



Department of Homeland Security Office of Inspector General

DHS Contracts Awarded Through Other than Full and Open Competition During Fiscal Year 2008





Homeland Security

MAR 25 2010

Preface

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

This report addresses the strengths and weaknesses of the department's noncompetitive procurement process. It is based on interviews with 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 of those who contributed to the preparation of this report.

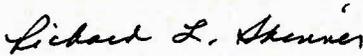

Richard L. Skinner
Inspector General

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Abbreviations

AAP	Advance Acquisition Plan
CPO	Chief Procurement Officer
DHS	Department of Homeland Security
FAR	Federal Acquisition Regulation
FPDS-NG	Federal Procurement Data System-Next Generation
OIG	Office of Inspector General
TSA	Transportation Security Administration

OIG

*Department of Homeland Security
Office of Inspector General*

Executive Summary

Public Law 110-329, the *Consolidated Security, Disaster Assistance, and Continuing Appropriations Act, 2009*, included a requirement that the Department of Homeland Security Office of Inspector General review the department's contracts awarded through less than full and open competition during fiscal year 2008 to determine compliance with applicable laws and regulations. To meet this mandate, we reviewed selected DHS component procurement files, as well as DHS policies, procedures, and management controls, to determine whether acquisition personnel appropriately documented and supported contracting decisions.

In fiscal year 2008, the Department of Homeland Security obligated about \$3.5 billion for procurements awarded through other than full and open competition. Based on our review of 39 contract files with a reported value of more than \$72 million, acquisition personnel did not always follow federal regulations when awarding noncompetitive contracts. Award files did not always contain sufficient evidence of market research or adequate acquisition planning. As a result, the department cannot ensure that it received the best possible value on these acquired goods and services.

We are making two recommendations that the department's Chief Procurement Officer strengthen internal controls over other than full and open competition procurements. The Chief Procurement Officer concurred with the intent of Recommendation 1 and fully concurred with Recommendation 2. If implemented, these actions should help enhance the effectiveness of the department's noncompetitive procurement process.

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.

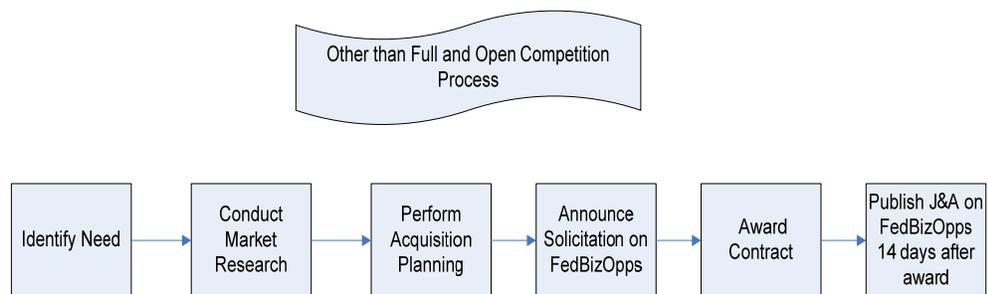
The Office of the Federal Procurement Policy within the Office of Management and Budget plays a central role in shaping the policies and practices that federal agencies use to acquire the goods and services they need to carry out their responsibilities. The office employs several tools to collect, develop, 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). The Government uses FPDS-NG reported data to measure and assess 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.

During fiscal year 2008, DHS contracting personnel were required to follow acquisition requirements set forth in the FAR, the *Department of Homeland Security Acquisition Regulation*, and the *Department of Homeland Security Acquisition Manual*. However, contracting personnel at the Transportation Security Administration (TSA) were not required to follow procurement requirements set forth in the FAR, *Department of Homeland Security Acquisition Regulation*, or *Department of Homeland Security Acquisition Manual* until June 2008. Instead, until this date, TSA contracting personnel followed TSA Management Directives 300.4, *Competition and Single Source Acquisition* and 300.8, *Acquisition Program Planning, Review, and Reporting* for conducting non-competed procurement and acquisition planning activities.

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 interest of taxpayers. According

to FAR § 2.101, 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.

Contract specialists are required to perform certain steps during the other than full and open contracting process. As depicted in the flowchart below, the other than full and open competition process begins when a need is identified. Afterwards, market research is performed to determine the most suitable approach for acquiring, distributing, and managing supplies and services to support the department’s mission. Acquisition planning helps ensure that the government is meeting its needs in the most effective, economical, and timely manner. With this assurance, acquisition personnel announce a solicitation on FedBizOpps, the single, government-wide point of entry for federal procurement opportunities greater than \$25,000. Government buyers can publicize their business opportunities by posting information directly to this website. Within 14 days of posting the solicitation, acquisition personnel award the contract and publish the justification and approval document on FedBizOpps, ending the contracting process.¹



The following entities within the Department of Homeland Security (DHS) have a role in managing these procurements:

- The Office of the Chief Procurement Officer – 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

¹ The FAR allows exceptions to the standard process for contracts awarded using the Unusual and Compelling Urgency exception to support other than full and open competition.

policy, 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 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 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.
- Procuring 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 at the component level. Procuring Competition Advocates must submit an annual report to the DHS Competition Advocate on the component's procurement activities.
- Heads of contracting activity directly manage the procurement functions of their respective components. They assist in the execution of acquisition programs by providing all of the necessary resources, facilities, and infrastructure for the acquisition process. The heads of contracting activity also provide procurement 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. This includes ensuring that sufficient funds are available for obligation, 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 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 investments, 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 managers' 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.
- Technical Representatives are responsible for providing and certifying as accurate and complete necessary data to support their recommendation for other than full and open competition.

On September 30, 2008, the President signed Public Law 110-329, the *Consolidated Security, Disaster Assistance, and Continuing Appropriations Act, 2009*. Section 525(d) of the law directs the Office of Inspector General (OIG) to review the department's contracts awarded during fiscal year 2008 through other than full and open competition to determine departmental 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 2008 through other than full and open competition to determine whether all required justifications and other elements were documented and approved at the appropriate level. We selected 39 noncompetitive procurements for review with a total estimated value of more than

\$72 million. We reviewed DHS policies, procedures, and management controls to determine whether acquisition personnel appropriately documented and supported contracting decisions.

Results of Audit

Our review and analysis of 39 DHS procurement files recorded during fiscal year 2008 as other than full and open competition showed that 33 had missing or inadequate documentation to demonstrate compliance with departmental or federal acquisition regulations. FAR § 4.801(b), Government Contract Files, requires that contract file documentation be sufficient in order to constitute a complete history of the transactions for the purpose of:

- Providing a complete background as a basis for informed decisions at each step in the acquisition process;
- Supporting actions taken;
- Providing information for reviews and investigations; and
- Furnishing essential facts in the event of litigation or congressional inquiries.

The procurement files reviewed did not always have sufficient evidence of market research or acquisition planning. Acquisition personnel did not always follow regulations, policies, or procedures to support awarding the contracts through other than full and open competition. As a result, the department cannot ensure that it received the best possible value on the goods and services it acquired from these contracts.

Noncompetitive Procurement Justification and Approval

Although competition is the preferred method of acquisition within DHS, FAR §§ 6.302-1 – 6.302-7 permits the following circumstances for other than full and open competition:

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

The FAR requires that any agency contracting officer who approves the acquisition of goods or services through other than full and open competitions provides written justification. The justification must have the proper approvals from the appropriate authority based on an established dollar threshold. Depending on the dollar amount of the acquisition, the justification approval requirements may vary. 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, the FAR allows some exceptions to the requirement for written justification for non-competed procurements.

Figure 1. Exceptions to Written Justification and Approval Requirement for Non-competed 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.²
 - 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:** USCG 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)(2)(i)*

We reviewed 39 noncompetitive procurements from fiscal year 2008, with an estimated value of more than \$72 million. Contract data recorded in FPDS-NG showed that 11 of the noncompetitive procurements required justification and written approval. However, based on our contract file review, 3 of the 11 did not have a written justification and approval document. For example, one of the three procurements that did not have written justification and approval documents was cited as a national security procurement under FAR § 6.302-6 in FPDS-NG. However, according to documents within the contract file, it appears that this procurement was an international agreement between the United States and a foreign government and as such, did not require a written justification and approval. We could not determine whether the component awarded this contract under other than full and open competition exceptions or as an international agreement, which the FAR provides an exemption for written justification and approval.

² The Small Business Administration's (SBA) 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.

Sole Source Awards Under the 8(a) Program

Of the 39 noncompetitive procurements from fiscal year 2008 that we reviewed, 23 or 59%, valued at about \$29 million, did not require written justification because components awarded them under the Small Business Administration 8(a) sole source program exception listed in figure 1. However, FAR part 10 requires that agencies conduct market research for all procurements. Specifically, it requires that agencies perform market research to identify the capabilities of small businesses that are available in the marketplace for meeting the requirements of the agency. It further states that agencies shall use this market research to determine whether sources capable of satisfying the agency's requirements exist.

Based on our review of the contract files, 16, or 70% of the 23 procurements lacked any evidence that procurement personnel conducted market research. At one component, all 10 of the contracts we reviewed were awarded as 8(a) sole source awards, with no evidence that market research was performed for 8 of the 10 contracts. The services purchased with these contracts varied from resource management to capital planning support for laundry services. The component awarded one contract, valued at \$1.2 million, as an 8(a) sole source contract for technical writing services to develop standard operating procedures for the component. Acquisition personnel did not conduct market research for this award, even though the services were not particularly unique or specialized and, quite possibly, other 8(a) firms may have been available to provide them. Correspondence in the contract file indicated that component personnel selected the contractor because a component official was "happy" with the contractor and "wanted to keep them on."

The Small Business Administration has a partnership agreement with the DHS where it delegates certain contract execution functions for sole source procurements under FAR part 19. This partnership agreement does not exempt procurement personnel from performing market research as required by FAR part 10.

Without proper documentation to support and justify procurement decisions, DHS increases the risk that components are awarding inappropriate procurements. DHS also cannot be certain components considered alternative contractors for procurements in the Small Business Administration 8(a) Program. Ultimately, the

department had no assurance that it was receiving the best possible value on the acquired goods and services.

Market Research

Many of the noncompetitive procurement files we reviewed for fiscal year 2008 did not contain sufficient evidence that market research was performed as required by the FAR. FAR § 10.001 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 29, or 76% of the 38 fiscal year 2008 noncompetitive procurements that required such market research. We previously discussed 16 of these 29 procurements under the Sole Source Awards using the 8(a) Program on page 8. The remaining 13 noncompetitive procurements did not provide sufficient evidence that market research was performed before awarding the funds. FAR §§ 6.302-1 – 6.302-7 provide exceptions to full and open competition, but not for conducting market research. Some procurement files did not provide sufficient evidence that component personnel performed market research before awarding the contracts. Other files contained references to market research that contracting personnel had conducted, however the files lacked any type of supporting documentation. Specifically, we noted that:

- For 7 procurements, the files did not contain evidence that component personnel conducted market research, as required. DHS components awarded 5 of the 7 procurements, valued at \$26,627,749, to a foreign government. None of the five contract files included documentation showing that component personnel conducted market research.

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- For the remaining 6 noncompetitive procurements valued at \$11.3 million, contract personnel summarized or mentioned market research in the files but did not contain sufficient documentation such as price negotiation memorandums, determination of findings, and market research summaries, to support references to market research. For example, one contract awarded for the development of a software-defined multi-band radio project, valued at \$6.2 million for FY08, made reference to market research having been conducted, but the contract file contained no documentation to support the component's claim.

The FAR provides limited guidance on the extent of market research that agencies must conduct and document with procurements. In addition, the *Department of Homeland Security Acquisition Regulation* and the *Department of Homeland Security Acquisition Manual*, followed during FY 2008, did not provide any further guidance to DHS components than what was in the FAR. This guidance required agencies to conduct market research, but did not require them to validate supporting documentation or assign responsibility to specific personnel. This allows personnel to apply market research requirements inconsistently. For example, some contracts contained a written market analysis, while others contained copies of data compiled from internet searches and cited as market research.

DHS updated its *Homeland Security Acquisition Manual* in October 2009 to include a Market Research Guide in Appendix I. This guide provides additional department-wide guidance to assist Acquisition Teams in determining the most suitable approach to acquiring, distributing, and managing supplies and services to support the department's mission. The Market Research Guide provides policies and procedures for conducting market research. The guide explicitly states that market research:

- Should start as soon as requirements are forecast as part of the acquisition planning and the development of the Advance Acquisition Plan.
- Efforts and results must be clearly documented and included in the contract file.
- Reports should be appropriate to the size and complexity of an acquisition.

The Market Research Guide emphasizes for DHS components that a market research plan is essential to ensure that the market research conducted is adequate and appropriate to the requirement. The guide goes further to state that the market research plan should document the overall research techniques the acquisition team will employ, information sources to be used, responsibilities of the team members, decision points in the process, and the timeframe for each task. The guide also provides attachments that list specific resources for market research, rules for meeting with industry representatives, guidelines for one-on-one discussions, and a market research report template.

The publication of such guidance should help DHS correct the market research deficiencies previously noted. By following both the departmental and federal policy, DHS components can ensure that they obtain the greatest overall benefit in response to procurement requirements.

Acquisition Planning

The DHS components we reviewed either did not prepare or could not provide the acquisition planning documentation required for some procurements awarded in fiscal year 2008. According to FAR § 2.101, 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 § 7.102 requires that agencies perform acquisition planning and market research to promote and provide for:

- Procurement of commercial or non-developmental items to the maximum extent practicable; and
- 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, Appendix I*, requires DHS to prepare a written acquisition plan for non-developmental 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 written acquisition plans. 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 Federal Interagency Database Online, located at www.fido.gov, is DHS' search tool for planned acquisitions for requirements over \$100,000.

The Advance Acquisition Plan (AAP) is a DHS plan of all anticipated procurements, including interagency agreements, blanket purchase agreements, and task orders greater than \$100,000 for the upcoming fiscal year. Acquisition personnel develop the plans on a fiscal year basis for procurements over \$100,000 and less than \$10 million (\$5 million for research and development) and modify the plans throughout the acquisition cycle using the DHS wide electronic AAP system under www.fido.gov. AAPs contain the integrated and coordinated efforts of all relevant acquisition personnel in determining acquisition requirements, financing, strategic planning, small business considerations, technical data requirements, contracting, and contract administration.

One of the 39 noncompetitive procurements in our sample required a written acquisition plan, which was contained in the contract file. The remaining 38 contracts required procurement personnel to enter advance acquisition planning information into the Federal Interagency Database Online system. Taking this action satisfied the written requirement for acquisition planning information. We found evidence, such as printouts from the system or references to the contract's AAP number, in 11 or 29% of the 38 contract files. However, the remaining 27, or 71% of the contract files, valued at more than \$58 million, did not contain evidence that contracting personnel satisfied the written acquisition plan requirement, or contract personnel could not provide the AAP numbers to enable us to retrieve the information.

There is currently no requirement at the federal or component level to include AAP numbers in the contract files. However, Procurement Operating Procedure 107, issued by the DHS Office of Procurement Operations on May 22, 2008, directs acquisition personnel to identify and describe program requirements in the Federal Interagency Database On-Line and obtain AAP numbers for their procurements and include the numbers in their purchase requests. For procurements not managed by the DHS Office of Procurement Operations, the guidance allows acquisition personnel to exclude AAP information from the contract files. Without the

AAP, supporting documentation is limited to confirm whether personnel adequately performed advanced acquisition planning.

The department needs to place greater emphasis on better planning and documenting its acquisitions and decision making processes. Making sure each component's acquisition decisions are well documented, integrated, and coordinated in determining requirements, financing, strategic planning, small business considerations, technical data requirements, contracting, and contract administration, will assist the department in this effort, as well as in ensuring that the goods and services acquired are the best value.

Recommendations

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

Recommendation #1: Implement a strengthened oversight review process for current and future other than full and open competition contract awards, including sole source contracts awarded under the 8(a) Program, to ensure component procurement files contain sufficient documentation to show compliance with FAR requirements.

Recommendation #2: Develop and implement guidance at the DHS level to require that acquisition personnel include Advanced Acquisition Plan numbers in procurement files, when applicable, based on established dollar thresholds.

Management Comments and OIG Analysis

The Acting Chief Procurement Officer (CPO) provided comments on a draft of this report. A copy of the comments in their entirety is included in Appendix B. The Chief Procurement Officer concurred with the intent of Recommendation 1 and fully concurred with Recommendation 2. The CPO also provided technical comments and suggested revisions to sections of our report. As appropriate, we made changes throughout the report in response to the CPO's technical comments and suggested revisions.

Management Comments to Recommendation 1

CPO concurred with the intent of the recommendation. The CPO agrees that lack of sufficient documentation is an issue for FY 2008 contract files, but believes it has a viable oversight program in place. Currently, the Office of the CPO maintains oversight of procurement actions that exceed specific dollar thresholds, conducts special reviews of specific contracting actions, and follows up on the special reviews. Additionally, the CPO indicated that a special review of noncompetitive contracts was recently completed to determine compliance with the FAR and that an additional follow-up review will be conducted during the first quarter of FY2011. The CPO plans to implement an action plan if the follow-up review reveals that significant improvements have not been made.

OIG Analysis: Dependent upon completion of the follow-up review scheduled for FY2011 and its results, the CPO's planned actions will satisfy the intent of this recommendation. The recommendation is resolved, but will remain open until the CPO provides the results of its FY2011 follow-up review and any actions taken as a result of this review.

Management Comments to Recommendation 2

The CPO concurred with the recommendation. The CPO will amend the *Homeland Security Acquisition Manual* to include a requirement that the Advanced Acquisition Plan number be included in the contract file.

OIG Analysis: The CPO's actions are responsive to the recommendation. The CPO's revision of the *Homeland Security Acquisition Manual* to include the Advanced Acquisition Plan number in the contract file shows the department's efforts to place greater emphasis on better planning and documenting its acquisitions and decision making processes. This recommendation is resolved, but will remain open until the CPO provides a copy of the updated/amended *Homeland Security Acquisition Manual*.

Management Technical Comments on Report Content

The CPO also provided technical comments and suggested revisions to sections of our report. We made a number of changes throughout the report in response to these technical comments and

suggested revisions. However, we did not make changes to the following areas:

Noncompetitive Procurement Justification and Approval: The CPO did not agree that 3 of the 11 noncompetitive awards required a justification and approval document. For the 3 contracts cited in the report, which were competitive procurements, two did not require justification and approval because they were awarded as single award 8(a) contracts and the other contract was awarded as an International Agreement.

OIG Analysis: We relied solely on the documentation within the contract file to perform our compliance review. We also relied on the information in FPDS-NG to provide us with correct contract information. The three contracts referenced in this section were included in our contract file review because they were coded as either “not available for competition” or “not competed.” Furthermore, during our file review, the contract that was awarded under an International Agreement did not contain the required Letter of Agreement, as noted in the comments to the draft report.

Appendix A

Purpose, Scope, and Methodology

On September 30, 2008, the President signed Public Law 110-329, *the Consolidated Security, Disaster Assistance, and Continuing Appropriations Act, 2009*. Section 525(d) of the law directs the OIG to review the department's contracts awarded during fiscal year 2008 through other than full and open competition to determine departmental 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 examined prior audit reports to identify related work in this regard. We also reviewed DHS procurements in fiscal year 2008 to determine whether selected components' justifications for noncompetitive procurement awards contained required elements and were appropriately approved.

We sampled procurement files for four 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. We coordinated our selections with the Government Accountability Office team that performed a similar audit during the same timeframe. Our sample covered procurement offices within the U.S. Coast Guard, Transportation Security Administration, Federal Emergency Management Agency, 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 reviewed a judgmental sample of 39 noncompetitive based contract procurement files, with approximately 10 files from each selected component that FPDS-NG indicated were awarded through other than full and open competition. We reviewed the procurement files to determine whether they contained the documentation needed to justify the contract awards. Specifically, we determined whether the noncompetitive procurement files contained proper justifications and approvals, adequate market research, and acquisition plans appropriate to the dollar values of the awards. Because there is no assurance that a judgmental sample is representative of the entire universe, our review results should not be projected to all DHS procurements.

Appendix A
Purpose, Scope, and Methodology

We conducted our fieldwork between October and December of 2009 at contracting offices in Washington, D.C., and Emmitsburg, Maryland. We conducted this performance audit under the authority of the *Inspector General Act of 1978*, as amended, and according to generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

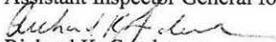
Appendix B Management Comments to the Draft Report

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

FEB 18 2010



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

FROM: 
Richard K. Gunderson
Acting, Chief Procurement Officer
Department of Homeland Security

SUBJECT: CPO Response to Draft Inspector General Report: *DHS Contracts Awarded Through Other Than Full and Open Competition During Fiscal Year 2008*

In response to your memorandum received on January 26, 2010, entitled *Draft Report: DHS Contracts Awarded Through Other Than Full and Open Competition During Fiscal Year 2008*, attached are the comments from the Office of the Chief Procurement Officer (CPO) for inclusion within the management comments appendix of the forthcoming final report.

If there are any questions, please contact Mr. David J. Capitano, Director, Oversight and Strategic Support, at (202) 447-5417 or at david.capitano@dhs.gov.

Attachments:
CPO Response to Draft Report
CPO Memorandum to HCAs: "Results of the OCPO On-Site Baseline Reviews"

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

Appendix B Management Comments to the Draft Report

CPO Response to OIG Draft Report: "DHS Contracts Awarded Through Other than Full and Open Competition During Fiscal Year 2008"

Attachment

I. CPO Response to OIG Draft Report Recommendations

The draft IG report includes two recommendations to the Chief Procurement Officer (CPO); specific responses to each recommendation are provided below.

Recommendation 1: *"Implement a strengthened oversight review process for current and future other than full and open competition contract awards, including sole source contracts awarded under the 8(a) Program, to ensure component procurement files contain sufficient documentation to show compliance with FAR requirements."*

CPO Response: While CPO agrees that lack of sufficient documentation is an issue for FY08 contract files, we do not believe the solution is to "implement a strengthened oversight review process." This recommendation implies that the current oversight process is not adequate; CPO disagrees with that implication. Instead, CPO believes that the solution is to continue our existing, effective oversight program in this area and, should the results of our follow-up reviews indicate that improvements are not being made, implement an additional action plan (e.g., increased accountability, more pre-award reviews/approvals by CPO) to address the problem..

The subject recommendation incorrectly suggests that the Department's current oversight review processes are inadequate with respect to other than full and open competition contract awards, including sole source contracts awarded under Section 8(a) of the Small Business Act. We believe that CPO has an effective pre-award and post-award oversight program for noncompetitive contracts.

In regards to pre-award oversight, pursuant to the Homeland Security Acquisition Manual (HSAM), the CPO reviews and/or approves components' acquisition planning documents, sole source justifications, and other administrative aspects of procurement actions conducted under other than full and open competition that exceed specified dollar thresholds. In addition, OCPO conducts post-award oversight reviews of component contract actions, including those awarded via other than full and open competition, without dollar threshold limitations. These reviews occur during the component specific procurement management reviews (each component is reviewed every three years).

CPO also conducts special reviews of specific contracting areas. This includes the recently completed special review of noncompetitive contracts by CPO's Procurement Oversight Branch. The purpose of this special review was to determine whether DHS contracting activities are awarding non-competitive contracts in compliance with the requirements set forth in the Federal Acquisition Regulation (FAR) Part 6.3, the Homeland Security Acquisition Regulations (HSAR), the Homeland Security Acquisition Manual (HSAM), and DHS acquisition policies and guidance. A copy of the draft report findings and recommendations has been sent to the contracting activities for comment. The final report, which will be issued later this month, will

Appendix B Management Comments to the Draft Report

CPO Response to OIG Draft Report: “DHS Contracts Awarded Through Other than Full and Open Competition During Fiscal Year 2008”

be provided to the DHS IG. We also will be performing a follow-up review in the first quarter of FY11 related to this special review to determine if (a) the recommendations in our report have been implemented, and (b) whether the implementation of those recommendations has improved compliance by DHS contracting activities with the applicable FAR, HSAM, and HSAR requirements. It is anticipated that the report on the follow-up review will be issued sometime in January, 2011. Should this follow-up review disclose that significant improvements have not been made in the areas where deficiencies were identified in the initial special review, CPO will initiate additional actions (e.g., increased accountability, lower thresholds for CPO and/or HCA approval for pre-award reviews) to address this issue.

It is important to note that the results of both our component oversight reviews and special reviews are submitted to component leadership to assist in targeting training opportunities and emphasizing process enhancements. In addition, in the enclosed September 2, 2009 memorandum to the Heads of Contracting Activities entitled “Results of the OCPO On-Site Baseline Reviews”, CPO summarized and emphasized the most prevalent findings of our component specific baseline reviews. This included an emphasis on the need to improve J&A’s, acquisition planning, and general file documentation; for example:

Justification and Approval (J&A): the memorandum addresses contract files that did not contain a required J&A and other cases where the J&A was not signed, and/or lacked an adequate justification for an award on the basis of other than full and open competition;

Acquisition Planning (AP): the memorandum advised HCAs that some contract files did not adequately document the acquisition planning process; and,

General File Documentation: the memorandum notes that some contract files were not sufficient to constitute a complete history of the transaction as required by FAR 4.801 and reminded HCAs that contracting personnel must assure that the contract files are sufficient to provide a complete history of every contract or order.

The OCPO oversight branch currently has a thirteen-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. OCPO’s 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 defines, by quarter, 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 to define the frequency, methodology and levels of oversight to be provided.

In summary, while CPO agrees that documentation for FY08 noncompetitive awards is an area where improvement is needed, we do not believe the recommended solution (“strengthen oversight”) is an appropriate recommended solution. CPO already has an effective oversight program in the area of contract documentation, including the performance of extensive oversight

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reviews, issuance of reports to HCA’s, and issuance of a memorandums to all HCA’s emphasizing the importance of such documentation. CPO believes the solution is to continue our current oversight efforts, including conducting a follow-up review to our special review on noncompetitive contracts. Furthermore, if this follow-up review indicates that improvements are not being made, CPO will implement an action plan (e.g., increased accountability, more pre-award reviews/approvals by CPO) to address the problem.

Recommendation 2: “Develop and implement guidance at the DHS level to require that acquisition personnel include Advanced Acquisition Plan numbers in procurement files, when applicable, based on established dollar thresholds.”

CPO Response: CPO concurs with this recommendation. OCPO will amend the HSAM to include a requirement that the Advanced Acquisition Plan number be included in the contract file.

II. CPO General Comments: Contract Competition within DHS

In addition to the negative findings noted in the report, CPO recommends that the report also recognize the significant accomplishments that DHS has made in the area of competition. The percentage of DHS obligations awarded through competitive contract actions increased from 69 percent in Fiscal Year (FY) 2007 (i.e., \$7.2 billion in competitive actions awarded from a competition base of \$10.4 billion) to 75 percent in FY 2008 (i.e., \$9.9 billion in competitive actions awarded from a competition base of \$13.2 billion). In addition, six of the eight DHS Contracting Activities also achieved a competition rate (in terms of competitive obligations) of 70 percent or greater. These outstanding accomplishments contributed to DHS realizing a 75 percent level of competition for FY 2008. This success continues a positive 6-year trend for DHS in the area of competition, as illustrated by the Exhibits that follow:

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

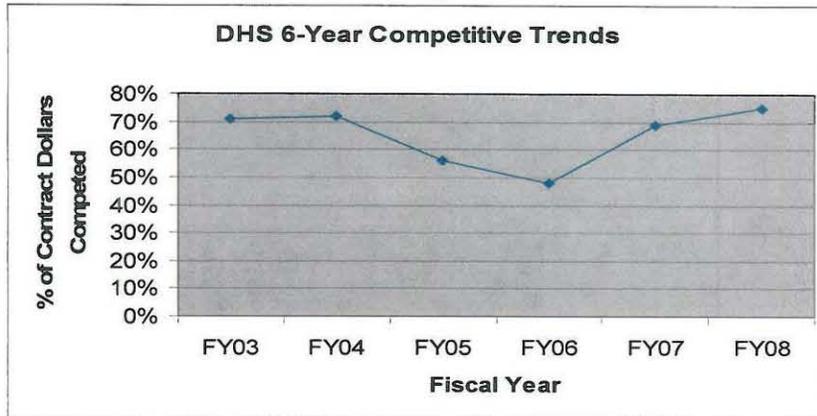
DHS Component/Contracting Activity	FY 2008 Accomplishment in Competition (Dollars)	FY 2007 Accomplishment in Competition (Dollars)	FY 2006 Accomplishment in Competition (Dollars)
CBP (Includes SBI)	74%	65%	60%
DHS-HQ. (OPO and CIS)	80%	66%	54%
FEMA	79%	81%	37%
FLETC	74%	77%	85%
ICE	79%	70%	57%
TSA	71%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

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

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Exhibit 2 – DHS 6-Year Competitive Trends



As illustrated in Exhibits 1 and 2, FY 2008 marked a recovery by DHS to pre-Katrina levels of competition. FY 2008 was the third, over a six fiscal year period, in which DHS achieved a level of competition equaling or exceeding 70 percent.

During FY 2008, DHS and its Components increased its actions and activities to promote competition and acquire commercial items. Specifically, Headquarters and Component actions included:

- Increased accountability, organizational changes, and realignment;
- Increased staffing and expanded training programs;
- Expanded policy and enhanced review processes; and
- Improved use of technological solutions.

Increased Accountability, Organizational changes, and realignment

The DHS Competition Advocate worked with each Component to establish annual competition goals, encourage Components to attain competition goals, and identify and resolve barriers to competition. As part of this effort, the DHS Competition Advocate and Component Competition Advocate monitored competition data as reported to the Federal Procurement Data System – Next Generation (FPDS-NG) to track competition achievements throughout the year. Mid-year reports were provided to each Component Head of the Contracting Activity highlighting achievements and, as appropriate, identifying areas in need of improvement. Competition Improvement Plans were requested from Components in danger of missing their goals. In

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addition, in response to a mandate from the Office of Federal Procurement Policy to improve the quality of contract data reported to FPDS-NG, DHS and its Components underwent extensive efforts to verify, validate, and certify its FPDS-NG data as accurate and complete.

Since July 2007, the DHS Competition Advocate has maintained 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 competition and the use of innovative and best procurement practices. Awards were presented to three individuals and four teams under the DHS Competition and Acquisition Excellence Awards Program in July 2008.

Specific Components accomplishments include:

- Serving as the Competition Advocate, the Deputy Assistant Secretary for Management (DASM) issued ICE’s first Annual Competition Advocate memo in January 2008. The memo emphasized that justifications for non-competitive acquisitions would be closely scrutinized and that managers would be required to fully explain why competition was not feasible. The DASM also directed the ICE Office of the Principal Legal Advisor to review sole source and limited source justifications for legal sufficiency. In addition, ICE included competition goals in the annual performance plans of Senior Acquisition leadership.
- As part of the restructuring of its competition advocacy program, in June 2008, the USCG delegated a Headquarters Procuring Activity Competition Advocate (PACA) and two Field PACAs, one to serve the west coast and the other to serve the east coast. The Headquarters PACA was delegated authority to approve Justifications for Other Than Full and Open Competition for requirements valued between \$550,000 and \$11.5 million. The Field PACAs were delegated authority to approve justifications and approvals (J&As) for requirements valued between \$550,000 and \$1 million. Contracting officers were delegated authority to approve J&As valued up to \$550,000. This hierarchical structure and separation of duties refocused the attention of details, and horizontally realigned the administration of the overall competition advocate program into manageable sections for efficiency and effectiveness.
- FEMA established a Contract Management Review Board (CMRB), of which the Competition Advocate is a standing member. The CMRB promotes competition, commercial item acquisitions, and the elimination of overly restrictive requirements through its review of acquisition plans, statements of work, and contract provisions and clauses.

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Increased staffing and expanded training programs

Building and sustaining the DHS acquisition workforce is a priority of the Chief Procurement Officer (CPO), not just in the area of procurement and contracting, but in all the other disciplines that make up an acquisition workforce. Recognizing that Governmentwide, the demand for Contract Specialists exceeds the supply, DHS implemented a series of targeted efforts to attract and retain a skilled contracting workforce. At DHS, Contract Specialist staffing (Series 1102) nearly doubled from an on-board staff of 603 in Fiscal Year 2004 to 1,107 Full time Equivalent (FTE) as of mid-September 2008. In 2008, DHS was staffed at 84.2 percent of its authorization for 1102s. DHS also increased its FTEs in the areas of procurement oversight, program management, and cost analysis. DHS recognizes that having adequate staffing levels impact the quality of documentation supporting individual procurement actions, the degree of competition needed to achieve competition goals, and DHS’s ability to ensure compliance with the Competition in Contracting Act (CICA).

DHS and its Components placed a high priority on training and professional development for all members of the acquisition workforce. During FY 2008, the CPO, who is responsible for all aspects of acquisition at DHS, initiated formal training and certification programs for Program and Project Managers, Test and Evaluation Engineers, Contracting Officers Technical Representatives, and Cost Analysts. DHS Components reported a significant increase in the number of certified acquisition professionals under these programs.

In addition to the certification programs, DHS and its Components provided supplemental training opportunities to members of the acquisition workforce. For example:

- The DAU on line CLC 015, Commercial Acquisition class was offered at the FLETC. Additionally, the FLETC Procurement Division provided a 3-hour module of purchasing training to new supervisors which covered commercial item acquisition procedures.
- APL developed a training program to guide Component procurement personnel in the documentation and review processes related to the application of exceptions to full and open competition contained in FAR Subpart 6.3. Over 100 students were trained in five sessions.
- Components also provided training on FPDS-NG data reporting. FEMA sponsored two training sessions focusing on properly entering data into FPDS-NG. HQ-OPO’s ADMT provided mandatory FPDS-NG training to all OPO contracting officers and contract specialists. FLETC initiated the development of training guides to ensure that contract actions were properly coded and reported in FPDS-NG to ensure accuracy. USCG’s data accuracy review was followed-up with FPDS-NG training conducted at 48 contracting activities.
- The HQ-OPO Policy, Oversight and Customer Support Division (POCS) provided targeted training in developing acquisition plans and statements of work. The training was provided

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as a means of fostering stronger relationships with program offices and to accomplish improved acquisition planning.

- TSA conducted 18 workshops on a variety of acquisition topics. Several of the workshops focused on the competitive process, including writing statements of work, conducting market research, and understanding the source selection process.
- ICE provided training on performance-based techniques to COTRs responsible for drafting performance work statements and quality assurance plans.
- The CBP Procurement Directorate provided training on FedBid® and market research.
- In addition, DHS and its Components provided learning opportunities using other forums. For example, TSA’s Office of Acquisition hosted monthly Program Management Town Hall meetings where information promoting competition, the use of commercial items, and lessons learned was shared.

Expanded policy and enhanced review processes

DHS and its Components developed policies, procedures, and processes to enhance competition and increase the use of commercial item acquisitions. For example:

- CBP established and implemented a more stringent J&As process for actions awarded under other than full and open competition during FY 2008. As a result, the CBP Competition Advocate was able to reduce the number of non-competitive actions from 31 actions in FY 2007 to 26 actions in FY 2008, a difference of 16%.
- During FY 2008, the HQ-OPO Competition Advocate continued to discourage, and in some cases, reject the inclusion of option periods in non-competitive procurements. Elimination of option periods forces a requisitioner to revisit market research, thereby, increasing the potential for a competitively awarded procurement action. The Competition Advocate also challenged several requirements that limited competition on the basis of expediency. As a result, the requirements were revised and advertised to maximize competition. In addition, the HQ-OPO’s implementation of POP 501, “Procedures for Tracking J&A and Limited Source Justifications (LSJ),” issued on October 17, 2007, created opportunities for increased competition by improving the tracking and analysis of HQ-OPO J&As and LSJs. The tracking process enabled HQ-OPO and its Competition Advocate to capture data on sole-source procurements, and facilitated the conduct of periodic trend analysis and the identification of competitive barriers. Periodic review allowed the Competition Advocate to take the appropriate action throughout the fiscal year as opposed to after the fiscal year had ended.

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- In June 2008, the USCG Competition Advocate function was reassigned from the Head of the Contracting Activity to the senior civilian in the acquisition directorate. The Competition Advocate’s extensive engineering background provided an independent technical assessment capability that had not existed previously, improving the rigor of the review and approval process. For similar reasons, in 2008, TSA’s Head of the Contracting Activity appointed a Senior Executive with broad acquisition and program management background to serve as the Competition Advocate.
- Review teams from the USCG Office of Procurement Policy and Oversight completed eight on-site visits to field offices to review internal control plan compliance. A major part of the review was to ensure compliance with the CICA. In addition, as part of the USCG oversight/quality assurance process, procurement analysts at USCG Headquarters routinely reviewed FedBizOpps synopses and other announcements for competition and commerciality of proposed contract actions. USCG has a rigorous program to implement the requirements prescribed in FAR 6.302-1(b)(4) when the agency head determined that only specified makes and models of technical equipment and parts would satisfy the agency’s needs for additional units or replacement items, and only one source was available. The program is comprised of several levels of review and approval by both the requiring activity and the Office of Standards and Capabilities to ensure essentialness.
- FLETC instituted a local standard operating procedure that required supervisory review and concurrence of any sole-source awards over the micro-purchase threshold.
- TSA’s Management Directive 300.13, “Acquisition Using Other than Full and Open Competition,” established thresholds for approvals within TSA for all non-competitive contract actions. The approval levels are more stringent than the FAR requirements to ensure higher levels of review and approval for non-competitive actions. Through the procurement planning conference process, the Office of Acquisition has successfully identified non-competitive plans earlier and has worked with the program offices to increase competition.

Improved use of technological solutions

DHS and its Components increased their use of technology such as FedBid, a web-based reverse auction tool that allows Federal buyers to procure commercial commodity-type requirements to satisfy competition goals. Use of reverse auctioning solutions to compete commercial requirements in FY 2008 increased transparency, facilitated open competition, and resulted in considerable savings. For example, using FedBid, total dollars competed by CBP included \$172.4 million, with estimated savings at \$12.9 million or 7.5%. HQ-OPO successfully awarded over \$16.9 million and achieved a savings of 9.4% from the Government Cost Estimate.

Components used the GSA e-buy system, where applicable, to solicit goods and services under FSS. The use of e-buy broadly disseminates solicitation requirements and promotes competition.

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III. CPO Comments on Report Content

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

Executive Summary:

We recommend that paragraph two of the executive summary be revised to read as follows:

“In fiscal year 2008, the Department of Homeland Security obligated about \$3.3 billion for procurements awarded through other than full and open competition. Based on our review of 39 noncompetitive contract procurements, with a total reported value of more than \$72 million, acquisition personnel did not always adequately document the files to show that they had complied with applicable federal acquisition regulations when awarding noncompetitive awards. Award files did not always have sufficient evidence of market research or adequate acquisition planning.”

Section entitled “Background,” pages 2 through 5.

CPO notes that within the second paragraph on page 2, the next-to-last sentence incorrectly states that FPDS-NG “. . . *measures various elements of procurement performance . . .*” However, FPDS-NG is a database where contracting officers record various data elements related to their contract actions. Therefore, CPO recommends that this sentence be revised to read:

“FPDS-NG provides a comprehensive web-based tool for agencies to report contract actions; and FPDS-NG reports provide a means for measuring and assessing various elements of procurement performance, e.g., competition.”

Within the fourth paragraph on page 2, the first sentence states: “*Competition is desirable because it can result in the timely delivery of quality products and services at reasonable costs.*” The first sentence as written implies that sole source procurements do not result in timely delivery of quality products and services at reasonable costs. Therefore, CPO recommends that the sentence be rewritten to read as follows:

“Competition provides the best assurance that the Government has (a) received a fair and reasonable price, and (b) obtained the most comprehensive input on the technical aspects of the various methods in which the work can best be performed.”

CPO notes that on page 3, within the first full paragraph, the description of the flow chart depicted below this paragraph (last sentence) incorrectly states that: “*Within 14 days of posting*

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the solicitation, acquisition personnel award the contract and publish the justification and approval document on FedBizOpps, ending the contracting process.” This statement is not entirely accurate. Therefore, CPO recommends that this sentence be revised as follows:

“After a contract is awarded under other than full and open competition, the FAR requires the agency to make the justification publicly available within 14 days, unless the contract is awarded under the exception for Unusual and Compelling Urgency, which permits public posting within 30 days. The justifications are posted at the Government Point of Entry, FedBizOpps.”

Also, CPO notes that the “*Other than Full and Open Competition Process*” flowchart, on page 3, depicts a standard process for all contracts awarded under other than full and open competition. However, this standard process does not apply in all situations. For example, the exception to other than full and open competition under *Unusual and Compelling Urgency* pursuant to FAR 6.302-2 does not require announcing a solicitation on FedBizOpps. The same is true for procurements authorized or required by statute under FAR 6.302-5, and certain actions related to national security at FAR 6.302-6. FAR 5.202 identifies other reasons for exceptions to the synopsis requirement. Therefore, CPO recommends that the flowchart be changed as follows:

- 4th block should read: Announce the Solicitation on FedBizOpps unless an exception is authorized;
- 5th block should read: Evaluation and Award;
- 6th (last) block should be revised to reflect both of the required posting timeframes (i.e., 14 days and 30 days) or none at all; and,
- Another block should be added to read: Contract Administration Phase Begins.

With respect to the various defined roles, beginning on page 3 after the flow chart and continuing to page 4, CPO recommends that the additional role of the component Procuring Competition Advocate (PACA) be added. Their role is the same as the DHS Competition Advocate, but at the component level. CPO recommends the following language for the PACA role:

“The Procuring Competition Advocate (PACA) 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 at the component level. PACAs must submit an annual report to the DHS Competition Advocate on the components’ procurement activities.”

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In addition, since justifications have to be certified by a Technical Representative (see FAR 6.303-1(b) and DHS J&A Guide), CPO recommends adding a role entitled “Technical Representative” with the following language:

“Technical Representatives are responsible for providing and certifying as accurate and complete necessary data to support their recommendation for other than full and open competition.”

With respect to the “Heads of contracting activity” (HCAs) role described on page 4, CPO recommends that the term “*acquisition functions*” within the first sentence be revised to read “procurement functions” in order to correctly describe the role of the HCAs. HCAs’ support the execution of acquisition programs via the procurement process and provide procurement data to the CPO. Therefore, CPO recommends that this bullet be revised as follows:

“Heads of contracting activity directly manage the procurement functions of their respective components. They assist in the execution of acquisition programs by providing all of the necessary resources, facilities, and infrastructure for the procurement process. The heads of contracting activity also provide procurement data and lessons learned to the Chief Procurement Officer for wider distribution within DHS.”

Finally, within the last paragraph of this section, on page 5, CPO notes that the fourth sentence, states “*We selected 39 noncompetitive procurements for review with an estimated value of more than \$72 million.*” As currently written, this sentence could be interpreted as meaning each of the procurements reviewed were in excess of \$72 million, rather than the fact that the total value of the all the procurements reviewed was \$72 million. Therefore, CPO recommends that this sentence be revised to read as follows:

“We selected 39 noncompetitive procurements for review with an estimated total value of more than \$72 million.”

Section entitled “Results of Audit,” pages 6 through 13.

The section entitled “Results of Audit,” within the first paragraph, states that 39 DHS procurement files were reviewed and that 33 had missing or inadequate documentation needed to prove compliance with departmental or federal acquisition regulations. We believe this does not provide a complete or accurate review of the report findings, because it groups multiple areas together. To assure a clear understanding by the reader, we recommend that this paragraph be re-written to read as follows:

“Our review and analysis of 39 DHS procurement files awarded during fiscal year 2008, through other than full and open competition, included 16 noncompetitive contract procurements

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plus 23 sole source contracts with the Small Business Administration (SBA) at TSA, FEMA, USCG, and the Office of Procurement Operations (OPO), with a reported total value of more than \$72 million. Of these 39 files, we found the following:

Justification and Written Approvals: 0% - All reviewed files complied with the FAR requirements.

Written Justification for Awards Under the 8(a) Program: 74% (17 of 23) did not comply with the FAR requirements.

Market Research (Other than Awards Under the 8(a) Program): (TBD*) % (___* of ___*) did not comply with the FAR requirements.

Acquisition Planning: 71% (27 of 38) either did not have the Advanced Acquisition Plan (AAP), referenced the incorrect AAP number, did not have a printout in the contract file, or component personnel could not provide the AAP numbers to enable us to retrieve the information from the Federal Interagency Database On-Line."

**Note: To be completed by OIG.*

CPO believes the above presentation provides a more accurate summary, and facilitates focus on each of the individual problem areas. Note that the numbers of the J&A's that were noncompliant have been reduced to zero because we believe the three procurements cited as lacking a J&A in the report actually did not require a J&A (see comments below on the subsection entitled "Noncompetitive Procurement Justification and Approval"). In addition, CPO believes the 8(a) awards should not also be included in the market research statistics, since this would represent double-counting and not provide the reader adequate visibility of the findings related to the non-8(a) awards.

In addition, since the percentage of noncompliance was zero in the area of Justifications and Written Approvals, we recommend that the first sentence of the second paragraph of this summary section (Page 6 of the draft report) be rewritten to read as follows:

"The procurement files reviewed did not always have sufficient evidence of market research or adequate acquisition planning".

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Subsection: "Noncompetitive Procurement Justification and Approval," pages 6 through 7.

This section of the draft report (second paragraph, Page 7) asserts that 3 of the 11 noncompetitive awards requiring a Justification and Approval (J&A) did not include the required J&A. CPO takes exception to this finding because we do not believe that any of these three files required a J&A.

The three files cited by the IG are contracts awarded by the Office of Procurement Operations (OPO), TSA, and USCG. The rationale for why a J&A was not required for each of these contracts is provided below:

- 1) HSTS0308CBTC015 (TSA): Single award 8(a) contract; justification and approval not required per FAR 6.203(b).
- 2) HSCG2308CH25001 (Coast Guard): Justification and approval not required; the FAR, at 6.302-4(c), actually exempts the Coast Guard *by name* from this requirement. This contract was awarded pursuant to an International Agreement (see FAR 6.302-4). The file contains a signed letter-of-agreement and the award memorandum cites the authority for the exception to competition, again per FAR 6.302-4(c).
- 3) HSHQDC08C00007 (OPO): Single award 8(a) contract; justification and approval not required per FAR 6.203(b).

Based on the above, CPO recommends that the report be revised to recognize 100% compliance by DHS contracting activities in this area.

Subsection: "Market Research," pages 9 through 11.

CPO believes that the findings in this section should include only non-8(a) awards. Including the 8(a) awards in both this subsection and the prior subsection represents double counting, distorts the results of the audit related to non-8(a) awards, and fails to provide the reader any insight into the noncompliance percentage related to the non-8(a) awards. Therefore, CPO recommends that the second paragraph of this subsection be re-written to read as follows:

"We identified deficiencies within market research for __* or __* % of the __* fiscal year 2008 noncompetitive procurements that were not 8(a) awards, as summarized below:

- For __* procurements, the files did not contain evidence that component personnel conducted market research, as required.
- For __* procurements, market research was summarized or mentioned in the files. However, the contract files did not contain sufficient

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documentation to support the summaries or the activities conducted. For example, ___* of the ___* procurements, with a total value of \$___*, were from ___* components and contained no documentation supporting that market research had been conducted. Although market research was mentioned in one report in a file, the file contained no documentation to show that it had been done."

**Note: To be completed by OIG.*

Furthermore, on page 10, within the third paragraph, the first sentence states, "*DHS updated its Homeland Security Acquisition Manual in October 2009 to include a Market Research Guide in Appendix I.*" This statement is inaccurate. On March 13, 2009, the DHS Office of the Chief Procurement Officer issued for comment, and interim use, at the discretion of the component Heads of the Contracting Activity, the Draft Market Research Guide. Comments were received and incorporated in April – May 2009. A final Market Research Guide was released as part of a global DHS Acquisition Manual update on October 1, 2009.

Appendix C
DHS Contracts Reviewed

DHS Contracts Reviewed³ FY 2008	
1	HSFEEM08C0298
2	HSFEEM-08C0253
3	HSFEEM-08C0085
4	HSFEHQ-08C1710
5	HSFEHQ-08C9005
6	HSFEEM-08C0294
7	HSFEEM-08C0306
8	HSFEEM-08C0317
9	HSFEEM-08C0288
10	HSFEEM08C0137
11	HSCG2308CHBK001
12	HSCG2308CHIP005
13	HSCG2308CHBM001
14	HSCG2308CHGW001
15	HSCG2308CH25001
16	HSCG2308CTXT001
17	HSCG2308CE43042
18	HSCG2308CPMG012
19	HSCG2308CT00000
20	HSTS0108CHRM205
21	HSTS0308CBTC015
22	HSTS0308CCOM034
23	HSTS0108CFIN028
24	HSTS0108CFIN003
25	HSTS0208CMLS104
26	HSTS0208CCGO033
27	HSTS0108CRES485
28	HSTS03-8CCIO129
29	HSTS0108CFIN032
30	HSHQDC08C00019
31	HSHQDC08C00025
32	HSHQDC08C00197
33	HSHQDC08C00043
34	HSHQDC08C00131
35	HSHQDC08C00007
36	HSHQDC08C00198
37	HSHQDC08C00188
38	HSHQDC08C00177
39	HSHQDC08C00148

³ Contract numbers downloaded from FPDS-NG. We provided each component a listing of contracts reviewed with deficiencies noted during our review.

Appendix D
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Appendix E

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