



Department of Homeland Security Office of Inspector General

CBP Faces Challenges in Achieving Its Goals for Small Business Participation in Secure Border Initiative Network





Homeland
Security

February 3, 2010

Preface

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

The attached report presents the results of our review to determine whether U.S. Customs and Border Protection's Secure Border Initiative Network contracting strategies will provide access to small business for the term of the contract. It is based on interviews with CBP employees, direct observations, and a review of applicable documents.

The recommendations herein have been developed to the best knowledge available to our office, and have been discussed in draft with those responsible for implementation. We trust this report will result in more effective, efficient, and economical operations. We express our appreciation to all 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	U.S. Customs and Border Protection
DHS	Department of Homeland Security
FAR	Federal Acquisition Regulation
SBI	Secure Border Initiative
<i>SBI</i>	Secure Border Initiative Network

OIG

*Department of Homeland Security
Office of Inspector General*

Executive Summary

We conducted this audit to determine whether Secure Border Initiative Network contracting strategies will provide access to small business for the term of the contract. Federal Acquisition Regulation 19.702 requires agencies to provide maximum practicable opportunity in their contracts to small business, veteran-owned small business, service-disabled veteran-owned small business, small disadvantaged business, women-owned small business, and small businesses located in designated historically underdeveloped “HUBZone” areas.

Customs and Border Protection faces challenges in meeting small business subcontracting goals for the remainder of the Secure Border Initiative Network indefinite delivery, indefinite quantity contract. A change in Customs and Border Protection’s acquisition strategy from acquiring technology to acquiring steel for border fence construction reduced opportunities for small business to participate in awards under the Secure Border Initiative Network indefinite delivery, indefinite quantity contract. In response, the prime contractor Boeing, has implemented initiatives to improve small business participation in Secure Border Initiative Network subcontracts to achieve its subcontracting goals. Despite these initiatives, the contractor has not achieved the established goals for small business participation since the reporting period ended September 2007.

We recommended that Customs and Border Protection continue monitoring Boeing’s efforts to identify and recruit small business in order to achieve established small business goals in the Secure Border Initiative Network indefinite delivery, indefinite quantity contract. Customs and Border Protection non-concurred with the recommendation.

Background

The Secure Border Initiative (SBI) program is a comprehensive, DHS-wide effort to secure the Nation's borders. A component of the overall effort is the Secure Border Initiative Network (SBInet), a major acquisition program initiated to gain operational control of the borders through improved use of technology, infrastructure, and personnel. To implement technology to monitor the border, the department awarded the SBInet systems integration contract in September 2006 to the Boeing Company (Boeing). The base period of the indefinite delivery, indefinite quantity (IDIQ) contract was three years.

The Federal Acquisition Regulation (FAR) requires companies who bid on contracts valued over \$550,000 to submit subcontracting plans with bid proposals.¹ The subcontracting plans are required to establish small business goals in each applicable small business category and identify mechanisms to recruit small business. Incorporated in the SBInet IDIQ contract with Boeing are small business participation goals. Strategies for achieving these goals are outlined in the Boeing Subcontracting Plan. Boeing has established an overall small business goal of 40% of the SBInet IDIQ contract. Within this overall goal are five small business subcategories with goals ranging from 1% to 5% for small business participation. The Boeing Subcontracting Plan identified a Mentor-Protégé component, an outreach component, and a web-based registry component as means of encouraging small business participation in the project. The contractor is required to provide small business participation data twice annually at the end of the six month periods ending March 31 and September 30.

¹ FAR 19.702. *Statutory Requirements.*

Results of Audit

CBP faces challenges in meeting its small business participation goals for the remainder of the *SBI*net IDIQ contract. A change in CBP's acquisition strategy from acquiring technology to acquiring steel for fence construction along 670 miles of the southern border significantly reduced opportunities for small business to participate in awards under the *SBI*net contract. This shift in border security strategy occurred in response to the *Secure Fence Act of 2006*. To meet the material needs of the fencing effort, CBP awarded the Supply and Supply Chain Management task order to Boeing. Generally, since steel companies are inherently large businesses, this strategy shift to fence construction reduced opportunities for small business participation.

CBP has taken steps to increase focus on small business participation in awards under the *SBI*net IDIQ contract to meet the challenge posed by the change in acquisition strategy. Specifically, the *SBI*net systems task order awarded in April 2008 more clearly focused on meeting small business goals in award fee calculations. CBP recruited knowledgeable contract specialists to monitor awards to small business. To develop opportunities for subcontracting to small business given the reduced emphasis on system deployment, CBP also encouraged Boeing to identify small businesses that could provide steel mesh for fence construction.

Despite these actions, awards to small business have not achieved the 40% goal since the reporting period ended September 2007. The trend for the last three reporting periods has been generally positive, showing a slight increase in small business participation. In March 2008, small business accounted for approximately 31% of subcontract awards. As of the reporting period ended September 2009, awards to small business remained at approximately 34% of subcontracts, with awards to HUBZone and veteran-owned small business exceeding the subcontract goal. Nonetheless, overall small business participation has not met established goals. Appendix C provides a summary of small business participation in awards under the *SBI*net IDIQ contract since project initiation.

Recommendation

We recommend that the Commissioner, U.S. Customs and Border Protection continue monitoring Boeing's efforts to identify and recruit small business in order to achieve established small business goals in the *SBI*net IDIQ contract.

Management Comments and OIG Analysis

CBP's Comments on Recommendation:

CBP did not concur with the recommendation stating that it was unnecessary because it closely monitors small business subcontracting performance under the *SBI*net IDIQ contract as a matter of routine and robust contract administration. CBP's response included examples which it claimed demonstrated that its subcontracting oversight program for the contract was adequate and exceeded requirements of federal acquisition regulations and routine contract administration guidelines. A copy of CBP's written response is included in Appendix B.

OIG Comments:

The FAR requires the administrative contracting officer to assist in the evaluation of the subcontracting plan, and to monitor, evaluate, and document contract performance.² CBP's assertion that its oversight of Boeing's subcontracting performance was adequate, and exceeded the requirements of federal acquisition regulations and routine contract administration guidelines is not evident in the agency's achievement of its small business goals. Many of the examples provided are exercises that do not provide in-depth oversight of the small business contract monitoring and evaluation requirement, and do not document performance. For instance, CBP's response that reviews were conducted semi-annually to assess small business participation and recommend actions when appropriate often do not result in increased participation as evidenced by the approximately 38% decline in small business participation from September 2007 to March 2008.

² FAR 19.706 *Responsibility of the cognizant administrative contracting officer*

Other examples provided represent external assessments of subcontracting monitoring activity which also do not address actual subcontracting performance.

CBP Comments:

CBP also expressed concerns regarding our assessment of its achievement of its small business goals and our portrayal of Boeing's small business goals and CBP agency wide goals in our recommendation.

CBP stated that the OIG incorrectly reported small business achievements. CBP stated that Boeing had exceeded small business subcontracting goals in October 2007.

OIG Analysis:

The reported data is correct. The timing, form, and mechanism for reporting awards to small business are prescribed in FAR 52.219.9 and section H.28 of the *SBI*net IDIQ contract. Awards to small business are reported at 6-month intervals ending March 31st and September 30th. To clarify the reporting period, the Results of Audit section was revised to "Despite these actions, awards to small business have not achieved the 40% goal since the reporting period ended September 2007."

CBP Comments:

CBP also commented that (1) the report recommendation mistakenly addresses the Boeing Subcontracting Plan small business goals and the agency's small business goals; and (2) small business goals specified in the Boeing Subcontracting Plan are dictated by federal and department regulations which limits CBP's authority beyond the implementation of mechanisms identified in the Boeing Subcontracting Plan.

OIG Analysis:

The *SBI*net IDIQ contract and the Boeing Subcontracting Plan were the focus of our audit. To clarify this issue, we revised references to "*SBI*net contracts" to "*SBI*net IDIQ contract". We agree that the *SBI*net IDIQ is not the only procurement tool used to execute SBI.

Appendix A

Purpose, Scope, and Methodology

The objective of our review was to determine whether Secure Border Initiative Network (SBInet) contracting strategies will provide access to small business for the term of the SBInet indefinite delivery, indefinite quantity (IDIQ) contract HSBP1006D01353. We interviewed government officials and reviewed information gathered at Department of Homeland Security (DHS), Office of Chief Procurement Officer and U.S. Customs and Border Protection (CBP) headquarters in Washington, DC, and at CBP's National Finance Center in Indianapolis, IN. We developed an understanding of internal controls to provide access to small business in awards under the SBInet IDIQ contract by reviewing requirements of the Federal Acquisition Regulation and the Boeing Subcontracting Plan by interviewing small business and contract specialists at DHS and CBP. The understanding gained was used to plan the audit and determine the nature, timing, and extent of tests to be performed.

We conducted this performance audit between September 2007 and April 2008 under the authority of the Inspector General Act of 1978, as amended, and according to generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We updated information for the report to present small business participation in the SBInet IDIQ contract through September 2009 and to present recent improvement initiatives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

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

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




U.S. Customs and
Border Protection

October 1, 2009

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

FROM:

Executive Director 
Office of Policy and Planning
U.S. Customs and Border Protection

SUBJECT:

Response to the Office of Inspector General's Revised Draft Letter Report Entitled, "CBP Faces Challenges in Achieving Its Goals for Small Business Participation in SBI^{net}"

Thank you for providing us with a copy of the revised draft letter report entitled, "CBP Faces Challenges in Achieving Its Goals for Small Business Participation in SBI^{net}," and the opportunity to discuss the issues included therein. The report summarizes the results of the Office of Inspector General's (OIG) audit of small business subcontracting achievements under the Secure Border Initiative's SBI^{net} prime contract with the Boeing Company, and provides a recommendation for continued monitoring of Boeing's efforts to identify and recruit small business in order to achieve established small business goals in SBI^{net} contracts.

Summary

CBP does not concur with the report's recommendation and does not agree with the report's conclusions and content. Despite extensive and collaborative pre-draft coordination with the OIG on the results of the audit, the draft report continues to contain misstatement of fact and inaccuracies that are misleading regarding small business participation in the SBI^{net} prime contract and Boeing's role related to small business participation in the SBI program as a whole. Of note, CBP has the following concerns:

- The recommendation, as written, interchangeably uses subcontracting goals of the SBI^{net} indefinite-delivery indefinite-quantity (IDIQ) contract and small business prime contract goals of the agency as a whole. Small business subcontracting and prime contracting goals, and regulations governing them, *are mutually exclusive*. Accordingly, CBP cannot implement a portion of the recommendation as it extends beyond the SBI^{net} contract awarded to the Boeing Company.
- Moreover, small business goals, and how small business set-asides are determined and approved are dictated by federal and departmental regulations. CBP is required to follow

CBP Faces Challenges in Achieving Its Goals for Small Business Participation in Secure Border Initiative Network

Appendix B Management Comments to the Draft Report

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these regulations and cannot “contract” for Boeing to achieve the agency’s or the SBI Program’s small business goals.

- The report’s recommendation regarding continued oversight and monitoring by CBP’s Commissioner of Boeing’s subcontracting achievements is unnecessary. CBP closely monitors small business subcontracting performance under the *SBI*net IDIQ contract as a matter of routine and robust contract administration.
- For these reasons, the reports findings do not logically support the report’s recommendation.

CBP’s rationale in support of its position follows below.

Small Business Participation in the *SBI*net Prime Contract

OIG Finding: Awards to small business have not achieved the 40% goal required in the *SBI*net systems integration contract since October 2007. The trend for the last three reporting periods have been generally positive, showing a slight increase in small business participation. In March 2008, small business accounted for approximately 31% of subcontract awards. A year later, awards to small business were approximately 34% of subcontracts, with awards to veteran-owned small business exceeding the subcontract goal. Nonetheless, Boeing still needs to do more to achieve its small business participation goals.

CBP Response: The OIG correctly identifies several challenges the prime contractor faced in achieving its planned small business subcontracting goals on the *SBI*net IDIQ contract. However, the OIG’s data as reported is incorrect. In October 2007 Boeing, in fact, exceeded its small business subcontracting goals. It was in late December 2007 that small business subcontracting achievements under the contract with the Boeing Company were impacted by a strategic acquisition decision to purchase structural steel and inventory management services. This purchase provided for structural steel, wire mesh panels, inventory management, storage and distribution of these materials to construction contractors completing 670 miles of fence along our nation’s Southwest border.¹ The decision to use the contract for this purchase was three fold: (1) the contract was pre-competed and allowed for this type of support; (2) it was the most cost effective and efficient means for acquiring and distributing these materials; and (3) it fully supported the agency in meeting the timeframe and mandate of the Secure Fence Act to expeditiously construct tactical infrastructure in areas determined by the Border Patrol to be high areas of illegal cross border activity².

Moreover, as part of Boeing’s subcontracting efforts for the supply and supply chain management task order (SSCM) a good faith effort was made by the contractor to locate small businesses capable of supplying steel materials. Two small businesses were identified to provide steel mesh panels, and no small businesses were available to supply the other structural steel components. This was due to both the nature of the market place and financial capabilities

¹ Referred to herein and in contract related documents as the “Supply and Supply Chain Management” task order.

² The agency’s determination supporting the expedited award of the Supply and Supply Chain Management task award is documented in the contract file.

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required to complete the work. The value of the small business subcontracts were ~\$28 million and the large business subcontract ~\$237 million.

Subsequent to the award of the SSCM task order in December 2007, small business subcontracting achievements have *notably been improving*. Reference *Table 1 – Small Business Goals and Awards as a Percentage of SBI_{net} Subcontracts*.

Table 1. Small Business Goals and Awards as a Percentage of SBI_{net} Subcontracts

Category	Goal	Actual Performance					Without SSCM Mar 09
		Mar 2007	Sept 2007	Mar 2008	Sept 2008	Mar 2009	
Overall Small Business	40%	42%	68.6%	30.9%	34.7%	34.2%	51.91%
Selected Subcategories:							
Small Disadvantaged	5%	3.5%	2.1%	1.3%	1.3%	1.4%	2.57%
Women-owned	5%	2%	2.3%	1.4%	1.5%	1.5%	2.52%
HUBZone	1%	3.5%	0.9%	0.4%	0.3%	0.5%	0.77%
Veteran-owned	3.5%	0.9%	1%	1.3%	3.2%	3.9%	4.21%
Service-disabled	3%	0.7%	0.5%	0.6%	1%	1.2%	1.96%

Supply & Supply Chain
Task Order Awarded

When subcontracting achievements are analyzed by both excluding and including the SSCM task order we find:

1. **Exclusive of SSCM:** Boeing is in fact exceeding the overall small business subcontracting goals by 11.91%.
2. **Inclusive of SSCM:** Boeing is within 5.8% points of meeting the contract's overall small business subcontracting goals *only one year after award of the SSCM task order*.

These results demonstrate both Boeing's commitment to attaining the originally established goals, and the government's commitment to overseeing their attainment.

Redirecting Work to Ensure Subcontracting Goals are Attained

OIG Finding: Given uncertain funding and potential future changes in SBI_{net} acquisition strategy, CBP may also need to redirect its approach to increasing small business participation in SBI_{net} contract. Pursuing alternative contract strategies, such as focusing efforts on deployment technology solutions on the northern border and subcontracting fence maintenance to small businesses on the southern border, should strengthen CBP's ability to increase small business access to and participation in SBI_{net}.

CBP Response: Although the SBI_{net} IDIQ contract is an important procurement tool utilized by CBP, it is not the exclusive contract vehicle used by the agency to execute its Border Security

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Fencing and Technology (BSFIT) funded initiatives. When using this contract CBP must weigh the benefits of competition and prime contract small business opportunities against the skill sets, resources, and technology that can be provided through the SBI*net* IDIQ contract.

This fiscal year CBP has chosen to compete its fence maintenance contracts and to set-aside approximately half of that effort to both HUBZONE and 8(a) construction contractors. CBP will benefit from the competitive environment, leverage the resources of contractors who have a construction and road maintenance skill set, and the procurement will benefit small business by providing opportunities at the prime contract level. Similarly, CBP has chosen to compete and partially set-aside: a series of pilots that may bring new commercial technologies to the border security community; its newest Northern Border demonstration project; and, its requirement for mobile surveillance systems. The SBI*net* IDIQ contract will be used to: complete planned integrated technology deployments; technology logistic and maintenance support services; tower-based technology deployments along the northern border; and, continued SSCM services.

Continued Oversight by CBP's Commissioner

OIG Finding: Continued oversight is needed to ensure that the improvement initiatives and actions prescribed in the subcontracting plan will be sufficient to increase small business access to and participation in SBI*net* for the remainder of the contract.

CBP Response: As shared with the OIG team previously, the following examples and documentation support our determination that the subcontracting oversight program for the contract is adequate, and exceeds the requirements of federal acquisition regulations and routine contract administration guidelines:

- CBP's Small Business Specialist and DHS's Office of Small and Disadvantaged Business Utilization (OSDBU) state: *"Since our involvement early-on with the SBI*net* IDIQ contract, we have found the SBI Acquisition Office's oversight on the SBI*net* IDIQ to be adequate. Further, we find no evidence to show that the prime contractor is not making a good faith effort to meeting the subcontracting plan requirements."*
- The Defense Contract Management Agency (DCMA) provides CBP with independent oversight and reviews of Boeing's compliance and subcontracting efforts. DCMA has validated, consistently, the contractor's electronic Subcontracting Reporting System (eSRS) reports, and found that *"the contractor has demonstrated a good faith effort to meet all of its goals and fulfills the requirements of its subcontracting plan and the regulations."*³
- CBP hosts semi-annual subcontracting reviews. To date DHS and CBP have participated in 5 semi-annual small business subcontracting review roundtables (2 during the review period). Participants in each meeting include the SBI Acquisition Office, CBP Small Business Specialist, and DHS OSDBU among others. During these reviews progress toward goal achievement are discussed, assessed, and recommendations made toward

³ DCMA report dated November 10, 2008.

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improving small business subcontracting opportunities – where appropriate and necessary.

- All semi-annual eSRS Subcontract Reports have been submitted, reviewed, and accepted in a timely manner by the Contracting Officer.
- Advance and pre-award approval of all subcontract awards are conducted by the Contracting Officer. Of note, this approval process is not required by the Federal Acquisition Regulation, or by known best practices, as the Boeing Company's purchasing system has been audited and approved by the Defense Contract Management Agency (DCMA). Although not required, CBP instituted this control to better manage and have insight into the contractor's subcontracting activities.
- Review and assessment of Boeing's performance against the subcontracting plan is conducted semi-annually as part of the award fee monitoring and evaluation of the Systems Task Order (previously the Program Management task order).
- Boeing conducts quarterly diversity reviews with its existing subcontractor and supplier base to review performance against goals and identify opportunities to improve performance.
- Additionally, Boeing conducts and participates in numerous outreach conferences and established a small business outreach program specifically for the *SBI_{net}* program. This activity further demonstrates the contractor's efforts to engage small businesses in executing its contract requirements.

These activities, controls, and independent assessments have been in place or have reviewed subcontracting activities since inception of the contract.

Finally, the OIG has an imbedded team located in the program office that is afforded every opportunity to participate in any of the aforementioned activities to monitor – in real time – Boeing's subcontracting performance should they have concerns not addressed by the current oversight system. Given the robust nature and effectiveness of CBP's oversight activities, quarterly reporting by the Commissioner to the OIG on these activities is unnecessary and unproductive.

In regard to the classification of the draft report, CBP did not identify any sensitive information that would require a "For Official Use Only" designation or warrant protection under the Freedom of Information Act.

If you have any questions regarding this response, please contact me or have a member of your staff contact Ms. Patricia Quintana, Program Analyst, Office of Policy and Planning, at (202) 344-1038.

Appendix C
History of SBInet Performance in Meeting Small Business Goals

The SBInet systems integration contract was awarded in September 2006 to the Boeing Company (Boeing). The base period of the indefinite delivery, indefinite quantity contract was 3 years with three 1-year options. Boeing’s bid proposal contained a Subcontracting Plan that established small business participation goals as a percentage of overall subcontract awards. The Subcontracting Plan prescribed mechanisms Boeing would implement to ensure access to small business in SBInet contracts.

The following table reflects Boeing’s efforts over the past 3 years to achieve its small business participation through its Subcontracting Plan.

Table 1. Small Business Goals and Awards as a Percentage of SBInet Subcontracts

Category	Goal	Actual Performance					
		Mar 2007	Sept 2007	Mar 2008	Sept 2008	Mar 2009	Sept 2009
Overall Small Business	40%	42%	68.6%	30.9%	34.7%	34.2%	34.3
Selected Subcategories:							
Small Disadvantaged	5%	3.5%	2.1%	1.3%	1.3%	1.4%	3.5
Women-Owned	5%	2%	2.3%	1.4%	1.5%	1.5%	1.6
HUBZone	1%	3.5%	0.9%	0.4%	0.3%	0.5%	2.1
Veteran-Owned	3.5%	0.9%	1%	1.3%	3.2%	3.9%	3.6
Service-Disabled	3%	0.7%	0.5%	0.6%	1%	1.2%	1.1

Appendix D
Major Contributors to this Report

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