



# Department of Homeland Security Office of Inspector General

## DHS Contracts Awarded Through Other Than Full and Open Competition During Fiscal Year 2007



*Office of Inspector General*

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



**Homeland  
Security**

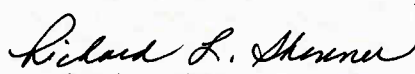
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Preface

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

This report addresses some of the strengths and weaknesses of the department's procurement process. It is based on interviews with DHS employees and officials, 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.

  
Richard L. Skinner  
Inspector General

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## Abbreviations

DHS	Department of Homeland Security
FAR	Federal Acquisition Regulation
FPDS-NG	Federal Procurement Data System-Next Generation
OCPO	Office of the Chief Procurement Officer
OIG	Office of Inspector General

# OIG

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## **Executive Summary**

In fiscal year 2007, the Department of Homeland Security obligated \$3.1 billion for procurements awarded through other than full and open competition. Our review of 82 noncompetitive procurements with a reported value of more than \$417 million showed that 70 were not awarded according to federal regulations. Awards were missing or did not have adequate documentation showing compliance with departmental or federal acquisition regulations. Further, procurement files did not always contain proper written justifications, were not always approved by the appropriate official, did not always contain sufficient evidence of market research or adequate acquisition planning, and did not always reflect the amount of competition that actually took place. We also reviewed 38 competitive procurements valued at \$348 million to determine whether those procurements were appropriately awarded as reported in the Federal Procurement Data System-Next Generation. Similar to the noncompetitive procurements, 21 of these were not awarded according to federal regulations.

These practices occurred because the department did not have adequate policies, procedures, controls, or resources to ensure procurements were carried out as required. As a result, the department cannot ensure that it received the best possible value on these acquired goods and services.

Additionally, the Department of Homeland Security did not effectively use the Federal Procurement Data System-Next Generation to ensure contract data was complete and accurate. This system is the only consolidated information source for analyzing competition on procurements and is relied on for reporting to the public and Congress. Without effective controls to ensure that personnel enter complete and reliable contract data, the department is unable to report competition statistics accurately.

The Department of Homeland Security's Acting Chief Procurement Officer concurred with all seven recommendations in the report and will use them to strengthen policies, procedures, and controls for procuring goods and services.



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## Background

The *Competition in Contracting Act of 1984* requires, with limited exceptions, that contracting officers promote and provide for full and open competition in soliciting offers and awarding United States government contracts. The Federal Acquisition Regulation (FAR) was established to codify uniform policies for acquiring supplies and services by executive agencies.

The Office of the Federal Procurement Policy within the Office of Management and Budget plays a central role in shaping the policies and practices that federal agencies use to acquire the goods and services they need to carry out their responsibilities. The office employs several tools to collect, develop, and disseminate government-wide procurement data for use by federal agencies and the general public, the most significant being the Federal Procurement Data System-Next Generation (FPDS-NG). FPDS-NG measures various elements of procurement performance, including funds obligated and the extent of competition. The Office of Federal Procurement Policy requires that executive agencies annually certify that the data they enter into FPDS-NG is valid and complete.

Competition is desirable because it can result in timely delivery of quality products and services at reasonable costs. It encourages contractors to offer best value proposals for meeting mission needs and requirements when bidding on federal contracts, thereby reducing costs and protecting the interests of taxpayers. According to the FAR, “best value” is the expected outcome of an acquisition that, in the government’s estimation, provides the greatest overall benefit in response to a requirement. Competition also discourages favoritism by leveling the playing field for contract competitors and curtailing opportunities for fraud and abuse. In May 2008, the Office of Management and Budget reported that federal agencies benefited from the use of competitive sourcing with an estimated net savings of approximately \$7.2 billion on competitions completed in fiscal years 2003 through 2007.

At the Department of Homeland Security (DHS), noncompetitive contracting has grown from \$655 million in fiscal year 2003 to \$3.1 billion during fiscal year 2007, accounting for approximately 25% of all contract dollars awarded during the year.

The following entities within DHS have a role in managing these procurements:

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- The Office of the Chief Procurement Officer (OCPO)— DHS Management Directive 0784, dated December 19, 2005, places responsibility on this office for ensuring the integrity of all acquisitions that support DHS. The office provides policies, procedures, guidance, and training to the department’s acquisition workforce. The office also oversees the acquisition of contracted goods and services for DHS through several entities, such as the Acquisition Oversight and Strategic Support Branch, the competition advocates, and heads of contracting activity.
  - The Acquisition Oversight and Strategic Support Branch— Within this branch, a staff of 15 employees conducts oversight to verify the integrity of the acquisition practices of DHS and its components. This branch also provides acquisition training, offers consultation services for DHS contracting personnel, and serves as external audit liaison on acquisition-related topics. The Acquisition Oversight Team, which accounts for less than half of the branch’s 15 positions, is responsible for reviewing procurements within specified thresholds to ensure compliance with applicable regulations and policies.
  - The DHS competition advocate is responsible for promoting full and open competition; promoting acquisition of commercial items; and removing barriers to full and open competition, such as unnecessarily restrictive statements of work, overly detailed specifications, and burdensome contract clauses. The competition advocate must submit an annual report to the Chief Procurement Office on the components’ procurement activities.
  - Heads of contracting activity directly manage the acquisition functions of their respective components. They execute acquisition programs by providing all of the necessary resources, facilities, and infrastructure for the acquisition process. The heads of contracting activity also provide acquisition data and lessons learned to the Chief Procurement Officer for wider distribution within DHS.
  - Contracting officers are responsible for many of the activities leading up to an acquisition for goods or services including: ensuring that sufficient funds are available for obligation,

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requesting offers from as many potential sources as practicable, certifying that all required justifications and approvals are accurate for awarding contracts noncompetitively, and determining that the anticipated cost will be fair and reasonable to the government. Contracting officers must provide input to the acquisition plan including: the type of contract to be used, procurement milestones, and set-aside considerations. Contracting officers are also responsible for timely and accurate reporting of procurement data to the FPDS-NG.

- Program managers within DHS are empowered to make final scope of work, capital investment, and performance acceptability decisions, and are responsible for accomplishing program objectives or production requirements through the acquisition of in-house, contract or reimbursable support resources, as appropriate. The program manager's duties include developing and updating the acquisition plan, coordinating with other personnel responsible for significant aspects of the plan, obtaining applicable concurrences, and forwarding the plan through the approval process.

On December 26, 2007, the President signed into law as Public Law 110-161, the Consolidated Appropriations Act, 2008, Division E—Department of Homeland Security Appropriations. Section 539 directs the OIG to review the department's contracts awarded during fiscal year 2007, through other than full and open competition, to determine compliance with applicable laws and regulations. To meet the requirements of this legislative mandate, we reviewed selected DHS component procurement files for contracts awarded during fiscal year 2007 through other than full and open competition to determine whether all required justifications and other elements and were approved at the appropriate level. We also reviewed DHS policies, procedures, and management controls to determine whether acquisitions were appropriately awarded and accurately reflected the extent of competition that took place.

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## Results of Audit

### DHS Procurement Practices

We reviewed 82 DHS procurement files awarded during fiscal year 2007 through other than full and open competition. Our analysis of the files showed that 70 had missing or inadequate documentation to show compliance with departmental or federal acquisition regulations. These procurements did not always contain proper written justifications, were not always properly justified or approved, did not always have sufficient evidence of market research or adequate acquisition planning, and did not always reflect the amount of competition that actually took place.

We also reviewed 38 files of competitive procurements from fiscal year 2007 to determine whether those procurements were appropriately awarded as reported in FPDS-NG. Similar to the noncompetitive procurements, 21 of the competed awards had missing or inadequate documentation to show compliance with departmental or federal acquisition regulations. These competed awards did not always have sufficient evidence of market research or adequate acquisition planning documentation, and did not always reflect the extent of competition that actually took place.

These practices occurred because the department did not have adequate policies, procedures, controls, and resources to ensure procurements were carried out as required. As a result, DHS could not ensure that it was appropriately using less than full and open competition contracting actions and receiving the best possible value on these goods and services it acquired using this contracting method.

#### **Noncompetitive Procurement Justification and Approval**

Although competition is the preferred method of acquisition within the DHS, FAR 6.3 permits the following circumstances for other than full and open competition:

- Only one responsible source and no other supplies or services to satisfy agency requirements;
- Unusual and compelling urgency;
- Industrial mobilization; engineering, developmental, or research capability; or expert services;
- International agreement;
- Authorized or required by statute;
- National security; and

**DHS Contracts Awarded Through Other Than Full and Open Competition  
During Fiscal Year 2007**

- Public interest.

The FAR requires that any agency contracting officer who approves the acquisition of goods or services through other than full or open competition provide written justification. The justification must have the proper approvals from the appropriate authority based on an established dollar threshold. Depending upon the dollar amount of the acquisition, the justification approval requirements may vary as shown in Appendix C. For procurements that require written justification, the contracting officer must sign to certify that the information is complete and accurate. As shown in figure 1, FAR allows some exceptions to the requirement for written justification for noncompeted procurements.

**Figure 1. Exceptions to Written Justification and Approval Requirement for Noncompeted Procurements**

- 1:** Agency need for a brand name commercial item for authorized resale.
  - 2:** Acquisition from qualified nonprofit agencies for the blind or other severely disabled.
  - 3:** Sole source awards under the 8(a) Program.<sup>1</sup>
  - 4:** When a statute expressly requires that the procurement be made from a specified source.
  - 5:** Sole source acquisitions with an estimated value equal to or less than \$100,000 that qualify under the FAR test program for certain commercial items.
  - 6:** U.S. Coast Guard is exempt from the requirement for written justifications and approvals for contracts awarded citing international agreement.
- Source: FAR Subpart 6.302-4(c); 6.302-5(c)(2); and 13.501(a)(1)*

We reviewed 82 noncompetitive procurements from fiscal year 2007 with an estimated value of more than \$417 million. Although 53 of the noncompetitive procurements required justification and written approval, this was not properly done for 18 of the awards. For example,

- Three noncompetitive procurements did not have the required written justifications. One procurement, involving maintenance and support of a geographic inventory system valued at \$142,713, was not supported by the required written justification. Neither the contracting officer nor the contract specialist was still employed by the component, precluding additional follow up.

<sup>1</sup> The Small Business Administration 8(a) Program, named for a section of the Small Business Act, is a business development program created to help small disadvantaged businesses compete in the American economy and access the federal procurement market. Participants are given preferential treatment in federal contracting.

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- Ten justifications did not contain sufficient facts and rationale to support awarding procurements through other than full and open competition. Also, the justifications for two of these actions were not approved by the appropriate officials.
  - Seven justifications were not approved by the appropriate officials. For example, an award to accommodate a training session, valued at \$242,847, was not competed citing the FAR's "Urgency" exception. Although a written justification was prepared, the document was not approved. The contracting officer indicated that the award was not competed because of a lack of advance notification for the requirement. According to FAR subpart 6.301(c)(1), "contracting without providing for full and open competition shall not be justified on the basis of a lack of advance planning."

#### Sole Source Awards Under the 8(a) Program

Of the 82 noncompetitive procurements from fiscal year 2007 that we reviewed, 18 did not require written justification because they were awarded under the Small Business Administration 8(a) sole source program exception listed in figure 1. One of the 18 procurements was noncompliant with FAR regulations for competition among 8(a) firms and another appeared to circumvent requirements.

One of these awards was an indefinite delivery procurement of recruitment advertising services valued at \$12 million and was listed in FPDS-NG as not available for competition. The initial award was made on May 31, 2007, at a value of \$0.01. On June 4, 2007, a delivery order for \$4 million was issued under this procurement, exceeding the \$3.5 million threshold in the FAR above which competition among 8(a) firms is required. According to the Acquisition Plan and other documentation dated April 2007 in the procurement file, there were indications that project costs were expected to exceed the threshold. Contract staff said that they held meetings with several 8(a) firms where the firms gave presentations on their ability to provide the required services. However, the contract staff could not provide supporting documentation on how the 8(a) firms' proposals were evaluated.

In the second instance, also involving an indefinite delivery, indefinite quantity procurement, the component may have avoided competition among 8(a) firms. The FAR prohibits separating into

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smaller segments an 8(a) requirement with an estimated value exceeding the competitive threshold. This procurement for acquisition support services in 2007 was estimated at \$3,498,500, just under the \$3.5 million competitive threshold in the FAR. There was nothing in the file to show how this estimate was determined; however, documentation in the file indicated that efforts were intentionally made to keep the amount just under the competitive threshold. This suggests that there may have been an aversion to competition. Documentation in the contract file indicated that the need for administrative and acquisition contract support was an ongoing requirement. Thus DHS awarded another contract for these support services to the same vendor in fiscal year 2008 and plans to do likewise in 2009. DHS officials were unable to produce the original Advance Acquisition Plan for this procurement. During the audit we brought this matter to the attention of component management for review and possible further action.

As of August 2008, the acquisition oversight and strategic support branch had a limited staff of 5 of 8 available positions to fulfill its responsibility for oversight of the department components' procurement practices to ensure that they complied with applicable requirements. To its credit, the branch increased the size of its staff to 15 filled positions as of April 2009. The branch Director noted that the staff were not only responsible for oversight, but also for collateral duties such as serving as liaison to support acquisition audits by external entities, and providing training and consultation to contract staff on pricing contracts. For these reasons, the acquisition oversight and strategic support branch did not sufficiently assess DHS' competition practices. Although Management Directive 0784 suggests that OCPO review pre and post award documentation, there is no requirement on the coverage of oversight needed to ensure compliance. As of a report provided in March 2009, the branch has completed nine program management reviews for the DHS components.

Given the prior oversight limitations combined with the staff's competing duties, some contracts may have been awarded quickly to meet organizational needs. For example, one procurement for \$208,095 was awarded to provide radio advertising for a recruitment initiative. The contracting officer approved the noncompetitive justification on July 30, 2007, after the funds had been awarded on July 24, 2007.

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The risk that expediency could take priority over how goods and services are acquired within DHS may still exist. One contracting officer described difficulties in keeping up with frequent acquisition procedural changes while being responsible for managing contract staff at different geographic locations. As a result, the individual acknowledged that they could pay closer attention to the documentation in the files. Another DHS contracting official stated that “shortcuts are taken to get the job done.”

The lack of justifications and approvals for noncompetitive procurements can be attributed to the challenges DHS faced with maintaining the acquisition workforce. DHS has had difficulties growing and retaining an experienced acquisition workforce. Department officials discussed having an insufficient number of contract specialists, overburdened acquisition staff, and high turnover rates. DHS officials also expressed concerns about maintaining an experienced, knowledgeable workforce and ensuring that employees keep up with frequent changes in acquisition regulations. According to DHS officials, the recent submission of the Acquisitions Workforce Human Capital and Succession Plan to the Office of Management and Budget will address the retention and recruitment challenges.

The inconsistent use of procurement checklists to ensure contract file maintenance may have also contributed to noncompliance with procurement requirements. Some component files contained checklists that had incomplete fields or incorrect references to support award decisions. As a result, contract activities and files were often disorganized or incomplete, making it difficult or impossible to determine whether or not the noncompetitive procurements were justified. For example, two procurement files had to be reconstructed because contract personnel were unable to locate the original files.

Without proper justification, written approvals, and oversight, DHS increases the risk that inappropriate procurements are being awarded. DHS also cannot be certain that alternative contractors were considered for its procurements through full and open competition. Ultimately, the department had no assurance that it was receiving the best possible value on these acquired goods and services.



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## Market Research

Many of the noncompetitive procurement files we reviewed for fiscal year 2007 did not contain sufficient evidence that market research was performed as required by the FAR. FAR Part 10 requires agencies to conduct market research before (1) developing new requirements documents for an acquisition, and (2) soliciting offers for an acquisition that exceeds \$100,000, is less than \$100,000 when adequate information is not available and circumstances justify the cost, or could lead to a bundled contract. Market research should be conducted to ensure that the government is procuring goods and services at reasonable costs, regardless of the status of competition.

*The FAR defines **market research** as collecting and analyzing information about capabilities within the market to satisfy agency needs.*

We identified deficiencies with market research for 57 of the 69 fiscal year 2007 noncompetitive procurements we reviewed that required such research. Some procurements did not provide sufficient evidence that market research was performed before awarding the funds. We noted that:

- Eleven procurement files did not contain evidence that market research was conducted, as required.
- For the remaining 46 noncompetitive procurements, market research was summarized or mentioned in the files. However, the procuring agencies could not provide sufficient documentation to support the summaries or activities conducted. For example, one procurement valued at \$2,942,325 for management and consulting services contained no documentation supporting that market research had been conducted. Although market research was mentioned in one report in the file, the file contained no documentation to show that it had been done.

The FAR and the Homeland Security Acquisition Regulation provide limited guidance on the extent of market research that agencies must conduct and document with procurements. The guidance requires agencies to conduct market research, but it does not require that they validate and maintain supporting documentation or assign responsibility to specific personnel. This

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allows personnel to apply market research requirements inconsistently.

For example, there were differing opinions among DHS contract staff on whether posting acquisition requirements to FedBizOpps constitute adequate market research. FedBizOpps is the single, government-wide point-of-entry for federal government procurement opportunities greater than \$25,000. Government buyers can publicize their business opportunities by posting information directly. Some component contract staff noted that this system may be used for market research. Other contract staff disagreed and commented that “market research is part of the planning phase of an acquisition. Posting a solicitation on FedBizOpps is part of the solicitation phase.”

Further, as previously noted, DHS had insufficient oversight resources to ensure that departmental components conducted market research to support that procurements were awarded in the best interest of the government.

Without establishing specific requirements and guidance for the extent of market research and supporting documentation, as well as providing sufficient oversight to ensure compliance, DHS could not be certain that it obtained the greatest overall benefit in response to a procurement requirement. Consequently, the government may not have received the best possible value on goods and services acquired.

### **Acquisition Planning**

The DHS components we reviewed either did not prepare or could not provide the required acquisition planning documentation for some procurements awarded in fiscal year 2007. According to the FAR, acquisition planning is the process by which the efforts of all personnel responsible for an acquisition are coordinated and integrated into a comprehensive plan for fulfilling an agency’s needs in a timely manner and at a reasonable cost. It entails developing the overall strategy for managing an acquisition. FAR 7.1 requires that agencies perform acquisition planning and market research to promote and provide for:

- Procurement of commercial items or nondevelopmental items to the maximum extent practicable; and

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- Full and open competition; or competition to the maximum extent practicable, with due regard to the nature of the supplies or services to be acquired.

The *Department of Homeland Security Acquisition Manual* requires DHS to prepare a written acquisition plan for nondevelopmental acquisitions valued greater than or equal to \$10 million. One exception is for research and development procurements valued greater than or equal to \$5 million, which also require a written acquisition plan. For all other acquisitions valued less than \$10 million, entry of information into the Advance Acquisition Plan Database satisfies the written acquisition plan requirement.

The Advance Acquisition Plan is a plan of all anticipated procurements, including interagency agreements, blanket purchase agreements, and task orders greater than \$100,000 for the upcoming fiscal year. It contains the integrated and coordinated efforts of all relevant acquisition personnel in determining requirements, financing, strategic planning, small business considerations, technical data requirements, contracting, and contract administration.

Ten noncompetitive procurements in our sample required a written acquisition plan; however, 1 of the 10 procurements did not have one. This instance involved a fixed-price services contract valued at \$20.7 million for aircraft ground servicing equipment; this contract had not been competed. The basis for the noncompetition was that the contractor was the only vendor that had the specialized equipment capable of performing the repairs or structural inspections. Although the contracting officer stated that an acquisition plan had been prepared, a copy could not be produced. In addition, supporting documentation for market research, a key component of acquisition planning, was not included in the file.

Further, component personnel could not provide us with advance acquisition plans for 31 of 64 noncompetitive procurements awarded in fiscal year 2007 that required them. For example, one procurement was a \$5.9 million contract for operations support services for the National Operation Center's monitoring and identification of incidents and threats. We requested a copy of the Advance Acquisition Plan, but it was never provided.

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We attribute this apparent lack of planning and documentation to previously discussed challenges in maintaining a knowledgeable acquisition workforce. In response to our concern, one contract official countered that acquisition plans may not have been needed in some cases. Others stated that efforts have been made to improve acquisition planning since fiscal year 2007.

### **Competed Procurements**

We also reviewed 38 procurement files for contracts awarded competitively in fiscal year 2007 with a reported value of \$348 million. We reviewed these procurements to determine whether the competitive procurements were appropriately awarded and to confirm the accuracy of the FPDS-NG entries. We reconciled the “Extent Competed” data category with the information in the procurement files. This review confirmed that the competed procurements were not always appropriately offered and awarded.

Similar to the noncompetitive procurements, 21 of the 38 competed awards were missing or did not have adequate documentation showing compliance with departmental or federal acquisition regulations. Our analysis of the competed files showed that 15 awards did not have sufficient evidence of market research, 7 did not have adequate acquisition planning documentation, and 2 did not accurately reflect the amount of competition that actually took place.

### **Summary**

Our review of 120 contracts included 82 noncompetitive procurements with an estimated value of over \$417 million, and 38 procurement files for contracts awarded competitively with a reported value of \$348 million. As detailed in Appendix D, multiple files had discrepancies that demonstrated noncompliance with applicable laws and regulations.

## **Reporting on DHS Procurement Activities**

DHS did not capture adequate data to identify, assess, and report the extent to which its procurements were competed. DHS is among the executive branch agencies relying on the FPDS-NG for a wide range of information, including agency contracting actions, government-wide procurement trends, and how procurement actions support socioeconomic goals and affect specific

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geographical areas and markets. FPDS-NG is the department's only consolidated source for determining the level of competition in its procurements and reporting the information to the public and Congress.

DHS contract data was not always accurately and completely entered into the FPDS-NG. FPDS-NG reports provided by OCPO in June 2008, show that DHS fiscal year 2007 procurement obligations totaled \$12.3 billion. However, because some of the procurement information in FPDS-NG was either blank or incorrect, we could not determine whether procurement actions constituting approximately \$1.2 billion (or 9.68%) of the total obligations reported for the year were competed.

Although OCPO issued Acquisition Alert 07/13 in June 2007 requiring that contracting officers ensure completeness and accuracy of competition data, the information in FPDS-NG was still incorrect for 14 and blank for 7 of the 120 competitive and noncompetitive procurements we reviewed. For example:

- Seven procurements did not contain a code for the extent of competition.
- Five procurements were entered as competed, but our review of the file revealed otherwise.
- Two procurements were entered as noncompeted, but our review of the files revealed that this was incorrect.
- Three procurements were entered as not available for competition; however, the files indicated that the awards should have been entered as not competed.

We identified a number of other discrepancies when comparing FPDS-NG data with the contract files. Examples include inaccurate dollar estimates, product descriptions, award dates, and procurement identification numbers. Notably, one noncompetitive procurement for security system services was estimated at more than \$22 million in FPDS-NG. After contacting the contracting officer to obtain supporting documentation for the contract award, we learned that the dollar amount had been entered erroneously into FPDS-NG and the procurement was actually valued at approximately \$7,700. The contracting officer said that this error has since been corrected.

Such FPDS-NG errors occurred because effective controls did not exist to ensure that procurement data was entered completely and

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accurately. For example, FPDS-NG did not contain a validation feature requiring completion of all data fields, such as the extent competed for certain contract actions. Thus, users entering data into the system may easily overlook some data fields. In addition, one contracting official stated that FPDS-NG sometimes will not accept certain data inputs and there are some inconsistencies with the system. GAO previously reported that OCPO did not have sufficient enforcement authority to ensure components took recommended corrective actions, which may have contributed to noncompliance with Acquisition Alert 07/13 to address incomplete competition data.<sup>2</sup>

One responsible official for FPDS-NG indicated data errors often occur due to incorrect entry by agency contract personnel. In addition, DHS components have indicated a need for additional training on FPDS-NG requirements. One contracting official noted that contract staffs need to be reeducated to learn FPDS-NG data entry requirements while another believed FPDS-NG to be more complicated than necessary.

Inaccurate and incomplete user data entry compromised FPDS-NG's usefulness to the department. Without a means to validate and ensure the integrity of the FPDS-NG data, the department cannot rely on the system to accurately identify, collect, and report on its competition in contracting. Obstacles to transparency in procurement spending can also erode taxpayer confidence that contracts are awarded in the best interest of the government. DHS has taken steps to comply with Office of the Federal Procurement Policy guidance, dated May 9, 2008, that requires government agencies to develop a plan for improving the quality of acquisition data entered into the FPDS-NG. According to DHS officials, this guidance has been implemented in the form of data quality review plans developed by each component, with support from the Acquisition Oversight and Strategic Support Branch.

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<sup>2</sup> *Department of Homeland Security: Progress and Challenges in Implementing the Department's Acquisition Oversight Plan*, GAO-07-900, June 2007

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## Recommendations

We recommend that the DHS Chief Procurement Officer, in coordination with DHS component heads of contracting activity:

**Recommendation 1:** Strengthen controls and procedures to enforce revisions of the *Department of Homeland Security Acquisition Manual* related to planning and justifying other than full and open competition. This should address the identified vulnerabilities regarding the levels of planning and documentation needed to support noncompeted acquisitions.

**Recommendation 2:** Coordinate with the Office of the Chief Human Capital Officer to develop a strategy that will ensure successful implementation of the components' Acquisitions Workforce Human Capital and Succession Plan for recruiting and retaining an experienced, knowledgeable acquisitions workforce.

**Recommendation 3:** Align the human resources needed to oversee the components' acquisition practices and ensure that the components comply with all applicable laws and regulations. This includes establishing requirements on the frequency and level of the oversight reviews to be conducted.

**Recommendation 4:** Provide guidance on conducting market research to support procurements including, at a minimum, roles and responsibilities, levels of detail and analysis needed, periodic updates for recurring acquisitions, and data retention requirements.

**Recommendation 5:** Establish a content checklist template that includes standard minimum requirements to ensure completeness, accuracy, and consistent organization of contract files among components.

**Recommendation 6:** Further evaluate the two Small Business Administration 8(a) sole source contracts discussed in the report to determine if they need to be re-awarded to meet the provisions of law and regulations.

**Recommendation 7:** Develop a strategy to measure that the implementation of the components' data quality review plans has resulted in the improvement of the completeness and accuracy of

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procurement data entered into the Federal Procurement Data System – Next Generation, as well as consistent reporting among components.

## **Management Comments and OIG Analysis**

The Chief Procurement Officer concurred with all seven of the recommendations in the report. The department will use the findings and recommendations to continue to improve the policies, procedures, and controls with respect to other than full and open competition.

OCPO provided technical comments as well as information regarding the progress the department has made overall in its competitive practices, as evidenced by its success in achieving improved annual competition results. In addition, OCPO provided documentation on behalf of the U.S. Coast Guard and U.S. Customs and Border Protection, requesting that we re-evaluate some of the specific deficiencies noted for the sample procurements. Where appropriate, we updated the report with this information. The changes do not materially impact the message, findings, or examples we used in the audit report.

OCPO noted that efforts are underway to address most of the recommendations made within the draft report. Specific responses to each recommendation are provided below.

### **Management Comments to Recommendation 1**

OCPO concurs. OCPO noted that the department has already strengthened controls and procedures to enforce revisions of the *Department of Homeland Security Acquisition Manual* related to planning and justifying other than full and open competition. This should address vulnerabilities we identified regarding the levels of planning and documentation needed to support noncompeted acquisitions.

Additionally, OCPO's oversight functions include reviews of the components' acquisition planning documents, sole source justifications, and other administrative aspects of the contract actions. A special review of DHS-wide sole source justifications is underway to determine the level of compliance with current acquisition regulations in this area. The results of component oversight reviews and special reviews are submitted to component leadership to assist them in targeting training opportunities and process enhancements.



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**OIG Analysis:** Dependent upon the thoroughness and frequency of the component oversight reviews and special reviews, these activities should assist the component leadership in targeting training opportunities and process enhancements. This recommendation is resolved, but will remain open until OCPO provides more details and documentation on the results of the reviews.

### **Management Comments to Recommendation 2**

OCPO concurs. OCPO developed an acquisition workforce human capital plan and a *National Defense Authorization Act*-mandated succession management plan. OCPO provided these documents to the DHS Office of the Chief Human Capital Officer for use in consolidated plans. Since the Office of the Chief Human Capital Officer has primary responsibility for human capital and succession planning, OCPO concurs that a strategy to monitor and measure the components' implementation of the plans should be developed; however, OCPO believes that the Office of the Chief Human Capital Officer is the lead DHS office for this effort.

**OIG Analysis:** We adjusted the recommendation based on clarification in OCPO's response that, while it is responsible for developing acquisition workforce human capital and succession plans, the DHS Office of the Chief Human Capital Officer is the lead in monitoring and measuring the plans' effectiveness. OCPO should coordinate with the Office of the Chief Human Capital Officer to develop a strategy that will ensure successful implementation of the components' Acquisition Workforce Human Capital and Succession Plan for recruiting and retaining an experienced, knowledgeable, acquisition workforce. This recommendation is resolved and will remain open until OCPO provides an approach to coordinating with the Office of the Chief Human Capital Officer in this regard.

### **Management Comments to Recommendation 3**

OCPO concurs. OCPO noted that this action has already been completed and implemented. The OCPO oversight branch currently has a staff of fourteen senior subject matter government experts with in-depth knowledge and experience in the areas of acquisition, procurement, contract pricing, and auditing/Inspector General support. OCPO's annual oversight program plan delineates the oversight and support functions planned for the year, commensurate with the personnel available to perform them. The program plan also defines the component, special, and follow-up reviews scheduled, as well as the support function and plans for addressing any prior year backlog activities.

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**OIG Analysis:** We have reviewed OCPO's annual oversight program plan. The document provides sufficient evidence of oversight of the components' acquisition practices to ensure that they comply with all applicable laws and regulations. As such, this recommendation is now resolved and closed.

#### **Management Comments to Recommendation 4**

OCPO concurs. OCPO responded that action has been taken to resolve this recommendation. In 2009, the OCPO's Acquisition Policy and Legislation Branch issued a draft interim DHS Market Research Guide for comment. The interim guide was adapted from the DHS Office of Procurement Operating Procedure 203, "Conducting Market Research" (July 2008) and relevant portions of Procurement Operating Procedure 106, "Contacts with Industry" (July 2008). It provides thorough coverage of market research and has been well received by DHS components. Disposition of Component comments was completed in late April 2009. The guide is scheduled to be issued in final form as an Appendix to the *Department of Homeland Security Acquisition Manual*, Chapter 3010, by July 2009.

**OIG Analysis:** Once final, OCPO's actions should sufficiently address the need for guidance on conducting market research to support procurements including, at a minimum, roles and responsibilities, levels of detail and analysis needed, periodic updates for recurring acquisitions, and data retention requirements. This recommendation is resolved, but will remain open until we have reviewed the final DHS Market Research Guide.

#### **Management Comments to Recommendation 5**

OCPO concurs in principal with the recommendation to have content checklists, but believes that such checklists should be developed at the component level to assure they meet the specific needs of each component. OCPO develops and provides through the *Department of Homeland Security Acquisition Manual* and other policy issuances, a variety of templates, standard formats, and other department-wide tools to assist the acquisition community. However, OCPO has not established department-wide checklist content and contract file requirements standards because it believes that to do so would be unnecessarily repetitive of the FAR. OCPO will, however, issue an Acquisition Alert reminding DHS components of FAR and *Department of Homeland Security Acquisition Manual* requirements and highlighting the options

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(e.g., through contract writing systems and subscriptions) available for developing, maintaining, and using standard checklists. OCPO will also make available from the component oversight reviews that have been performed any identified best practices in the area of contract file checklists.

**OIG Analysis:** OCPO's actions are responsive to the recommendation. OCPO's Acquisition Alert reminder and efforts to share identified best practices will promote completeness, accuracy, and consistent organization of contract files among components. This recommendation is resolved, but will remain open until we have obtained and reviewed the Acquisition Alert and examples of best practices shared to supplement that alert.

#### **Management Comments to Recommendation 6**

OCPO concurs with this recommendation and the two Small Business Administration 8(a) sole source contract evaluations have been completed. OCPO has determined that there is no need for these procurements to be re-awarded. Based upon a recent review of these files, OCPO has determined that these procurement actions were in general compliance with FAR requirements. OCPO will remind DHS personnel about the need to reengage the Small Business Administration whenever a proposed contract action includes terms that vary significantly from an original offer letter.

**OIG Analysis:** OCPO's actions will satisfy the intent of this recommendation. The recommendation is resolved, but will remain open until OCPO provides the specific plans and resulting products for actions taken for reminding DHS personnel of the need to reengage the Small Business Administration whenever a proposed contract action includes terms that vary significantly from an original offer letter, as well as documented analysis of the two procurements in question.

#### **Management Comments to Recommendation 7**

OCPO concurs. OCPO noted that this action has already been completed and implemented. In accordance with Office of Federal Procurement Policy guidance, each DHS component submitted a quality plan to OCPO for validating their respective fiscal year 2008 FPDS-NG data, including certifying the accuracy rate for that data. In June 2009, OCPO provided a certified accuracy rate to the Office of Federal Procurement Policy for the department's fiscal year 2008 FPDS-NG data.

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In addition, OCPO is currently conducting a special oversight review to determine the extent to which the department's components have implemented their FPDS review processes in accordance with their submitted quality plans, and to identify best practices for improving the FY 2009 reviews.

**OIG Analysis:** OCPO's actions will be sufficient to ensure the components' data quality review plans have resulted in complete and accurate procurement data entered into the FPDS-NG, as well as consistent reporting among components. This recommendation is resolved, but will remain open until we have reviewed the quality plans provided and the review plan and final results from the 2009 special review.

## Appendix A

### Purpose, Scope, and Methodology

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On December 26, 2007, the President signed into law as Public Law 110-161, the Consolidated Appropriations Act, 2008, Division E—Department of Homeland Security Appropriations. Section 539 directs the OIG to review the department’s contracts awarded during fiscal year 2007, through other than full and open competition to determine compliance with applicable laws and regulations.

To meet the requirements of this legislative mandate, we reviewed applicable federal laws and regulations, as well as DHS- and component-specific guidance to identify requirements for noncompetitive contract awards. We also examined prior audit reports to identify related work in this regard. We reviewed DHS procurements in fiscal year 2007 to determine whether:

- Selected components’ justifications for noncompetitive procurement awards contained all required elements and were appropriately approved; and
- DHS has sufficient policies, procedures, or management controls in place to ensure that acquisitions are appropriately awarded and accurately reflect the extent of competition that takes place.

We sampled procurement files for three of eight DHS procurement offices. We selected for review the procurement offices with the highest estimated dollar value of contracts awarded through other than full and open competition, as reported in FPDS-NG. Our sample covered procurement offices within U.S. Customs and Border Protection, the U.S. Coast Guard, and the DHS Office of Procurement Operations, which is responsible for acquisitions by the Office of the Secretary and the U.S. Citizenship and Immigration Services. We excluded from our sample the Transportation Security Administration, which we covered in other recent audit work.<sup>3</sup>

We reviewed a judgmental sample of 120 procurement files, with approximately 40 files from each selected component. Of the 120 procurement files, we selected 79 that FPDS-NG indicated were awarded through other than full and open competition. To determine whether DHS acquisitions are awarded and reported as required, we reviewed 34 procurement files that were identified in FPDS-NG as competitively awarded, and 7 with a blank “extent competed” entry.

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<sup>3</sup> *TSA Single Source (Noncompetitive) Procurements*, OIG-08-67, June 2008.

## **Appendix A**

### **Purpose, Scope, and Methodology**

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We reviewed the procurement files to determine whether they contained the documentation needed to justify the contract awards. Specifically, we determined whether they contained adequate market research, acquisition plans appropriate to the dollar values of the awards, and proper justifications and approvals for procurements that were awarded noncompetitively. We also verified the accuracy of “extent competed” entries in FPDS-NG, confirming that documentation in the procurement files supported whether or not competition had occurred. Because there is no assurance that the judgmental sample is representative of the entire universe, the results should not be projected to all DHS procurements.

To determine whether DHS has sufficient policies, procedures, and management controls in place to ensure that acquisitions were awarded as required and accurately reflect the extent of competition reported, we interviewed DHS and General Services Administration officials. We also interviewed the DHS Competition Advocate, the Acting Director of the Acquisition Oversight Team, the FPDS-NG Program Director, and the DHS FPDS-NG specialist. To identify the challenges that DHS’ procurement staff face in awarding acquisitions of best value to the government, we also interviewed contracting officials and employees at each location visited. We reviewed internal controls pertinent to our objectives.

We conducted our fieldwork between October and December of 2008 at contracting offices in the following locations: Washington, DC; Norfolk, Virginia; Elizabeth City, North Carolina; Burlington, Vermont; and Indianapolis, Indiana. We conducted this performance audit 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 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**

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

JUN 19 2009



**Homeland  
Security**

MEMORANDUM FOR: Anne L. Richards  
Assistant Inspector General for Audits

FROM: *Draft of Cyber FUR*  
Richard K. Gunderson  
Acting, Chief Procurement Officer  
Department of Homeland Security

SUBJECT: OCPO Response to Draft Inspector General Report: *DHS  
Contracts Awarded Through Other Than Full and Open  
Competition During Fiscal Year 2007*

In response to your May 19, 2009 memorandum, attached is the OCPO response to the subject draft report. Should you have additional questions, please contact Mr. David J. Capitano, Director, Oversight and Strategic Support, at 202-447-5417 or at [david.capitano@dhs.gov](mailto:david.capitano@dhs.gov).

Attachment:  
OCPO Response to Draft Report

Cc:  
DHS Undersecretary for Management  
DHS Office of the Chief Financial Officer

**DHS Contracts Awarded Through Other Than Full and Open Competition  
During Fiscal Year 2007**

## Appendix B Management Comments to the Draft Report

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### CPO Response to OIG Draft Report: “DHS Contracts Awarded Through Other than Full and Open Competition During Fiscal Year 2007”

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#### Section I. OCPO Response to OIG Report Recommendations

The draft OIG report includes seven recommendations to the Chief Procurement Officer (OCPO); specific responses to each recommendation are provided below. OCPO notes that of the seven recommendations made within the draft report, four are already complete; one is near completion; one is more appropriately directed to the Office of the Chief Human Capital Officer; and one we concur with in principle but believe it should be implemented at the component level. The DHS recommendations and related OCPO responses are detailed as follows:

**Recommendation 1:** “Strengthen controls and procedures to enforce revisions of the *Department of Homeland Security Acquisition Manual* related to planning and justifying other than full and open competition. This should address the identified vulnerabilities regarding the levels of planning and documentation needed to support noncompeted acquisitions.”

**OCPO Response:** OCPO concurs with this recommendation and notes that this action has already been implemented and completed. Currently, the Office of the Chief Procurement Officer’s (OCPO’s) oversight functions include reviews of the Components’ acquisition planning documents, sole source justifications, and other administrative aspects of these contract actions. Additionally, a special review of DHS-wide sole source justifications is currently underway to determine the level of compliance with current acquisition regulations in this area. The results of component oversight reviews and special reviews are submitted to component leadership to assist them in targeting training opportunities and process enhancements.

**Recommendation 2:** “Develop a strategy to monitor and measure the components’ implementation of its Acquisition Workforce Human Capital and Succession Plan for recruiting and retaining an experienced, knowledgeable acquisitions workforce.”

**OCPO Response:** OCPO concurs in principal with this recommendation. OCPO developed an acquisition workforce human capital plan and National Defense Authorization Act (FY2008)-mandated succession management plan. OCPO provided these documents to the DHS Office of the Chief Human Capital Officer (OCHCO) for use in consolidated plans OCHCO worked on behalf of DHS.

Since OCHCO is the office of primary responsibility for human capital and succession planning, OCPO concurs that a strategy to monitor and measure the components’ implementation of the plans should be developed; however, OCPO believes that OCHCO is the lead DHS office for this effort.

**Recommendation 3:** “Align the human resources needed to oversee the components’ acquisition practices and ensure that the components comply with all applicable laws



## Appendix B Management Comments to the Draft Report

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### **CPO Response to OIG Draft Report: “DHS Contracts Awarded Through Other than Full and Open Competition During Fiscal Year 2007”**

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and regulations. This includes establishing requirements on the frequency and level of the oversight reviews to be conducted.”

**OCPO Response:** OCPO concurs with this recommendation and notes that this action has already been completed and implemented. The OCPO oversight branch currently has a fourteen member staff comprised of senior subject matter government experts with in depth knowledge and experience in areas of acquisition, procurement, contract pricing and auditing/inspector general support. Our annual oversight program plan delineates the oversight and support functions planned for the year commensurate with the personnel available to perform them. This program plan, which has been previously provided to the DHS IG, defines the component, special and follow-up reviews scheduled for the year as well as the support function and plans to address any prior year backlog activities. All of the various reviews are scoped in advance of the reviews to define the frequency, methodology and levels of oversight to be provided.

**Recommendation 4:** “Provide guidance on conducting market research to support procurements including, at a minimum, roles and responsibilities, levels of detail and analysis needed, periodic updates for recurring acquisitions, and data retention requirements.”

**OCPO Response:** OCPO concurs with this recommendation and notes that this action is already underway and near completion. On March 13, 2009, the OCPO’s Acquisition Policy and Legislation Branch issued for Department-wide review, comment, and immediate use, an interim DHS Market Research Guide. The interim guide was adapted from the DHS Office of Procurement Operating Procedure (POP) 203, “Conducting Market Research” (July 2008) and relevant portions of POP 106, “Contacts with Industry” (July 2008). It provides thorough coverage of market research and has been well received by Components. Disposition of Component comments was completed in late April 2009. The guide is scheduled to be issued in final form as an Appendix to Homeland Security Acquisition Manual (HSAM) Chapter 3010 by July 2009.

**Recommendation 5:** “Establish a content checklist template that includes standard minimum requirements to ensure completeness, accuracy, and consistent organization of contract files among components.”

**OCPO Response:** OCPO concurs in principal with the recommendation to have content checklists, but believes that such checklists should be developed at the component level, to assure they meet the specific needs of each component. OCPO develops and provides through the HSAM and other policy issuances, a variety of templates, standard formats, and other Department-wide tools to assist the acquisition community. However, OCPO has not established Department-wide checklist content and contract file requirements/ standards because to do so would be unnecessarily

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### CPO Response to OIG Draft Report: “DHS Contracts Awarded Through Other than Full and Open Competition During Fiscal Year 2007”

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repetitive of Federal Acquisition Regulation (FAR) Subpart 4.802 and 4.803, Government Contract Files. Further, FAR 4.801, acknowledging differences and specialization in contracting types, staffing, and technology among contracting activities, requires the *head of each office* that performs contracting, contract administration, or payment functions to establish files containing the records of all contractual actions, and procedures to ensure that documentation in the files are sufficient to constitute a complete history of the transaction within the general guidelines contained in FAR 4.802 and 4.803. (Implementing FAR 4.801, HSAM 3004.801 designates the Chief of the Contracting Office (COCO) as the head of each office performing contracting and contract administration functions.)

OCPO will, however, issue an Acquisition Alert reminding DHS Components of the requirements at FAR 4.801 and HSAM 3004.801, and highlighting the options (e.g., through contract writing systems, and subscriptions) available for developing, maintaining, and using standard checklists to ensure contract file sufficiency and compliance with the requirements of FAR 4.801. We will also make available any identified best practices in the area of contract file checklists from the component oversight reviews that have been performed.

**Recommendation 6:** “Further evaluate the two Small Business Administration 8(a) sole source contracts discussed in the report to determine if they need to be re-awarded to meet the provisions of law and regulations.”

**OCPO Response:** OCPO concurs with this recommendation and these evaluations have been completed. OCPO has determined that there is no need for these procurements to be re-awarded. Based upon a recent review of these files, OCPO has determined that these procurement actions were in general compliance with the Federal Acquisition Regulation (FAR). As described below, while both contract actions contained a pre-award administrative oversight, that oversight was not significant enough to warrant re-awarding the contracts.

With respect to the USCG contract, OCPO found that the sole source 8(a) action was in compliance with FAR with the exception of an administrative omission. Although the Contracting Officer did submit the required offer letter to the Small Business Administration (SBA) and received an acceptance letter as required, the Contracting Officer did not re-engage the SBA when the actual contract not-to-exceed amount was higher than originally specified within the offer letter.

Second, with respect to the CBP contract, OCPO found that the sole source 8(a) action was also in compliance with FAR with the exception of an administrative omission. While the total value of this contract was significantly in excess of the \$3.5 million threshold, the contract included significant “pass-through” costs, which are not part of the threshold determination. This was confirmed by the Small Business Administration through its approval of the required offer letter. However, although



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### **CPO Response to OIG Draft Report: “DHS Contracts Awarded Through Other than Full and Open Competition During Fiscal Year 2007”**

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the Contracting Officer did submit the required offer letter to the Small Business Administration (SBA) and received an acceptance letter as required, the Contracting Officer did not re-engage the SBA when the actual contract not-to-exceed amount was higher than originally specified within the offer letter (the amount went from about \$2.6 million to about \$3.5 million, excluding the pass-through costs).

In light of these two instances disclosed by the IG report, OCPO will remind DHS personnel about the need to re-engage SBA whenever the proposed contract action includes terms that vary significantly from the original offer letter.

**Recommendation 7:** “Develop a strategy to measure that the implementation of the components’ data quality review plans has resulted in the improvement of the completeness and accuracy of procurement data entered into the Federal Procurement Data System, as well as consistent reporting among components.”

**OCPO Response:** OCPO concurs with this recommendation and notes that this action has already been completed and implemented. In accordance with OFPP guidance, for fiscal year 2008 FPDS data, each DHS Component submitted a quality plan to OCPO for validating their respective data which included certifying an accuracy rate for that data. On June 5, 2009, OCPO provided a certified accuracy rate to OFPP for the Department’s fiscal year 2008 FPDS data. All of the component plans and the certification letter to OFPP have previously been provided to the DHS-IG. In addition, OCPO is currently conducting a special oversight review to determine the extent to which the Components implemented their FPDS review processes in accordance with their submitted quality plans, and to identify best practices for improving the FY2009 reviews.

### **Section II. OCPO General Comments**

Overall, the Office of the Inspector General’s draft report as currently presented is critical of the OCPO’s policies, procedures, and controls with respect to other than full and open competition; however, it is remiss in not acknowledging the very real progress the Department has made overall as evidenced by its success in achieving improved annual competition results. It also fails to provide any specific references to any OCPO policies, procedures, or controls that are lacking. The findings in the IG report, to the extent they are valid (USCG and CBP content that many of them are not), represent compliance issues rather than a lack of policies, procedures, or controls.

**Competition.** The percentage of DHS obligations awarded through competitive contract actions increased from 69 percent in Fiscal Year (FY) 2007 to 75 percent in FY 2008. In addition, six out of eight DHS Components met or exceeded their FY

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2008 competition goals. Six out of eight DHS Components also achieved a competition rate (in terms of competitive obligations) of 70 percent or greater. These outstanding accomplishments contributed to DHS surpassing its FY 2008 competition goal of 68 percent by seven percentage points, allowing it to realize a 75 percent level of competition two years ahead of a FY 2010 target.

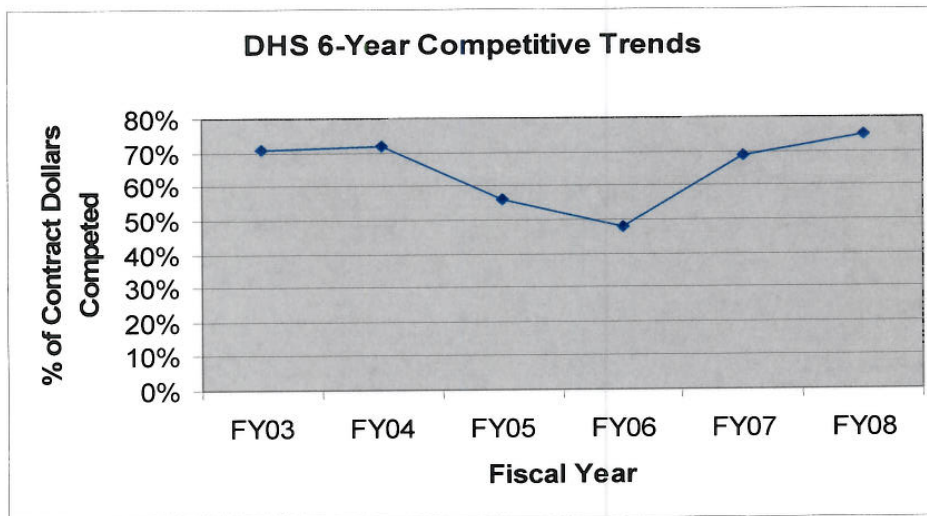
**Exhibit 1: DHS Summary Competition Data: Fiscal Years 2006 – 2008**  
**Department wide and by Component**

DHS Component/Contracting Activity	FY 2008 Accomplishment in Competition (Dollars)	FY 2007 Accomplishment in Competition (Dollars)	FY 2006 Accomplishment in Competition (Dollars)
CBP (Includes SBI)	74%	65%	60%
DHS-HQ. (OPO and CIS)	80%	66%	54%
FEMA	79%	81%	37%
FLETC	74%	77%	85%
ICE	79%	70%	57%
TSA	71%	62%	61%
USCG	68%	73%	53%
USSS	47%	49%	42%
<b>Department wide</b>	<b>75%</b>	<b>69%</b>	<b>48%</b>

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**Exhibit 2: DHS 6-Year Competitive Trends**



Data Source for Exhibits 1 and 2: Federal Procurement Data System- Next Generation (December 2008)

FY 2008 marked a recovery by DHS to pre-Katrina levels of competition. Fiscal Year 2008 was the third, over a six fiscal year period, in which DHS achieved a level of competition equaling or exceeding 70 percent. DHS’s FY 2007 and 2008 competitive accomplishments exceeded the Government-wide average of 64% and 67%, respectively. As of mid-year 2009, most DHS Components are either exceeding, meeting, or are within five percentage point of their FY 2009 goals.

Rather than lacking adequacy, we would argue that, based on overall results, the DHS competition program’s policy, procedures, and practices compare favorably with those of numerous other Federal agencies. Examples of DHS competition program policy, procedures, and practices include:

- **DHS Competition and Acquisition Excellence Awards Program.**  
In July 2007, the DHS Competition Advocate established the DHS Competition and Acquisition Excellence Awards Program as a means of renewing and increasing acquisition workforce interest in competition and related innovative procurement practices by recognizing and rewarding individuals and teams for outstanding contributions to the enhancement of



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competition and use of innovative and best procurement practices. (Competition award and recognition programs are authorized by the Competition in Contracting Act (CICA). Thirteen nominations were received from across the DHS organization during the award program’s inaugural year. Seven teams and individuals were selected for recognition, their efforts collectively resulting in estimated cost avoidance/cost savings of over \$5.2 million. The DHS OCPO was gratified that in a July 18, 2008 memorandum, the Office of Federal Procurement Policy (OFPP) cited the DHS FY 2007 Competition and Acquisition Excellence Awards Program as an example for agencies considering establishment of programs to recognize employee contributions to improving competition. Six out of eight DHS Components submitted nominations for the DHS FY 2008 Competition and Acquisition Excellence Award (one more than in FY 2007). Interest and support for recognition programs such as the DHS Competition and Acquisition Excellence Award Program has cascaded support within DHS. In addition to continuing to participate in the Department-wide awards program, some DHS Components report that they have established or are considering recognition of competitive achievements as part of their own awards and recognition programs in FY 2009.

- **DHS Industry Days.** The DHS Chief Procurement Officer hosts an annual DHS Industry Day in Washington, DC to provide a forum to better communicate DHS’ requirements and increase competition and use of commercial items by sharing information with Federal contractors and other business representatives interested in DHS contracting and subcontracting opportunities.
- **Competition Advocate Activities.** Throughout the fiscal year, the DHS Competition Advocate works actively with Components to encourage attainment of competition goals and to identify and resolve barriers to competition. The Competition Advocate analyzes transaction data on a regular basis. Mid-year reports are provided to the OCPO and each Component Head of Contracting Activity highlighting achievements and, as appropriate, identifying areas in need of improvement. (As recently as April 7, 2009, (within seven calendar days of the end of the Second Quarter), the Competition Advocate provided the OCPO with a formal report on the Department’s mid-year accomplishments.) Competition Improvement Plans are requested from Components in danger of missing their goals. (Sample copies of FY 2008 mid-year reports to Components from the DHS Competition Advocate were provided to OIG reviewers at their request on July 30, 2008.)

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- Annual DHS Competition Advocate Report. DHS Competition Advocate Reports for FY 2007 and 2008 were provided to OFPP on time and in accordance with OFPP and FAR guidance.

**Acquisition Workforce.** In regards to statements made in the report related to the acquisition workforce, OCPO notes that the challenges faced in recruiting, training and retaining an acquisition workforce are not unique to DHS. The critical shortage of acquisition professionals across the Federal sector has been recognized and as a result the following language was inserted in the National Defense Authorization Act for FY-2009. “*SEC. 869. ACQUISITION WORKFORCE DEVELOPMENT STRATEGIC PLAN.*

*(a) Purpose- The purpose of this section is to authorize the preparation and completion of a plan (to be known as the ‘Acquisition Workforce Development Strategic Plan’) for Federal agencies other than the Department of Defense to develop a specific and actionable 5-year plan to increase the size of the acquisition workforce, and to operate a government-wide acquisition intern program, for such Federal agencies. ...”* To this end, DHS is playing a vital role in multiple sub-committees working to accomplish the development of the Federal-wide strategic plan.

Generally, the report does not clearly reflect the significant strides DHS has made in developing and retaining a qualified acquisition workforce. Since the creation of the department, DHS has more than doubled the size of its contracting professional workforce with an increase of over 20% since 2007. Another key milestone was the creation and execution of the Acquisition Professional Career Program (APCP); DHS’s centralized Acquisition Intern program. This FY-2008 start-up, once fully deployed in FY-2011, will add 100 acquisition professionals to the departments’ compliment annually.

**Accuracy of Specific Findings.** CBP and USCG take exception to a number of the specific contract findings contained in the report. These exceptions are included as attachments to this response. OCPO requests that the OIG review the CBP and USCG responses to its field work conclusion to determine if and to what extent the IG findings need to be revised. OCPO, CBP, and USCG are available to discuss the component exceptions as deemed necessary by the IG, to help ensure that the subject material and its conclusions are presented in an accurate and fair manner.

### **Section III. OCPO Comments on Report Content**

The following comments are provided in accordance with the draft report sections as specified below.

#### **1. Section entitled “Executive Summary”, Page 1**



## Appendix B Management Comments to the Draft Report

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### CPO Response to OIG Draft Report: “DHS Contracts Awarded Through Other than Full and Open Competition During Fiscal Year 2007”

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The Executive Summary, within the first paragraph, states that 83 noncompetitive procurements were reviewed and that 73 were not awarded according to federal regulations. The summary also states that: awards were missing or did not have adequate documentation showing compliance with departmental or federal acquisition regulations; procurement files did not always contain proper written justifications; justifications were not always approved by the appropriate official; files did not contain sufficient evidence of market research or adequate acquisition planning; and, that files did not always reflect the amount of competition that actually took place. Further, this paragraph states that 37 files of competitive procurements were reviewed and 23 of these were not awarded according to federal regulations.

The OIG provided the supporting data for its conclusions to OCPO and the affected components. CBP and USCG reviewed this data and take exception to many of the findings, including the following:

CBP takes exception to the following IG findings:

- HSBP1007C01752 (\$268K; DC-06): OIG indicates that the file did not contain a Justification for Other Than Full and Open Competition (JOFOC); however, a sources sought notice requesting qualifications was posted in FedBizOpps. The procurement was competed under full and open competition.
- HSBP1007C01703 (\$25.6M; DC-08): OIG indicated that the JOFOC did not contain sufficient facts and rationale to support the use of sole source. However, DHS OCPO and the DHS Competition Advocate both signed the JOFOC, although their signatures are only required when the threshold is \$50M or more.
- HSBP1007C01404 (\$20.7M; DC-09): OIG indicates that the appropriate official did not approve the JOFOC. The appropriate official, Head of the Contracting Activity (HCA), did sign the JOFOC as required (threshold range of \$11.5M - \$57M) per HSAM Chapter 3006, as well as CBP’s Directive 5220-031B).
- HSBP 1007P13029 (\$110K; DC-14): OIG states that the component did not indicate that market research was conducted; however, due to the proprietary Pacific Applied Technology (PAT) software (in use since 1987), CBP submitted a synopsis in FedBizOpps notifying vendors that CBP had the intent to sole source and no vendor responded.
- HSBP1007F19055 (\$4.2M; DC-01): OIG indicates that sufficient documentation to support the market research was not provided; however,



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### CPO Response to OIG Draft Report: “DHS Contracts Awarded Through Other than Full and Open Competition During Fiscal Year 2007”

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market research was conducted prior to awarding the First Source multiple award IDIQ contract (HSHQDC07D00024), awarded by DHS. The order was properly competed among the First Source contractors and the FedBizOpps’ results were in the file.

- HSBP1007J18292 (\$642k; DC-02): OIG indicates that sufficient documentation to support the market research was not provided; however, market research was conducted prior to awarding the CBP Administrative and Professional services (CAPs) multiple award IDIQ contracts.

USCG takes exception to the following IG findings:

- The OIG findings included 2 files for which the OIG stated that the contract file did not contain the required JOFOCs; however, neither file required a JOFOC under the procurement regulations.
- The OIG findings included 3 files for which the OIG stated that the contract file contained JOFOCs that were not signed by the appropriate official; however, 2 of the files did not require a JOFOC under procurement regulations and the third file did contain a JOFOC that was signed by the appropriate official.
- The OIG data alleges that 24 files lacked sufficient documentation of market research; however, 18 of those files either contained an appropriate level of market research or did not require market research under procurement regulations.

In addition to the USCG and CBP exceptions taken with many of the findings, OCPO also believes that the following language in the report should be revised to assure accuracy:

- First paragraph, fourth sentence is inaccurate, and should read as follows (OCPO revision in brackets and **Bold**): “Further, procurement files did not always contain proper written justifications, were not always approved by the appropriate official, did not [**always**] contain sufficient evidence of market research or adequate acquisition planning, and did not always reflect the amount of competition that actually took place.” This proposed change adds consistency to the sentence as related to the fact that, for all of the examples provided, in many cases there were no deficiencies as noted.

The Executive Summary also reaches the following conclusion: “*These practices occurred because the department did not have adequate policies, procedures,*

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*controls, or resources to ensure procurements were carried out as required. As a result, the department cannot ensure that it received the best possible value on the goods and services it acquired.”* OCPO believes that there is no basis for taking a small judgmental sample, and the findings the IG found within that sample, and making a broad-based statement regarding all DHS procurements. Furthermore, no specific DHS policies, procedures, or controls alleged to be lacking are specified within this paragraph. While OCPO recognizes there may have been some compliance issues in fiscal year 2007, those issues have been adequately addressed, as noted in our responses to the recommendations to this report.

#### 2. Section entitled “Background,” pages 2 through 4.

To assure accuracy and full-disclosure, OCPO notes that on page 2, the fourth paragraph does not show that the percentage of competed actions within the Department increased from fiscal year 2003 to fiscal year 2007. As a result, this paragraph gives the reader an incorrect impression that the percentage of non-competed procurement actions within the Department has increased over this period. In reality, the percentage of non-competed procurement actions decreased during this period. OCPO notes that total spend dollars within the Department increased from fiscal year 2003 through fiscal year 2007, and likewise, the percentage of those total spend dollars that were competed also increased. OCPO objects to the presentation of the spend data in a manner which casts an inaccurate negative result on the Department’s competition successes.

#### 3. Section entitled “Results of Audit,” pages 5 through 9.

The section entitled “Results of Audit,” within the first paragraph, states that 83 noncompetitive procurements were reviewed and that 73 were not awarded according to federal regulations. This paragraph also states that: awards were missing or did not have adequate documentation showing compliance with departmental or federal acquisition regulations; procurement files did not always contain proper written justifications; justifications were not always approved by the appropriate official; files did not contain sufficient evidence of market research or adequate acquisition planning; and, that files did not always reflect the amount of competition that actually took place. Further, the second paragraph states that 37 files of competitive procurements were reviewed and 23 of these were not awarded according to federal regulations.

OCPO believes that the first paragraph, third sentence of this section is misleading, and should more appropriately read as follows: (new text included in brackets and **Bold**): “These procurements did not [**always**] contain proper written justifications, were not [**always**] properly justified or approved, did not [**always**] have sufficient



## Appendix B Management Comments to the Draft Report

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### CPO Response to OIG Draft Report: “DHS Contracts Awarded Through Other than Full and Open Competition During Fiscal Year 2007”

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evidence of market research or adequate acquisition planning, and did not always reflect the amount of competition that actually took place.” This proposed change adds consistency to the sentence as related to the fact that, for all of the examples provided, in many cases there were no deficiencies as noted.

OCPO believes that the second paragraph, second and third sentences are also misleading and should more appropriately read as follows (new text included in brackets and **Bold**): “Similar to the noncompetitive procurements, **[some]** of the competed awards did not **[always]** include adequate documentation to show compliance with departmental or federal acquisition regulations. These competed awards did not **[always]** have sufficient evidence of market research or adequate acquisition planning documentation, and did not always reflect the extent of competition that actually took place.” This proposed change adds consistency to the sentence as related to the fact that, for all of the examples provided, in many cases there were no deficiencies as noted.

This same section, within the third paragraph of this page, reaches the following conclusion: “*These practices occurred because the department did not have adequate policies, procedures, controls, or resources to ensure procurements were carried out as required. As a result, DHS could not ensure that it was appropriately using less than full and open competition contracting actions and receiving the best possible value on the goods and services it acquired using this contracting method.*” OCPO believes that there is no basis for taking a small judgmental sample, and the findings the IG found within that sample, and making a broad-based statement regarding all DHS procurements. Furthermore, no specific DHS policies, procedures, or controls alleged to be lacking are specified within this paragraph. While OCPO recognizes there may have been some compliance issues in fiscal year 2007, those issues have been adequately addressed, as noted in our responses to the recommendations to this report.

#### 4. “Sole Source Awards Under the 8(a) Program,” pages 7 through 8.

OCPO recommends that the statements made within the report be amended to specifically note that the two specific contracts identified in the report involved only administrative omissions, as described in our reply to the OIG.

OCPO requests that the last paragraph be revised to correct an inaccurate statement made regarding one of the responsibilities of the acquisition oversight and strategic support branch; specifically, this paragraph describes serving as the liaison to support acquisition audits by external entities as “collateral duties” for staff members. These are much more than collateral duties; these duties consume a significant amount of time of the oversight staff, and are ongoing, permanent oversight functions that are critical to assuring that DHS pays a fair and reasonable price for the products/services

## Appendix B Management Comments to the Draft Report

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### CPO Response to OIG Draft Report: “DHS Contracts Awarded Through Other than Full and Open Competition During Fiscal Year 2007”

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it receives. OCPO believes that, to be accurate, the third sentence of this paragraph should read as follows: (new text included in brackets and **Bold**): “The branch Director noted that [**the staff’s oversight duties include**] serving as liaison to support acquisition audits by external entities, [**and**] providing training and consultation to contract staff [**on**]-~~and~~ pricing contracts.”

OCPO requests that the last paragraph beginning on page 8, which continues on to the top of page 9, be revised within the last sentence to reflect the fact that, since 2006, the OCPO oversight branch has issued reports on seven of the nine components, and has completed the field work and is in the process of drafting the oversight reports for the remaining two components.

#### 5. “Sole Source Awards Under the 8(a) Program,” Page 9.

The first complete paragraph describes a sole source contract properly awarded under the FAR 6.302-2(c); whereby the Contracting Officer, based upon an unusual and compelling urgency, awarded the contract and then later completed the required JOFOC, as permitted within this section of the FAR. The draft report notes that the JOFOC was completed after the award, but omits the fact that this practice is appropriate under FAR 6.302-2(c); therefore, OCPO requests that this paragraph be revised to include sufficient explanatory reference to the FAR including the reasonable conclusion that the Contracting Officer acted in accordance with the procurement regulations.

#### 6. Page 10, First complete paragraph.

Within the final sentence of this paragraph, a broad and general conclusion is reached that is not supported by the remainder of this paragraph or elsewhere in the draft report. The report alleges that “the department had no assurance that it was receiving the best possible value on the goods and services it acquired in fiscal year 2007”. OCPO believes that there is no basis for taking a small judgmental sample, and the findings the IG found within that sample, and applying that as a broad-based statement to all goods and services acquired by DHS in fiscal year 2007. Furthermore, no specific DHS policies, procedures, or controls alleged to be lacking are specified within this paragraph. While OCPO recognizes there may have been some compliance issues in fiscal year 2007, those issues have been adequately addressed, as noted in our responses to the recommendations to this report.

#### 7. Section entitled “Market Research,” pages 10 and 11.



## Appendix B Management Comments to the Draft Report

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### CPO Response to OIG Draft Report: *“DHS Contracts Awarded Through Other than Full and Open Competition During Fiscal Year 2007”*

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OCPO believes that this section contains overly broad conclusions which greatly overreach the judgmental sample results (to which we also take exception) of the OIG’s field work. For example, USCG’s subsequent review of the OIG field work data found that the file that was cited as not containing evidence that market research was conducted included a procurement action that did not require market research in accordance with procurement regulations; further, USCG found that where OIG claimed that 24 of 44 USCG files lacked sufficient evidence of market research, 18 of those files either contained an appropriate level of market research documentation, or did not require market research in accordance with procurement regulations. Additionally, CBP also takes exception to the results of the OIG field work data, as specified within the attachment to this response.

#### **8. Section entitled “Acquisition Planning,” pages 11 through 13.**

USCG takes exception to a number of the IG findings in this section. For example, USCG reviewed the OIG’s field work data and found that two of the files cited did not require acquisition plans in accordance with procurement regulations.

#### **9. Section entitled “Conclusion,” pages 13 and 14.**

This paragraph concludes that a majority of the files reviewed by the OIG had multiple discrepancies that demonstrated noncompliance with applicable laws and regulations. OCPO does not believe that this is the case. As previously noted, CBP and USCG have taken exception to a number of the IG findings. While OCPO recognizes there were some compliance issues in FY2007, we do not believe that the findings in the report support a conclusion that the “majority” of the files reviewed had multiple discrepancies.

#### **10. Section entitled “Reporting on DHS Procurement Activities,” pages 14-16.**

OCPO requests that this section be revised to include the following completed action:

In accordance with OFPP guidance, for fiscal year 2008 FPDS data, each DHS Component submitted a quality plan to OCPO for validating their respective data which included certifying an accuracy rate for that data. On June 5, 2009, OCPO provided a certified accuracy rate to OFPP for the Department’s fiscal year 2008 FPDS data. OCPO is currently performing a special oversight review to determine if and to what extent the Components implemented their review processes in accordance with their submitted quality plans, and to identify best practices for use in the components 2009 reviews.

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

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### **CPO Response to OIG Draft Report: “DHS Contracts Awarded Through Other than Full and Open Competition During Fiscal Year 2007”**

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OCPO believes that without the above addition to this section, the section fails to credit the Department for advances made with respect to FPDS accuracy.

Also, on page 15 and 16, concerning the discussion of FPDS, the report states “*Such FPDS-NG errors occurred because effective controls did not exist to ensure that procurement data was entered completely and accurately.*” This statement has been overcome by the Department’s implementation of the OFPP Policy guidance, dated May 9, 2008, which requires government agencies to develop a plan for improving the quality of acquisition data entered into the FPDS.

#### **11. Technical Correction, pages 18 and 22.**

On pages 18 and 22, OCPO requests that OIG revise “Customs and Border Protection” to read “U.S. Customs and Border Protection.”

#### **12. Appendix D; “Summary of Deficiencies with Procurement Activities”**

OCPO requests that OIG correct Appendix D as-needed to address the inaccuracies described within the attachments provided to this response; specifically, the USCG and CBP results of their analyses of the OIG data used to support the draft report.

### **IV. OCPO RESPONSE ATTACHMENTS**

- 1) USCG Response to OIG field work data
- 2) CBP Response to OIG field work data

## Appendix B Management Comments to the Draft Report

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Head of the Contracting Activity  
1900 Half Street, S.W.  
Washington, DC 20593-0001  
Staff Symbol : CG-9

### MEMORANDUM

MAY 29 2009

From: Claire M. Grady, USCG *Claire M. Grady*  
Head of the Contracting Activity

Reply to: CG-9131  
Attn of: James VanAllan  
202.475.5787

To: David Capitano, DHS  
Director, Oversight and Strategic Support

Subj: Response to DHS OIG Analysis of Other Than Full and Open Competition – USCG Results

The United States Coast Guard (USCG) is responding to the draft results contained in the spreadsheet from the DHS OIG Analysis of Other Than Full and Open Competition – USCG Results as requested by DHS on 04 May 2009. The DHS request contained a matrix-spreadsheet of OIG findings which compared procurement file data (paper) against the Federal Procurement Data System, and also made other conclusions based on the review of the respective files. The DHS-OIG reviewed 44 separate procurement actions processed by the USCG (ALC, CG-912, and MLC-LANT). The analysis reviewed each procurement file for the adequacy of documentation for Justification and Approvals (J&A) or evidence of competition, the adequacy of documentation for market research, the existence of an Acquisition Plan (or AAP), and whether the FPDS-NG contained accurate information regarding the extent competed. The DHS-OIG analysis found several findings in regards to these areas. The USCG does not concur with all of the findings.

The USCG reviewed the files that were cited by the DHS-OIG matrix-spreadsheet to validate the findings, and in many instances was able to identify the necessary data or provide documentation that reduced the number of instances cited or nullified the DHS-OIG finding.

Attachment 1 is the USCG response to each DHS-OIG finding.  
Attachment 2 is a list of specific USCG files and USCG comments that detail why the finding is not valid.

In response to the findings contained in the DHS-OIG matrix-spreadsheet, the USCG is committed to ensure it complies with procurement rules and regulations, and therefore it intends to develop a comprehensive memorandum (COCO Alert) that emphasizes FAR, HSAM, and USCG regulations and policies for each DHS finding. This COCO Alert will serve as the primary mechanism to educate our contracting community. Additional corrective actions are included in Attachment 2. In addition, the USCG has revised the spreadsheet provided by DHS to include USCG responses to each finding.

I look forward to receiving the final DHS-OIG Project A08-AM-008 Review Report. If you have any questions, please contact Mr. James B. VanAllan at 202.475.5787.

#

Attached:

- 1) USCG Response to Each Finding
- 2) USCG Comments on Specific Files

DHS Contracts Awarded Through Other Than Full and Open Competition  
During Fiscal Year 2007



## Appendix B Management Comments to the Draft Report

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### ATTACHMENT 1

#### **Finding 1a – Justification and Approval was not in the file.**

DHS stated that 29 of the 44 files reviewed were awarded as a result of Other than Full and Open Competition requiring a J&A in the file, and of the 29 files, 2 files did not contain the required J&A.

The USCG does not concur. The USCG reviewed the 2 files and discovered that neither file required a J&A as one file was for a no-cost warranty repair, and the other file was for a purchase made under a USCG BPA. The rationale and supporting documentation for each of these instances is provided in the attachments.

#### **Finding 1b – Justification and Approval does not contain sufficient facts and rationale to support the use of sole source.**

DHS stated that 29 of the 44 files reviewed were awarded as a result of Other than Full and Open Competition requiring a J&A in the file, and of the 29 files, 2 files did not contain sufficient facts and rationale to support the use of sole source.

The USCG concurs.

- ACTION – The USCG intends to ensure that these files contain J&As that are adequately prepared with sufficient facts and rationale to support the use of sole source. In addition, a Standard Operating Procedure (SOP) on preparing, reviewing, and approving J&A is being developed and will be distributed to all USCG contracting activities.

#### **Finding 1c – Justification and Approval was not approved by the appropriate official.**

DHS stated that 29 of the 44 files reviewed were awarded as a result of Other than Full and Open Competition requiring a J&A in the file, and of the 29 files, 3 files were not approved by the appropriate official.

The USCG does not concur. The USCG reviewed the 3 files and found that 2 of the findings were invalid. One file did not require a J&A since it was for a delivery order and the basic contract contained the appropriately approved J&A, and the other file had a J&A containing the proper approval by the Competition Advocate, as per the HSAM and CGAP. The rationale and supporting documentation for each of these instances is provided in the attachments.

- ACTION – The USCG intends to ensure the file that did not contain a properly approved J&A is remedied. In addition, a Standard Operating Procedure (SOP) on preparing, reviewing, and approving JOFOC is being developed and will be distributed to all USCG contracting activities.

#### **Finding 2 – Evidence of Competition in the file if FPDS-NG indicated competition.**

DHS stated that 15 of the 44 files reviewed contained evidence of competition when FPDS-NG indicated competition. DHS had no findings for USCG under this category.

The USCG concurs.

#### **Finding 3 – Market Research was not documented in the file.**

DHS stated that of the 44 files reviewed, 1 file lacked evidence that market research was conducted.

The USCG does not concur. The USCG reviewed this file and found that market research was not required as this was a procurement for a no-cost warranty repair. The rationale and supporting documentation for this instance is provided in the attachments.



## Appendix B

### Management Comments to the Draft Report

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#### ATTACHMENT 1

**Finding 3a – Market Research was not sufficiently documented.**

DHS stated that of the 44 files reviewed, 24 files lacked sufficient documentation of market research.

The USCG does not concur. The USCG reviewed these files and found that 18 files either contained an appropriate level of market research documentation, or did not require market research. The rationale and supporting documentation for each of these instances is provided in the attachments.

- ACTION – The USCG will ensure that all files requiring market research demonstrate an appropriate level of market research.

**Finding 4 – Acquisition Plan (or AAP) not in file.**

DHS stated that 17 of the 44 contract files reviewed did not have an Acquisition Plan (or AAP) in the file.

The USCG does not concur. The USCG reviewed these files and found that 2 files did not require an AP(or AAP). One file was for a no-cost warranty repair, and another file did have a copy of the AAP contained in the file. The rationale and supporting documentation for each of these instances is provided in the attachments.

- ACTION – The USCG will ensure that all files contain an Acquisition Plan (or AAP) when required.

**Finding 5 – FPDS-NG extent competed not correct.**

DHS stated that 4 of the 44 files reviewed did not have correct FPDS-NG extent competed.

The USCG concurs.

- ACTION – The USCG will ensure that the extent competed is correctly entered into FPDS-NG.

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

Attachment 2

DHS-OIG Analysis of Other Than Full and Open Competition - USCG Results  
USCG Response

**2008 DHS-OIG Analysis of Other Than Full and Open Competition - USCG Results - USCG RESPONSE**

CG ACTIVITY	ORDER NO. (OIG SAMPLE NO.)	FINDING NO. *	ACTION TAKEN
<b>Finding No. 1a - Justifications and Approvals (J&amp;A) not in file.</b>			
ALC	HSCG38-07-P-010086 (CG-NC-11)	1a - J&A	Finding not valid; J&A not required as this was a no-cost warranty repair (see attached SF1449).
ALC	HSCG38-07-F-900067 / HSCG89-07-A-TBX016 (CG-NC-12)	1a - J&A	Finding not valid; Purchase utilized USCG BPA (see attached CGSW Vendor List).
<b>Finding No. 1c - Justifications and Approvals (J&amp;A) not approved by appropriate official.</b>			
ALC	HSCG38-07-J-A70801 / HSCG38-07-D-100008 (CG-NC-05)	1c - J&A	Finding not valid; J&A not required for delivery order, the approved J&A is in contract file (see attached J&A contained in contract).
CG-912	HSCG23-07-C-T00001 (CG-DC-06)	1c - J&A	Finding not valid; J&A signed by Competition Advocate as required in HSAM & CGAP. (Copy of Small Business Review and J&A is attached).
<b>Finding No. 3 - Market Research was not documented in the file.</b>			
ALC	HSCG38-07-P-010086 (CG-NC-11)	3 - Market Research	Finding not valid; Market Research not required as this was a no-cost warranty repair (see attached SF1449).
<b>Finding No. 3a - Market Research was not sufficiently documented.</b>			
ALC	HSCG38-07-D-H00003 (CG-NC-02)	3a - Market Research	Finding not valid; market research is in the contract file (see attached Market Research report).
ALC	HSCG38-07-D-500040 (CG-NC-07)	3a - Market Research	Finding not valid; J&A describing sufficient market research is in the contract file (see attached J&A).
ALC	HSCG38-07-P-700452 (CG-NC-09)	3a - Market Research	Finding not valid; J&A describing sufficient market research is in the contract file (see attached J&A).
ALC	HSCG38-07-D-J00004 (CG-NC-10)	3a - Market Research	Finding not valid; J&A describing sufficient market research is in the contract file (see attached J&A).
ALC	HSCG38-07-F-900067 / HSCG89-07-A-TBX016 (CG-NC-12)	3a - Market Research	Finding not valid; mandatory source (see attached CGSW Vendor List).
ALC	HSCG38-07-D-100004 (CG-NC-15)	3a - Market Research	Finding not valid; market research is in the contract file (see attached market research report).
ALC	HSCG38-07-P-700301 (CG-NC-17)	3a - Market Research	Finding not valid; J&A describing sufficient market research is in the contract file (see attached J&A).
ALC	HSCG38-07-P-700505 (CG-NC-18)	3a - Market Research	Finding not valid; sole sourced to OEM; J&A describing sufficient market research is in the contract file (see attached J&A).
CG-912	HSCG23-07-J-TBX040 / HSHQDC-07-D-00030 (CG-DC-01)	3a - Market Research	Finding not valid; this was a competition under FirstSource for a MasterTask Order (BPA). 6 offers were received; (see attached Addendum #2 to AP).
CG-912	HSCG23-07-F-TED352 (CG-DC-03)	3a - Market Research	Finding not valid; this was a competitive task order against an existing competed GSA BPA
CG-912	HSCG23-07-J-TE4213 / HSCG23-07-D-TE4331 (CG-DC-07)	3a - Market Research	Finding not valid; this is a task order under an existing IDIQ contract.

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

Attachment 2

DHS-OIG Analysis of OFFER - USCG Results

**USCG Response**

CG ACTIVITY	ORDER NO. (OIG SAMPLE NO.)	FINDING NO. *	ACTION TAKEN
CG-912	HSCG23-07-D-AGA124 (CG-DC-08)	3a - Market Research	Finding not valid; this was a sole source under the 8(a) program; (see attached offer and acceptance correspondence with SBA)
CG-912	HSCG23-07-C-ELT002 (CG-DC-09)	3a - Market Research	Finding not valid; this was a sole source under the 8(a) program; (see attached offer and acceptance correspondence with SBA)
CG-912	HSCG23-07-F-ACP171 (CG-DC-10)	3a - Market Research	Finding not valid; market research was performed for the initial acquisition of 52 boats under 03-F-AWP111 (see attached memo and J&A).
MLC-LANT	HSCG84-07-J-AAM077 (CG-VA-01)	3a - Market Research	Finding not valid; market research not required on a task order under IDIQ contract
MLC-LANT	HSCG84-07-J-HXW037 / HSCG84-07-A-100002 (CG-VA-07)	3a - Market Research	Finding not valid; market research not required on a task order under a BOA with a Class J&A that addresses market research (see attached memo)
MLC-LANT	HSCG84-07-N-AA5180 (CG-VA-10)	3a - Market Research	Finding not valid; file contained market research for both the instant requirement and the predecessor contract (see attached Small Business Review Form and Market Research Summary)
MLC-LANT	HSCG84-07-P-330146 (CG-VA-12)	3a - Market Research	Finding not valid; task order awarded under DHS mandated First Source and no other market research required
<b>Finding No. 4 - Acquisition Plan (or AAP) not in file.</b>			
ALC	HSCG38-07-P-010086 (CG-NC-11)	4 - AP or AAP	Finding not valid; this was a no-cost warranty repair (see attached SF-1449).
MLC-LANT	HSCG84-07-J-AAM077 (CG-VA-01)	4 - AP or AAP	Finding not valid; copy of AAP was in task order file (see attached AAP).



## **Appendix B**

### **Management Comments to the Draft Report**

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#### OFFICE OF FINANCE RESPONSE TO OIG DRAFT REPORT:

#### **“DHS Contracts Awarded Through Other Than Full and Open Competition During Fiscal Year 2007”**

### **I. GENERAL COMMENTS**

#### **(Please Insert General Comments Regarding the Audit Report in this Section)**

U.S. Customs and Border Protection (CBP) will work with DHS OCPO as required in support of any DHS-level initiative established to implement the recommendations made to the department.

The Draft report makes statements that are not adequately supported by evidence that can be independently reviewed by the reader to reach the same conclusions. In order to identify and address the deficiencies noted in Appendix D, OCPO provided CBP with the OIG’s spreadsheets (OIG OTFOC Sample Results to OCPO – CBP.xls).

As a result of the review of OIG’s spreadsheet that was provided by OCPO, CBP takes exception to six of the noted deficiencies identified in Appendix D, page 22.

1. HSBP 1007C01752 (\$268k; DC-06): OIG indicates that the file did not contain a JOFOC; however, a sources sought notice requesting qualifications was posted in FedBizOpps. The procurement was competed full and open. See the Attachment A, FedBizOpps notice.
2. HSBP1007C01703 (\$25.6M; DC-08): OIG indicated that the JOFOC did not contain sufficient facts and rationale to support the use of sole source. However, DHS CPO, Elaine Duke, and the DHS Competition Advocate both signed the JOFOC although their signatures are only required when the threshold is \$50M or more. See Attachment B, JOFOC.
3. HSBP1007C01404 (\$20.7M; DC-09): OIG indicates that the appropriate official did not approve the JOFOC. The appropriate official, Head of the Contracting Activity (HCA), did sign the JOFOC as required (threshold range of \$11.5M - \$57M) per HSAM Chapter 3006 as well as CBP’s Directive 5220-031B). However, an outdated CBP Form 445 dated April 2002 from the CBP Directive 5220-031A, was used and identified the HCA as the Director, Procurement Division. The correct CBP Form 445 dated August 2007 should have been used. See Attachments C and D, CBP Form 445 dated April 2002 and August 2007 for the signature page for each referenced CBP Form 445.
4. HSBP 1007P13029 (\$110K; DC-14): OIG states that the component did not indicate that market research was conducted; however, due to the proprietary Pacific Applied Technology (PAT) software (in use since 1987), CBP submitted a synopsis in FebBidOpps notifying vendors that CBP had the intent to sole source and no vendor responded. See Attachment E, FedBizOpps notice.

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

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5. HSBP1007F19055 (\$4.2M; DC-01): OIG indicates that sufficient documentation to support the market research was not provided; however, market research was conducted prior to awarding the First Source multiple award IDIQ contract (HSHQDC07D00024), awarded by DHS. The order was competed among the First Source contractors and the FedBid results were in the file. See Attachment F, FedBid results.
6. HSBP1007J18292 (\$642k; DC-02): OIG indicates that sufficient documentation to support the market research was not provided; however, market research was conducted prior to awarding the CBP Administrative and Professional services (CAPs) multiple award IDIQ contracts.

**II. TECHNICAL COMMENTS**

**(Please Insert Technical Comments Regarding the Audit Report in this Section – Reference page numbers, paragraph numbers, line number for each technical comment)**

Page	Paragraph	Line	Technical Comment
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1. Page 7, fourth paragraph, Sole Source Awards Under the 8(a) Program and Page 16, Recommendation 6 regarding the indefinite delivery procurement of recruitment advertising services. A competitive 8(a) procurement is underway.
2. Pages 18 and 22, revise ‘Customs and Border Protection’ to read ‘U.S. Customs and Border Protection’.
3. Page 22, Appendix D Summary of Deficiencies with Procurement Activities. CBP recommends that the appendix be revised to reflect the numbers reported in the column entitled “Recommended Revision”.

Deficiencies Identified	U.S. Customs and Border Protection		
	Based on OIG's Draft Report	Actions with Non-concurrence	Recommended Revision
Files that do not contain a required written justification for noncompetitive award.	1	HSBP1007C01752 (CBP-DC-06)	0
Required written justifications that do not contain sufficient facts and rationale to support noncompetitive award.	6	HSBP1007C01703 (CBP-DC-08)	5

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

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Required justifications lacking the appropriate official's approval for noncompetitive award.	5	HSBP1007C01404 (CBP-DC-09)	4
Market research not conducted for non-competed procurements.	9	HSBP1007P13029 (CBP-DC-14)	8
Sufficient documentation to support the market research described in the file for non-competed procurements not provided.	11	HSBP1007F19055 (CBP-DC-01) & HSBP1007J18292 (CBP-DC-02)	9

**III. DRAFT REPORT – SENSITIVITY REVIEW**

**For Official Use Only**

**Appendix C**  
**Federal Acquisition Regulation Approval Requirements for Justifying**  
**the Use of Other Than Full and Open Competition**

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<b>Federal Acquisition Regulation Approval Requirements for Justifying the Use of Other Than Full and Open Competition</b>	
<b>Procurement Estimated Value</b>	<b>Signatures Required Before Award</b>
Not exceeding \$550,000	Contracting officer
	Procuring activity competition advocate, head of the procuring activity (or qualified designee), or senior procurement executive of the agency designated
Exceeding \$11.5 million, but not exceeding \$57 million (\$78.5 million for the U.S. Coast Guard)	Head of the procuring activity (or qualified designee)
Exceeding \$57 million (\$78.5 million for the U.S. Coast Guard)	Designated senior procurement executive of the agency

*Source: FAR Subpart 6.304*

**Appendix D**  
**Summary of Deficiencies with Procurement Activities**

	<b>DHS Components Reviewed<sup>4</sup></b>				<b>Total</b>
	<b>U.S. Coast Guard</b>	<b>U.S. Customs and Border Protection</b>	<b>U.S. Citizenship and Immigration Service</b>	<b>Office of the Secretary</b>	
<b>Procurements Reviewed</b>					
Procurements Awarded Through Other Than Full and Open Competition	29	28	8	17	82
Procurements Awarded Through Competition	15	12	5	6	38
Total Number of Procurements	44	40	13	23	120
<b>Deficiencies Identified</b>					
Files that do not contain a required written justification for noncompetitive award.	2	0	0	1	3
Required written justifications that do not contain sufficient facts and rationale to support noncompetitive award.	2	6	0	2	10
Required justifications lacking the appropriate official's approval for noncompetitive award.	1	5	0	1	7
Market research not conducted for noncompeted procurements	1	8	0	2	11
Sufficient documentation to support the market research described in the file for noncompeted procurements not provided.	19	10	7	10	46
Files did not contain either the required Acquisition Plan or Advance Acquisition Plan ( <i>for both competed and noncompeted procurements</i> )	16	10	1	13	40
Procurement files had to be reconstructed ( <i>for both competed and noncompeted procurements</i> )	0	0	0	2	2

<sup>4</sup> The DHS Office of Procurement Operations is responsible for supporting acquisitions by the Office of the Secretary and the U.S. Citizenship and Immigration Service.



**Appendix E**  
**Major Contributors to this Report**

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Patrick O'Malley, Director  
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Gregory Crissey, Program Analyst  
Amanda Beisel, Program Analyst  
Melissa Jones, Program Analyst  
Steffanie Moore, Program Analyst  
Ashley Smith, Program Analyst  
John Chamberlain, Management and Program Clerk  
Gary Alvino, Independent Referencer

**Department of Homeland Security**

Secretary  
Deputy Secretary  
Chief of Staff for Operations  
Chief of Staff for Policy  
Acting General Counsel  
Executive Secretariat  
Director, GAO/OIG Liaison Office  
Assistant Secretary for Office of Policy  
Assistant Secretary for Office of Public Affairs  
Assistant Secretary for Office of Legislative Affairs  
Under Secretary for Management  
DHS Acting Chief Procurement Officer  
DHS Competition Advocate  
Director Office of Procurement Operations  
DHS Component Liaison, CBP  
DHS Component Liaison, CIS  
DHS Component Liaison, Office of the Secretary  
DHS Component Liaison, USCG

**Office of Management and Budget**

Chief, Homeland Security Branch  
DHS OIG Budget Examiner

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