



Department of Homeland Security Office of Inspector General

Progress in Addressing Secure Border Initiative Operational Requirements and Constructing the Southwest Border Fence





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.

This report covers CBP's progress in constructing the tactical infrastructure needed to meet border security mission requirements. Specifically, the report discusses CBP's efforts to develop, refine, and document the underlying operational needs of the Border Patrol, and as set forth in the *Secure Fence Act of 2006*, as amended, to build pedestrian and vehicle fences along the Southwest border of the United States to guard against illegal entries. The report also addresses related management improvements, including establishing, staffing, and equipping an acquisition program management office to oversee tactical infrastructure construction, including fencing. The report is based on interviews with employees and officials of the Department of Homeland Security, direct observations, and a review of applicable documents.

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

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

Richard L. Skinner
Inspector General

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Abbreviations

CBP	United States Customs and Border Protection
DHS	Department of Homeland Security
OIG	Office of Inspector General
PMO	Program Management Office
SBI	Secure Border Initiative



Department of Homeland Security
Office of Inspector General

Executive Summary

Achieving the optimal mix of personnel, technology, and tactical infrastructure is key to the Secure Border Initiative strategy for protecting and controlling the Nation's borders. We conducted an audit of the United States Customs and Border Protection to determine its progress in addressing Secure Border Initiative requirements and in constructing tactical infrastructure, which includes fencing to secure the Southwest border as mandated by Congress and determined by the Secretary of Homeland Security.

Customs and Border Protection has made progress in identifying the Border Patrol's operational requirements for technology and tactical infrastructure. However, Border Patrol assessments could better document and define operational requirements for tactical infrastructure to ensure that border fence construction is linked to resource decisions and mission performance goals.

As of September 30, 2008, Customs and Border Protection had completed about half of the 670 miles of fence that the Secretary determined would be most practical and effective. Although the Secretary waived environmental requirements in April 2008, Customs and Border Protection continues to face several other challenges, such as land acquisition, which has impeded fence construction progress. As a result, Customs and Border Protection did not meet its goal of completing 670 miles of fence by December 31, 2008. CBP informed us that it altered the goal from completing 670 miles of fencing to having 90 to 95 % under construction or under contract by the end of 2008. Also, Customs and Border Protection has not fully staffed its Tactical Infrastructure Program Management Office or fully developed the management information systems used to support this office.

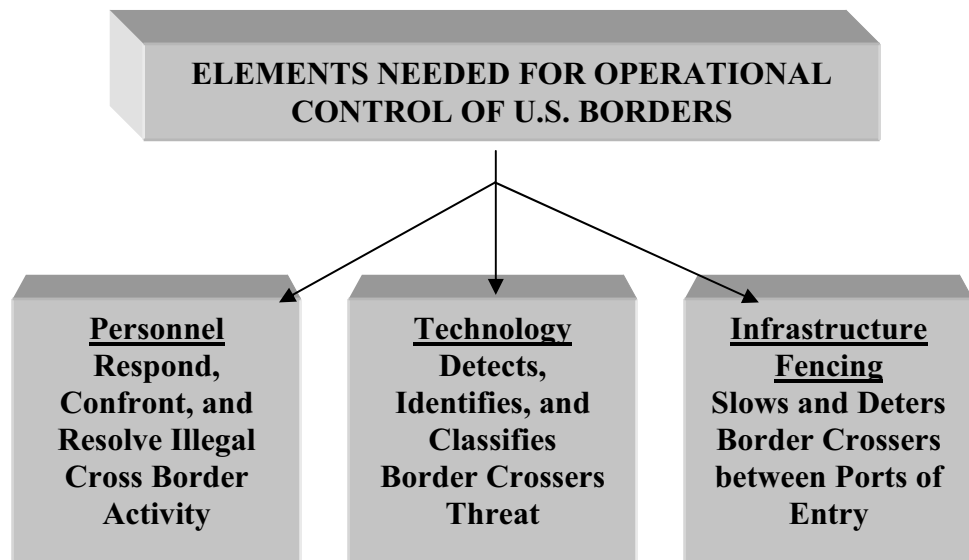
We are making four recommendations which, when implemented, should help CBP improve its management of tactical infrastructure fencing construction. CBP concurred with all four recommendations. We incorporated CBP's response to our recommendations in Appendix B.

Background

The Department of Homeland Security (DHS) has the responsibility to secure and control the Nation's borders as a means of deterring and preventing terrorists, weapons of mass destruction, and aliens from unlawfully entering the country. Customs and Border Protection's (CBP) Office of Field Operations inspects and admits people and commerce into the United States at designated ports of entry. Legal border crossings take place only at these ports. CBP's Office of Border Patrol is responsible for interdicting illegal immigration and maintaining security between the ports along 5,525 miles of land bordering Canada and 1,989 miles bordering Mexico.

In 2005, the President established the Secure Border Initiative (SBI), a comprehensive multiyear, multibillion-dollar effort to secure U.S. borders and reduce illegal immigration. Elements of SBI are carried out by several components within DHS. Gaining control of the border is one of the cornerstones of the SBI strategy, which includes the optimal mix of enforcement personnel, technologies, and infrastructure to achieve border control.

Different border terrains, climates, and populations require the Border Patrol to use different mixes of personnel, technology, and tactical infrastructure to gain operational control of the border. Border Patrol agents comprise the personnel element of operational control, providing the law enforcement response to intercept pedestrians, contraband, and vehicles illegally crossing into the United States between land ports of entry. The *SBI_{net}* Technology Program is the portion of SBI that includes video cameras, ground sensors, radar, and computer systems, which are used to detect, identify, classify, and track illegal pedestrian and vehicle crossings. Sensors detect movement at the border and the systems identify if it is a person illegally crossing the border. Illegal crossings are classified by threat level and are responded to by Border Patrol agents. Tactical infrastructure assets include pedestrian and vehicle fences and lighting, used to slow and deter pedestrians and vehicles from illegally crossing the border between ports of entry. It also includes roads and bridges used by Border Patrol agents to patrol and respond to illegal crossings. These three elements are depicted:



Remote, rural, and urban areas require the Border Patrol to adapt to significantly different operational environments along the international borders. Because remote areas are isolated, not easily accessible, and have very low population density, it could take illegal border crossers hours or days to cross to a U.S. community, allowing the Border Patrol more time to respond. In contrast, entry through rural areas, which are less isolated and more easily accessible with somewhat higher population density, may take minutes or hours, affording less response time. Urban areas are densely populated cities, enabling illegal border crossers to go over the border and disappear into a U.S. community in a matter of minutes unless quickly interdicted.

The *Secure Fence Act of 2006*, as amended¹, provides, in part, that DHS shall construct reinforced fencing along the Southwest border where fencing would be most practical and effective. The Act also provides for the installation of physical barriers, roads, and lighting to gain operational control of the Southwest border. For priority areas, the Act directs CBP to complete a number of miles of fencing, as determined by the Secretary, by December 31, 2008. The Secretary determined that 670 miles of fencing is to be constructed by the year-end deadline.

In FY 2007, Congress appropriated about \$1.5 billion for the SBI program, including \$300 million in supplemental appropriations to support the installation of fence, infrastructure, and technology along the border. The

¹ The *Secure Fence Act of 2006* (Public Law 109-367) amended Section 102(b) of Public Law 104-208. Subsequently, the *Consolidated Appropriations Act 2008* (Public Law 110-161, Div E, §564) amended Section 102 of Public Law 104-208.

Department of Homeland Security Appropriations Act, 2007 (Public Law 109-295) provided funding for CBP border security, fencing, infrastructure, and the technology program, but did not identify how DHS was to apportion the funds among the three SBI program elements. The appropriation for SBI for FY 2008 was \$1.225 billion for fencing, infrastructure, and technology. The department received an additional \$775 million for fencing, infrastructure, and technology for FY 2009. In addition, *The American Recovery and Reinvestment Act of 2009* (Public Law 111-5) provides \$100 million for border technology along the Southwest border.

Results of Audit

CBP has made progress in identifying and meeting the Border Patrol's operational requirements for technology and tactical infrastructure. Specifically, CBP has:

- Defined the Border Patrol's operational requirements for the *SBI_{net}* Technology Program and is refining them to set performance objectives for SBI technology. This helps ensure that resources are applied consistently to meet operational needs.
- Identified its SBI tactical infrastructure fencing requirements through the Border Patrol's assessment process. However, improvements are needed in the assessment documentation to show that the Border Patrol's tactical infrastructure needs are being met.
- Developed fencing performance requirements and tested and assessed these designs through the Fence Lab project. This testing program provided cost-effective fence designs that could be rapidly replicated to meet the Border Patrol's requirement to slow and deter vehicles and pedestrians from crossing the border between the ports of entry.

CBP has made progress in constructing fencing along the Southwest border, but faced several challenges that prevented CBP from meeting its goal of completing 670 miles of fence by December 31, 2008. In addition, CBP's project management office is not at full capacity. Specifically, CBP has:

- Completed construction of more than 357 miles of vehicle and pedestrian fence along the Southwest border as of September 30, 2008. Although the Secretary waived environmental requirements in April 2008, CBP continued to face challenges such as land acquisition and therefore in September 2008 was just over halfway to completing its fencing goal for that year.

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- Established the SBI Tactical Infrastructure Program Management Office and a monitoring system to address the Border Patrol's tactical infrastructure needs. However, the office is not fully staffed and the system to monitor progress and cost has not been fully developed and implemented.

Although the goal of completing 670 miles of fence by December 31, 2008, was not accomplished, the Secretary remained committed to having 90 to 95 % of planned fencing either under construction or under contract in 2008.

Defining Operational Requirements

CBP is taking steps to better define the Border Patrol's operational requirements for both technology and tactical infrastructure by:

- Clarifying intended outcomes for *SBI_{net}* technology products and systems to ensure that their operational needs are met;
- Defining SBI operational requirements for tactical infrastructure; and
- Using the results from the Fence Lab project to assess select fence designs.

These fence designs better ensure that the Border Patrol's mission needs will be effectively achieved. However, CBP has not satisfactorily documented the operational requirements for tactical infrastructure fencing, making it difficult to determine whether actual construction of fencing is meeting mission needs for operational control of the border.

Refining Operational Requirements for Technology

In our November 2006 Risk Management Advisory Report,² we reported that operational requirements were not fully defined and documented at the start of the *SBI_{net}* program. Specifically, the department needed to define and document the underlying operational requirements for *SBI_{net}* technology, and translate the Border Patrol's mission needs into performance measures and objectives for the program.

Operational requirements should be clearly identified, fully defined, and properly documented in terms of key performance parameters, with thresholds and objectives set. Program managers are to ensure that program plans and resources are optimally directed at achieving the key performance parameters.

² *Risk Management Advisory for the SBI_{net} Program Initiation*, OIG-07-07, November 2006.

Accordingly, an Operational Requirements Document is used for any major acquisition program to set performance objectives and threshold parameters for the proposed concept or system, in this case *SBI_{net}*. The operational users prepare this document as guidance to acquisition program managers on making cost, schedule, and technical performance trade-offs. Also, the Operational Requirements Document may be used to set assumptions for program plans, schedules, and cost estimates.

The Operational Requirements Document is necessary for effectively establishing the program's performance management systems. The Operational Requirements Document is key to establishing an Acquisition Program Baseline and formally documenting the program's critical cost, schedule, and performance parameters, expressed in measurable, quantitative terms that must be met to accomplish the program's goals. By tracking and measuring actual program performance against this formal baseline, the program's management is alerted to potential problems, such as cost growth or requirements creep, and is able to take early corrective action.

Since our 2006 report, CBP has developed and published an Operational Requirements Document to establish the operational requirements and performance objectives to drive *SBI_{net}* plans. However, CBP is currently adjusting the Operational Requirements Document to provide greater clarity and detail about intended outcomes.

Documenting Operational Requirements for Tactical Infrastructure

CBP's Office of Border Patrol developed and implemented a needs assessment process to link resources to mission performance. This process is being used to identify Border Patrol's operational requirements for tactical infrastructure fencing. However, this process did not clearly document and define tactical infrastructure fencing needs; therefore, it is difficult to link actual fence construction to the needs that the Border Patrol originally identified to accomplish its mission.

Although the needs assessment process did not provide a clear link to actual and planned fence construction, supplemental explanations by the Border Patrol and our observations showed that resources were being applied to bona fide needs. The Border Patrol is also taking steps to improve its assessment process by identifying and incorporating *SBI_{net}* technology requirements when assessing tactical infrastructure needs. The technology overlay with tactical infrastructure should provide a more comprehensive and effective needs assessment by better identifying and resolving any gaps in border coverage.

The Border Patrol has established processes to link resource decisions to mission goals to achieve border control. As part of its annual budgeting process, the Border Patrol performs operational needs assessments in each sector.³ Sector-by-sector assessments describe the threat environment and identify the needs to achieve operational control of portions of the border. Operational control is achieved in a tactical zone when the level of border security (controlled, managed, monitored) in that specific zone matches the level of threat or risk, either high, medium, or low. Level of threat is measured by the presence or need for detection and interdiction resources to fully implement the sector's border control strategy and tactics. The Border Patrol sectors identify where it would be most practical and effective to build fencing to gain operational control of their sections of the border. The sectors then document the tactical infrastructure needs in a management information system known as the Operational Requirements Based Budget Program.

During our review of the 2007 Operational Requirements Based Budget Program documents, we could not reconcile Border Patrol's fencing requirements as set forth in the documents with the miles of fence constructed or to projects planned.

According to Border Patrol officials, their assessments identified approximately 225 miles of pedestrian fence and 170 miles of vehicle fence needed along the Southwest border. However, the location of the miles was not always identified in its Operational Requirements Based Budget Program plans, or was not sufficiently specified in the documents. Therefore, we could not determine whether the actual fencing planned or under construction corresponded to fencing needs as identified in Border Patrol assessments. Clearer links between the detailed needs assessments for each sector and fence construction plans are needed to ensure resources are most effectively applied.

Although fencing generally was not properly documented, no instances of unneeded fencing came to our attention during our site visits. At the sites visited, Border Patrol agents readily gave us reasonable explanations that demonstrated the need for a fence in a particular area, based on how quickly a border crosser could escape when not apprehended. Consistently, Border Patrol agents said that existing fencing or fencing under construction was required to accomplish their mission.

³ A sector is a Border Patrol field office's geographic operational area of responsibility. Office of Border Patrol has 20 sectors that cover the geographic areas of the United States and Puerto Rico. Each sector is headed by a sector headquarters office.

The Operational Requirements Based Budget Program system has been evolving since 2005, but Border Patrol lacks a standard procedure on how to document and account for the miles of fencing being constructed. The Border Patrol continues to refine its operational needs assessment process with each annual cycle.

Starting in FY 2007, the Operational Requirements Based Budget Program process added a web-based Tactical Infrastructure Module. The Border Patrol uses the module to input the location, type, and miles of tactical infrastructure needed. However, we compared but could not reconcile data regarding location, type, and miles of fencing in the FY 2007 Operational Requirements Based Budget Program documents with data in the 2007 Tactical Infrastructure Modules.

Border Patrol officials also said that information on planned *SBI* technology products and systems, previously left out of Operational Requirements Based Budget Program documents is to be included. Knowing the technology that is planned for an area should allow Border Patrol sectors to identify any gaps in technology and tactical infrastructure when performing annual operational needs assessments. Border Patrol officials said that three sectors (Tucson, Yuma, and El Paso) out of the nine Southwest sectors are starting to evaluate both technology and tactical infrastructure, and the remaining six sectors (San Diego, El Centro, Marfa, Rio Grande Valley, Laredo, and Del Rio) will be added later. This expanded assessment should improve CBP's ability to ensure that resources are applied to achieve operational control of the border through a proper mix of technology and tactical infrastructure.

Figure 1: DHS-OIG Auditors Examining the Southwest Border Fence with Border Patrol Agents



Setting and Testing Fence Performance Requirements and Designs

Through the Fence Lab project, CBP tested and assessed the performance criteria for fence designs to ensure they satisfy Border Patrol operational requirements. This testing program provides assurance that fencing constructed by the SBI program meets the Border Patrol’s needs.

In 2007, CBP established Fence Lab, a research and development project to test, evaluate, and provide a variety of fence design solutions that meet the Border Patrol’s fencing needs. The Boeing Company was awarded a task order to test and evaluate fencing solutions. Boeing collaborated with Sandia National Laboratories and the Texas Transportation Institute to test nine prototype concepts of fencing at the institute’s highway barriers testing facilities at Texas A&M University in College Station, Texas. Experienced Border Patrol agents participated in the Fence Lab project to present user concerns, monitor tests, and evaluate the operational effectiveness of the alternative fence designs.

Figure 2: Example of a Pedestrian Fence Design



The Fence Lab project assessed prospective designs for both pedestrian and vehicle fencing. Pedestrian fence designs include a steel picket-style fence set in concrete and a post-and-rail fence that has double layers of welded wire mesh mounted on steel columns or rails. Vehicle fence designs include vehicle bollards, which typically are steel posts inserted into a concrete base and spaced to allow foot and animal traffic but not vehicular traffic, and Normandy barriers, which are steel beams usually made of welded train rails.

Through Fence Lab, CBP assessed performance criteria for border fencing. For example, one criterion is that the fence must disable a 10,000-pound vehicle traveling at 40 miles per hour. One fence design that met this criterion is the anchored-rail-barrier design, which consists of steel posts set in concrete with train rails running across the posts. Fence Lab conducted a test where a vehicle traveling 40 miles per hour, loaded with 10,000 pounds of cargo, was stopped and disabled when it crashed into this fence.

Figure 3: Example of a Vehicle Fence Design



Fence Lab used this criterion to test six commercial and three government-designed fences. Additional criteria include the following:

- Pedestrian fence must not be easily climbed over or penetrated by a pedestrian.
- One must be able to see through the fence with the human eye.
- The fence must be applicable to desert and open range⁴ environments.

Other considerations for evaluating fence designs included fence construction cost, maintenance ease, time needed to repair fence sections, and whether the materials or parts used were readily available.

The Fence Lab created a basis for a Fence Toolbox, which provides a variety of standardized fence designs that can be customized for border use, including three pedestrian fence designs, two vehicle fence designs, and three

⁴ An open range environment is land where livestock can legally run free and ranchers do not provide fencing to protect adjacent private land.

combination pedestrian/vehicle fence designs to deter both vehicles and pedestrians. Much of the fencing currently planned for the Southwest border is pedestrian/vehicle fencing that is designed to deter or slow pedestrians and also deter or disable vehicles attempting to cross the border illegally.

Figure 4: Fence Crash Test at Fence Lab



Figure 5: A Sample of Pedestrian/Vehicle Fence Design



Recommendation

We recommend that the Commissioner, U.S. Customs and Border Protection:

Recommendation #1: Require the Border Patrol to provide consistent and specific information in documenting its operational requirements for tactical infrastructure so that actual border fence construction can be linked to the Border Patrol’s mission needs for operational control.

Management Comments and OIG Analysis

CBP provided written comments, including technical comments, on our draft report. We addressed the technical comments, as appropriate, throughout the report. Below is a summary of CBP’s written response to the report’s first recommendation and our analysis. A copy of CBP’s response and a summary of its plans and progress for addressing the recommendations are included in Appendix B.

CBP's Comments to Recommendation #1:

CBP concurred with the recommendation to better document its tactical infrastructure requirements and provided a due date of December 31, 2009. The Office of Border Patrol has been continually making internal improvements to the tactical infrastructure requirement gathering process. In May 2008, the Office of Border Patrol augmented the Operational Requirements Based Budget Process assessment process by creating an analysis of alternatives for the proposed fencing segments. It also developed the tactical infrastructure module to record project status. The Office of Border Patrol plans to automate the process by developing an analysis of alternatives component within the web-based Operational Requirements Based Budget tactical infrastructure module. Infrastructure projects will be tracked by the type of infrastructure, location, number of miles/area covered, status, and the construction start and end dates. Once fully implemented, the analysis of alternatives module will become the means for identifying requirements, for reviewing operational suitability, and for approving funding for each infrastructure project.

In addition, the tactical infrastructure module will be enhanced to record the status of partially completed projects and to update these projects with detailed information on how much remains to be completed. Infrastructure completed at the end of each year will be reconciled with the type, amount, and location of the project at the start of the new fiscal year.

The analysis of alternatives module should be fully implemented and the tactical infrastructure module upgraded by December 31, 2009, contingent upon the availability of funds. The Office of Border Patrol believes that these improvements will significantly improve accountability and strengthen the reconciliation process.

OIG Analysis: We consider CBP's comments responsive to the recommendation, which is resolved and open pending full implementation of the analysis of alternatives module and tactical infrastructure module upgrades.

Challenges to Meeting Fence Construction Year-End Goals

In August of 2007, DHS committed to having 370 miles of pedestrian fence and 300 miles of vehicle fence, a total of 670 miles of fence, completed by December 31, 2008. Despite the progress made during the past few years, as of September 2008, CBP was about halfway to fulfilling the Secretary's commitment. Table 1 below outlines the cumulative progress that CBP has made toward meeting its goal as stated in 2007. CBP achieved this progress primarily in areas where environmental and real estate issues did not cause significant delay. Other challenges that continue to hinder progress involve land acquisition and demand for fence materials. CBP provided initial estimates that fence construction costs could increase by about four times due to use of commercial labor instead of military labor.

Table 1: Cumulative Fence Construction Progress

Fence Type	Cumulative Miles of Fence Constructed				Target for 12/31/08 ⁵
	As of 9/30/06	As of 9/30/07	As of 9/30/08	% of Target Completed 9/30/08	
Pedestrian	82.4	154.7	203.7	55%	370
Vehicle	57.0	109.5	153.7	51%	300
Total	139.4	264.2	357.4	53%	670

Difficulties in Acquiring Site Access or Purchasing Land

Gaining access rights and acquiring non-federal property has delayed the completion of fence construction and may increase the cost beyond available funding. Of the 225 miles of pedestrian fence designated for Project PF-225, 122 miles were initially identified as involving non-federal land. Prior to building fence, CBP needed to gain access rights and acquire land for constructing the fence. CBP acquired 180-day temporary rights of entry⁶ for all miles of the non-federal land through voluntary signature or condemnation.⁷ This process caused delays due to prolonged litigation,

⁵ The DHS Secretary's goal, as stated in August of 2007.

⁶ A right of entry gives the contractor the right to enter another person's real property without committing trespass.

⁷ Condemnation is the process of taking private property for public use through the power of eminent domain. When private property is taken by the government, the owner is entitled to receive compensation.

primarily in U.S. District Court, Southern District of Texas, which was not completed until May 22, 2008.

Acquiring real property from non-federal owners is a costly, time-consuming process requiring negotiations and sometimes condemnation. For example one landowner in New Mexico refused to allow CBP to acquire his land for the fence. The land ownership predated the Roosevelt easement⁸ that provides the federal government with a 60-foot border right-of-way. As a result, construction of fencing was delayed and a 1.2-mile gap in the fence existed for a time in this area. CBP later acquired this land through a negotiated settlement.

A number of processes need to be completed before acquiring the land, including:

- Surveying and investigative activities, such as site contamination or cultural surveys, that may require follow-up activities;
- Negotiating purchases and voluntary sales from more than 480 landowners;
- Potentially relocating owners, as appraisers may rule that an owner must be relocated due to the impact of the fence;
- Filing condemnation cases for construction rights where ownership cannot be established because the title is cloudy and cannot transfer until cleared (more than 300 such cases are predicted in Texas);
- Filing condemnation cases for construction rights where an agreeable selling price cannot be reached through negotiations; and
- Determining final condemnation costs, as courts may award considerably more than the government's appraised value.

Additional real estate issues involve ensuring access roads and staging areas for materials, and obtaining written permission from the International Boundary and Water Commission to construct fences in selected areas in Texas.

In response to our draft report, CBP officials stated that as of October 2008 the non-federal land miles had been reduced from 122 miles to 45 miles. The mileage was reduced because detailed surveys refined the estimates, and fence segments were reprioritized for future years' construction, or realigned to different locations. As of January 22, 2009, 33 of the 45 miles had been

⁸ In 1907, President Theodore Roosevelt reserved a 60-foot strip along the international boundary with Mexico for the United States to maintain the area free from obstruction as a protection against the smuggling of goods between the United States and Mexico. However, the proclamation applied only to publicly owned lands in the State of California and the Territories of Arizona and New Mexico; privately owned lands in those areas were exempt.

acquired either through Federal Court Orders, purchase, or voluntary Rights of Entry for Construction. The remaining miles are in active condemnation.

Environmental Considerations

CBP is required to meet environmental requirements in constructing fencing and vehicle barriers unless they are waived by the Secretary of Homeland Security. CBP has normally performed environmental impact assessments for project areas but the Secretary has exercised his authority to waive the requirements in 5 instances to expedite construction along the Southwest border.

A substantial amount of time and effort is required to conduct environmental impact assessments prior to construction. These assessments determine the potential impacts on a range of issues, including geologic resources (soils and seismicity), biological resources (vegetation, wildlife, and threatened and endangered species), cultural resources (archaeological and historic sites), water resources (rivers, streams, U.S. waters, and wetlands), social and economic profiles, land use of the area, air quality, and noise. The environmental requirements are included in the *National Environmental Policy Act* (42usc4321) and other laws involving extensive public and federal agency participation.

Although the Secretary of Homeland Security has exercised his authority to waive environmental impact assessments in 5 instances, a waiver can be challenged in court. Further, once an environmental impact assessment is completed, there is a potential for lawsuits by environmental interest groups, thereby slowing or stopping project construction. For example, on October 5, 2007, the Defenders of Wildlife and the Sierra Club filed a lawsuit seeking to keep DHS from carrying out road-building activities in the San Pedro Riparian National Conservation Area, located in southeastern Arizona. On October 10, 2007, the district court judge issued a temporary restraining order halting fence construction activities in the conservation area and ruling that relevant federal agencies had failed to carry out an environmental assessment as legally required. However, on October 26, 2007, the Secretary exercised his waiver authority over the legal requirements to ensure the expeditious construction of fence and roads through the conservation area. This enabled DHS to resume fence construction.

Defenders of Wildlife and the Sierra Club subsequently filed an amended complaint on November 1, 2007, challenging the constitutionality of DHS' waiver authority. On June 24, 2008, the Supreme Court rejected the challenge

without comment. Nonetheless, delays such as this can adversely impact the schedule and cost of fence projects.

On April 1, 2008, the Secretary of Homeland Security signed an environmental waiver for the Southwest Border. Although the Secretary's waiver means that CBP no longer has any specific legal obligations under various environmental laws and regulations, CBP is committed to proceeding in an environmentally sensitive manner and working closely with the appropriate agencies to minimize any adverse impacts on the environment, wildlife, and historic and cultural resources. According to CBP, even though the waiver authority was invoked, it is using the same standards and guidelines to evaluate and mitigate potential environmental impacts.

Increased Costs for Construction Materials and Labor

The significant amount of materials that will be used in fence construction and the use of commercial versus military labor increased fence construction costs for CBP. CBP took action to ensure materials would be available and lock in steel prices by obtaining a supply and supply-chain management support system for fence construction.

While executing fence projects in 2007, CBP learned that the commercial market demand for steel-based materials and fabrication was far greater than anticipated and that transportation of fence supplies to remote project sites required even more extensive coordination. Hence, in January 2008, CBP awarded Boeing a supply and supply-chain management task order to purchase steel and other construction materials to support and facilitate the successful execution of its pedestrian and vehicle fence projects. The objective of the supply and supply-chain management support system is to ensure that sufficient quantities of construction materials are readily available to meet the fence construction needs and schedules along the Southwest border. CBP anticipated that the supply and supply-chain management system would minimize transportation times and costs, along with storage costs, and result in cost savings to the government.

Similarly, CBP's use of commercial labor in lieu of military labor to construct fencing was an effort to improve timeliness, but it increased project costs. CBP did not use military labor because military units can be reassigned to other duties, which causes indefinite delays. According to CBP, it worked to mitigate potential risks and minimize added costs. However, due to the statutory requirement to complete about 670 miles of fence by the end of calendar year 2008, CBP placed a high priority on avoiding project delays.

In February 2008, CBP provided examples of estimated pedestrian fencing costs, ranging from \$3.6 million to \$4.5 million per mile for commercial construction and from \$880 thousand to \$1 million per mile using the military. At that time, CBP did not have a breakout of vehicle fence costs, as those projects were a mix of both military and commercial construction. As of November 2008, the reported estimated cost of fencing had significantly increased: CBP estimated an average cost of \$6.5 million per mile for pedestrian fencing, and \$1.7 million per mile for vehicle fencing.

On September 10, 2008, CBP testified before the U.S. House of Representatives Committee on Homeland Security that escalating construction costs coupled with competition for construction labor, equipment, and materials have resulted in significant fence construction cost increases. CBP stated that concerns about the trend of escalating fence construction costs made it prudent to purchase long-lead structural steel in advance. CBP stated that by this action it had locked in fixed prices of some materials and saved the government between \$63 million and \$100 million.

The advance purchase of materials under the supply and supply-chain management task order to control costs and maintain schedule appears to have been prudent, especially for reducing schedule risks. However, commodity prices are volatile and recent steel industry trade publications report steel price decreases under current and projected global economic conditions. Therefore, advance purchases should be closely monitored to avoid excess inventories in the face of declining prices.

Recommendation

We recommend that the Commissioner, U.S. Customs and Border Protection:

Recommendation #2: Require CBP to evaluate the supply and supply-chain management process to ensure it has performed as expected and consider the impact of market trends on cost and acquisition of fencing materials in future projects.

Management Comments and OIG Analysis

CBP's Comments to Recommendation #2:

CBP concurred with the recommendation to evaluate the supply-chain management process for future projects and provided a due date of June 30, 2009. CBP noted that the Tactical Infrastructure Program

Management Office monitored the supply and supply chain management contract throughout the fence construction process. This office has not conducted an analysis of cost of fencing materials for ongoing FY 2008 projects since fencing materials had already been purchased as long lead items. Currently, there are no new fence construction projects. However, fencing materials information from completed projects will be used to evaluate the impact of market trends on costs and acquisition of materials for the new projects.

OIG Analysis: We consider CBP's comments responsive to the recommendation, which is resolved and open pending our receipt of CBP's evaluation of the supply and supply-chain management process for any new fence construction projects.

Improving Project Management and Oversight

CBP has made organizational changes and implemented various practices to improve its ability to manage its tactical infrastructure projects. CBP created a new Program Management Office (PMO) to oversee all tactical infrastructure projects for border security. CBP is also developing and implementing an information system to monitor fence construction and costs. However, CBP needs to fully staff the new PMO and complete the monitoring system to ensure adequate management and oversight of the tactical infrastructure projects.

Program Management Office for Tactical Infrastructure

In November 2006, we reported⁹ that CBP did not have the organizational capacity to oversee, manage, and execute the *SBI*net program. Although CBP has taken actions to build-up its management capabilities regarding the tactical infrastructure program, it still has not fully staffed the office to ensure proper oversight, management, and execution of the program, making it more difficult to achieve CBP's goals. The foremost action that CBP took was to create a new program office responsible for carrying out all tactical infrastructure projects under SBI.

The new program office manages the SBI Tactical Infrastructure Program and is responsible for two major construction projects on the U.S. Southwest border: Project PF-225 for constructing pedestrian fence and Project VF-300

⁹ *Risk Management Advisory for the SBI*net Program Initiation, OIG-07-07, November 2006.

for constructing vehicle fence. Additionally, the Tactical Infrastructure Program Office has an interagency agreement with the U.S. Army Corps of Engineers to assist the office with fence construction, real estate acquisition, and environmental issues.

Although CBP created the Tactical Infrastructure PMO in 2007, it has not fully staffed the office. As of March 2008, CBP had filled only 13 of the office's 69 positions with 3 positions filled by government employees and 10 by contractors. Open key positions include the directors for project management; operations and reporting; integrated logistics support; finance and program control; and environmental real estate and engineering management.

As of September 2008, the PMO was operating with 32 positions, including two additional key positions: the director for project management and the director of operations. CBP had increased onboard staffing in the Tactical Infrastructure Program Management Office to 12 government employees and 20 contractors. In October 2008, new SBI executive leadership began reviewing the program's organization and structure and was uncertain whether the plan as of March 2008 for 69 staff positions was appropriate.

However, as long as the other key positions are not filled with government employees, the risk increases that CBP will not have sufficient capacity to properly manage and oversee fence construction projects. For example, the director of finance and program control would typically perform business management functions, including schedule management, earned value analysis, cost estimate review, cost control, financial tracking, and invoice review and processing. The absence of this director increases the risk that projects will overrun deadlines and cost estimates. An engineering manager would ensure that project engineering and construction planning and execution are completed by the U.S. Army Corps of Engineers in a timely fashion and meet quality standards. The absence of an engineering manager poses increased risk to the quality and integrity of the constructed fence.

Tactical Infrastructure Monitoring System

Although not complete, CBP implemented a monitoring system to improve fence construction oversight. CBP is continuing to develop modules in this tactical infrastructure database and an integrated project management tool to allow the program office to monitor fence construction progress. For example, as of September 2008, the system showed the progress of PF-225, including the number of miles of fencing planned, earned value, and costs. It

also tracked and showed the status of real estate parcels, including acquisition, rights of entry, and names of landowners. Project managers are to update the information in the system weekly for each segment of the fence project. By providing timely and accurate information on construction progress to decision makers and program managers, the tactical infrastructure monitoring system should provide better management of cost and schedule, as well as fulfillment of Border Patrol needs to attain operational control of selected areas.

In June 2008, CBP was testing the system and plans to add additional functionality. CBP officials said the system must have corrected geospatial information system linkages, updated capabilities for tracking vehicle fence, and additional real estate database functionality. In February 2009, CBP advised us that it had corrected the geospatial information system linkages and full capabilities for tracking vehicle fence. In addition, CBP added new capabilities to the system for tracking the progress of projects under construction, enhanced query capabilities, and added a new risk management module and a supply chain management module.

Recommendations

We recommend that the Commissioner, U.S. Customs and Border Protection:

Recommendation #3: Develop and implement a plan of action with specific task assignments and schedule milestones for staffing the SBI Tactical Infrastructure Program Management Office to ensure proper administration of all tactical infrastructure program management functions.

Recommendation #4: Require CBP to refine and complete its tactical infrastructure monitoring system capabilities to ensure adequate oversight of performance progress and cost data.

Management Comments and OIG Analysis

CBP's Comments to Recommendation #3:

CBP concurred with the recommendation to provide an action plan for staffing and organization structure and provided a due date of December 31, 2009. CBP stated that SBI tactical infrastructure is currently staffed at a level appropriate to meet and manage SBI FY 2009 priorities. Since the completion of the audit, the SBI program office has redesigned and right-sized the overall SBI organization, to include the SBI Tactical Infrastructure Program Management Office. The detailed reorganization is just starting, but it does

reflect a reduction in the number of personnel required to support tactical infrastructure, based on (1) the evolution and maturation of the program; (2) the shift from a high surge, transition activity to a more steady-state activity; and (3) the efficiencies derived from reassessment of organizational processes and structures. Furthermore, SBI is currently in the process of transitioning the Tactical Infrastructure Program Management Office to CBP's Office of Finance, Facilities Management and Engineering Division. The transition is planned for March 2009 and SBI will provide a proposed staffing plan and organization structure for the office.

OIG Analysis: We consider CBP's comments responsive to the recommendation, which is resolved and open pending our receipt of the plans for the changes to the Tactical Infrastructure Program Management Office: staffing, organization structure, task assignments, and milestones. The information provided should include the schedule for filling all staffing positions responsible for overseeing and ensuring proper administration of all tactical infrastructure program management functions.

CBP's Comments to Recommendation #4:

CBP concurred with the recommendation to complete and deploy a tactical infrastructure monitoring system and provided a due date of December 31, 2009. CBP has been improving features within the Tactical Infrastructure Program Office database. It has been in the developmental phase throughout the fence construction projects. A Risk Management module will also be available in April 2009 and requirements are being developed for an Environmental module. Deployment of these two modules constitutes completion of the Tactical Infrastructure Program Office system. In addition, CBP is working on an Interim Operations and Maintenance database that will link to the Tactical Infrastructure Program Office system. This interim database is in the early stages of development.

A program team plans to implement a formal systems lifecycle development process for deploying a fully integrated, long-term system solution for the program by December 2009.

OIG Analysis: We consider CBP's comments responsive to the recommendation, which is resolved and open pending CBP's completion and deployment of the Tactical Infrastructure Program Office system modules.

Appendix A

Purpose, Scope, and Methodology

Our audit objective was to determine whether CBP was meeting SBI requirements for constructing fence along the Southwest border as stipulated in the *Secure Fence Act*, as amended.

This is one in a series of reports on the Secure Border Initiative and SBI*net* program. This audit focused on tactical infrastructure along the Southwest border. The audit scope generally covered pedestrian and vehicle fencing projects on the Southwest border since the inception of SBI in November 2005 to September 2008.

We toured and physically observed the tactical infrastructure either in place or under construction at five border patrol sectors along the Southwest border. We conducted audit fieldwork at CBP Headquarters in Washington, D.C., field sites at CBP Border Patrol Sector Headquarters and station offices, and at border sites in the sectors. The sectors visited included El Centro, California; Yuma and Tucson, Arizona; and El Paso and Laredo, Texas.

We reviewed CBP task orders, operational requirements and planning documents, and status and monitoring reports. We reviewed prior Government Accountability Office, and Congressional Research Service reports on Border Patrol tactical infrastructure. We participated in discussions with the Government Accountability Office on their related work and attended congressional hearings involving tactical infrastructure and related projects. In addition, we reviewed specific plans, maps, and schedules for construction of tactical infrastructure, showing where pedestrian and vehicle fencing currently exists and when and where future fencing will be constructed.

We determined the progress that CBP is making in constructing pedestrian and vehicle fencing and whether it was according to the priorities and timeframes of the *Secure Fence Act*, as amended. We interviewed CBP managers and personnel; reviewed documents, records, procedures, and controls; and viewed tactical infrastructure. We also reviewed the oversight systems that CBP uses to monitor the construction of fences and barrier projects. We did not test the accuracy and reliability of the systems because of ongoing system testing and time constraints.

We conducted this performance audit between September 2007 and July 2008 according to generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence

Appendix A
Purpose, Scope, and Methodology

obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

We would like to extend our appreciation to CBP, and in particular to the Border Patrol, for the cooperation and courtesies extended to our staff during this audit.

Appendix B Management Comments to the Draft Report


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



U.S. Customs and
Border Protection

February 11, 2009

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

FROM: Acting Director 
Office of Policy and Planning
U.S. Customs and Border Protection

SUBJECT: Response to the Office of Inspector General's Draft Report Entitled,
"Progress in Addressing Secure Border Initiative Operational Requirements
and Constructing the Southwest Border Fence"

Thank you for providing us with a copy of your draft report entitled "Progress in Addressing Secure Border Initiative Operational Requirements and Constructing the Southwest Border Fence" and the opportunity to discuss the issues in this report. The report identified several challenges that the Office of Inspector General (OIG) believes CBP faced in meeting the Secretary's goal of completing 670 miles of vehicle and pedestrian fencing along the Southwest border by December 31, 2008, as mandated in the *Secure Fence Act of 2006*.

CBP acknowledges the existence of these challenges. However, much of the information in the draft report is outdated due to the time between when the review was conducted and when the draft report was issued. In addition, CBP takes exception to several comments made in the draft report that are either inaccurate or incomplete. For example:

- The report incorrectly concluded that staffing shortages inhibited the Secure Border Initiative (SBI) Tactical Infrastructure (TI) program's ability to provide effective management oversight of fence construction. In November 2008, we provided specific comments to the OIG on the discussion draft report that staffing was at a level appropriate to meet and manage Fiscal Year 2009 priorities and beyond. We explained that SBI TI utilized the U.S. Army Corps of Engineers (USACE) to provide necessary additional management and oversight of the Pedestrian Fence 225 (PF 225) and Vehicle Fence 300 (VF 300) fence construction projects. This staffing model allowed CBP to have all fence construction complete, under construction or under contract by the end of calendar year 2008. A total of 602 miles of fence were constructed by December 31, 2008. All vehicle fence projects and all but six pedestrian fence projects were completed or under construction.
- The draft report's discussion of the land acquisition process and its associated cost and delay risks merges the discussion of Condemnations for Rights of Entry and Condemnations for Final Construction Rights. The draft report devotes a paragraph to the status of obtaining access rights - known as Rights of Entry (ROEs). The draft report states that voluntary ROEs were

**Progress in Addressing Secure Border Initiative Operational Requirements
and Constructing the Southwest Border Fence**

Appendix B Management Comments to the Draft Report

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obtained for 102 of 122 non-federal miles. That paragraph correctly suggests that the Condemnation for ROEs across the remaining 20 miles may cause delays. The next paragraph states that acquiring real property from non-federal owners of 102 miles is costly, time-consuming and may require condemnation. The above statement omits the fact that all 122 miles of non-federal property would ultimately have an ROE authorizing access, and thus were subject to acquisition and potentially subject to Condemnation for Final Construction Rights. Whether ROEs were obtained voluntarily or via condemnation, the Government negotiated with all known owners for acquiring all non-federal property. While the condemnation process for a ROE is the same as the condemnation process for final construction rights, the former does not directly cause the latter. In some cases, the Government successfully reached an agreement as to price, but had no choice other than to use the condemnation process to clear title issues – commonly referred to as Friendly Condemnation. In other cases, the owner either refused to negotiate or reached a negotiation impasse with the Government resulting in Adverse Condemnations, some of which also had title issues that needed to be cleared.

- The draft report incorrectly asserted that continued use of military labor to complete fence construction was an option and CBP chose the more costly option of utilizing commercial labor. With the exception of a few early projects, CBP did not have the option of using military labor. This, coupled with the congressionally mandated timeline for completion required the use of commercial labor. USACE notified CBP at the close of Operation Jump Start that a limited number of military personnel would be available for fence construction. CBP used military labor to complete some PF 225 Phase I and VF 300 projects, but the number of military labor available was inadequate to complete both projects. Therefore, CBP utilized the established USACE Multiple Award Task Order Contract process as a more cost effective and efficient method to obtain commercial labor to complete the remaining 670 miles of fence.
- The draft report also incorrectly characterized CBP's rationale for entering into a supply and supply chain management contract with the Boeing Corporation (Boeing). Specifically, the report states, "While executing fence projects in 2007, CBP learned that the commercial market demand for steel-based materials and fabrication was far greater than anticipated and that transportation of fence supplies to remote project sites required even more extensive coordination." CBP benefited from the lessons learned in execution of the Pedestrian Fence 70 project in 2007. However, these lessons did not address market demand for steel and coordination of transportation in 2008. CBP's primary reason for entering into the supply and supply chain management contract was to ensure the timely acquisition and delivery of long lead items to the project sites.

The OIG made four recommendations in its report. CBP concurs with the recommendations. Attached is a summary of CBP's plans and progress for addressing the recommendations. Also attached are technical comments that relate to statements that need to be clarified prior to finalization of this report.

With regard to the classification of the draft report, CBP has not identified any information within this report that would warrant a "For Official Use Only" classification.

If you have any questions regarding this response, please contact me or have a member of your staff contact Ms. Lynn Richardson, Program Analyst, Office of Policy and Planning, at (202) 344-2953.

Attachments

Appendix B Management Comments to the Draft Report

Response to Recommendations in the Office of Inspector General's Draft Report "Progress in Addressing Secure Border Initiative Operational Requirements and constructing the Southwest Border Fence"

U. S. Customs and Border Protection's Corrective Action Plan

The Office of Inspector General (OIG) made four recommendations in its report. U.S. Customs and Border Protection (CBP) concurs with the recommendations. Below is a summary of CBP's plans and progress for addressing the recommendations.

Recommendation #1: Require the Border Patrol to provide consistent and specific information in documenting its operational requirements for tactical infrastructure so that actual border fence construction can be linked to the Border Patrol's mission need for operational control.

CBP Response: Concur. The Office of Border Patrol (OBP) was in the process of making internal improvements to the tactical infrastructure (TI) requirement gathering process when OIG initiated its review. Historically, the U.S. Border Patrol has always understood the importance of accurately determining requirements to meet our operational needs. Initially, we manually captured TI needs, by location, in the Tactical Infrastructure Requirements Document. OBP automated the assessment process using the Operational Requirements Based Budget Process (ORBBP), which electronically stores the information. ORBBP analyzed the costs and the levels of border control that could be attributed to the fence in comparison with other border enforcement tools. In May 2008, OBP augmented this assessment process by creating an analysis of alternatives (AoA) for the proposed fencing segments and by developing the TI module to record project status.

Through the formal AoA effort, field personnel will be guided through the process of considering and determining what and how much infrastructure (e.g., fence, roads, or lighting) would be most effective in gaining operational control in a given area. In addition to establishing this formal AoA process for submitting, reviewing, and approving TI projects, we will automate the process by developing an AoA component within the web-based ORBBP TI module. Only TI projects passing AoA screening will be entered into the ORBBP TI module. Infrastructure projects will be tracked by the type of infrastructure, location, number of miles/area covered by the respective project, status, as well as the construction start and end dates for each infrastructure project.

Once fully implemented, the AoA module will become the means for identifying requirements, for reviewing operational suitability, and for approving funding for each infrastructure project. Only approved projects will be submitted for OBP headquarters (HQ) funding. OBP HQ will prioritize and submit the projects to *SBI_{net}* for review and construction. Infrastructure projects that are not approved for funding will remain "pending" until the project is either approved for funding in subsequent fiscal years or removed by the field representative who originated the infrastructure request. The AoA module should be implemented by December 31, 2009, contingent upon the availability of funds.

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In addition, the TI module will be enhanced to record the status of partially completed projects and to update these projects with detailed information on how much of the project remains to be completed. Infrastructure completed at the end of each year will be reconciled with the type, amount, and location of the project at the start of the new fiscal year (FY). The TI module is improving with each yearly cycle; however, it should be noted that the FY 2009 budget cycle was only the third iteration of the TI module. The module is being improved on a continuous basis to make it more adaptable for field use and for SBI*net* integration. Significant changes last year included keeping the module open year round for updating projects rather than operating in a narrow two month budgeting window. The upgrades to the TI module should be implemented by December 31, 2009, contingent upon the availability of funds. By adding different improvements, such as the AoA and the ability to record and reconcile partial completion of infrastructure projects in the TI module, OBP believes that accountability will significantly improve and the reconciliation process will only strengthen.

Due Date: December 31, 2009

Recommendation #2: Require CBP to evaluate the supply and supply chain management process to ensure it has performed as expected and consider the impact of market trends on cost and acquisition of fencing materials.

CBP Response: Concur. Throughout the fence construction process the supply and supply chain management contract was monitored by the Tactical Infrastructure Program Management Office (TI PMO) to ensure performance in accordance with the contract. However, TI PMO has not conducted an analysis of cost of fencing materials for ongoing FY 2008 projects, because the fencing materials had already been purchased as long lead items. The current plan is for TI PMO to transition to CBP's Office of Finance, Facilities Management and Engineering Division, in March 2009. At the present time, the TI PMO has not been given any new fence construction projects beyond the current FY 2008 projects. Should TI PMO be given new fence construction projects then the cost of fencing materials information from completed projects will be used to evaluate the impact of market trends on costs and acquisition of materials for current fencing projects.

Due Date: June 30, 2009

Recommendation #3: Develop and implement a plan of action with specific task assignments and schedule milestones for staffing the SBI Tactical Infrastructure Program Management Office to ensure proper administration of all tactical infrastructure program management functions.

CBP Response: Concur. SBI TI is currently staffed at a level appropriate to meet and manage SBI FY 2009 priorities. Since the completion of the audit, the SBI program office has redesigned and

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right-sized the overall SBI organization, to include the SBI TI program office. The detailed reorganization is just starting, but it does reflect a reduction in the number of personnel required to support TI based on (1) the evolution and maturation of the program; (2) the shift from a high surge, transition activity to a more steady-state activity; and (3) efficiencies derived from reassessment of organizational processes and structures. Furthermore, SBI is currently in the process of transitioning the TI PMO to CBP's Office of Finance, Facilities Management and Engineering Division. The transition is planned for March 2009 and SBI will provide a proposed staffing plan and organization structure.

Due Date: December 31, 2009

Recommendation #4: Require CBP to refine and complete its tactical infrastructure monitoring system capabilities to ensure adequate oversight of performance progress and cost data.

CBP Response: Concur. CBP continues to improve the features within the Tactical Infrastructure Program Office (TIPO) database. It has been in a "beta" use phase during the fence construction

projects. In addition, a Risk Management module will be available in April 2009 and requirements are being developed for an Environmental module. Deployment of these two modules constitutes completion of the TIPO system. CBP is also working on an Interim Operations and Maintenance database that will link to TIPO that is in the early stages of development.

The recent completion of construction projects to meet calendar year 2008 program objectives has allowed CBP to re-direct focus of the TIPO Integrated Product Team from rapid application development to more formal data application development. This will allow the joint program management team to implement a formal systems lifecycle development process for deploying a fully integrated long-term program information system solution by December 2009.

Due Date: December 31, 2009

Appendix C
Major Contributors to the Report

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Appendix D Report Distribution

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