

DEPARTMENT OF HOMELAND SECURITY

Office of Inspector General

Audit of Buy American Act Compliance



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**Homeland
Security**

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 by the OIG as part of its DHS oversight responsibility to promote economy, effectiveness, and efficiency within the Department.

This report assesses the strengths and weaknesses of DHS' compliance with the Buy American Act. It is based on interviews with employees and officials of relevant agencies and institutions, direct observations, and a review of applicable documents.

The recommendations herein have been developed to the best knowledge available to the OIG, and have been discussed in draft with those responsible for implementation. It is our hope that 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
Acting Inspector General

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Abbreviations

BAA	Buy American Act
CBP	Customs and Border Protection
CO	Contracting Officer
DHS	Department of Homeland Security
FAR	Federal Acquisition Regulation
FPDS	Federal Procurement Data System
FPDS-NG	Federal Procurement Data System – Next Generation
H.R.	House of Representatives
HSCIS	Homeland Security Contract Information System
HSAM	Homeland Security Acquisition Manual
HSAR	Homeland Security Acquisition Regulations
ICE	Immigration and Customs Enforcement
NAFTA	North American Free Trade Agreement
OCPO	Office of Chief Procurement Officer
OMB	Office of Management and Budget
OIG	Office of Inspector General
TSA	Transportation Security Administration
U.S.C.	United States Code
USCG	United States Coast Guard
USSS	United States Secret Service

*Department of Homeland Security
Office of Inspector General*

Executive Summary

The House of Representatives Conference Report H.R. 108-774 for the Department of Homeland Security's (DHS') appropriation for fiscal year 2005 directed the Office of Inspector General (OIG) to audit DHS' compliance with the Buy American Act (BAA). In response to this direction, we reviewed DHS' policies, procedures, and practices to determine whether sufficient controls were in place to ensure that DHS fully complied with BAA requirements. The Conference Report required that we submit our report at the same time the President submits to Congress the budget for fiscal year 2006 which limited the amount of time for required fieldwork.

Our fieldwork began in November 2004 and continued through February 2005 at several DHS organizational component procurement offices. See Appendix A for a more detailed description of our objective, scope, and methodology.

DHS and its organizational component procurement offices have sufficient policies and procedures to ensure compliance with BAA requirements. However, we were unable to fully validate compliance with BAA requirements because of DHS' inability to identify conclusively all procurements subject to BAA requirements and the tight time constraints under which the audit had to be conducted. Following is a summary of our review:

1. DHS organizational components have procurement oversight processes to ensure that Federal Acquisition Regulations (FAR) requirements, including BAA, are incorporated appropriately into contracts.
2. Neither the Federal Procurement Data System – Next Generation (FPDS-NG) nor the Homeland Security Contract Information System (HSCIS) have the capability to collect data regarding the amounts and types of foreign end products being procured by DHS.
3. DHS organizational components identified acquisitions worth approximately \$165 million involving foreign end products. These

acquisitions do not represent the entire BAA universe at DHS. While DHS believes that acquisition of foreign end products occurs infrequently, system limitations make it difficult to determine the actual frequency of foreign acquisitions.

4. Immigration and Customs Enforcement (ICE) incorrectly applied BAA evaluation factors during the source selection process for a major procurement of pistols.
5. Automated contract writing systems that help ensure BAA compliance are not available at all procurement offices at this time.

We are recommending that the Office of the Chief Procurement Officer:

1. Provide additional training to procurement personnel regarding the BAA requirements and the application and use of BAA evaluation factors.
2. Complete the scheduled implementation of automated contract writing systems for all DHS organizational components to ensure compliance with BAA and other FAR requirements.
3. Consult with OMB regarding the necessity for government-wide tracking of BAA compliance within FPDS-NG.
4. Revise HSCIS guidance to change the country of origin field to a mandatory field, when applicable.
5. Require organizational components to continue manual data collection on domestic and foreign end product data, until automated systems to collect this information become available.

Background

The BAA of 1933, 41 U.S.C. 10a-10d, was enacted during the Depression to foster and protect American industry and workers. The BAA requires, with certain exceptions, that only articles, materials, and supplies that have been mined, produced, or manufactured in the United States be utilized in fulfilling federal procurement and construction contracts. The BAA is applicable only to articles, materials and supplies; and is not applicable to professional or personal services. Certain trade agreements, e.g., the North America Free Trade Agreement (NAFTA) waive the applicability of BAA for some foreign supplies and construction materials from certain countries.

In the Conference Report accompanying DHS' fiscal year 2005 appropriations, Congress directed the Secretary of DHS to report to the Committees on Appropriations on the supplies acquired by the DHS during fiscal year 2005 that were manufactured outside of the United States as well as an itemized list of all waivers granted with respect to such supplies. The report should include a summary of the total funds spent by DHS on goods manufactured within the United States compared with funds spent on goods manufactured outside of the United States. DHS issued Acquisition Alert Number 05/04 on November 16, 2004, which requires DHS organizational components to provide the Congressionally required information to the DHS Office of Chief Procurement Officer by October 31, 2005. The Conference Report also served as the impetus for this audit since it directed the Inspector General to audit DHS' compliance with BAA.

BAA requirements are incorporated in FAR Part 25, "Foreign Acquisition." FAR Subpart 25.1, "Buy American Act Supplies," contains detailed guidance regarding: the policy, applicable exceptions, a listing of articles not available in the United States, and determining reasonableness of cost for domestic end products that are not the low offer. FAR Subpart 25.5, "Evaluating Foreign Offers - Supply Contracts," contains detailed guidance and numerous examples on the steps to follow when evaluating foreign offers for supply contracts.

According to FAR 25.105, "Determining the reasonableness of cost," if there is a domestic offer that is not the low offer and the BAA applies, the contracting officer must determine the reasonableness of the cost of the domestic offer by adding to the price of the low offer, inclusive of duty, (1) 6 percent, if the lowest domestic offer is from a large business concern; or (2) 12 percent, if the lowest domestic offer is from a small business concern. The price of the domestic offer is reasonable if it does not exceed the evaluated price of the low offer after addition of the appropriate evaluation factor, 6 or 12 percent.

The Federal Procurement Data System (FPDS) collects historical and statistical information about the federal Government's procurement contracts to meet the information needs of the Congress, federal agencies, and the public. FPDS can be modified when new information requirements are imposed, such as BAA reporting, government-wide. The FPDS - NG is the most recent change to FPDS. The transition period for FPDS-NG began in October 2003 and is expected to last at least two years. The HSCIS provides data collection and reporting capabilities for DHS to comply with required reporting of procurement actions to FPDS. It creates a DHS-wide database of DHS procurement actions that are reported to FPDS.

Results of Audit

DHS procurement policies and internal controls, if implemented properly, appear to be sufficient to ensure compliance with BAA requirements. However, we were unable to validate the effectiveness of DHS' BAA compliance because the HSCIS and DHS' organizational components could not conclusively identify procurements where BAA waivers and determinations, i.e., public interest, nonavailability, and unreasonable cost, were conducted. Neither FPDS nor HSCIS have the capability to identify all contracts with BAA-related contract activity and report accurately on the types and amounts of foreign domestic products purchased by DHS. In addition, the limited time available to conduct our audit prevented us from conducting the extensive file reviews necessary to overcome the HSCIS limitations. DHS organizational components identified acquisitions of about \$165 million involving foreign end products. These acquisitions do not represent the entire BAA universe at DHS. While DHS believes that acquisition of foreign end products occurs infrequently, system limitations make it difficult to determine the actual frequency of foreign acquisitions.

We identified one major procurement in which incorrect evaluation factors were used in evaluating foreign and domestic offers. Even with this error, the low domestic offeror was still awarded a contract under a multiple award best value source selection process, and received approximately 58% of the purchase orders, as of December 2004.

The United States Coast Guard (USCG) and Transportation Security Administration (TSA) reported that some of their procurement offices do not have access to a centralized contract writing system that contain automated safeguards to ensure BAA compliance. Major procurement offices currently lacking automated contract writing systems are scheduled to obtain them in fiscal year 2005.

Policies And Oversight Processes To Ensure BAA Compliance

The policy and guidance set forth in FAR Part 25, "Foreign Acquisition," and the Homeland Security Acquisition Manual, if implemented, are adequate to ensure compliance with BAA requirements. In addition, DHS procurement internal control systems are designed to ensure that all FAR requirements, including BAA, are met. DHS' organizational components have controls which require that a solicitation or contract award be reviewed by the contracting officer (CO), the CO's supervisor, the Chief of the Contracting

Office, the Head of the Contracting Activity, or the cognizant Office of Counsel, depending on the dollar value and contract type.

In addition, the USCG operates a procurement management review program for their procurement offices. This review program uses independent reviews or validated self-assessments to ensure that FAR requirements are met. A draft version of the implementing instruction for the USCG procurement management review program specifically addresses BAA compliance.

The tight time constraints under which our audit had to be conducted did not allow us to fully validate the effectiveness of each organizational component's internal control procedures in ensuring BAA compliance. In our limited sample, BAA provisions were incorporated appropriately into all but one of the solicitations and contracts. We verified the existence of internal control procedures, i.e., management review sign off sheets and review comments fields in automated systems, at several DHS procurement offices and validated that some oversight of the procurement process is being provided.

Limited Ability To Collect Data For Foreign End Products

While HSCIS has the capability to collect information regarding country of origin for a contract as a whole, it does not have the capability to provide automated reporting regarding the amounts and types of foreign end products. For example, HSCIS currently records only one country of origin for a specific contract and does not have the capability to track contracts containing multiple contract line items with multiple countries of origin. In addition, the HSCIS User Manual does not list the country of origin field as a mandatory field. Therefore, contracting personnel are not required to enter country of origin data into the HSCIS database.

The DHS Office of Chief Procurement Officer (OCPO) confirmed these HSCIS limitations and speculated that DHS organizational components do not have an automated capability to report the country of origin data into HSCIS. Unless HSCIS or the organizational component's management information systems, which feed into HSCIS, are modified to collect the country of origin, the amounts, and types of supplies for individual contract line items; data collection regarding BAA compliance is likely to be a labor intensive process. Organizational component officials advised us that they have to manually collect the data to provide the information on the domestic and foreign end product data requested by H.R. 108-774.

OCPO reported that because HSCIS will be phased out when FPDS-NG becomes fully operational, OMB is unwilling to provide funds to improve capabilities for HSCIS. Therefore, OCPO will not be able to provide improved Buy American tracking capabilities within HSCIS. OCPO also reported that implementation of FPDS-NG is behind schedule and that improvements to FPDS-NG cannot be made until the basic system becomes fully operational. In addition, since FPDS is a government-wide contract reporting system, changes to FPDS are made generally when the requestor can support the need for a change on a government-wide basis. Finally, like HSCIS, FPDS does not have the capability to track country of origin for individual line items with separate countries of origin.

Infrequent Acquisitions Involving Foreign End Products

DHS organizational elements identified acquisitions worth approximately \$165 million involving foreign end products. These acquisitions do not represent the entire BAA universe. While DHS believes that acquisition of foreign end products occurs infrequently, system limitations make it difficult to determine the actual frequency of foreign acquisitions. HSCIS does not require organizational components to input the country of origin into HSCIS. Therefore, the actual amount and types of foreign end products being procured by DHS organizational components for fiscal year 2004 and 2005 are not available in either HSCIS or FPDS.

The table below lists the contract awards involving foreign end products reported to us by DHS organizational components.

Agency	Item Description	Year of Award	Foreign End Product	Domestic End Product
CBP	Helicopters	2004	\$152 M*	\$164 M*
ICE	Pistols	2004	\$3.3 M	\$4.6 M
TSA	Pistols	2003	\$0.5 M	\$0
USCG	Personal Emergency Position Indicating Radio Beacons	2002	\$4.1 M	\$0
USCG	Handheld Spectrometers	2003	\$5.5 M	\$0
Totals			\$165.4 M	\$168.6 M

* These figures represent total contract values. The exact amount of foreign and domestic end products were not ascertainable.

Incorrect Evaluation Factors Applied For A Pistol Procurement

In one major procurement for pistols, ICE applied an inappropriate evaluation factor to some foreign offers in determining the reasonableness of cost. The low domestic offer was from a small business, and ICE applied a 6 percent evaluation factor to some foreign offers instead of the 12 percent evaluation factor as required by FAR 25.105, "Determining reasonableness of cost." This error occurred despite preaward reviews by procurement management and the Office of Counsel. The infrequency of procurements involving foreign end products could have contributed to this error. Although procurement staff were aware of the BAA, they reported little recent experience in implementing BAA requirements. Even with this error, the low domestic offeror was still awarded a contract under a multiple award best value source selection process and, as of December 2004, received approximately 58% of the purchase orders.

Automated Contract Writing Systems Not Always Available

CBP, ICE, and portions of USCG reported that their contract writing systems are designed to ensure BAA-related clauses are considered for inclusion in solicitations and contracts. However, TSA and portions of USCG reported that they do not have these automated contract systems and may be at increased risk of awarding contracts without full compliance with BAA requirements. Organizational components without automated systems reported that they use management oversight or approved standard clause matrices to mitigate the risk of BAA non-compliance.

Over the past several years, most major DHS organizational components have either implemented or upgraded their automated contract writing systems. With the exception of some USCG field offices, which have limited procurement authority, major procurement offices currently lacking automated contract writing systems are scheduled to obtain them in fiscal year 2005.

We were unable to determine the extent to which required BAA clauses are contained in solicitations and contracts due to the following reasons:

- Organizational components could not readily identify contracts with BAA applicability.
- HSCIS does not currently track the country of origin for individual contract line items and country of origin is not a mandatory field for completion in HSCIS.
- Due to time constraints, we were unable to verify BAA compliance at DHS field offices.

Conclusions and Recommendations

While DHS policies and procedures adequately address BAA requirements, DHS needs to take steps to better ensure compliance. We recommend that OCPO:

1. Provide additional training to procurement personnel regarding the BAA requirements and the application and use of BAA evaluation factors.
2. Complete the scheduled implementation of automated contract writing systems for all DHS organizational components to ensure compliance with BAA and other FAR requirements.
3. Consult with OMB regarding the necessity for government-wide tracking of BAA compliance within FPDS-NG.
4. Revise HSCIS guidance to change the country of origin field to a mandatory field, when applicable.
5. Require organizational components to continue manual data collection on domestic and foreign end product data, until automated systems to collect this information become available.

Management Comments and OIG Analysis

We obtained written comments (Appendix B) on a draft of this report from DHS. DHS concurred with our recommendations. Below is a summary of DHS' response to each recommendation and our assessment of the response.

Recommendation 1: Provide additional training to procurement personnel regarding the BAA requirements and the application and use of BAA evaluation factors.

DHS concurred, and will provide BAA guidance to procurement personnel. We consider this recommendation to be resolved, and will close it when implementation is complete.

Recommendation 2: Complete the scheduled implementation of automated contract writing systems for all DHS organizational components to ensure compliance with BAA and other FAR requirements.

DHS concurred, and is moving ahead with their implementation. We consider this recommendation to be resolved, and will close it when implementation is complete.

Recommendation 3: Consult with OMB regarding the necessity for government-wide tracking of BAA compliance within FPDS-NG.

DHS concurred, and will consult with OMB regarding tracking BAA compliance within FPDS-NG. We consider this recommendation to be resolved, and will close it upon completion of DHS' efforts with OMB.

Recommendation 4: Revise HSCIS guidance to change the country of origin field to a mandatory field, when applicable.

DHS concurred, and will clarify HSCIS guidance. We consider this recommendation to be resolved, and will close it when implementation is complete.

Recommendation 5: Require organizational components to continue manual data collection on domestic and foreign end product data, until automated systems to collect this information become available.

DHS concurred. We consider this recommendation to be resolved, and will close it when implementation is complete.

Our objective in reviewing the DHS procurement policies, procedures, and practices was to determine the extent to which sufficient controls were in place to ensure BAA requirements compliance.

Our fieldwork began in November 2004 and continued through January 2005. We interviewed DHS organizational element procurement management personnel regarding BAA compliance issues. We interviewed personnel from DHS OCPO to determine whether procurement data is readily available within HSCIS or FPDS-NG regarding the types and amounts of foreign domestic products being procured by the Department.

In conducting our audit, we reviewed the following items:

- relevant sections of the United States Code, Federal Acquisition Regulations, DHS Acquisition Manual, DHS Acquisition Regulations, the Homeland Security Contracts Information System Manual, the FPDS-NG Data Dictionary, and various DHS organizational element acquisition regulations;
- the extent of controls and oversight for BAA compliance being conducted for procurement activities within CBP, ICE, USCG, and USSS;
- contract writing systems at several organizational components to determine whether they contained safeguards to ensure BAA compliance; and
- individual contracts involving BAA requirements at CBP, ICE, TSA, USCG, and USSS. The short timeframe for conducting the audit did not allow us to review contracts at all DHS agencies.

We conducted the audit pursuant to the Inspector General Act of 1978, as amended, and according to generally accepted government auditing standards.

Throughout the audit, we worked closely with the Chief Procurement Office and various procurement officials within the organizational elements. The cooperation and courtesies extended to the audit team are appreciated. The principal OIG point of contact for the audit is Assistant Inspector General for Audits, J. Richard Berman, (202) 254-4100. Major OIG contributors to the audit are identified in Appendix C.



**Homeland
Security**

June 2, 2005

Richard L. Skinner
Acting Inspector General
Office of the Inspector General
Inspections, Evaluations and Special Reviews
Department of Homeland Security
Washington, D.C. 20528

Dear Mr. Skinner:

The Department of Homeland Security (DHS) has reviewed your draft report of the Audit of Buy American Compliance. We appreciate the opportunity to comment and generally concur with your draft recommendations.

Recommendation 1: Provide additional training to procurement personnel regarding the BAA requirements and the application and use of BAA evaluations factors.

DHS Response: Concur. DHS, Office of the Chief Procurement Officer will issue an acquisition alert to the DHS acquisition workforce that provides guidance on the use of the evaluation criteria stated in FAR 25.504.

Recommendation 2: Complete the scheduled implementation of automated contract writing systems for all DHS organizational components to ensure compliance with BAA and other FAR requirements.

DHS Response: Concur. DHS will continue to move forward with its implementation of automated contract writing system throughout DHS.

Recommendation 3: Consult with OMB regarding the necessity for government-wide tracking of BAA compliance within FPDS-NG.

DHS Response: Concur. DHS will consult with OMB regarding BAA compliance within FPDS-NG.

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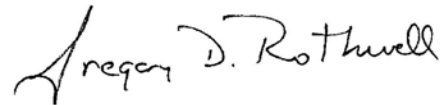
Recommendation 4: Revise HSCIS guidance to change the country of origin field to a mandatory field, when applicable.

DHS Response: Concur. DHS will review current HSCIS guidance and make clarification as needed.

Recommendation 5: Require organizational components to continue manual data collection on domestic and foreign end product data, until automated systems to collect this information become available.

DHS Response: Concur. DHS will continue to collect this data manually through September 30, 2005 or until an automated system is available.

If you have any questions or need additional assistance, please contact Ashley Lewis at (202) 692-4213.

A handwritten signature in black ink that reads "Gregory D. Rothwell". The signature is written in a cursive style with a large initial 'G'.

Appendix C
Major Contributors To Report

Judy Leonhardt, Director, Procurement and Acquisition Programs
David O'Connell, Supervisory Auditor
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