

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

U.S. Customs and Border Protection's
Management of the Purchase and
Storage of Steel in Support of the
Secure Border Initiative





**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 addresses the effectiveness of the U.S. Customs and Border Protection's management of the purchase and storage of steel in support of the Secure Border Initiative. It is based on interviews with employees and officials of relevant agencies and institutions, direct observations, and a review of applicable documents.

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

A handwritten signature in cursive script that reads "Anne L. Richards".

Anne L. Richards
Assistant Inspector General for Audits

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Abbreviations

CBP	U.S. Customs and Border Protection
CO	contracting officer
DHS	Department of Homeland Security
FY	fiscal year
IBWC	International Boundary and Water Commission
LOTSS	Long-Term Steel Storage
IIRIRA	<i>Illegal Immigration Reform and Immigrant Responsibility Act of 1996</i>
NFC	National Finance Center
OIG	Office of Inspector General
SBI	Secure Border Initiative
SSCM	Supply and Supply Chain Management
TI	Tactical Infrastructure



Department of Homeland Security
Office of Inspector General

Executive Summary

The Department of Homeland Security's Customs and Border Protection uses infrastructure to impede illegal entry into the United States and provide officers access to their areas of operations. Since 2008, Customs and Border Protection has spent approximately \$1.2 billion to construct physical barriers along the southwest border as part of the Department's Secure Border Initiative. About \$310 million of the cost was to purchase and store steel in support of fence construction. We performed this audit to determine the effectiveness of Customs and Border Protection's management of the purchase and storage of steel in support of the Secure Border Initiative.

Customs and Border Protection completed 299 miles of fence; however, it did not effectively manage the purchase and storage of steel in support of the Secure Border Initiative. It purchased steel based on an estimate before legally acquiring land or meeting international treaty obligations. In addition, it did not provide effective contract oversight during the project: it paid invoices late, did not reconcile invoices to receiving documents, and did not perform a thorough review of the contractor's selection of a higher-priced subcontractor or document the reasons for its approval of the subcontractor. As a result, Customs and Border Protection purchased more steel than needed, incurred additional storage costs, paid interest on late payments, and approved a higher-priced subcontractor, resulting in additional expenditures of about \$69 million that could have been put to better use.

We made five recommendations to improve Customs and Border Protection's management of future fence construction and contract oversight. Customs and Border Protection concurred with four recommendations, and the Department of Homeland Security proposed an alternative to the fifth recommendation that met the intent of that recommendation. Customs and Border Protection is taking action to implement the recommendations.

Background

Achieving operational control of the U.S. border is one of the key missions of the Department of Homeland Security (DHS), and specifically U.S. Customs and Border Protection (CBP). CBP's Border Patrol has 20 sectors responsible for detecting and preventing illegal entry of aliens into the United States between ports of entry.

Section 102 of the *Illegal Immigration Reform and Immigrant Responsibility Act of 1996* (IIRIRA) required the Attorney General to construct fencing and road improvements to prevent illegal entry at the border near San Diego, California.¹ In November 2005, DHS established the Secure Border Initiative (SBI) to secure the Nation's borders and reduce illegal immigration. DHS tasked CBP as the executive agent for the SBI program. CBP's SBI Program Management Office was responsible for developing and constructing a comprehensive border protection system using a combination of technology, known as *SBI_{net}*, and physical barriers, known as Tactical Infrastructure (TI). TI consists of roads, lighting, drainage improvements, bridges, and fencing to impede illegal entry into the United States and provide officers access to their areas of operations.

Congress amended Section 102(b) of the IIRIRA with the *Secure Fence Act of 2006*, requiring reinforced fence construction and accompanying physical barriers in priority areas along the southwest border in California, Texas, New Mexico, and Arizona. In September 2006, DHS awarded a 3-year indefinite delivery/indefinite quantity contract to a prime contractor. The contractor was responsible for acquiring, deploying, and maintaining SBI technology while providing supply chain management for TI projects. The contractor was also responsible for selecting and managing a team of subcontractors to support the project.

In December 2007, the *Consolidated Appropriations Act of 2008* further amended Section 102(b) of the IIRIRA to require DHS to construct not less than 700 miles of reinforced fencing along the southwest border "where fencing would be most practical and effective." In carrying out that mandate, the Secretary was required to identify and build 370 miles "or other mileage" of priority fencing on the southwest border by December 31, 2008. In January 2008, CBP awarded the Supply and Supply Chain Management (SSCM) task order to a prime contractor for the purchase and storage of steel to support fence construction. The

¹ *The Homeland Security Act of 2002*, as amended, transferred many authorities of the Attorney General to DHS. Section 564 of the *Consolidated Appropriations Act of 2008*, however, amended section 102 of the IIRIRA to replace "Attorney General, in consultation with the Commissioner of Immigration and Naturalization" with "Secretary of Homeland Security."

SSCM task order consisted of three contracts for the purchase of steel, mesh, and storage. Since fiscal year (FY) 2008, CBP has spent about \$310 million to purchase and store steel in support of fence construction. During the performance of the SSCM task order, the contractor stored and distributed the steel from three locations: El Paso, Texas; Houston, Texas; and Lynwood, California. CBP consolidated the remaining steel at the end of the project to the El Paso, Texas, facility.

Between the enactment of the *Secure Fence Act of 2006* and the time of our review, CBP completed nearly 299 miles of fencing at a cost of \$1.2 billion.² To date, CBP has constructed about 650 miles of fencing along the southwest border, including the miles constructed using the steel from the SSCM task order. Table 1 illustrates the fence miles from the SSCM task order and the total miles of fencing along the southwest border as of March 2011. Table 2 illustrates the total estimated cost for fence constructed under the SSCM task order. Figure 1 illustrates some of the pedestrian and vehicle fence designs.

Table 1. SSCM Task Order Miles and Total Miles Along the Southwest Border as of March 2011*

Fence Type	Miles Built From SSCM Task Order	Total Miles of Fencing
Pedestrian	150.57	351.79
Vehicle	147.98	298.85
Total	298.55	650.64

** Figures include approximately 2.35 planned miles that were still under construction as of March 2011.*

² According to CBP, the cost per mile includes commercial construction, supply chain and planning oversight, environmental compliance and cultural mitigation, program management, design, and real estate planning and acquisition.

Table 2. Average Cost per Mile and Associated Totals of Fence Constructed Under the SSCM Task Order

Fence Type	Miles Built From SSCM Task Order	Average Cost Per Mile	Total Cost
Pedestrian	150.57	\$6,500,000	\$978,705,000
Vehicle	147.98	\$1,800,000	\$266,364,000
Total	298.55		\$1,245,069,000

Figure 1. Examples of Southwest Border Fence Designs



Results of Audit

CBP did not effectively manage the steel and storage purchased under the SSCM task order. It purchased steel based on an estimate before legally acquiring land and meeting international treaty obligations. CBP did not provide effective contract oversight during the project, as demonstrated by paying invoices late and by not reconciling invoices to receiving documents. In addition, it did not perform a thorough review of the consent to subcontract and did not document the reasons for its approval of the higher-priced subcontractor. As a result, CBP purchased more steel than needed, incurred additional storage costs, paid interest on late payments, and approved a higher-priced subcontractor. The insufficient planning and inadequate contract oversight led to additional expenditures of about \$69 million that CBP could have put to better use.

Project Planning

CBP did not efficiently plan the purchase and storage of steel for the SSCM task order. It purchased steel based on an estimate of types of fence per mile. As a result, 27,557 tons of extra steel, with a value of about \$44 million, remained in storage at the end of the task order. Further, CBP incurred \$9.8 million in additional storage costs because it did not move the remaining steel to a government facility for more than 2 years after the original storage contract expired.

Steel Purchased for the SSCM Task Order

CBP purchased steel based on an estimate of types of fence per mile. In March 2008, CBP instructed the prime contractor to purchase approximately 145,000 tons³ of steel before finalizing fence designs. According to CBP, at that time it did not have access to all the land where it would build the fence and therefore could not properly plan the project or determine the appropriate fence design for all the planned miles. Because CBP did not have access to all the land, it based the initial purchase on an estimate completed in December 2007. CBP attributed the decision to purchase the steel in bulk to the December 31, 2008, deadline, an agreement with the supplier to purchase the steel at January 2008 prices, and production times for steel.

Additionally, CBP did not obtain necessary approval to build all planned fence segments before acquiring the steel. CBP was aware that it might be required to build new fence along the southwest border. To address this possibility, CBP performed multiple environmental assessments in areas where it might be required to build. In 2007, CBP performed an

³ According to CBP, the quantity of steel purchased included a 10% allowance for unanticipated design changes; it did not intend for the additional steel to be excess at the end of the contract.

environmental assessment and determined that a permanent fence would result in adverse affects to the flood plain and recommended building a movable fence. Despite this recommendation, the steel that CBP purchased was of a type to build a permanent fence. CBP purchased approximately 11,300 tons, or \$20.5 million worth of steel to build 14 miles of permanent fence along the Rio Grande Valley. However, CBP did not meet the International Boundary Water Commission’s (IBWC) criteria for a fence type that would minimize effects of water flow on the flood plain. CBP consulted with the IBWC between 2008 and 2010 to find a solution to the impact on the flood plain. The IBWC denied support of CBP’s proposal of permanent fence in this area because of the potential adverse impacts to the flood plain. According to CBP, it did not construct a movable fence in this area because of high cost.

CBP indicated that the bulk purchase saved the government approximately \$72 million based on the price per ton increase of raw steel from \$550 in January 2008 to \$1,060 in August 2008. Although the cost of raw steel did almost double in price, we were not able to validate CBP’s reported cost savings. CBP computed the savings using raw steel prices rather than the manufactured purchase price. CBP paid \$1,655 per ton for most (84%) of the steel rather than the \$550 per ton used in its cost-savings analysis. In addition, CBP used the total amount of steel purchased (about 145,000 tons) in the calculation, instead of the amount needed (approximately 117,000 tons) to build about 299 miles of fence.

Additional Purchase of Steel

In September 2009, CBP purchased 34 tons of steel for \$23,000, even though it had significant quantities of the same steel already in storage. According to CBP, the subcontractor offered CBP the steel at a reduced price, and CBP determined that it would need it in the future. Table 3 illustrates the quantities in storage prior to the purchase of additional steel.

Table 3. Breakdown of Additional Steel Purchase

Length of Steel	Purchase (Pieces)	Weight (Tons)	Pieces Already in Storage	Weight (Tons)
21 foot	159	25	24,142	3,683
20 foot	51	7	35,033	5,091
25 foot	12	2	12,090	2,196
Total	222	34	71,265	10,970

Storage of Extra Steel

CBP was not proactive and did not efficiently plan for the storage of steel remaining from the SSCM task order. Instead of moving the extra steel to a cost-efficient location, CBP extended the original contract and awarded a supplemental storage contract. CBP's decision to extend the storage contracts for 2 years resulted in \$9.8 million in avoidable storage costs.

The original storage contract for the SSCM task order covered the period from April to December 2008. During this period, CBP was aware that it would have at least 24,000 tons of remaining steel but did not begin to identify possible government-owned storage facilities until August 2009. CBP made multiple revisions to the storage contract until it found a new storage site. The revisions extended the original storage contract 15 months, from January 2009 to March 2010, at a cost of about \$5.6 million.

In April 2010, CBP awarded a 1-year task order, Long-Term Steel Storage (LOTSS), under the SSCM task order for storing the steel through March 2011 for \$4.1 million. A CBP legal review, cost/price, and technical evaluations of the LOTSS task order determined that the proposed amount for the LOTSS task order was unrealistically high and recommended that CBP include a memorandum in the contract file to explain why it accepted the cost/price proposal and the technical proposal. However, CBP awarded the LOTSS task order for \$4.1 million without including the memorandum or justifying the high cost. According to CBP, the legal review recommendation to justify the cost was only a suggestion and the contracting office chose not to accept it.

In July 2010, almost 1 year after it began researching cost-effective storage locations, CBP identified a suitable site. In January 2011, CBP paid approximately \$1 million to prepare the new site and estimated about \$780,000 to transport the steel to the new facility. At the time of our review, CBP was in the process of moving the remaining steel to the new site. Table 4 illustrates additional storage costs CBP incurred because of its delay in finding a cost-effective site.

Table 4. Storage Costs Between January 2009 and March 2011

Task Order	Amount
SSCM Task Order Revision (January 2009–June 2009)	\$4,250,000
SSCM Task Order Revision (July 2009–December 2009)	\$908,385
SSCM Task Order Extension (January 2010–March 2010)	\$427,244
LOTSS Task Order (April 2010–March 2011)	\$4,167,381
Total	\$9,753,010

CBP said that it will use the remaining steel to maintain and repair the existing fence and has already used some of it for these projects. In January 2011, CBP transported approximately 500 tons of steel to two areas along the southwest border to replace damaged fencing. CBP also indicated that if required to build additional fence, it would use the extra steel for future construction projects. To ensure that future large-scale projects are as efficient as possible, CBP should analyze its performance under the SSCM task order and apply lessons learned to future projects.

Project Oversight

CBP did not provide effective oversight during the SSCM task order. CBP increased the cost of the SSCM task order because it paid invoices late. In addition, it did not reconcile invoices and did not perform a thorough review of the consent to subcontract documentation. As a result, CBP incurred late payment interest charges and could not guarantee that the government received what it paid for under the task order. In addition, CBP approved a subcontractor that may have added about \$13.5 million to the project.

Interest Payments

CBP increased the cost of the SSCM task order because it paid invoices after the due date. The contractor submitted 28 invoices over the duration of the task order. Our review of the invoices showed that CBP paid 7 (25%) of 28 invoices late under the SSCM task order contract payment terms. Late payments occurred because CBP entered the contract into the system incorrectly, did not have policies in place for submitting and reviewing invoices, and did not establish a notification process to remind offices of an invoice coming due. Additionally, CBP applied “net 21” as payment terms rather than the standard “net 30” terms. As a result, CBP paid approximately \$282,000 of interest during the SSCM task order. Table 5 lists the seven invoices that accrued interest.

Table 5. Contractor Invoices That Accrued Interest*

Invoice				
1	June 21, 2008	August 26, 2008	65	\$29,819
2	August 8, 2008	August 26, 2008	17	\$44,915
3	August 23, 2008	August 26, 2008	2	\$5,257
4	August 28, 2008	September 5, 2008	7	\$61,718
5	September 14, 2008	September 26, 2008	11	\$55,213
9	November 13, 2008	November 26, 2008	12	\$48,241
11**	December 16, 2008	December 29, 2008	12	\$36,465
Total				\$281,628

**The National Finance Center (NFC) calculated the interest from the day after the due date through the payment date using rates of 4.75% (January 2008–June 2008) and 5.125% (July 2008–December 2008). The U.S. Department of the Treasury determined the applicable interest rates*

***CBP made two interest payments for invoice #11 for \$36,465; one payment of \$19,752 and the second payment was \$16,713. Our review determined the second payment was a duplicate. CBP was aware of the duplicate payment and as of July 2011, it had not recovered the duplicate payment. Without the duplicate payment, the total interest paid would have been about \$265,000.*

CBP did not have policies and procedures for submitting and reviewing invoices. It also did not have clear guidance on the proper office to route invoices to, or timelines for the review process. In addition, CBP did not have a notification process to remind offices of an invoice coming due.

CBP applied accelerated payment terms to the SSCM task order. According to Title 5 of the Code of Federal Regulations §1315.14(c)(1)(iii) and CBP operating procedures, the standard payment terms for supplies and services are 30 days after receipt of an invoice, or “net 30.” However, CBP agreed to payment terms of 21 days after the receipt of an invoice, or “net 21.” According to CBP, the accelerated payment was an incentive for the contractor to produce expedited delivery schedules. However, as of April 2011, CBP personnel had not provided documents to support this statement. If CBP had applied the standard net 30 payment terms instead of net 21, it would have avoided approximately \$178,000 (63%) of accrued interest payments. Table 6 illustrates the amount of interest that CBP would have saved if it had applied the standard payment terms.

In March 2009, after CBP paid 98% of the contract, it modified the contract to adjust the payment terms to net 30.

Table 6. Interest Savings Using the Standard Payment Terms

Invoice Number	Interest Paid when Net 21 Terms Applied	Interest Paid if Net 30 Terms Applied	Savings
4	\$61,718	\$0	\$61,718
5	\$55,213	\$9,202	\$46,011
9	\$48,241	\$10,338	\$37,903
11	\$36,465	\$4,558	\$31,907
Total	\$201,637	\$24,098	\$177,539

Invoice Reconciliation

The Contracting Office did not reconcile invoices to receiving documentation. The National Finance Center (NFC) is responsible for ensuring proper expenditure of appropriated funds for CBP. The invoice packet that the NFC received included a contracting officer's (CO) technical representative acceptance letter and a contracting specialist's checklist indicating approval for payment. The invoice packets did not contain supporting documentation for goods received. According to the Contracting Office, it relied on verbal confirmation from the program manager that the invoice amounts were accurate. As a result, CBP cannot guarantee that the government received the accurate amount of steel for which it paid the contractor.

Consent to Subcontract

CBP did not perform a thorough review of the consent to subcontract documentation and did not document the reasons for its approval of the higher-price subcontractor. The Federal Acquisition Regulation states that if an approved purchasing system exists, COs may include a Consent to Subcontract clause in the contract if additional oversight is necessary because of the subcontract type, complexity, or value. The clause allows COs to determine whether contractors obtained adequate price competition and have a sound basis for deciding to select subcontractors. Although the contractor had an approved purchasing system, CBP required the contractor to obtain its written consent for subcontracts under the SSCM task order.

According to CBP, it intended to provide additional oversight of the selection of a subcontractor by participating, as a nonvoting member, in the contractor Source Selection Board meeting. CBP did not request documentation to support the contractor's decision to select the higher-priced bidder. For example, the contractor's price proposal showed an adjustment to the system-selected bidder by 5% to account for additional

transportation costs. However, CBP did not request an explanation or review the adjustment. A review of supporting documentation would have determined that the contractor did not adequately document its decision to select the higher-priced bidder or justify the perceived benefits associated with the additional costs. It also would have determined that the contractor did not consistently follow the stated evaluation criteria in its request for proposals. Additionally, the consent to subcontract documentation did not show that the automated purchasing system selected a lower bidder as the recommended vendor, and the contractor did not document its reason for overriding the system's selection. CBP did not request documentation to support the contractor's decision and did not justify the contractor's selection. CBP's lack of oversight may have increased the SSCM task order by the adjusted difference in bids of \$13.5 million.

Actions Taken by DHS

DHS's Office of the Chief Procurement Officer recognized the importance of component oversight of subcontractor selection and issued an acquisition alert in April 2011 to DHS heads of contracting activities. The purpose of the alert was to emphasize the responsibilities and considerations of a CO when evaluating prime contractors' source selection decisions. According to the alert, COs must review a contractor's notification and supporting data to ensure that the proposed subcontract is appropriate for the risks involved and consistent with current policy and sound business judgment. At a minimum, the alert required COs to review all contractor requests for subcontract consent. These reviews must consider, among other things, whether the contractor performed adequate cost or price analysis or price comparisons.

Conclusion

CBP did not efficiently plan for the purchase and storage of steel in support of the SBI. CBP purchased the steel based on an estimate before legally acquiring land or meeting international treaty obligations. In addition, CBP did not provide effective oversight during the project because it made late payments, did not reconcile invoices, and did not perform a thorough review of the consent to subcontract before approving the selected subcontractor. CBP needs to ensure that it applies lessons learned from the SBI project to future projects. The insufficient planning prior to the purchase of steel and the inadequate oversight of the SSCM led to the purchase of extra steel, additional storage costs, interest paid on late payments, and approval of a higher-priced subcontractor. As a result, CBP spent about \$69 million that it could have put to better use.

Recommendations

We recommend that the Assistant Commissioner of the Office of Administration:

Recommendation #1: Continue to relocate extra steel in storage to a more cost effective site.

Recommendation #2: Perform a lessons learned analysis of the SSCM task order and apply the results to future projects.

Recommendation #3: Develop and communicate policies and procedures for reconciling invoices.

Recommendation #4: Develop a reminder notification process to warn appropriate offices that invoices are due.

Recommendation #5: Require contractors to inform the contracting officer if they override the automated purchasing system.

Management Comments and OIG Analysis

We obtained written comments on the draft report from CBP's Assistant Commissioner, Office of Internal Affairs. We reviewed the comments and, where appropriate, made changes to the report. According to its response to the draft report, CBP did not agree with the report's conclusions. According to CBP, the report did not acknowledge the context in which CBP made many of its business decisions related to the purchase and storage of steel, contract oversight, and subcontractor selection. We recognize the constraints placed on CBP by *The Secure Fence Act of 2006*, but we maintain that if CBP had ensured that it legally acquired the land and met international treaty obligations before it purchased the steel, it would have reduced the cost to purchase and store the steel.

CBP agreed that it made late payments, but stated that our finding did not reflect corrective actions it took before late payments became a systemic issue. We recognize that there were no additional interest payments after invoice #11 related to the SSCM task order. However, CBP did not provide a copy of the corrective action plan it said it developed and implemented. OIG further maintains that the Contracting Office did not reconcile invoices to receiving documentation because the invoices it received did not contain sufficient detailed information to perform those reconciliations.

We also recognize that CBP intended to provide additional oversight of the selection of a subcontractor by its appointment of a representative. The CBP representative participated as a nonvoting member in the contractor Source Selection Board meeting but did not request documentation to support the contractor's decision to select a higher-priced bidder. We believe that CBP needs to improve its processes and develop plans in anticipation of further construction of the fence along the border.

We included a copy of the management comments in their entirety in appendix B. The following is an evaluation of CBP's official response.

Management Response on Recommendation #1

CBP concurred with the recommendation and stated that it relocated the remaining steel inventory to a government-owned site in Fabens, Texas, on March 31, 2011.

OIG Analysis: We consider CBP's actions responsive and consider the recommendation resolved. However, it will remain open until CBP provides additional documentation. The DD 1149 CBP provided does not contain sufficient detail, and the additional inventory data did not account for the remaining steel. The recommendation will remain open until CBP provides a reconciled inventory of the remaining steel at the new government-owned site.

Management Response on Recommendation #2

CBP concurred with the recommendation. CBP's Facilities Management & Engineering will coordinate with the U.S. Army Corps of Engineers and other internal stakeholders in a lessons learned session. The results of this session will include a lessons learned document that CBP will provide to OIG.

OIG Analysis: We consider CBP's actions responsive to the recommendation and consider the recommendation resolved. However, it will remain open until CBP provides the lessons learned document.

Management Response on Recommendation #3

CBP concurred with the recommendation and will develop and communicate policies and procedures for reconciling invoices. CBP's Procurement Directorate is in the process of establishing and aligning invoice approval procedures based on lessons learned, a recent

reorganization, and the need to manage prescribed timelines to avoid late payment interest penalties.

OIG Analysis: We consider CBP's actions responsive to the recommendation and consider the recommendation resolved. However, it will remain open until CBP provides invoice policies and procedures.

Management Response on Recommendation #4

CBP concurred with the recommendation. CBP's Financial Management Office will determine if its financial system can be programmed to send reminder notices regarding invoice payment due dates. If the system can be programmed to do so, CBP will include the notification process in the invoice procedures currently being developed.

OIG Analysis: We consider CBP's actions responsive to the recommendation and consider the recommendation resolved. However, it will remain open until CBP provides documentation that a reminder notification process is in place, whether the financial system can be programmed or not.

Management Response on Recommendation #5

CBP did not concur with the recommendation because it requires contractors to inform the CO if they override the automated purchasing system, which involves a change to the regulations. DHS proposed an alternative recommendation: *Emphasize the importance of the contracting officer's responsibility to adequately review a consent request and supporting data, including the contractor's cost or price analysis of subcontracts.*

OIG Analysis: Although CBP did not concur with the recommendation, DHS's alternative recommendation meets the intent to provide additional oversight to ensure that government representatives mitigate risk to the government in the subcontractor selection process. We consider this recommendation resolved, but it will remain open until CBP provides documentation on the steps it is taking to implement the Department's guidance on the importance of the CO's responsibility.

Appendix A

Purpose, Scope and Methodology

This report provides the results of our work to determine the effectiveness of CBP's management and oversight over the purchase and storage of steel used for SBI. To achieve our objectives, we—

- Reviewed the contract documentation for the SSCM task order and the LOTSS task order applicable to the purchase and storage of steel;
- Interviewed CBP headquarters officials; CBP COs in Arlington, Virginia, regarding the steel purchase contract; CBP Budget Office officials in Indianapolis, Indiana; and Defense Contract Audit Agency and Defense Contract Management Agency officials in Huntsville, Alabama;
- Reviewed invoices that the contractor submitted to determine whether the invoices were complete and had accrued interest;
- Reviewed Environmental Impact Statements for areas where CBP planned to build TI;
- Reviewed CBP inventory records for the extra steel;
- Reviewed design changes related to the SSCM task order;
- Reviewed policies and procedures, including the Federal Acquisition Regulation, DHS Acquisition Manual, and CBP Directives; and
- Reviewed prior audit reports regarding SBI and TI.

We conducted this performance audit between October 2010 and April 2011 pursuant to the *Inspector General Act of 1978*, as amended, and according to generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based upon our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based upon our audit objectives.

Appendix B

Management Comments to the Draft Report

July 29, 2011

MEMORANDUM FOR CHARLES K. EDWARDS
ACTING INSPECTOR GENERAL
DEPARTMENT OF HOMELAND SECURITY

FROM: Assistant Commissioner
Office of Internal Affairs

SUBJECT: U.S. Customs and Border Protection's Response to the Office of Inspector General's Draft Report Entitled, "U.S. Customs and Border Protection's Management of the Purchase and Storage of Steel in Support of the Secure Border Initiative"

Thank you for the opportunity to review and offer comments on the Department of Homeland Security (DHS) Office of the Inspector General (OIG) draft report entitled "U.S. Customs and Border Protection's Management of the Purchase and Storage of Steel in Support of the Secure Border Initiative," dated June 20, 2011. U.S. Customs and Border Protection (CBP) has reviewed the draft report and takes exception with several findings and conclusions in the report given they are not supported by program or procurement documentation. While we agree that the program incurred unanticipated costs, we markedly disagree with the amount of these costs and the reasons why they were incurred. In short, of the \$69 million questioned in the report, we agree that approximately \$282,000 in unanticipated costs were attributable to errors in using CBP's accounting system to properly process invoices and track steel as an asset. CBP immediately responded to these early challenges, correcting them within 60 calendar days, resulting in no late payments thereafter. The balance of the costs discussed in the draft report were not program overruns, or funds spent unwisely as we briefly discussed here.

The OIG made five recommendations in its draft report. CBP concurs with Recommendations #1, #2, #3, and #4 and does not concur with Recommendations #5.

Project Planning

In general, CBP wholly disagrees with the report's conclusion that \$44 million in excess steel was purchased as a result of poor management practices. While CBP does continue to maintain an inventory of structural steel we find that the report fails to acknowledge the context in which CBP made many of its business decisions related to the purchase of steel, for example:

- The report fails to consider the constraints placed on the agency by the *The Secure Fence Act of 2006*, as amended, that required CBP to deploy 670 miles of tactical infrastructure within an 18-month timeframe.

Appendix B

Management Comments to the Draft Report

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- Prior to launching full scale procurement and construction activities CBP did, in fact, use lessons learned from initial small fence construction projects to plan the full deployment. These early projects, like PF-70, demonstrated availability of and competition for materials within the construction industry – including structural steel – that played a significant role in the successful, timely, and cost effective execution of the fence program.
- Project planning was quite thorough in the context of the deadline for fence construction completion. Specifically, the “fence toolbox” which included detailed and tested fence designs was finalized and completed in December 2007 *before* steel was ordered. This planning work provided a sound estimating tool for detailing what CBP’s steel requirements would be.
- As one of the largest material requirements of the program, structural steel production and timely delivery was critical to avoiding widespread construction delays during program execution. The time required for both fence construction and the receipt of manufactured steel materials required CBP to place its steel order in early in Fiscal Year (FY) 2008. Further, estimated savings of \$72.4 million was achieved by using this acquisition strategy.
- The remaining structural steel not used for work related to *The Secure Fence Act* is being used for maintenance and some new construction work. The principal advantage to CBP here is that the steel used for maintenance activities is the same production quality and has the same finish as currently installed fencing.

Further, the report also states that CBP proceeded with the ordering of steel prior to “obtaining necessary construction approval.” However, as CBP’s Office of Chief Counsel explained during the audit engagement, pursuant to Section 102(a) of the *Illegal Immigration Reform and Immigrant Responsibility Act of 1996*, as originally enacted and as it currently reads, the Secretary of Homeland Security has long had the approval and authority from Congress to construct physical barriers and roads in the vicinity of the border in areas of high illegal entry. Moreover, beginning in FY 2007, Congress began appropriating significant money to CBP, via the Border Security, Fencing, Infrastructure and Technology (BSFIT) appropriation, for the construction of tactical infrastructure as well as the installation of border security technology. As such, CBP did in fact possess the authority to construct border fencing when the Supply and Supply Chain Management (SSCM) task order was awarded in January 2008. While the program did manage through several delays, they were related to the legal process for land acquisition, and ensuring that the United States complied with the requirements of certain treaties with Mexico and not poor program execution or planning.

Project Oversight

CBP takes exception to the following statement used throughout the OIG report: “CBP did not provide effective oversight.” This statement is found in the Executive Summary, Results of Audit, Project Oversight and Conclusion sections of the OIG report. This statement as written in the report are based on OIG’s findings: (1) that invoices were paid late; (2) not reconciling invoices to receiving reports; and (3) not having visibility into the subcontractor selection process.

First, CBP agrees that in fact late payments were made, but this finding does not reflect the fact that corrective actions were taken before late payments became a systemic issue. CBP agrees that the program incurred unanticipated costs; however, CBP disagrees with the causes of those costs as described in the draft report. The unanticipated costs were more accurately attributed to systemic

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errors and problems in implementing the payment system at the very beginning of the program. In response to these early problems, the program developed and implemented an action plan and recovered. There were no late payments after correcting the early accounting and invoice problems.

Second, CBP used extensive documentation to reconcile invoices. This documentation consisted of SSCM Financial Status Report (Funds and Manhour Expenditure Report), Task Execution Plan (labor & materials); and Steel Mesh Weekly Status which were provided to OIG during the audit.

Third, CBP had extensive visibility into the contractor's subcontractor selection process. This subcontract was awarded with both CBP's concurrence and participation in the source selection process. The report inaccurately concludes that the selection of the subcontractor led to additional costs (\$13.5M) over a lower price offeror. The subcontract was awarded as a "best value" procurement and price alone was not the determining factor. It is entirely appropriate for the government and contractor to use "best value" procedures in determining award of contracts or subcontracts when the situation warrants as prescribed in FAR Part 15.100. In addition, CBP disagrees with the implications that significant savings and/or cost avoidances would have been achieved by the selection of the lowest bidder. The "best value" trade-off selection significantly reduced performance risk facing the program. The program managers were faced with the urgency to get the program started as soon as possible and the need to obtain large quantities of steel within significant time constraints. As a result, the selection of the subcontractor with a proven record to deliver the required large quantities of steel under tight time constraints was made in accordance to the "best value" criterion instead of a "lowest cost". CBP considers that the contractor made a valid management decision.

With regard to "Consent to Subcontract," the DHS Office of the Chief Procurement Officer (OCPO) and CBP believe that this section, as currently written, is inaccurate and should either (a) be deleted in its entirety, or (b) be rewritten based on our comments that follow. The draft report incorrectly asserts that CBP did not have visibility into the prime contractor's subcontractor selection process. The draft report further inaccurately asserts that the contractor did not notify CBP that it selected a vendor that was \$13.5 million more than the vendor chosen by its automated purchasing system. However, supporting documents show that CBP was fully aware of the initial price difference (\$29 million) at the time of the source selection decision as well as the difference after the transportation adjustment (\$13.5 million).

The record shows that the CBP contracting personnel were closely involved in the prime contractor's source selection process and were fully aware of the price differences. The CBP Supervisory Contract Specialist participated as a non-voting member in the Source Selection Board meeting where the source selection process was discussed in detail and the best value decision was made. The slide presentation of this meeting was submitted as part of the consent request. In addition, CBP documented that it obtained and reviewed the source selection documents and approved the prime contractor's request for consent to subcontract, as required under FAR 44.202.

With regard to the contractor overriding their automated procurement system, our review found that due to technical limitations, the automated template could not effectively be used for determining the best value supplier for SSCM. For example, the template did not permit input of sub-factors used in the source selection evaluation for SSCM. Thus, we believe that the override was justified – therefore, we recommend deleting this assertion from the final report.

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However, we recognize that this subcontract review included some deficiencies. We believe the contractor failed to adequately document their source selection decision to select the higher-priced bidder, including justifying the perceived benefits associated with additional costs; and (2) the contractor, in its evaluation of the proposals, failed to consistently follow the stated evaluation criteria in its request for proposal (RFP). We also accept that CBP should have performed a more complete review of the supporting data and documented the reasons for CBP's approval of the higher-price subcontractor. To correct this problem moving forward, the DHS OCPO issued an acquisition alert to all contracting personnel emphasizing the need to perform adequate subcontract reviews, as discussed in the paragraph that follows.

DHS's OCPO recognized the importance of component oversight of subcontractor selection and issued an acquisition alert in April 2011 to DHS heads of contracting activities. The purpose of the alert was to emphasize the responsibilities and considerations of a CO when evaluating prime contractors' source selection decisions. According to the alert, COs must review a contractor's notification and supporting data to ensure that the proposed subcontract is appropriate for the risks involved and consistent with current policy and sound business judgment. At a minimum, the alert required COs to review all contractor requests for subcontract consent. These reviews must consider, among other things, whether the contractor performed adequate cost or price analysis or price comparisons. This alert adequately addresses the deficiency found during the review.

Conclusion and Recommendations

CBP believes that the report's conclusion should be rewritten based on the general and detailed technical comments provided herein. Specifically, in the report's conclusion, CBP recommends replacing "\$69 million" with "\$282,000" based solely on the payment of prompt payment interest. The OIG's five recommendations and CBP's actions to address them are described below.

Recommendation #1: Continue to relocate extra steel in storage to a more cost effective site.

CBP Response: Concur. CBP addressed this finding independently in March 2011. CBP relocated the remaining steel inventory to a government-owned site in Fabens, Texas. This activity was completed on March 31, 2011. Forms DD-1149, attached, substantiate completion of this action. CBP respectfully requests that the OIG close this recommendation.

Due Date: Complete.

Recommendation #2: Perform a lessons learned analysis of the Supply and Supply Chain Management task order and apply the results to future projects.

CBP Response: Concur. CBP's Facilities Management & Engineering (FM&E) will engage in a lessons learned session that will include both internal stakeholders and representatives from the U.S. Army Corps of Engineers who were involved in the execution of the PF 225 and VF 300 programs for which the steel was purchased. The outputs of this lessons learned session will include a lessons learned document that will be shared with the OIG to close this recommendation.

Due Date: October 31, 2011

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Recommendation #3: Develop and communicate policies and procedures for reconciling invoices.

CBP Response: Concur. CBP will develop and communicate policies and procedures for reconciling invoices. CBP is in the process of resolving a related recommendation found in the GAO 11-68 “SECURE BORDER INITIATIVE: Controls Over Contractor Payments for the SBI Technology Component Need Improvement” final report. The Procurement Directorate is in the process of establishing and aligning invoice approval procedures based on “lessons learned,” a recent reorganization, and the need to manage prescribed time lines to avoid late payment interest penalties. Also, CBP is improving the awareness of the risks associated with the various contract types through its new COTR Management Program, announced in April 2011, to Contracting Officers (COs) and Contracting Officer Technical Representatives (COTRs).

CBP has established an integrated project team (IPT) who are currently drafting a directive to outline the invoice review and approval process, which will include identifying risk-based steps for various contract types. The directive will also focus on timeliness of invoice receipt, review and proper handling through the payment process. The IPT is currently analyzing the invoice receipt through payment process. Upon determining the most effective process it will be included in the CBP directive. A CBP-wide communication plan will also be developed after the directive is approved and issued to ensure all CBP stakeholders and procurement personnel understand the invoice review and approval process.

Due Date: August 31, 2011

Recommendation #4: Develop a reminder notification process to warn appropriate offices that invoices are due.

CBP Response: Concur. CBP is currently coordinating with our Financial Management Office to determine if SAP, CBP’s financial system, can be programmed to send reminder notices to the appropriate personnel regarding the invoice payment due dates. This reminder notice will also be included in the directive if SAP has the capability.

Due Date: August 31, 2011

Recommendation #5: Require contractors to inform the Contracting Officer if they override the automated purchasing system.

CBP Response: Non-concur. DHS does not concur with this recommendation. This recommendation would require contractors to inform the Contracting Officer if they override the automated purchasing system (this would involve a change to the regulations, which in turn would require following the regulatory process). As discussed above, we do not believe this was an issue in the subcontractor selection. CBP was fully aware of the price differential and the contractor’s rationale for selecting the higher priced subcontractor. Thus, the deficiencies in the review of the subcontract did not have any material relationship to the contractor’s decision to override the automated purchasing system.

If a recommendation is included, we recommend it read as follows:

Emphasize the importance of the contracting officer's responsibility to adequately review a consent request and supporting data, including the contractor's cost or price analysis of subcontracts.

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Note that if the recommendation is rewritten as DHS recommends, then DHS will concur with the recommendation (and has already implemented that recommendation via our acquisition alert).

With regard to the classification of the report, CBP has identified information within this report that warrants a "For Official Use Only" classification. CBP's technical and sensitivity comments related to the information included in the draft report are included in Attachment A.

Once again, thank you for the opportunity to comment on the draft report. CBP looks forward to working with you on future homeland security engagements. If you have any questions regarding this response, please contact me or have a member of your staff contact Ms. Lynn Richardson, CBP Audit Liaison, Office of Internal Affairs, at (202) 344-2953.

Attachments:

See Attachment A for technical comments and sensitivity review.

See Attachment B for procurement supporting documentation.

See Attachment C for fence toolbox and DD1149 supporting documentation.

Appendix C
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Appendix D
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