by July 1, 2009, on the appropriate use of IAs and completion of the AoA document to help ensure that PMs:

- Fully consider the value of competition in all projects;
- Apply project-specific criteria to justify use of an Economy Act IA in lieu of competition;
- Understand the requirement to use supporting documentation that is substantially sufficient to support the decision to use the IA;
- Use the current version of the AoA document.

Division Heads will be responsible for reviewing all AoAs to ensure the PM has conducted and documented an adequate analysis. The S&T CFO's office will independently review all AoAs for completeness.

ATTACHMENT B

**INTER/INTRA AGENCY REIMBURSABLE  
AGREEMENT ANALYSIS OF ALTERNATIVES**

This Analysis of Alternatives will: (1) identify and evaluate various methods of obtaining needed goods and services, (2) determine which alternative is the most advantageous to the government, and (3) document the cost/price analysis.

Part A to be completed by Contracting Officer's Technical Representative/Program Office Point of Contact:

Project Description: Define the objective and explain why obtaining the goods and/or services is necessary to meet mission goals.

Analysis of Alternative Solutions: Identify all feasible alternatives for accomplishing the stated objective. Identify all known costs and describe the benefits and disadvantages of each alternative.

In-House Resources (Include whether in-house sources are available and/or if expertise required is/is not available in-house.)

Servicing Agency In-House Resources (Include if another agency can perform services with in-house personnel.)

Existing Bureau or Treasury Contracts (List all current Bureau or Treasury contracts for the same service or item. If none, so state.)

Existing Servicing Agency Contracts (List current contracts issued by other agencies for same service or item.)

New Contract (Address the feasibility of issuing a new Bureau contract.)

Rationale for Selecting an Interagency Agreement (Compare the alternatives and state why the use of a Payable IA is in the best interest of the government. If comparable services are available, discuss why the Payable IA would be more beneficial in terms of cost, convenience, and/or need to expedite the acquisition.)

Name:  
Title:  
Signature:  
Date:

**Appendix C**  
**DHS MD 0710.1, Analysis of Alternatives Template**

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ATTACHMENT B

Part B to be completed by the Procurement Office Representative/ Contracting Officer:

Cost/Price Reasonability (Analyze cost/price in as much detail as required for the type of supplies/services being obtained and the dollar amounts of the various alternatives).

Additions to Part A above, if required (Specify item being amended.)

Name:  
Signature:  
Title:  
Date:

INTERAGENCY REIMBURSABLE AGREEMENT  
ANALYSIS OF ALTERNATIVES

This analysis of alternatives will: (1) identify and evaluate various methods of obtaining needed goods and services, (2) determine which alternative is the most advantageous to the Government and (3) document the cost/price analysis.

**PART A:**

**Project Description:** DHS/S&T has a need for [REDACTED] to design, develop, and test the prototype center wing panel for the [REDACTED]. The primary goals of this effort are to: (1) Design, build and checkout the tooling and handling equipment for the center wing panel; (2) Validate the composite materials and manufacturing processes for the full-scale center wing panel; (3) Build and proof test a prototype center wing panel. Detailed design of the prototype center wing panel was accomplished under a separate effort.

Successful completion of this project will reduce the schedule and performance risk for the design and fabrication of the entire wing for the [REDACTED] during the [REDACTED] program.

The period of performance for the [REDACTED] wing panel project is for an 8-month period after contract award.

**Analysis of Alternative Solutions:**

In-House Resources: Resources and expertise required is not available in-house.

Servicing Agency In-House Resources: [REDACTED] has the resources to complete these tasks.

Existing DHS Contracts: There are no existing DHS contracts to provide this service.

Existing Servicing Agency Contracts: DHS currently has other interagency agreements with [REDACTED] to provide research expertise for various aspects of DHS.

New Contract: A new contract is not feasible at this time, and would delay this project.

Program Manager Name: [REDACTED]

Date:

Signature: [REDACTED]

4/12/07

**PART B:**

**Cost/Price Reasonability:** [REDACTED] has expertise in grant administration services that is not found within DHS. Entering into an interagency agreement with [REDACTED] to provide these services is in the best interest of the Government, as [REDACTED] has the expertise to provide these services in a cost effective and efficient manner.

Contracting Officer Name:

Date:

Signature:

**Appendix E**  
**DHS Instruction 125-02-001, Analysis of Alternatives Template**

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ATTACHMENT 1

**SAMPLE**  
**ANALYSIS OF ALTERNATIVES**

This Analysis of Alternatives will: (1) identify and evaluate various methods of obtaining needed goods and services, (2) determine which alternative is the most advantageous to the government, (3) document the value analysis, and (4) (For Economy Act Assisted Acquisitions,) attest that the work required to be performed is not an inherently governmental function. Also, see FAR Subpart 7.3 – “Contractor versus Government Performance.”

**To be completed by the DHS Program Manager:**

Project Description: Define the objective and explain why obtaining the goods and/or services is necessary to meet mission goals.

Analysis of Alternatives: Identify all feasible alternatives for accomplishing the stated objective. Identify known costs and describe the benefits and disadvantages of each alternative below:

- In-House Resources (Include whether in-house resources/expertise are available.)
- Existing Requesting Agency Contracts (List current contracts issued for same service or item, if any.)
- New Contract (Address the feasibility of issuing a new contract.)
- Servicing Agency In-House Resources (Include if another agency can perform services with in-house personnel.)
- New or Existing Servicing Agency Contracts (List current contracts issued by other agencies for same service or item, if any.)

Rationale for selecting an Interagency Agreement (Compare the alternatives and state why the use of an Interagency Agreement is in the best interest of the government. If comparable services are available, discuss why the Interagency Agreement would be more beneficial in terms of cost and convenience.)

Based on the above analysis, I have determined that executing the Interagency Agreement is in the best interest of the government.

Name:

Title:

Signature:

Date:

1-1

Instruction # 125-02-001  
Revision # 00

**Appendix F**  
**Major Contributors to This Report**

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Kirsten Murray, Inspector

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## **Appendix G**

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