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IS THE DEPARTMENT OF HOMELAND SECURITY TOO DEPENDENT ON CONTRACTORS TO DO THE GOVERNMENT'S WORK?

HEARING

BEFORE THE

COMMITTEE ON HOMELAND SECURITY AND GOVERNMENTAL AFFAIRS UNITED STATES SENATE

ONE HUNDRED TENTH CONGRESS

FIRST SESSION

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IS THE DEPARTMENT OF HOMELAND SECURITY TOO DEPENDENT ON CONTRACTORS TO DO THE GOVERNMENT'S WORK?

WEDNESDAY, OCTOBER 17, 2007

U.S. SENATE,
COMMITTEE ON HOMELAND SECURITY
AND GOVERNMENTAL AFFAIRS,
Washington, DC.

The Committee met, pursuant to notice, at 10:34 a.m., in Room SD–342, Dirksen Senate Office Building, Hon. Joseph I. Lieberman, Chairman of the Committee, presiding.

Present: Senators Lieberman, McCaskill, and Collins.

OPENING STATEMENT OF CHAIRMAN LIEBERMAN

Chairman LIEBERMAN. Good morning, and thank you for being here this morning. I appreciate your indulgence. I just had the honor of introducing Judge Mukasey at his hearing before the Judiciary Committee.

This morning in this Committee, we are going to examine the extent to which the Department of Homeland Security (DHS) relies on contractors to carry out its crucial mission to secure our homeland from terrorism and natural disaster. Plainly put, we will ask who is in charge at the Department of Homeland Security—its public managers and workers or its private contractors?

Today this Committee is releasing the Government Accountability Office's (GAO) report, which we requested, in which GAO calls on the Department of Homeland Security to improve its oversight of contractors and better manage the risks associated with relying on contractors. The fact is that the GAO, in its report, expresses profound concern that there is inadequate oversight now of contractors and that there is a serious need to better manage the risks associated with relying on contractors.

GAO examined 117 statements of work for the Department of Homeland Security service contracts and found that over half of those contracts were for services that closely support inherently governmental functions. GAO then examined nine of those contracts in detail.

While GAO did not make any conclusions on whether DHS improperly allowed contractors to perform inherently governmental work, it did find that: First, DHS has not revisited its original justification for relying on contractors—which was the need of this new Department to stand programs up quickly—and has not con-

ducted a comprehensive assessment of the appropriate mix of Federal employees and contractors.

Second, DHS did not assess the risk that its decisions may be influenced by, rather than independent from, contractors.

Third, most of the contract officials and program managers interviewed by GAO were unaware that Federal procurement policy requires heightened oversight when contractors perform these types of services.

Fourth, six of the nine contracts called for the contractor to perform a very broad range of services or lacked detail. Without clearly specifying requirements for the contractor, the Department exposed itself, according to GAO, to waste, fraud, and abuse.

And, fifth, none of the oversight plans reviewed by GAO contained specific measures for assessing contractor performance.

Now, to bring this down to real-life examples, let me mention a few of the questionable uses of contractors that were uncovered by GAO.

The Coast Guard hired a contractor to help manage its competitive sourcing program, meaning that it hired a contractor to help determine whether existing Coast Guard jobs should be contracted out.

One $42.4 million contract to support the Department's Information Analysis and Infrastructure Protection Directorate was so broad that it covered 58 different and distinct tasks. This very large, all-encompassing umbrella of a contract covered such disparate items as acquisition support, intelligence analysis, budget formulation, and information technology planning. And how many DHS employees were assigned to help the contracting officer provide technical oversight of this enormous job? Just one.

Another example: The contractor supporting TSA's employee relations office provided advice to TSA managers on dealing with personnel issues, including what disciplinary actions to take—the very same function that TSA employees were already being paid to perform themselves in that very office.

GAO says that the Department of Homeland Security's reliance on contractors during the days when the Department was first being stood up post-September 11 was understandable, but they question whether it is now.

Now, let me mention the Federal Acquisition Regulation (FAR), which governs procurement for Federal agencies, prohibits inherently governmental work from being performed by contractors. FAR allows contractors to perform work that "closely supports inherently governmental work," but does not allow contractors to perform "inherently governmental" work itself. The line between those two is, admittedly, hard to draw and something that perhaps this Committee and the Office of Management and Budget and separate departments like DHS should take a fresh look at. But the FAR says specifically, for example, that the government itself is supposed to determine agency policy, including regulations, not private contractors, and that the government itself must make, quite naturally, its own governmental contract arrangements.

But GAO's report leads us to question whether DHS is in control of all the activities occurring at the Department or whether in too

many cases the Department may be rubber-stamping decisions made by contractors.

In fiscal year 2006, DHS spent $15.7 billion on goods and services. Of this, $5 billion, almost one-third, went to contractors providing professional and management support—often sitting side by side with Federal employees performing similar work, if not the same work. This heavy reliance on contractors certainly suggests the requirements of the FAR are being ignored, and I want to raise two questions that come off of that.

First, is the risk that the Department is not creating the institutional knowledge within itself that is needed to be able to judge whether contractors are performing as they should. That could mean vulnerability to overcharges and other forms of fraud and abuse.

Second is, of course, the risk that the Department may lose control of some of its own decisionmaking. The danger is that the Department may become so dependent on private contractors that it simply does not anymore have the in-house ability to evaluate the solutions its private contractors propose or to develop options on its own accord. In that sense, the Department may lose some of the critical capability to think and act on its own for we the people of the United States.

So these are serious questions, and GAO has done a critically important report, and we have an excellent group of witnesses to discuss that report.

Senator Collins.

OPENING STATEMENT OF SENATOR COLLINS

Senator COLLINS. Thank you, Mr. Chairman.

The theme of today's hearing is captured quite well in a handbook published by the Office of Personnel Management. It reads as follows: "Managers need to keep in mind that when they contract out . . . they are contracting out the work, not the accountability."

That handbook, "Getting Results Through Learning," was released in 1997. To judge from the GAO's report this morning, the government has yet to embrace that important lesson.

The Department of Homeland Security offers a useful case study in the benefits—and the risks—of government contracting for services.

There are many legitimate reasons for contracting work out: For example, helping with stand-up requirements, meeting intermittent or surge demands, and keeping agency staff focused on core responsibilities. The GAO report notes that DHS has faced many of these challenges over its short life, leading to the use of contracts to cover needed services. But GAO also notes, "Four years later, the Department continues to rely heavily on contractors to fulfill its mission with little emphasis on assessing the risk and ensuring management control and accountability."

Despite OPM's admonition a decade ago, DHS has failed in numerous instances to ensure appropriate accountability for service contracts. GAO's report provides troubling evidence that DHS has not routinely evaluated risks in acquiring services by contract and has not properly monitored services that are closely related to "inherently governmental functions." These examples of inadequate

oversight are particularly troubling given the billions of taxpayer dollars that DHS used last year to procure professional and management-support services.

Some of GAO's findings are especially disconcerting:

First, without sufficient oversight, contractors were preparing budgets, managing employee relations, and developing regulations at the Office of Procurement Operations, TSA, and the Coast Guard. As the Chairman has pointed out, these seem to be inherently governmental functions that should not be contracted out.

Second, some DHS program officials were unaware that a longstanding Federal policy requires an assessment of the risks that government decisions may be influenced by a contractor's actions. Worse, even when informed of this policy, some DHS officials said they did not see the need for enhanced oversight.

Third, in six of the nine cases studied by GAO, statements of work lacked measurable outcomes, making it difficult to hold contractors accountable for the results of their work.

And, fourth, DHS has not assessed whether its contracting could lead to a loss of control and accountability for mission-related decisions, nor has it explored ways to mitigate such risks.

These concerns are very similar to many raised by the DHS Inspector General, who identified instances of poorly defined contract requirements, inadequate oversight, unsatisfactory results, and unnecessary costs. I would note that I think it is a very positive sign that DHS has brought an experienced procurement official, Elaine Duke, to the Department to try to improve its processes. But it is troubling that we are finding this pattern of problems.

To address the reports of contracting failures like those identified in this and other GAO reports—and these failures are found in agencies other than DHS—Senator Lieberman and I introduced S. 680, the Accountability in Government Contracting Act of 2007, along with several of our colleagues, earlier this year. The bill was unanimously reported by this Committee at the beginning of August, and it would reform contracting practices; strengthen the procurement workforce; introduce new safeguards against waste, fraud, and abuse; and provide increased oversight and transparency in the Federal Government's dealings with its contractors.

I want to highlight one other provision of the bill that I think is particularly important and would apply to some of the problems we found in DHS, and that is the bill would also limit the duration of non-competitive contracts. This has been a problem identified by GAO in this report, as many DHS service contracts were extended well beyond the original period of need.

The GAO report that is being released today delivers a troubling judgment, especially when so much of DHS service contracting seems to come very close—and in some cases crosses the line—to the performance of "inherently government functions."

So, Mr. Chairman, I appreciate your holding this hearing today and assembling a distinguished group of experts.

Chairman LIEBERMAN. Thanks very much, Senator Collins. Thanks for mentioning the legislation that we have cosponsored, the Accountability in Government Contracting Act, and just to say briefly, the focus today is on the GAO report on the Department of Homeland Security, which is troubling. But it raises questions

that obviously go beyond the Department more broadly in our government.

At this moment, there is much attention both from Congress and the public, the media, on the use of private security guards in Iraq and Afghanistan, which is understandable, apart from the rights or wrongs of those particular contracts and the contractors and their employees who are carrying them out. That is a separate question.

It does raise exactly the same questions as raised here. What are "inherently governmental responsibilities" that ought to be carried out by public employees? Second, do we have sufficient public employees to carry out those responsibilities? And if we do not and, therefore, we determine that to get the job done to fulfill the responsibility that Congress has given an agency circumstances require that they have to use private contractors, then is the oversight adequate? And I think all of these questions that we will be discussing today about DHS have applicability broadly throughout the Federal Government, including in the particular case of private security guards in Iraq and Afghanistan. Of course, we hope that our legislation will help answer those questions in the right way in all of these cases.

Our first witness today is John Hutton, Director of the GAO Acquisition and Sourcing Management Team. Mr. Hutton has had a wonderful career at GAO dating back to 1978 and has been instrumental in many of the reports that the office has prepared for this Committee on contracting issues, for which we are grateful. The report being issued today is one in a series that GAO is conducting for this Committee—it is not the last one—on contracting by the Department of Homeland Security, which, after all, is a major responsibility of oversight for this Committee as the Homeland Security Committee. Last fall, GAO reported to us on the Department's use of interagency contracts, and still to come are reports on performance-based contracting and on the acquisition workforce.

Mr. Hutton, we thank you and your team for the extraordinary work that you have done for this Committee, indeed, for the public, and I now welcome your testimony about your latest report.[1]

TESTIMONY OF JOHN P. HUTTON,[1] DIRECTOR, ACQUISITION AND SOURCING MANAGEMENT TEAM, U.S. GOVERNMENT ACCOUNTABILITY OFFICE

Mr. HUTTON. Thank you very much. Chairman Lieberman, Senator Collins, and Members of the Committee, thank you for inviting me here to discuss our report today on work done for this Committee, as you note, on the Department of Homeland Security's reliance on contractors that perform mission-related services. As you know, when DHS was established over 4 years ago, it faced enormous challenges in setting up offices and programs that would provide a wide range of activities that are very important to this country's national security. And to help address this challenge, as we know, the Department relied on contractors, many for professional management support, and these are services that increase the risk

[1] The GAO Report submitted by Mr. Hutton, GAO–07–990, "Department of Homeland Security—Improved Assessment and Oversight Needed to Manage Risk of Contracting for Selected Services," dated September 2007 appears in the Appendix on page 84.

[1] The prepared statement of Mr. Hutton appears in the Appendix on page 29.

of contractors' unduly influencing the government's control over programs and accountability for actions. And for this reason, longstanding Federal policy requires attention to this very risk.

And I would like to point out also that the scope of this work was really focused on those activities that are closely supporting inherently governmental functions. We did not address specifically inherently governmental functions that may be performed by contractors. And that is a key point here because for services that closely support, you are getting real close to government decisionmaking, and that is where the decisions ought to be made—in the government.

But my testimony today will highlight our key findings. First, I want to describe the types of professional management support services for which DHS has contracted and the associated risks. And, second, I will then discuss DHS' consideration and management of risk when contracting for such services. And, Senator Lieberman, I must say you did a nice job summarizing our methodology, so I will move on to some of our key points.

DHS contractors performed a broad range of activities under the four types of professional management services that we reviewed, and most of the statements of work we reviewed requested contractors to support policy development, reorganization and planning, and acquisitions. And, again, these are services that closely support inherently governmental functions.

For example, the Transportation Security Administration acquired contractor support for such activities as assisting the development of acquisition plans and hands-on assistance to program officers to prepare acquisition documents.

The Office of Procurement Operation's Human Capital Services Order provided for a full range of professional and staffing services to support DHS headquarters offices, including writing position descriptions, assigning official offer letters, and meeting new employees at DHS headquarters for the first day of work.

Now, as we drill down further into our case studies, we gained additional insights into the types of services being performed and the circumstances that drove DHS' contracting decisions. Many of the program officials we spoke with said that contracting for services was necessary because they were under pressure to get these programs and offices up and running quickly, and they did not have enough time to hire staff with the right expertise through the Federal hiring process.

Given the decision that contractors were to be used, we then looked at DHS' consideration and management of the risk when contracting for such services. Federal acquisition guidance highlights the risk inherent in these services, and Federal internal control standards require assessment of risks.

Now, in our nine case studies, while contracting officers and program officials generally acknowledged that such support services closely support inherently governmental functions, none assessed whether these contracts could result in a loss of control and accountability for policy and program decisions. Also, none were aware of the Federal requirements for enhanced oversight in such cases, and most did not believe enhanced oversight was need.

Our nine case studies provided examples of conditions that needed to be carefully monitored to help ensure the government does not lose this control and accountability. For example, in seven of the nine cases, contractors provided services integral to an agency's mission and comparable to those provided by government employees. To illustrate, one contractor provided acquisition advice and support while working alongside Federal employees and performing the same tasks.

In each of the nine case studies, the contractor provided ongoing support for more than 1 year. In some cases, the original justification for contracting had changed, but the DHS components extended or re-competed services without examining whether it would be more appropriate for Federal employees to perform the service.

Third, in four of the case studies, the statements of work contained broadly defined requirements lacking specific details about activities that closely support inherently governmental functions. And, in fact, several program officials noted that the statements of work did not accurately reflect the program's needs or the work the contractor actually performed.

Moreover, Federal Acquisition Regulations and policies state that when contracting for services, particularly for the ones we are speaking of, a sufficient number of qualified government employees are needed to plan the acquisition and to oversee the activities to maintain that control and accountability over their decisions.

We found some cases in which the contracting officer's technical representative lacked the capacity to oversee contractor performance due to limited expertise and workload demands. For example, one technical representative was assigned to oversee 58 tasks ranging from acquisition support to intelligence analysis to budget formulation and planning, and these were across multiple offices and locations. Similarly, another technical representative assigned to oversee a contractor provide an extensive range of personnel and staffing services lacked technical expertise which the program manager believed affected the quality of oversight provided.

Now, in prior work, GAO has noted that agencies facing these workforce challenges, such as lack of critical expertise, have used strategic human capital planning to develop these long-term strategies to achieve programmatic goals. While DHS' human capital strategic plan notes that the Department has identified some core mission-critical occupations and seeks to reduce these skill gaps, it has not assessed the total workforce deployment across the Department to guide decisions on contracting for selected services.

We have noted the importance of focusing greater attention on which types of functions and activities should be contracted out and which ones should not while considering other reasons for using contractors, such as a limited number of Federal employees.

In closing, until the Department provides greater scrutiny and enhanced management oversight of contracts for selected services—as required by the Federal guidance—it will continue to risk transferring government responsibility to contractors. To improve the Department's ability to manage this risk and help ensure government control, the report we are releasing today recommends that the Secretary of Homeland Security take several actions. These ac-

tions include: Establishing a strategic level guidance for determining the appropriate mix of government and contractor employees; assessing the risk of using contractors for selected services during the acquisition planning process; again, more clearly defining contract requirements, acquisition planning is of note there; and assessing the ability of the government workforce to provide sufficient oversight when using services.

Mr. Chairman, this concludes my statement, and I will be happy to answer any questions you will have.

Chairman LIEBERMAN. Thanks very much, Mr. Hutton. We certainly have questions for you.

We will next go to Elaine Duke, who is the Chief Procurement Officer at the Department of Homeland Security. Ms. Duke brings considerable experience with her to this position, having previously served as Deputy Chief Procurement Officer at DHS, Deputy Assistant Administrator for TSA, and for many years before that held a series of acquisition-related positions with the U.S. Navy.

Since being appointed Chief Procurement Officer last year, 2006, Ms. Duke has undertaken a number of initiatives to strengthen acquisition practices at the Department, which we on this Committee appreciate. But obviously, having heard Mr. Hutton and having read his report, I am sure you recognize that you have a tremendous challenge that you have found to improve acquisition management in a Department where the procurement needs are so vast and so complex.

So, with that, we thank you for being here and welcome your testimony now.

TESTIMONY OF ELAINE DUKE,[1] CHIEF PROCUREMENT OFFICER, U.S. DEPARTMENT OF HOMELAND SECURITY

Ms. DUKE. Thank you, Mr. Chairman, Ranking Member Collins, and Members of the Committee. I really appreciate the opportunity to be here this morning before your Committee for the first time.

Since it is my first time before you, I wanted to take a moment to talk about the priorities we are working on within the procurement program within DHS, and then I will specifically address the GAO report.

We have three procurement priorities within the Department of Homeland Security. They are all essential for our stewardship of the taxpayers' dollars: The first is to build the acquisition workforce; the second is to make good business deals; and the third is to perform effective contract administration. I share these priorities with the heads of contracts in each of the components within DHS.

Within the first priority, building the acquisition workforce, some of the initiatives we have undertaken over the last year include a Centralized Hiring Initiative, where we at the corporate level are recruiting and hiring for key acquisition positions throughout the Department of Homeland Security. We used direct hire authority extensively for this. As the Committee knows, the direct hire authority has expired, and we appreciate that being part of your proposed bill to renew that hiring authority. That is something we

[1] The prepared statement of Ms. Duke appears in the Appendix on page 45.

have used for well over 100 people just in the last 8 months, and we appreciate your efforts to reinstate that.

We have in the President's budget for fiscal year 2008 a new centralized Acquisition Intern Program. We will essentially manage and fund interns for a 3-year period, rotating them throughout DHS to provide that continuity in one DHS field. This is a program that we think will bring a new workforce into the Department of Homeland Security and are very much looking forward to starting that in this fiscal year.

We also in the President's budget have a centralized Acquisition Workforce Training Fund. We have partnerships with the Federal Acquisition Institute and the Defense Acquisition University to use for delivering these central training skills throughout DHS.

Under the second priority, make good business deals, we have several policy and oversight initiatives in this area. We have a Homeland Security Acquisition Manual that addresses key aspects of a good business deal, including competition, acquisition planning, small business, contractor responsibility, lead systems integrator issues, and organizational conflicts of interest. This past June we issued DHS' first Guide to Source Selection to try to institute a culture of good source selection, best values throughout the Department.

We recently received an actual kudos in a GAO report on Alaska Native use, and it said that DHS was one of the leaders in having good oversight policy and proper use of Alaska Native corporations. And this fiscal year, initial numbers have greatly increased our level of competition going from about 50 percent in fiscal year 2006 to about 65 percent in fiscal year 2007—still much room to improve, but a great improvement over 1 year.

Additionally, we are on the Office of Federal Procurement Policy working groups for some of the Federal initiatives, including how to do interagency agreements better and how to improve the use of performance-based service contracts—one of the focuses of the GAO report.

Under the third priority, effective contract administration, we are working heavily with Defense Contract Management Agency and Defense Contract Audit Agency to augment with Federal employees DHS' workforce in these key areas.

We have had a series of Excellence in Contracting workshops done by persons on my staff to target certain areas, such as government property management, COTR functions in many of the key areas.

We also have cross-cutting initiatives that really cover all three of the priorities. I would like to specifically mention the achievements of my Office of Small and Disadvantaged Business Utilization. We were one of the few Federal agencies to receive a green in the Small Business Administration's first annual scorecard. During fiscal year 2007, we conducted our first major on-site acquisition reviews. We reviewed FLETC, Office of Procurement Operations, FEMA, and U.S. Citizenship and Immigration Services in a comprehensive review, in addition to a number of targeted specialized reviews.

One of the areas that I would like to distinguish that we are doing is expanding the authority and responsibility of my office

from procurement to acquisition, and that may sound like a semantics issue, but it is not. Some of the issues we are talking about here, and as the GAO report identifies, we have to start with a good requirement, and that starts in the program office. And to wait until the end of the process, the end result, the procurement, is really just Band-aiding in or inspecting in a solution. So we are working with expanding both at my office and within the components to make sure we have the full range of acquisition competencies and people in place to manage these programs. I have selected a Senior Executive Service program manager that will lead this effort in my office, and we have the full support of the Under Secretary of Management, as you know, in this initiative.

Now I would specifically like to address the GAO report, and it addresses the government's increasing reliance on government services. It has already been said that this is not just a DHS issue. It is a Federal problem. I think that was most evidenced by the Services Acquisition Reform Act, the SARA Acquisition Advisory Panel results, who devoted a whole chapter to this and made some recommendations, which we and OFPP are looking at to see what is the best answer for the Federal Government.

I think there are two issues raised by the report. One of them is: Is DHS contracting out inherently governmental services? And the second, is it properly managing the service contracts that it has?

We agree with the recommendations of the report. There is a risk in reliance on government contractors. We do agree that we have much more to do, but we do not agree that we have not done anything to start managing this risk.

To keep in mind perspective, Mr. Chairman, you brought up the fact that we are building and executing at the same time in DHS. One other point to bring up is we are actually growing, to add another dimension of complication. Just a few years ago, we had about $2 billion worth of contracts. Last year, if you include interagency agreements our contracting officers had to execute, we had well over $17 billion worth of responsibility in contracting.

So what are some of the things we have done to address the concerns of the GAO report? I issued a memorandum to all the component heads talking about DHS service contracting best practices, risks, things to look out for and enforce in the contracting. We brought to the attention of Defense Acquisition University, who does the COTR training for all the Federal agencies, the importance of the OFPP Letter 93–1 that was mentioned in the GAO report to make sure that the COTR training is modified to include the specific risk areas.

We are focusing heavily on the requirements piece, as I said earlier. We really think that is the true solution, to have good requirements so that we can increase our use of performance-based contracting, decrease the risk. We are doing work in the areas of organizational conflicts of interest, both in awareness and training, to ensure that when we have a blended workforce, as was stated earlier, a contractor sitting next to a government employee, that the risks and the nuances between that is recognized and managed.

And we are addressing staffing, and that is a big thing. At least in the near future, we will continue to have what is classified as

nearly inherently governmental services necessary to accomplish our mission, but we have to make sure that we have the in-house government forces in the program office as COTRs and in the contracting officers to make sure we adequately manage that risk.

We are currently looking at all our major programs under a "Quick Look" review to assess risk of those programs, and then we are going to prioritize and target the programs for what we are calling "deep dives" based on those Quick Look reviews and an assessment of risk. And that has started now, and we are about halfway through our Quick Look reviews.

We are increasing the certification of program managers. We have acquisition career certification standards for contracting, COTRs, and program managers. And we currently have about 250 certified program managers. They are not all in the right jobs, though, and that is another thing we are working on.

So these are some of the efforts we are working on within the Department. I would also like to point out that seven of the nine most troubling acquisitions in the GAO report are no longer active contracts, so we are working in the right direction in that regard, too.

Mr. Chairman, Ranking Member Collins, I really thank you for the opportunity to address this important issue and look forward to your questions.

Chairman LIEBERMAN. Thanks very much, Ms. Duke. We will obviously have questions for you.

The third witness, who we welcome now, is Professor Steven Schooner, Senior Associate Dean for Academic Affairs, Associate Professor of Law—that is quite a title.

Mr. SCHOONER. Too many titles.

Chairman LIEBERMAN. You are a busy man. And Co-Director of the Government Procurement Law Program at the George Washington University School of Law. Before joining the faculty at GW, Mr. Schooner was the Associate Administrator for Procurement Law and Legislation at the Office of Federal Procurement Policy at the Office of Management and Budget. So he is extremely well qualified to offer expert testimony this morning, which we now welcome.

TESTIMONY OF STEVEN L. SCHOONER,[1] CO-DIRECTOR, GOVERNMENT PROCUREMENT LAW PROGRAM, THE GEORGE WASHINGTON UNIVERSITY LAW SCHOOL

Mr. SCHOONER. Chairman Lieberman, Ranking Member Collins, and Members of the Committee, I commend this Committee for its focus on improving the procurement process, and I support many of the initiatives in the current version of S. 680, particularly the Acquisition Workforce Human Capital Succession Plan. I concur with the GAO report, and I echo the three priorities that Ms. Duke articulated for her organization.

You asked me to comment on the benefits, challenges, and risks of DHS' increased reliance on contractors, so let me begin by saying the key benefit is that using contractors avoids failure where the government lacks the ability and the resources to perform its mis-

[1] The prepared statement of Mr. Schooner appears in the Appendix on page 58.

sion. Contractors also provide surge capacity. They can add resources quickly, efficiently, and effectively, and contractors also permit agencies to quickly employ superior technology and better talent.

But I do not suggest and I take issue with those who do suggest that a primary benefit of reliance on contractors is merely the potential for cost savings.

Of course, extensive contractor reliance creates significant challenges. To use contractors well, agencies have to plan, which means they need to understand what outcome they want and accurately describe that to the private sector. They need to select appropriate qualified contractors in a timely fashion. They need to negotiate cost-effective agreements, draft contracts that contain effective incentives in order to maximize contractor performance. Agencies then must manage those relationships to ensure that the government gets value for its money.

Against that backdrop, the risks of relying on contractors are constrained only by your imagination. If a contractor fails, the agency can fail. Contractor failures, just like government failures, can result in harm being inflicted upon the public, the government, or others. Of course, also at risk is loss of confidence in the government and always excessive expenditure of scarce public funds.

Now, you also asked me to comment on the adequacy of current laws and regulations concerning the acquisition process. There is always room for improvement, but the legal and regulatory regime generally is adequate. The lion's share of DHS' and the government's acquisition difficulties result from implementation of the laws, regulations, and policies, and the root cause of that is an inadequate acquisition workforce.

Now, let me digress. One area where the legal regime is not adequate is the government's rather chaotic reliance upon private security. As recent events involving Blackwater make clear, the risks in this area are particularly grave. The existing legal and regulatory regimes are inadequate to address them, and the government has waited far too long to address them in a thoughtful and responsible manner.

Now, as my testimony suggests, I think it oversimplifies the problem to suggest that DHS currently is too dependent on contractors. It is distinctly possible that under different circumstances, an outsourced and privatized DHS might best serve the government's interest, but that debate—how much we should outsource—is simply irrelevant here. We rely on the private sector because we have restricted the size of government and, more specifically, the number of government employees. It is true that the Bush Administration did not mask its preference for outsourcing, but that initiative is a statistically insignificant percentage of the new service contracts we see.

We have no short-term choice but to rely on contractors for every conceivable task that the government is understaffed to fulfill. For example, in Iraq, the military relies on contractors not only for transportation, shelter, and food, but unprecedented levels of battlefield and weaponry operations support and maintenance. DHS cannot simply consolidate its mission, jettison a number of the tasks, start terminating contracts, and take on only the missions

that it is appropriately staffed to perform. Nor can it wait as it embarks upon an aggressive program to identify, recruit, hire, and retain an extraordinary number of civil servants. And, frankly, it is quite unclear whether there is political will to grow the Federal workforce as we need to do. It is going to take years for DHS to have a significantly larger and, most importantly, cohesive organization.

So, accordingly, DHS has to acknowledge that it is, frankly, a hollow agency and do its best to achieve its mission with the resources available. One oft-criticized practice, the use of Lead Systems Integrators—one of the most relevant examples here was Deepwater—is a direct result of the human capital gap. Similarly, contractors will continue to perform what historically has been perceived as inherently governmental functions. That is acquisition support, engineering and technical services, intelligence services, policy development, and reorganization and planning.

All of which brings us to the inescapable conclusion that the government must devote more resources to acquisition. This is urgent following a bipartisan 1990s congressionally mandated acquisition workforce reduction. No empirical evidence supported the reductions, and the sustained reductions and subsequent failure to replenish them created a full generational void and devastated procurement personnel morale. Simultaneously, the government skimped on training, and contracting officers were facing increasingly complex contractual challenges. In addition—and this is critical—despite the explosive growth in the reliance on service contracts, no emphasis was placed on retaining or obtaining skilled professionals to plan for, compete, award, or manage sophisticated long-term service contracts.

The dramatic and now sustained increase in procurement spending since the September 11, 2001, attacks exacerbated an already simmering workforce crisis. Congress has been quick to call for more auditors and inspector generals to scrutinize contracting, and that is responsible. But the corresponding call for more contracting experts to proactively avoid the problems has been both delayed and muted. The workforce today, understaffed, underresourced, and underappreciated, desperately requires a dramatic recapitalization.

We not only have too few people to do the work, many of the people we have lack the necessary qualifications. We need business-savvy professionals to promptly and accurately describe what the government wants to buy, identify and select quality suppliers, ensure fair prices, structure contracts with appropriate monetary incentives for good performance, and then manage and evaluate the contractors' performance.

The Acquisition Advisory Panel report appropriately acknowledged, while the private sector invests substantially in a core of highly sophisticated, credentialed, and trained business managers, the government does not make comparable investments. It is a mistake. But acquiring that talent is not going to be easy. Senior procurement officials today increasingly bemoan that no young person in his or her right mind would enter government contracting as a career today.

Let me wrap up with a symptom of the current acquisition crisis: The increased reliance on personal services contracts.

Now, DHS already enjoys greater authorities than most agencies in that regard, but the longstanding prohibitions against personal services contracting have become dead letter. We have witnessed an explosive growth in what we refer to as "body shop" or "employee augmentation arrangements." As the name implies, the government uses these contracts to hire contractor personnel to replace or supplement civil servants or members of the military. This is the antithesis of the government's preferred approach, known as "performance-based service contracting."

The worst-case scenario is where contractors work under open-ended contracts without guidance or management from a responsible government official, typically facilitated by an interagency contracting vehicle. Civil servants work alongside and at times for contractor employees who sit in seats previously occupied by civil servants. Unfortunately, no one ever stopped to train the government how to operate in such an environment, which we commonly refer to as a "blended workplace." In addition to the potential conflicts of interest, the other human capital issue is that if we are going to try to attract and retain a qualified workforce, DHS may find it increasingly difficult to articulate why an individual should come and work for DHS rather than its contractors. This is particularly problematic where contractors use incentives, such as raises, bonuses, training opportunities, travel and entertainment, to reward their top talent. This is particularly troubling now that the market for talent is increasingly global, and we see, for example, a global shortage of engineers. Serious, long-term, far-reaching personnel reforms are needed to reverse the trend.

So let me conclude by saying I agree with many of GAO's recommendations, but I am not optimistic that DHS can fully implement them. Yes, there is no higher priority for heavily outsourced agencies such as DHS than to assess program office staff and expertise necessary to provide sufficient oversight of its service contracts. DHS should assess the risks of relying on contractors as part of the acquisition process. And while DHS may have no choice but to rely on those contractors, the discipline will help control the risks. Surely, any additional energy devoted to acquisition planning will pay dividends during contract performance.

But, in closing, let me be clear. More than 15 years of ill-conceived underinvestment in the acquisition workforce followed by a governmentwide failure to respond to a dramatic increase in procurement activity has led to a triage-type focus on buying with insufficient resources available for contract administration, management, or oversight. The old adage we all learned in kindergarten—"An ounce of prevention is worth a pound of cure"—rings true. A prospective investment in upgrading the number, skills, and morale of government purchasing officials would reap huge dividends for the taxpayers.

I thank you for this opportunity, and I would be pleased to answer any questions.

Chairman LIEBERMAN. Thanks, Mr. Schooner. I have a very unsenatorial response to your testimony, which is, "Bingo." [Laughter.]

You have made the case very well. I serve, as other Members of this Committee do, on the Armed Services Committee. I happened to have the privilege over the last several years of being either chair or ranking member of the Airland Subcommittee. The U.S. Air Force has had terrible acquisition problems, some cases of fraud—and, of course, some people have gone to jail—and also cases of waste and illogical judgments made. And you just come back to the fact that as the demand for acquisition went up, the acquisition workforce at the Air Force went down, and we are paying for it. So I think you state the case very well on that ultimate point, and I thank you for it.

Do you think we are contracting out too many professional and management services in DHS or in the Federal Government generally?

Mr. SCHOONER. In the short term, no, I honestly do not believe we have a choice. In terms of the long-term best approach for government, I do not think that there is any way for the government to maintain the institutional knowledge necessary for the government to make good long-term decisions if we, in fact, cede all of this authority to the private sector.

Chairman LIEBERMAN. Understood. And you say in the short term, no, and generally speaking—I presume that you are not in a position to comment on every private contract let out. Generally speaking, you think the private contractors are actually carrying out responsibilities that the various departments have to carry out.

Mr. SCHOONER. Absolutely. I think it is just a common reflection of the fact that we have hollowed out the government, particularly among the most knowledgeable, skilled, and talented people that we need to rely on the most.

Chairman LIEBERMAN. And you said quickly in your testimony, but it is relevant here, that you do not believe that cost savings is a justification for private contracting. And I take it you meant that not only in the broader sense of institutional knowledge, but you are skeptical that we actually save money when we private contract out. Am I right?

Mr. SCHOONER. I think the latter part of that is more accurate. What I was trying to communicate is I do not believe the primary justification for relying on the private sector should be cost savings alone. It troubles me when I hear people say that all that matters is the marginal dollar. The most compelling arguments for relying on the private sector are if you need surge capacity, if you need quality or talent that is not available to the government in the short term. The private sector can make the government better, more flexible, and more potent, but chasing only the marginal dollar, worrying about whether it is cheaper, does not make sense.

Can I offer you a brief analogy or an example? If we look at the reliance on private contractors providing support for the military in Iraq, we could focus on whether it costs more or less than what the Army used to spend to take care of the people in the military.

Chairman LIEBERMAN. Right.

Mr. SCHOONER. But the bottom line is if you bring in a contractor who can more quickly provide hot meals, showers, clothing, and a general quality of life to our troops, I am willing to pay more for that, and I believe the public is, too. So the marginal dollar is not

the issue. The question is can they effectively provide a service that the government cannot do as presently constituted?

Chairman LIEBERMAN. OK. Then notwithstanding that, let me turn to you, Ms. Duke, and ask: Just looking at all of the contracts that Mr. Hutton has cited in his report on DHS, and actually noting that you have said that seven of the nine troublesome, inadequate, questionable contracts that the GAO report cites are no longer in existence, don't you think that the Department of Homeland Security is contracting out too many services now?

Ms. DUKE. I think it is an issue that we are looking at, to be honest. I think that you have inherently governmental services, and if you look at what is inherently governmental and what is commercial, they are very similar. One is deciding on the budget; the other is assisting with budget development. And so we are systematically looking through the numbers, contract renewal by contract renewal, to make sure that we do have those core competencies within the Department of Homeland Security. So when we do execute this inherently governmental function, such as signing a document, we have the knowledge to know what we are signing. It is not an administrative exercise. I think that is very important.

Chairman LIEBERMAN. OK. But I take it from your opening statement that you do believe—and you have come in relatively recently as the CPO—that the Department of Homeland Security is not exercising adequate oversight of these contracts, including particularly, if I heard you correctly, the initial requirements decision. In other words, is this something we want to contract out?

Ms. DUKE. I think that deciding if we are going to contract it out and clearly defining the requirement are the two up-front actions that we need to focus on to manage risk. After it is awarded, what we need to focus on is making sure that the right COTRs, who are the ones that accept the services and monitor the services, that the right people are in place in the right numbers, in addition to the contracting officers. So I think there are actions on both ends of the timeline.

Chairman LIEBERMAN. Let me ask you finally in this round about competition for the contracts. In OMB's latest review of major agencies, the Department of Homeland Security actually ranks first—or last, depending on your point of view—in terms of the percentage of contracts entered without full and open competition. That means you are No. 1 in most of them. In fact, 51 percent of DHS' contracts last year were awarded without full and open competition.

I noted in your opening statement you cited fiscal year 2007 numbers that put that number down to 35 percent—I believe that is correct—and that is an improvement, which I appreciate. But it still says that more than a third of the contracts, which involve billions of dollars, are being awarded without open competition. And, of course, this not only creates the risk that the Department does not get the best value for the taxpayers' money, but the perception and possible danger of a coziness between the Department and the contractors that will undermine confidence, both here in Congress and in the public, in the Department's work.

So are you concerned about the questions that I have just raised? And if so, what steps are you taking to increase competition hope-

fully to as close to 100 percent as you can get it for contracts at DHS?

Ms. DUKE. I am always concerned about competition. That is one that, regardless of how high we get, we are not done yet. Competition clearly is the basis of our economy, and it works.

Some of the steps we are taking is, I think, better defining the requirements, like I said earlier. We have instituted competition advocates with each of the components that are reviewing all the sole-source actions within the operating components of DHS so that we can look at these one by one. We have bolstered our acquisition planning so we get reports up front what people are planning on doing in the next fiscal year in addressing those.

The other thing I think we have to do is systematically look at urgency. One of the things Mr. Schooner mentioned is we should not singularly look at cost. I really think that you have cost, you have schedule, and you have performance. And if any one of them is out of balance, then you really are going to get a poor result. And I think that because of the urgency in which DHS was started and then when Hurricane Katrina hit mid-time between our beginning and current, an overreliance on the impact of schedule, which in essence minimizes the importance of competition, and so we have to get that back in balance.

Chairman LIEBERMAN. OK. My time is up. I take your answer to be that 51 percent of contracts awarded without full and open competition was unacceptable to you.

Ms. DUKE. Yes

Chairman LIEBERMAN. You got it to 35 percent, and I take it that your goal is to get it as close to zero percent as you can.

Ms. DUKE. Yes, sir.

Chairman LIEBERMAN. Thank you. Senator Collins.

Senator COLLINS. Thank you, Mr. Chairman.

Ms. Duke, let me pick up exactly where the Chairman left off because I, too, am very concerned about the Department's reliance on other than full and open competition.

After Hurricane Katrina hit, the Department awarded four noncompetitive contracts to help with installing temporary housing throughout the Gulf Coast. Originally, each of these contracts had a ceiling of $500 million.

Now, there may have been an initial justification to award noncompetitive contracts using the urgent and compelling exception under the Competition in Contracting Act. So I am not questioning that initial decision. What I am questioning is why, instead of competing the contracts later, they were, in fact, just extended. The ceiling for one of the contracts went from $500 million to, I think it was, $1.4 billion.

Do you think that the Department should take a look at the duration of noncompetitive contracts when the urgent and compelling exception to competition is employed?

Ms. DUKE. Yes, I think the duration is important. With the specific Hurricane Katrina circumstance, the issue was there were many actions. We were not prepared in a contracting response in general, so those contracts were one of many problems where we had urgent issues, and so it did take longer to recompete those than it should have. But I do support having some restrictions on

the length of an initial urgency justification in situations like the one you are speaking of.

Senator COLLINS. And that is a provision of our bill as well.

When I look at the Department, in addition to the FEMA contracts and the problems there, the other area that troubles me greatly is the Coast Guard's Deepwater contracts. I am such a strong supporter of the Deepwater program, I know firsthand of the need to recapitalize the assets of the Coast Guard. But there is no doubt that the entire acquisition procurement process for the Deepwater program was a disaster. And it led to cutters having to be scrapped. It led to the waste of millions of dollars, dollars that the Coast Guard desperately needs for new cutters that work and for new helicopters.

Could you give us your analysis of what went wrong with the Deepwater program and what is being done now to get it back on track? It seems to me a fundamental thing that went wrong is that the Coast Guard just lost control of the program by putting too much responsibility on the contractors.

Ms. DUKE. The commandant, Admiral Allen, and I are aligned on many things. One of them is the accountability that we have when we are appropriated funds, and we believe that we maintain the accountability for that. We do believe in partnership with the contractor, but that means an effective working relationship. It does not mean transferring responsibility or accountability. And that is the primary function and the cultural change that is going to improve the continued administration of the Deepwater program.

Some of the things that have been done is the blueprint for acquisition reform; we have put some key senior executives in those programs and flag officers that have significant shipbuilding experience. We moved a senior executive from my office to head contracts for the Coast Guard, who has a significant career with Naval Sea Systems Command to see that expertise. She does have to build a staff with the same expertise, but that is key. A senior executive for the Deepwater program has been selected, as well as one to be a deputy to Admiral Blore.

Those key positions are important, especially on the civilian side, to make sure that this attitudinal change continues into the future and does not change with change of military members.

I think the other area that we have improved the Deepwater is the alternatives analysis that is ongoing. It is a pause point for the Coast Guard to reassess. It had a major change in mission post-September 11. This is a pause point to really look at the mission need and do a true look at the alternatives and what major assets are needed to fulfill the Coast Guard's mission in the future.

Senator COLLINS. Thank you.

Chairman LIEBERMAN. Thanks very much, Senator Collins. Senator McCaskill, good morning.

OPENING STATEMENT OF SENATOR MCCASKILL

Senator MCCASKILL. Good morning. Thank you, Mr. Chairman.

Mr. Hutton, when you all were there—did you have any sense of how many of these contracts are definitized in terms of an appropriate level of the standards at GAO in terms of what is being asked? What percentage of these things are like a LOGCAP where

we said, hey, tell us what we need and when we need it, and by the way, it is cost-plus so you tell us how much it is going to cost? How much of that is at DHS similar to what we have seen in——

Mr. HUTTON. I think of the ones that we drilled down in, there were several that were basically off of the GSA schedules. There are others like the Information Analysis and Infrastructure Protection Directorate contract. That was one that started with a fairly narrow scope. I think that was probably back in 2002 or 2003, but it was off of VA—they provided assistance, and they went off of GSA's schedule. But in that issue, you found that the requirements just expanded. Initially, I think the contractor had expectations to do a few things, but over time more and more things were added to their areas of services to be provided.

But in terms of undefinitized contract actions, I could look at that for you, but I do not recall that being an issue, say, such as what work we might have done in Iraq where you saw that happening a lot.

Senator MCCASKILL. Right.

Ms. Duke, are there more contractors working at DHS now or at this time last year?

Ms. DUKE. I do not have information about the specific number of contractor employees, but in terms of percentage of dollars, there are slightly more in our current 2007 numbers than were in 2006.

Senator MCCASKILL. Well, that is what I am really worried about. Because I think that we had a great excuse to take a short cut, because you all were stood up as a new Department and everyone understood the need for urgency and quick movement and everyone understood that you did not have the people on staff, a Federal employee workforce was not available for some of these functions.

But the problem is that was at the beginning. Well, we are not at the beginning anymore, and it seems to me, what I have looked at, it just keeps growing, that there is absolutely no attempt, particularly in the area of overseeing the overseers. You have a number of contractors that have oversight responsibility, and the ones that bother me are the contractors that are overseeing companies that they work for. So it is incestuous.

You have Booz Allen Hamilton who works for Boeing, who is now overseeing Boeing on the Secure Borders Initiative (SBInet). And when you have overseers that are supposed to be providing the government assurances that the work is being done, and the people they are checking on are also the people they work for, that is not a good business practice. I mean, that is an audit finding, is what that is.

Can you speak to this phenomenon that you have where you are hiring people to perform the oversight function and they are overseeing people that they need in business relationships?

Ms. DUKE. Well, I think the core issue, again, is keeping inherently governmental the true oversight in Federal employees. That is clear and that is the way we have to go.

In terms of some of the measures we have taken, for instance, in our EAGLE contract, which is our big DHS IT contract that we expect to probably have about $6 billion worth of work a year anticipated, we have a separate group, and if you are going to be

doing independent verification and validation, meaning giving a third-party objective look, if you are in that category of EAGLE, you cannot bid on any actual work performance. So that is making a clear line. It is not leaving potential organizational conflicts of interest up to individual legal interpretations. It is saying if you are doing this, you are not doing performance.

In the specific area of the SBInet, I did look into that because it was brought to my attention, and from a purely legal standpoint, Booz Allen is not overseeing. They are supporting the contract office. But I do understand, Senator, the issue that you bring in terms of appearance to not only our oversight but to the American people, and that is something we are looking at.

So I really think what we have to do is we have to go program by program—I do not think there is a ratio. I do not think it is one in four. But we have to program by program look at the risk and make sure we have the right number with the right skills of government people dedicated to overseeing these contracts and manage them.

Senator MCCASKILL. Well, the trend needs to go the other way than the way it is going, and I just want to close. I have some questions I want to ask on the record that I will have to submit, but I want some response on the DHS data breaches and the problem that is a very large contract. And I am concerned about these DHS data breaches, particularly because of the Chinese connection.

But as my time is slipping away, I want to mention a comment from the DHS officials about this issue of the use of contractors. And one of the things is tightening acquisition training and requirements on contractors. The DHS spokesman said that part would be very difficult to achieve. Now, let's think about that—tightening acquisition training and requirements on contractors. There should be no uncertainty about our appreciation to be a good steward of taxpayer dollars, but this objective will be very difficult to achieve, and it is far too early to place a progress or a timeline on completion.

Acquisition training and requirements on contractors, that is such a difficult goal that we cannot even talk about when we might be able to get it done? I think that is what makes the taxpayers shake their head and kind of go, "Huh?" How can we not accept that tightening requirements on contractors and acquisition training? I would like the Department to take another run at that as to what steps they are taking and can take immediately. I mean, we are not talking about completely changing out your workforce. We are talking about a core competency of government. And the idea that we cannot even put a timeline on completing it—when I read that in the paper this morning, I kind of went, well, that is a problem.

So I would like someone to take another look at whether or not we cannot tighten acquisition training and requirements on contractors at some time without saying we have no idea when we would be able to do that. Thank you.

Chairman LIEBERMAN. Thanks, Senator McCaskill.

Mr. Hutton, let me go to one of the examples that we cite just to elucidate our discussion with a little detail. I am speaking of the $42.4 million task order to support the DHS Information Analysis

and Infrastructure Protection Directorate. The order included 58 tasks for the contractor to perform and support for over 15 program offices and 10 separate Directorate-wide administrative efforts. It was big. And as I indicated in my opening statement, there was only one DHS employee to serve as a technical representative to provide oversight.

So let me ask you to step back and tell the Committee what in that case, in the best of all professional worlds, should DHS have done differently.

Mr. HUTTON. OK. That is a great question because the way I look at it, first of all—we have all been talking that there are times when there may be no way to meet an urgent mission need with existing resources, maybe even across the enterprise, and a decision is to go with a contractor.

At that point, though, as part of the acquisition planning process, I think one would want to start thinking about, OK, what specifically do we need this contractor to do? What types of activities? How do those activities translate to types of services that closely support inherently governmental?

If they do, what kind of oversight do we need, what kind of expertise do we need to ensure that the contractor is not performing inappropriate activities and that the government is able to maintain their independence and their decisionmaking?

I think, Senator McCaskill and Senator Collins, you mentioned as well about urgent and compelling and the nature of that. I would argue that if that is the justification, at that point you probably already need to be starting to think ahead. What are you going to do? Because the initial contract will not go on forever. And yet I think you need to start thinking about where do we want to go with this? Do we want to continue to use a contractor? If we do and we feel we have to, then what kind of process are we going to put in place to make sure that we have a competition because competition is a bedrock, I think, ultimately to get the best possible service.

I would just say that, to me, a lot of it is the front-end acquisition planning.

Chairman LIEBERMAN. Would you say that just self-evidently it was too big a contract? Or might there have been justification for having an umbrella contract that large?

Mr. HUTTON. Well, Senator, it is a hard thing because, as I mentioned earlier, it appeared that the types of activities that the contractor undertook kind of evolved over time. And so that was not an intended outcome, I do not believe, at the outset. That again, I believe, takes you back to more strategically where do we want to go with a contractor for providing these types of services.

Chairman LIEBERMAN. How about the oversight that should have been there from the Department in the best of all worlds? Let us assume that the contract was executed as it was. Presumably, one employee was not enough.

Mr. HUTTON. No, sir, and this is an issue that is just across government. Mr. Walker has been up here talking about systemic acquisition issues.

Chairman LIEBERMAN. Right.

Mr. HUTTON. And the policies require, what expertise do we need? If you assess the risk and you think about the vulnerabilities to the government decisionmaking, that is when you start thinking, what is the expertise of folks we need to ensure that the contractor is performing as required and that we are protecting the government's interests? It may be several people. It may be six people. But you have to go through that calculus, that thought process.

Chairman LIEBERMAN. Let me ask you to speak for just a moment or two in response to the general questions that I asked the two other witnesses in the first round. You are the GAO expert here. Why is there so much more contracting for services now than before? Is there too much? And if so, why?

Mr. HUTTON. To say whether it is too much, we do not really have criteria for that. You would have to look at it on a case-by-case basis. But I do point out, Senator, that GAO has done some work looking at service contracting in a broad sense. And in that report we talked about the need to look at it from a strategic level, the enterprise-wide level, as well as the transactional level. And I think a lot of the things that we are talking about today were more at the transactional level, individual decisionmaking on a particular need, how do you meet that requirement.

But when you loop back up to the strategic level, you need to have certain processes. You really need to know what you are buying, what kind of services are you buying, what are the contractors doing, and you have got to start thinking about where do I want to end up 5, 10 years from now. Do I want to have these types of services provided by contractors, or do I want to have a different mix? And how do I get there?

Chairman LIEBERMAN. Is it fair to assume that you agree with what Mr. Schooner said about the urgent need to improve and expand the Federal Government's acquisition workforce?

Mr. HUTTON. That is an issue that the SARA panel brought up. As you mentioned yourself, we are looking at it for DHS. I do not have any information that would be able to make that generalization, but I do point out there are even fundamental issues as to what do we mean by acquisition officials. There are different definitions out there. So how do you get a handle on that across all the different government agencies? And I think you would find it is probably a case-by-case situation. There may be some agencies that will not cross the line and use a contractor for a certain type of acquisition support, while others may. And I think that is where, again, the agency focus on what they are buying with these services and do they want to have the contractor perform certain ones or not.

Chairman LIEBERMAN. Generally, do you reach a judgment on the question of whether we save money when we contract out professional management services as opposed to spending more money than we would if the Federal employees did it?

Mr. HUTTON. That would be a hard generalization to make because, again, it is just case by case.

Chairman LIEBERMAN. OK. My time is up in this round. Senator Collins.

Senator COLLINS. Thank you.

Professor, you raised an interesting point, which I am going to ask Mr. Hutton about shortly, about whether there are shortages not just in the procurement workforce, which I think is widely accepted as being at risk right now, but generally across the Federal Government causing us to rely on private security firms in Iraq, to use your example, but also raising questions about inherently governmental functions being contracted out.

Based on what you have seen, if we were to strictly enforce the inherently governmental requirement, would we see a massive expansion in the Federal workforce? Is it even possible to do that?

Mr. SCHOONER. Let me take that on in two parts.

First, you would have to experience a massive increase in the size of government if we are only doing government personnel head count, or you would have to restrain the ambition and the commitments of the Federal Government. You cannot really do both.

I find it remarkable—and, again, this has been a bipartisan move. The public is very enamored with the concept of small government, and it is one of the reasons why I think Paul Light's work on shadow government is so important. It has been consistently represented in the annual budgets that the government is small, the line I always like, "the smallest administration since the Kennedy administration." But we all know that government's reach is expanding, the amount of expenditure is expanding, the tasks that government takes on, the services that it hopes to provide for the public. Government has grown, but we have artificially constrained the size of the government. Maybe today there is no more example of how acute this problem is than the troop strengths we have placed on the military, and it has a direct result being that we have more contractors supporting the military in Iraq right now than we have members of the military and, more specifically, we have an extremely disconcerting number of arms-bearing contractors in the operational theater that do not necessarily work for the government, do not necessarily speak the same language, and, frankly, do not like each other. And that has to concern you not only if you are a member of the public but if you have any military experience whatsoever.

Senator COLLINS. Mr. Hutton, based on the work that you have done generally, are agencies and departments essentially winking at the requirement that they are not supposed to contract out inherently governmental functions?

Mr. HUTTON. We do not have any indication, even in our drill downs. To be able to actually demonstrate that a contractor is performing an inherently governmental function oftentimes means that you have to show that the contractor actually made the decision and that the government really did not have any knowledge, did not have any understanding of the issues, and basically rubber-stamped. That is a very hard thing to do.

To say that there is perhaps a winking at it, we did not get any indication of that case, but we do have serious concerns because, as we have all been talking here, there are more and more service contracts in government and they are performing many more services than they may have done in the past, perhaps for some of the reasons that Mr. Schooner mentions. But the key is, though, is this just happening or is it a managed outcome. I think it is just hap-

pening. And I think through some of the work that we have done in the service contracting more broadly, where we are advocating looking at it from a strategic as well as a transactional standpoint, is one vehicle and one way to help agencies get a better handle on what it is that they are actually requiring and what is the best way to fill that need.

Senator COLLINS. Professor, I want to go back to the issue of the enormous noncompetitive contracts that were awarded in the wake of Hurricane Katrina. Do you think it is possible for DHS to plan for the unexpected—in other words, to have on-the-shelf contracts that would be pre-negotiated, that if a storm hits, DHS could take those contracts, fill in the terms, make them specific? Is there a way around awarding huge noncompetitive contracts every time a disaster strikes? It seems like there ought to be. Even if you cannot define precisely where the storm is going to hit or how much assistance is going to be needed, isn't there a way to prepare contracts in advance?

Mr. SCHOONER. I think the short answer is it is unequivocally feasible to create contingency contracts for almost any conceivable or even the inconceivable contingency. So you can plan for things. You can have a contractor in reserve ready to provide whatever it is you need—water, body bags, portable housing.

But I think that the important thing to keep in mind is once the realm of what is feasible grows and you begin planning for contingencies past a certain point, the risk you run is that by pre-purchasing surge capacity, you are going to end up paying a very high premium for that. And, again, we get into some extremely complex economic arguments as to how many supplies need to be pre-positioned, what the capacity needs to be on hold, and what you have available because that costs the private sector money. And if we want it, we have to pay for it.

Senator COLLINS. Ms. Duke, do you have any comments on this issue?

Ms. DUKE. I think it is not only possible, but it is necessary. And we have done a lot of work with FEMA since Hurricane Katrina in having pre-positioned contracts.

The pre-positioned contracts or the in-place contracts are often national and large. I do think it is important to, as soon as possible, move to local contracts under the Stafford Act to revitalize the economy. But I do think that is important, and we have done a lot of work in that area.

I also think the people issue and knowing how to deal with contingency operations—I know your proposed bill has an issue in it about contingency contracting officers, and we started that under the Office of Federal Procurement Policy Working Group that I co-chair. I think that is important to have the people that know how to use these pre-positioned instruments.

Senator COLLINS. Thank you. I think having, as our bill proposes, a contingency corps of contracting officers who can be brought together from different agencies to help in an emergency would greatly increase the quality of contracts and allow for this surge approach. So I appreciate your comments on that as well.

Thank you, Mr. Chairman.

Chairman LIEBERMAN. Thanks, Senator Collins. This hearing is not about the Blackwater situation or private security contractors, but while I have this expertise in front of the Committee, I do want to ask a couple of questions that will be immediately helpful, but also will guide us as to whether there is a constructive role this Committee can play in oversight, investigation, etc.

Professor Schooner, let me start with you. You said, generally speaking, that you thought with regard to procurement that current laws were adequate, but their implementation was not, but that you did believe, if I heard you correctly, that some of the laws in the area of the government's use of private security contractors are insufficient. And I wanted to ask you to elaborate on that, if you would, and indicate whether you have specific areas of concern that you believe the Committee might constructively assess.

Mr. SCHOONER. The short answer is yes, and if you will indulge me for just a moment, let me begin first with the legal regime, which is, at best, confusing and, at worst, inadequate.

Chairman LIEBERMAN. By legal regime here, what do you mean?

Mr. SCHOONER. I am including the fundamental laws that we know, for example, the Uniform Code of Military Justice (UCMJ); Military Extraterritorial Jurisdiction Act (MEJA); the conventional approach that we take on these matters, which is a Status of Forces Agreement (SOFA); and then, of course, we also have the General Order 17 in Iraq, which complicates this all the more. But the bottom line is many of our arms-bearing contractors in Iraq fall into a vacuum, and to the extent that Congress has now repeatedly attempted to fix the legislative vacuum, we do not have the precedent and we surely do not have the regulatory structure in place to ensure that those legal regimes are going to work.

A very important issue here is that there is a tremendous amount of expertise in terms of dealing with contractors in varying industries, but the government did not have that expertise in place at September 11, 2001. No one planned for the dramatic increased reliance on arms-bearing contractors. And we simply do not have sufficiently sophisticated regulations or policy in place for them.

That process has begun, but, for example, the private security industry has been screaming for years, I think appropriately, begging to be regulated, begging to have quality standards in place. We should have an ISO that specifically indicates what we expect the credentials and qualifications of private military to be. Now, once we set those standards, we may be disappointed to find that many of the contractors we are relying on do not meet them.

Then the last point on this—and I think this is the inherently obvious part of it—is that to the extent that we are using private military, all of the other acquisition workforce problems come to bear. We did not have the time to write the best possible contracts, and, therefore, the government has not always clearly communicated to the contractors what is particularly important and how they want their behavior to be constrained. And then the next part of that is we do not have sufficient people in place, in theater, to manage those contractors effectively once the contracts have been awarded.

Chairman LIEBERMAN. Let me ask you the prior question in a way, the baseline question, and I know you had experience in the

military as well as your extensive procurement experience. And let me ask it with an edge to it. Isn't it an inherently governmental responsibility to provide arms-bearing security personnel in a war zone? In other words, is it appropriate to contract out such services?

Mr. SCHOONER. It is a little bit more complicated, but let me give you what I believe the easiest answer first. I am very comfortable with a doctrine that says that government shall have a monopoly over the use of force. But as we all know from our experiences, there is any number of static security functions that contractors can do. Whether you want to call people rent-a-cops or the kind of people that provide security at the gates to military installations, that is all fine. But we used to be quite confident or comfortable with a doctrine that said private contractors do not engage the enemy in combat. And that is the line that is blurred. And where we see it as an extremely complicated issue is when we have a fuzzy battle area, where it is not so clear where the lines are drawn.

Put yourself in the shoes of the military commander on the ground in Iraq, knowing that there are tens of thousands of people who are theoretically on our side, bearing weapons, who, first, do not necessarily work for the military commanders and do not even necessarily work for the military commanders' agencies or do not even work for the government because the largest population of arms-bearing contractors in Iraq are contractors that work for other contractors and do not even have a contract with the government.

Chairman LIEBERMAN. Right. In other words, the contractor providing food, for instance, or servicing of vehicles will retain private security guards to protect his personnel.

Mr. SCHOONER. Absolutely.

Chairman LIEBERMAN. There is a story in the papers today, attributed to Secretary Gates, suggesting that he may have raised the question of whether all the private security personnel in military theater should come under Department of Defense control or oversight. What do you think about that?

Mr. SCHOONER. I think that it is a solution. I do not think that it is a satisfactory solution, and I am not convinced it can be implemented in the short term. Let me just give you a simple explanation on that.

I am very comfortable that anyone in uniform over there would much rather have all of the contractors under the thumb of the military because, again, it empowers the military commander.

Now put yourself in the shoes of the State Department. One of the reasons that Blackwater is so exposed and has so raised the ire of the Iraqi people is they are not providing static security. They are guarding the most attractive targets that we have placed in the most dense urban environment, which is also the hottest area on the ground there. I am quite confident——

Chairman LIEBERMAN. Right, our State Department personnel and visitors, for example.

Mr. SCHOONER. Sure, and the Ambassador and folks like yourselves. But I am quite confident the State Department does not want to be told by the military when they can and cannot move the

Ambassador, where they can hold meetings, and the like. It is perfectly reasonable for the military to say, "If we keep the Ambassador inside the protected area, he or she will not be harmed." Well, that is not the way the State Department operates.

Chairman LIEBERMAN. I am just going to take a quick moment on this. I am interested, Mr. Hutton, based on your extensive work experience in contracting oversight, whether you have anything to add to this discussion from a GAO historical perspective of the oversight of private security contractors in war zones.

Mr. HUTTON. Well, GAO has done work on oversight of contractors 10 years ago, back in the Balkans, but also more recently in Iraq, but Iraq is where you really see the heavy use of private security contractors. But in doing that work, we pointed out back in 2005 that there were obvious coordination problems between the military and the private security contractors, particularly in the early stages where a lot of those contractors were working more as it relates to the reconstruction and the civilian side of things. And so coordination was a big issue.

Also, we looked at the fact that when units were going over, they were not getting insight and training and understanding or guidance as to how you work with the PSC, and that was pointed out as a particular issue.

We are looking at private security contractors right now. We have some work just getting underway. And, one, we are looking at are the PSCs properly trained and vetted. We are looking at what are the processes in place to ensure that there is accountability over the actions of the employees. And we are looking at some cost issues as well. But it is a very interesting question.

Chairman LIEBERMAN. I appreciate it, and Senator Collins and I are going to be talking about whether there is a constructive role for a hearing or some oversight on this specific question of private sector security contractors in war zones.

Senator Collins, do you have other questions or final comments?

Senator COLLINS. No. Thank you.

Chairman LIEBERMAN. I want to thank the witnesses. I want to thank you, Mr. Hutton, for another excellent report.

Ms. Duke, it is obvious that this is a tough report and it is a critical report about DHS. You have the benefit of coming to this Chief Procurement Officer position relatively recently. Senator Collins and I never want to play a "gotcha" game here. We really believe in the Department, and we want to work together with the personnel of the Department to make it work.

This report is troublesome, and I hope you will respond to it with the attitude that I saw here today, which is that you have some work to do as the Chief Procurement Officer to make this situation of contracting at the Department of Homeland Security a lot better, more competitive, and with more oversight than exists today. Thank you very much.

The hearing record will remain open for 15 days for additional questions or comments from the witnesses. Again, I thank you.

The hearing is adjourned.

[Whereupon, at 12:05 p.m., the Committee was adjourned.]

APPENDIX

United States Government Accountability Office

GAO

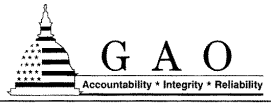
Testimony Before the Committee on Homeland Security and Governmental Affairs, United States Senate

For Release on Delivery
Expected at 10:00 a.m. EDT
Wednesday, October 17, 2007

DEPARTMENT OF HOMELAND SECURITY

Risk Assessment and Enhanced Oversight Needed to Manage Reliance on Contractors

Statement of John P. Hutton, Director
Acquisition and Sourcing Management



GAO-08-142T

GAO
Accountability·Integrity·Reliability

Highlights

Highlights of GAO-08-142T, a testimony before the Committee on Homeland Security and Governmental Affairs, United States Senate

Why GAO Did This Study

In fiscal year 2005, the Department of Homeland Security (DHS) obligated $1.2 billion to procure four types of professional and management support services. While contracting for such services can help DHS meet its needs, using contractors to provide services that closely support inherently governmental functions increases the risk of government decisions being influenced by, rather than independent from, contractor judgments.

This testimony summarizes our September 2007 report to this Committee and others and focuses on (1) the types of professional and management support services DHS has contracted for and the circumstances that drove its contracting decisions, and (2) DHS's consideration and management of risk when contracting for such services.

GAO analyzed 117 statements of work and 9 case studies in detail for selected contracts awarded in fiscal year 2005 by the Coast Guard, the Office of Procurement Operations, and the Transportation Security Administration.

What GAO Recommends

Our September 2007 report recommended that DHS take actions to improve its ability to manage risk and ensure government control over and accountability for decisions resulting from services that closely support inherently governmental functions. DHS generally agreed with these recommendations.

To view the full product, including the scope and methodology, click on GAO-08-142T. For more information, contact John Hutton at (202) 512-4841 or huttonj@gao.gov.

October 17, 2007

DEPARTMENT OF HOMELAND SECURITY

Risk Assessment and Enhanced Oversight Needed to Manage Reliance on Contractors

What GAO Found

A broad range of program-related and administrative activities was performed under the four types of professional and management support services contracts we reviewed—program management and support, engineering and technical, other professional, and other management support. DHS decisions to contract for these types of services were largely driven by the need for staff and expertise to get programs and operations up and running. While DHS has identified core mission critical occupations and plans to reduce skill gaps in core and key competencies, it is unclear whether this will inform the department's use of contractors for services that closely support the performance of inherently governmental functions.

Program officials generally acknowledged that their professional and management support services contracts closely supported the performance of inherently governmental functions, but they did not assess the risk that government decisions may be influenced by, rather than independent from, contractor judgments—as required by federal procurement guidance. In addition, none of the program officials and contracting officers we spoke with was aware of these requirements, and few believed that their professional and management support service contracts required enhanced oversight. Federal guidance also states that agency officials must retain control over and remain accountable for policy and program decisions. For the nine cases we reviewed, the level of oversight DHS provided did not always help ensure accountability for decisions or the ability to judge whether contractors were performing as required. DHS's Chief Procurement Officer is implementing an acquisition oversight program—designed to allow flexibility to address specific procurement issues—with potential to address this issue.

Range of Contracted Services and Related Risk Level

Basic services	Professional and management support services that do not closely support inherently governmental functions	Professional and management support services that closely support inherently governmental functions
• Custodial • Food • Landscaping • Snow removal • Storage • Trash collection	• Advertising • Banking • Parking • Records maintenance	• Acquisition support • Budget preparation • Developing or interpreting regulations • Engineering and technical services • Intelligence services • Policy development • Reorganization and planning
Low	← Risk level →	High

Source: GAO analysis.

Mr. Chairman and Members of the Committee:

Thank you for inviting me here today to discuss the Department of Homeland Security's (DHS) continued and increasing use of contractors for professional and management support services. When DHS was established over 4 years ago, it faced an enormous challenge to quickly set up numerous offices and programs that would provide wide-ranging and complex services critical to ensuring the nation's security. To help address this challenge, the department relied on contractors to perform many mission-related services. For example, in fiscal year 2005 DHS obligated $1.2 billion on four types of professional and management support services that may closely support the performance of inherently governmental functions: program management and support, engineering and technical, other professional, and other management support. The use of these types of services can increase the risk of contractors unduly influencing the government's control over programs and accountability for actions, making them vulnerable to fraud, waste, and abuse. For this reason, long-standing federal policy requires attention to this risk.

At your request, we reviewed DHS's use of contracts for four selected services that closely support inherently governmental functions to identify the types of activities DHS requested through these contracts and the associated risks. Our findings are discussed in detail in a report that we are releasing today.[1] My statement will focus on (1) the types of professional and management support services for which DHS has contracted and the circumstances that drove its contracting decisions, and (2) DHS's consideration and management of risk when contracting for such services. Our findings are based on a review of 117 judgmentally selected statements of work for professional and management support services for the Coast Guard, the Office of Procurement Operations (OPO), and the Transportation Security Administration (TSA) from fiscal year 2005.[2] We selected nine of the 117 statements as case studies and examined them in detail. These nine were spread among the three

[1]GAO, *Department of Homeland Security: Improved Assessment and Oversight Needed to Manage Risk of Contracting for Selected Services*, GAO-07-990 (Washington, D.C.: Sept. 17, 2007).

[2]Fiscal year 2005 was the most recent year for which complete data were available at the time we began our review.

components and represented a variety of services and dollar values among the three components. We conducted our work in accordance with generally accepted government auditing standards.

Summary

More than half of the 117 statements of work we reviewed included reorganization and planning activities, policy development, and acquisition support—services that closely support the performance of inherently governmental functions according to federal acquisition guidance. For the nine case studies we conducted, decisions to contract for these services were largely driven by the need for staff and expertise to get DHS programs and operations up and running quickly. However, DHS program officials did not assess the risk that contractor judgments could influence government decisions and did not provide enhanced oversight, despite federal procurement guidance requiring such attention. Most contracting and program officials we spoke to were not only unaware of federal requirements for enhanced oversight, but did not see a need for it based on the services provided. While DHS's human capital strategic plan notes the department has identified core mission critical occupations and plans to reduce skill gaps in core and key competencies, it is unclear whether it will inform the department's use of contractors for services that closely support the performance of inherently governmental functions.

Background

Inherently governmental functions require discretion in applying government authority or value judgments in making decisions for the government; as such, they should be performed by government employees—not private contractors.[3] The Federal Acquisition Regulation (FAR) provides 20 examples of functions considered to be, or to be treated as inherently governmental (see Appendix I), including

- determining agency policy and priorities for budget requests,
- directing and controlling intelligence operations,
- approving contractual requirements, and
- selecting individuals for government employment.

[3]Federal acquisition policy states that contracts shall not be used for the performance of inherently governmental functions.

The closer contractor services come to supporting inherently governmental functions, the greater the risk of their influencing the government's control over and accountability for decisions that may be based, in part, on contractor work. Table 1 provides examples of the range of services contractors provide to the federal government—from basic activities, such as custodial and landscaping, to more complex professional and management support services—and their relative risk of influencing government decision making.

Table 1: Range of Contracted Services and Related Risk Level

Basic services	Professional and management support services[a] that do not closely support inherently governmental functions	Professional and management support services[a] that closely support inherently governmental functions
• Custodial	• Advertising	• Acquisition support
• Food	• Banking	• Budget preparation
• Landscaping	• Parking	• Developing or interpreting regulations
• Snow removal	• Records maintenance	• Engineering and technical services
• Storage		• Intelligence services
• Trash collection		• Policy development
		• Reorganization and planning
Low	**← Risk level →**	**High**

Source: GAO analysis of selected FPDS-NG and FAR subpart 7.5 categories of services, and OFPP Policy Letter 93-1.

[a]Professional and management support services consists of 42 codes in the Federal Procurement Data System – Next Generation (FPDS-NG).

The potential for the loss of government management control and accountability for decisions is a long-standing governmentwide concern. For example, in 1981, we found that the level of contractor involvement in management functions at the Departments of Energy and Defense was so extensive that the agencies' ability to develop options other than those proposed by the contractors was limited.[4] More recently, in 2006, government, industry, and academic participants in GAO's forum on federal acquisition challenges and opportunities[5] and the congressionally

[4]GAO, *Civil Servants and Contract Employees: Who Should Do What for the Federal Government?*, FPCD-81-43 (Washington, D.C.: June 19, 1981).

[5]GAO, *Highlights of a GAO Forum: Federal Acquisitions Challenges and Opportunities in the 21st Century*, GAO-07-45SP (Washington, D.C.: Oct. 6, 2006).

mandated Acquisition Advisory Panel[6] noted how an increasing reliance on contractors to perform services for core government activities challenges the capacity of federal officials to supervise and evaluate the performance of these activities.

FAR and Office of Federal Procurement Policy (OFPP) guidance state that services that tend to affect government decision-making, support or influence policy development, or affect program management are susceptible to abuse and require a greater level of scrutiny and an enhanced degree of management oversight. This would include assigning a sufficient number of qualified government employees to provide oversight and to ensure that agency officials retain control over and remain accountable for policy decisions that may be based in part on a contractor's performance and work products.[7]

DHS Contracting Decisions For A Broad Range Of Activities Were Largely Driven By A Lack Of Staff And Expertise And Immediacy Of Need

A broad range of program-related and administrative activities was performed under the professional and management support services contracts we reviewed. DHS decisions to contract for these services were largely driven by the need for staff and expertise to get programs and operations up and running. While DHS has identified core mission-critical occupations and plans to reduce skill gaps in core and key competencies, it has not directly addressed the department's use of contractors for services that closely support the performance of inherently governmental functions.

[6] *Report of the Acquisition Advisory Panel to the Office of Federal Procurement Policy and the United States Congress*, January 2007; see Services Acquisition Reform Act of 2003, Pub. L. No. 108-136, Title XIV, §1423.

[7] FAR section 37.114, Special Acquisition Requirements; OFPP Policy Letter 93-1: *Management Oversight of Service Contracting*, Office of Federal Procurement Policy, May 18, 1994.

DHS Contracts for Selected Services Covered a Broad Range of Activities Closely Supporting Inherently Governmental Functions

A broad range of activities related to specific programs and administrative operations was performed under the professional and management support services contracts we reviewed. The categories of policy development, reorganization and planning, and acquisition support were among the most often requested in the 117 statements of work, as well as in the nine case studies.

- For example, TSA obligated $1.2 million to acquire contractor support for its Acquisition and Program Management Support Division, which included assisting with the development of acquisition plans and hands-on assistance to program offices to prepare acquisition documents.

- A $7.9 million OPO human capital services order provided a full range of personnel and staffing services to support DHS's headquarters offices, including writing position descriptions, signing official offer letters, and meeting new employees at DHS headquarters for their first day of work.

Contractor involvement in the nine case studies ranged from providing two to three supplemental personnel to staffing an entire office. Figure 1 shows the type and range of services provided in the nine cases and the location of contractor performance.

Figure 1: Professional and Management Support Services Closely Supporting Inherently Governmental Functions in Nine Cases Reviewed

DHS program or office supported, by component	Total[a] (dollars in millions)	Service provided									Service type	Location
		Budget preparation	Policy development	Acquisition support	Developing or interpreting regulations	Reorganization and planning	Contractor representing component	Contractor responding to Freedom of Information Act request	Program support	Administrative operations	Performed on-site at DHS	Performed at contractor facility
Coast Guard												
Integrated Deepwater System, Modeling and Simulation Services	$ 2.1					●			●			●
Competitive Sourcing Program	1.7	●	●	●		●			●		●	
Office of Standards, Evaluation, and Development	1.3		●		●				●		●	
Office of Procurement Operations												
Information Analysis and Infrastructure Protection Directorate	42.4	●	●	●	●	●	●	●	●	●	●	
U.S. Visitor and Immigration Status Indicator Technology	11.8			●		●			●			●
DHS Headquarters Human Capital Services	7.9					●	●			●	●	●
Transportation Security Administration												
Transportation Worker Identification Credential Program	7.9	●	●	●	●	●	●		●		●	
Employee Relations Support Services	5.4		●				●			●	●	
Secure Flight	1.6	●		●	●	●	●		●	●	●	

Source: GAO analysis.

Note: Categories are based on services that approach being inherently governmental in FAR subpart 7.5 and, therefore, may not include all the services provided by contractors in each of the nine cases.

[a]Obligations based on information provided by DHS at the time of our review.

[b]Situations in which contactors might be assumed to be agency employees or representatives. FAR section 7.503(d)(13).

DHS Contracting Decisions Were Largely Driven by a Lack of Staff and Expertise and Immediacy of Need

Many of the program officials we spoke with said that contracting for services was necessary because they were under pressure to get program and administrative offices up and running quickly, and they did not have enough time to hire staff with the right expertise through the federal hiring process. For example:

- According to officials at TSA, federal staff limitations was a reason for procuring employee relations support services. Specifically, the agency needed to immediately establish an employee relations office capable of serving 60,000 newly hired airport screeners—an undertaking TSA Office of Human Resources officials said would have taken several years to accomplish if they hired qualified federal employees.

- DHS human capital officials said there were only two staff to manage human resources for approximately 800 employees, and it would have taken 3 to 5 years to hire and train federal employees to provide the necessary services.

In prior work, GAO has noted that agencies facing workforce challenges, such as a lack of critical expertise, have used strategic human capital planning to develop long-term strategies for acquiring, developing, motivating, and retaining staff to achieve programmatic goals.[8] While DHS's human capital strategic plan notes that the department has identified core mission-critical occupations and seeks to reduce skill gaps in core and key competencies, DHS has not determined the right mix of government performed and contractor performed services or assessed total workforce deployment across the Department to guide decisions on contracting for selected services. We have noted the importance of focusing greater attention on which types of functions and activities should be contracted out and which ones should not, while considering other reasons for using contractors, such as a limited number of federal employees.[9] DHS's human capital plan is unclear as to how this could be achieved and whether it will inform the Department's use of contractors for services that closely support the performance of inherently governmental functions.

[8]GAO, *Federal Acquisitions and Contracting: Systemic Challenges Need Attention*, GAO-07-1098T (Washington, D.C.: July 17, 2007).

[9]GAO-07-1098T.

DHS Did Not Consider Risk Or Provide Enhanced Oversight When Contracting For Selected Services

While program officials generally acknowledged that their professional and management support services contracts closely supported the performance of inherently governmental functions, they did not assess the risk that government decisions may be influenced by, rather than independent from, contractor judgments—as required by federal procurement policy. In addition, none of the program officials and contracting officers we spoke with was aware of these requirements, and few believed that their professional and management support service contracts required enhanced oversight. Federal guidance also states that agency officials must retain control over and remain accountable for policy and program decisions. For the nine cases we reviewed, the level of oversight DHS provided did not always help ensure accountability for decisions or the ability to judge whether contractors were performing as required; however, DHS's Chief Procurement Officer is implementing an acquisition oversight program with potential to address this issue.

Selected Cases May Have Been at Risk of Contractors Influencing Decisions

To help ensure the government does not lose control over and accountability for mission-related decisions, long-standing federal procurement policy requires attention to the risk that government decisions may be influenced by, rather than independent from, contractor judgments when contracting for services that closely support inherently governmental functions. The nine cases we reviewed in detail provided examples of conditions that we have found need to be carefully monitored to help ensure the government does not lose control over and accountability for mission-related decisions.

- *Contractors providing services integral to an agency's mission and comparable to those provided by government employees*: In seven of the nine cases, contractors provided such services. For example, one contractor directly supported DHS efforts to hire federal employees, including signing offer letters. In another case, a contractor provided acquisition advice and support while working alongside federal employees and performing the same tasks.

- *Contractors providing ongoing support*: In each of the nine case studies, the contractor provided services for more than 1 year. In some of these cases, the original justification for contracting had changed, but the components extended or recompeted services without examining whether it would be more appropriate for federal employees to perform the service. For example, OPO established a temporary

"bridge" arrangement without competition that was later modified 20 times, and extended for almost 18 months, to avoid disruption of critical support including budget, policy, and intelligence services. Subsequently, these services were competed and awarded to the original contractor under six separate contracts.

- *Broadly defined requirements*: In four of the case studies, the statements of work lacked specific details about activities that closely support inherently governmental functions. In addition, several program officials noted that the statements of work did not accurately reflect the program's needs or the work the contractors actually performed. For example, a Coast Guard statement of work for a $1.3 million order initially included services for policy development, cost-benefit analyses, and regulatory assessments, though program officials told us the contractors provided only technical regulatory writing and editing support. The statement of work was revised in a later contract to better define requirements.

Officials Did Not Assess Risk or Provide Enhanced Oversight of Contracts for Selected Services as Required

Federal acquisition guidance highlights the risk inherent in services contracting—particularly those for professional and management support services—and federal internal control standards require assessment of risks.[10] OFPP staff we met with also emphasized the importance of assessing the risk associated with contracting for services that closely support the performance of inherently governmental functions. While contracting officers and program officials for the nine case studies generally acknowledged that their professional and management support services contracts closely supported the performance of inherently governmental functions, none assessed whether these contracts could result in the loss of control over and accountability for mission-related decisions. Furthermore, none were aware of federal requirements for enhanced oversight of such contracts. Contracting officers and program officials, as well as DHS acquisition planning guidance, did not cite services that closely support the performance of inherently governmental functions as a contracting risk and most did not believe enhanced oversight of their contracts was warranted.

[10]GAO, *Standards for Internal Control in the Federal Government*, GAO/AIMD-00-21.3.1 (Washington, D.C.: November 1999).

Current DHS initiatives may have the potential to address oversight when contracting for services that closely support inherently governmental functions. DHS's Chief Procurement Officer is in the process of implementing an acquisition oversight program that is intended to assess contract administration, business judgment, and compliance with federal acquisition guidance.[11] This program was designed to allow flexibility to address specific procurement issues and is based on a series of reviews at the component level that could address selected services.

Control and Accountability Were Limited

Both the FAR and OFPP policy state that when contracting for services—particularly for professional and management support services that closely support the performance of inherently governmental functions—a sufficient number of qualified government employees assigned to plan and oversee contractor activities is needed to maintain control and accountability. While most contracting officers and program officials that we spoke with held the opinion that the services they contracted for did not require enhanced oversight, we found cases in which the components lacked the capacity to oversee contractor performance due to limited expertise and workload demands. For example:

- One Contracting Officer's Technical Representative (COTR) was assigned to oversee 58 tasks, ranging from acquisition support to intelligence analysis to budget formulation and planning, across multiple offices and locations. Program and contracting officials noted the resulting oversight was likely insufficient. To provide better oversight for one of the follow-on contracts, the program official assigned a new COTR to oversee just the intelligence work and established monthly meetings between the COTR and the program office. According to program officials, this change was made to ensure that the contract deliverables and payments were in order, not to address the inherent risk of the services performed.

- Similarly, a DHS Human Capital Services COTR assigned to oversee an extensive range of personnel and staffing services provided by the contractor lacked technical expertise, which the program manager believed affected the quality of oversight provided. To improve

[11]GAO, *Department of Homeland Security: Progress and Challenges in Implementing the Department's Acquisition Oversight Plan*, GAO-07-900 (Washington, D.C.: June 12, 2007).

oversight for the follow-on contract, the program manager assigned a COTR with more human resources experience along with an employee with human resources expertise to assist the COTR.

DHS components were also limited in their ability to assess contractor performance, which is necessary to ensure control and accountability, in a way that addressed the risk of contracting for professional and management support services that closely support the performance of inherently governmental functions. Assessing contractor performance requires a plan that outlines how services will be delivered and establishes measurable outcomes. However, none of the related oversight plans and contract documents we reviewed contained specific measures for assessing contractors' performance of the selected services.

Conclusion and Recommendations

Until the department provides greater scrutiny and enhanced management oversight of contracts for selected services—as required by federal guidance—it will continue to risk transferring government responsibility to contractors. To improve the department's ability to manage the risk associated with contracting for services that closely support the performance of inherently governmental functions and help ensure government control and accountability, the report we are releasing today recommends that the Secretary of Homeland Security take several actions. These actions include establishing strategic-level guidance for determining the appropriate mix of government and contractor employees, assessing the risk of using contractors for selected services, more clearly defining contract requirements, assessing the ability of the government workforce to provide sufficient oversight when using selected services, and reviewing contracts for selected services as part of the acquisition oversight program.

DHS generally concurred with our recommendations and provided information on what actions would be taken to address them. However, DHS partially concurred with our recommendation to assess the risk of selected services as part of the acquisition planning process and modify existing guidance and training, noting that its acquisition planning guidance already provides for the assessment of risk. Our review found that this guidance does not address the specific risk of services that closely support the performance of inherently governmental functions. DHS also partially concurred with our recommendation to review selected services contracts as part of the acquisition oversight program. DHS stated that rather than reviewing selected services as part of the routine

acquisition oversight program, the Chief Procurement Officer will direct a special investigation on selected issues as needed. We did not intend for the formal oversight plan to be modified, rather we recognize that the program was designed with flexibility to address specific procurement issues as necessary. We leave it to the discretion of the Chief Procurement Officer to determine how to implement the recommendation.

Mr. Chairman, this concludes my prepared statement. I would be happy to respond to any questions you or other members of the committee may have at this time.

Contacts And Acknowledgments

For further information regarding this testimony, please contact me at (202) 512-4841 or (huttonj@gao.gov). Contact points for our Offices of Congressional Relations and Public Affairs may be found on the last page of this product. Staff making key contributions to this statement were Amelia Shachoy, Assistant Director; Katherine Trimble; Jennifer Dougherty; Karen Sloan; Julia Kennon; and Noah Bleicher.

Appendix I: Examples of Inherently Governmental and Approaching Inherently Governmental Functions

Federal Acquisition Regulation (FAR) section 7.503 provides examples of inherently governmental functions and services or actions that are not inherently governmental, but may approach being inherently governmental functions based on the nature of the function, the manner in which the contractor performs the contract, or the manner in which the government administers contractor performance. These examples are listed in tables 1 and 2.

Table 1: Examples of Inherently Governmental Functions

1	Directly conduct criminal investigations.
2	Control prosecutions and perform adjudicatory functions other than arbitration.
3	Command military forces.
4	Conduct foreign relations and determine foreign policy.
5	Determine agency policy, including regulations.
6	Determine federal program priorities for budget requests.
7	Direct and control of federal employees.
8	Direct and control intelligence and counter-intelligence operations.
9	Select individuals for federal government employment.
10	Approve position descriptions and performance standards for federal employees.
11	Determine the disposal of government property.
12	In federal procurement activities with respect to prime contracts: Determine the supplies or services acquired by the government; participate as a voting member on any source selection boards; approve contractual documents, including documents defining requirements, incentive plans, and evaluation criteria; award contracts; administer contracts; terminate contracts; determine whether contract costs are reasonable, allocable, and allowable; and participate as a voting member on performance evaluation boards.
13	Approve agency responses to Freedom of Information Act requests.
14	Conduct administrative hearings to determine eligibility for security clearances, or that affect personal reputation or eligibility to participate in government programs.
15	Approve federal licensing actions and inspections.
16	Determine budget policy, guidance, and strategy.
17	Collect, control, and disburse public funds, unless authorized by statute. Does not include: The collection of public charges to mess halls, national parks, and similar entities; and routine voucher and invoice examination.
18	Control treasury accounts.
19	Administer public trusts.
20	Draft congressional testimony, responses to congressional correspondence, or agency responses to audit reports.

Source: GAO analysis of FAR section 7.503(c).

Table 2: Examples of Services That May Approach Being Inherently Governmental Functions

1	**Involve or relate to budget preparation.**
2	Involve or relate to reorganization and planning activities.
3	Involve or relate to analyses, feasibility studies, and strategy options to be used in developing policy.
4	Involve or relate to developing regulations.
5	Involve or relate to evaluating another contractor's performance.
6	Support acquisition planning.
7	Assist in contract management.
8	Provide technical evaluation of contract proposals.
9	Assist in developing statements of work.
10	Support the preparation of responses to Freedom of Information Act requests.
11	Work in situations that may permit access to confidential business information.
12	Provide information regarding agency policies or regulations.
13	Participate in situations where contractors may be assumed to be agency employees or representatives.
14	Participate as technical advisors to source selection boards or as members of a source evaluation board.
15	Serve as arbitrators or provide alternative methods of dispute resolution.
16	Construct buildings intended to be secure.
17	Provide inspection services.
18	Provide legal advice and interpret regulations and statutes for government officials.
19	Provide non-law enforcement security activities that do not directly involve criminal investigations.

Source: GAO analysis of FAR section 7.503(d).

STATEMENT OF
ELAINE DUKE
CHIEF PROCUREMENT OFFICER
DEPARTMENT OF HOMELAND SECURITY

BEFORE THE
COMMITTEE ON HOMELAND SECURITY AND GOVERNMENTAL AFFAIRS
UNITED STATES SENATE

"Is DHS Too Dependent on Contractors to Do the Government's Work?"

October 17, 2007

Chairman Lieberman, Ranking Member Collins, and Members of the Committee, thank you for this opportunity to appear before you to discuss the Department of Homeland Security's (DHS) acquisition program. I am the Chief Procurement Officer (CPO) for the Department of Homeland Security. I am a career executive and I have spent most of my twenty-three years of public service in the procurement profession.

I would like to convey my top three priorities, which are essential elements to achieving the DHS mission and practicing sound stewardship of taxpayers' money:

- First, to build the DHS acquisition workforce.
- Second, to make good business deals.
- Third, to perform effective contract administration.

The subject under consideration today relates to all three of my priorities and is especially important to me for that reason. As DHS' Chief Procurement Officer (CPO), I provide oversight and support to eight procurement offices within DHS – Customs and Border Protection (CBP), Federal Emergency Management Agency (FEMA), Immigration and Customs Enforcement (ICE), Transportation Security Administration (TSA), United States Coast Guard (USCG), United States Secret Service (USSS), Federal Law Enforcement Training Center (FLETC), and the Office of Procurement Operations (OPO). As the CPO, my primary responsibility is to manage and oversee the DHS acquisition program. I provide the acquisition infrastructure that includes acquisition

policies, procedures, training and workforce initiatives that allow DHS contracting offices, as appropriate, to operate in a uniform and consistent manner.

PRIORITY: BUILD THE DHS WORKFORCE

The first of my top three priorities is building the DHS Acquisition Workforce. My responsibility as the Chief Procurement Officer is to understand the unique needs of each contracting activity and to provide the appropriate infrastructure to support each of these offices. While each contracting office is necessarily unique, they share the common objective of acquiring goods and services to meet mission needs at fair and reasonable prices, with integrity and transparency. My goal is to develop a superior acquisition workforce that not only puts the right contracts in place, but that also effectively manages the performance of its contractors. To ensure we meet our collective objective, my office has embarked on these major workforce initiatives:

- Centralized Hiring Initiative. A successful acquisition program requires a team of integrated acquisition professionals who manage the entire lifecycle of a major procurement effort. However, the competition for highly qualified acquisition and procurement professionals is intense, both within the Federal Government and the private sector. Therefore, in partnership with the Office of the Chief Human Capital Officer, we plan to initiate staffing studies related to the skill sets of individuals and staffing levels of programs under the purview of the Department. The outcome of these studies will include recommendations for the number and skill sets of Federal employees required to successfully manage long term projects and programs at the Department. We have also initiated an aggressive staffing solution to resolve personnel shortages and have centralized recruiting activities to better manage similar needs across the Department.

  Centralized recruiting efforts include department-wide vacancy announcements, print advertisements in major media publications as well as attendance at key acquisition recruiting events. In addition, for Contract Specialists, one of our most critical staffing shortages, the Department received the authority to maximize the use of hiring flexibilities such as Direct Hire Authority and Re-Employed Annuitants. While these authorities are extremely helpful to our recruiting efforts, the Direct Hire Authority has expired. This will adversely impact our ability to quickly hire needed acquisition professionals. Given the complexity of our acquisition programs, the recruitment of talented acquisition professionals will take time. I appreciate your continued support of our initiatives.

- Acquisition Intern Program. In order to satisfy the long term need for qualified acquisition personnel, my office sought centralized funding in order to attract, hire, and train exceptional new talent. Beginning in fiscal year (FY) 2008, my office is centrally funding an Acquisition Intern Program that will start with 66 participants, recruited from campuses across the country, and will grow incrementally each year to reach our goal of 300 participants. Our objective is to grow our talent and develop a pipeline for our future acquisition leaders. Interns will participate in a three-year

program, rotating through three contracting offices within DHS, and will graduate from the program as journeyman-level professionals. This program is modeled after highly successful Department of Defense (DoD) programs and is especially critical for the contracting functional area. Unlike engineering, information technology, or finance, contracting is a field that is to a significant extent learned on the job. That is why DoD and others have relied on intern programs to develop the leadership pipeline for this profession and why it is perhaps the most critical initiative for strengthening the acquisition workforce. However, the continuing resolution under which the Department now operates will cause a delay in bringing on board the first class of interns.

- Centralized Acquisition Workforce Training Fund. By centralizing our training program, the Department is better positioned to deliver a unified training program that enables our acquisition professionals to achieve the appropriate certification levels and to develop the necessary skills and competencies to negotiate good business deals. We will maximize the use of the training resources available to Federal agencies from the Federal Acquisition Institute. In May, the DHS Under Secretary for Management (USM) signed a partnership agreement with the Under Secretary of Defense (Acquisition, Technology, and Logistics) and the President of the Defense Acquisition University (DAU) to leverage existing DoD training and development opportunities. This agreement will enable DHS to use DoD's capabilities and talent pool to help develop our workforce on a long-term partnership basis. We will supplement these resources with specialized targeted training in areas such as the Safety Act, Performance-Based Acquisition, and Buy American Processes and Compliance. Our Excellence in Contracting Training Series for DHS headquarters and Component personnel is designed to enhance the acquisition workforce's understanding of contracting regulations and policies. Based on the results of reviews conducted by my Acquisition Oversight Division, our training program will develop or purchase, as needed, training aides to close identified competency gaps.

PRIORITY: MAKE GOOD BUSINESS DEALS

Ensuring the acquisition workforce makes good business deals is the second of my top three priorities. My office is continuing to develop the policy framework to facilitate the Department's ability to meet its acquisition-related mission requirements by incorporating good business practices even in the face of urgent requirements. To accomplish this, my office has engaged in a wide range of activities this year, with particular emphasis on areas of identified risk:

- The Homeland Security Acquisition Manual (HSAM) includes guidance on acquisition matters that do not rise to the level requiring formal rulemaking. In December, my office, the Office of the Chief Procurement Officer (OCPO), issued a complete revision to the HSAM to ensure currency and completeness. Subsequently, OCPO issued three FY 2007 HSAM notices that cover an extensive range of acquisition topics - competition requirements, acquisition planning, our small

business program, OCPO's class deviation process, contractor qualifications, and lead system integrator organizational conflicts of interest. Several other HSAM notices are in process to update our Acquisition Planning Guide and our Sole Source Justification & Approval Guide.

- During this last year, my office also issued a number of Acquisition Alerts on topics of particular importance to the DHS Acquisition Workforce. Recently, DHS received recognition in Government Accountability Office (GAO) Congressional testimony (GAO-07-1251T) for being among the first agencies to issue guidance to its workforce on the Alaska Native Corporation (ANC) 8(a) Program to tighten oversight of contracts with 8(a) ANC firms. Other Alert topics ranged from Buy American Act reporting, SBA Partnership Agreement, Warrant Program, Supplemental On-Line Acquisition Ethics Training Availability and Earned Value Management.

- My office is very focused on improving both the level and quality of our competitions. To that end, OCPO established a Competition Award to recognize significant achievement in strengthening competition; issued an Acquisition Alert spearheading an initiative for Components to correct existing records; and began a headquarters' systematic review of Component FedBizOpps sole source announcements as they are published to ensure that authorities are being appropriately used.

- OCPO is actively engaged in Office of Federal Procurement Policy's (OFPP) Interagency Working Group crafting the government-wide comprehensive guidance on Interagency Acquisitions. Concurrently, this week, OCPO is conducting a Lean Six Sigma event for the purpose of developing new DHS-level guidance on interagency agreements. The goal is to streamline the process while ensuring appropriate internal controls are in place.

- My office is also actively engaged in OFPP's Performance-Based Acquisition (PBA) Interagency Working Group. The Group has worked to enhance OFPP's PBA *Seven Steps* Guidance and make available appropriate samples tailored to Component needs. Additionally, during its Component reviews, OCPO Acquisition Oversight has begun checking acquisitions coded in the Federal Procurement Data System as performance-based to verify if the contracts are, in-fact, performance-based. PBA was also one of the very first Excellence in Contracting Series training topics and in January, GSA will present its PBA training as an Excellence in Contracting Series topic.

- OCPO crafted guidance signed out by the USM on use of the Past Performance Information Retrieval System, the Government's data repository for collection on contractor past performance. The memo is intended to increase awareness of the Contracting Officer and Contracting Officer Technical Representative (COTR) responsibility to use the database when making source selection decisions as well as to improve compliance with the requirement to enter past performance information into the database on DHS' contractors. OCPO is scheduled to provide an Excellence in Contracting Series training session on past performance this month. Additionally,

OCPO partnered with Components' Acquisition Systems and Policy groups to encourage completion of contractor performance evaluation reports and institute Component training.

- In June, OCPO issued a *Practical Guide to Source Selection* that provides extensive guidance on conducting Federal Acquisition Regulation (FAR) Part 15 formal source selections at DHS.

- OCPO is currently developing guidance on the proper use of Time & Material (T&M) contracting in response to recent changes in government-wide T&M policy. The guidance will be provided to Components via an Acquisition Alert or HSAM Notice and an Excellence in Contracting Series training session will be scheduled to further disseminate the information.

- OCPO is negotiating a Price Fighters Memorandum of Understanding (MOU) with the Naval Inventory Control Point to provide cost and pricing support for major Department acquisitions.

- Through its representation on the Civilian Agency Acquisition Council, OCPO is very engaged in all regulatory changes to the FAR. OCPO's active involvement ensures that the balance between good business decisions and urgency is a consideration when government-wide acquisition regulations are promulgated. Significant cases of particular DHS interest are:
    - Local Community Recovery Act (P.L.109-218) and additional Stafford Act changes (P.L. 109-295, Sec 694) for local affected set-aside areas. OCPO served as an ad hoc member of the FAR Committee for the first interim rule (Aug 2006) and second interim rule (expected to be published this month).
    - In FY 2007, OCPO and FEMA drafted and submitted the FAR business case to support initiation of implementation of the FEMA Registry of Disaster Response Contractors (P.L 109-295, Sec 697).
    - OCPO crafted the initial draft FAR rule to require Federal contractors to verify employment eligibility of their employees.

PRIORITY: EFFECTIVE CONTRACT ADMINISTRATION

In addition to areas related specifically to the topic of this hearing that I will address later in my testimony, there are several noteworthy activities related to efficient contract administration, my third priority.

- OCPO Acquisition Policy & Legislation negotiated an amendment to a Memorandum of Agreement (MOA) with the Defense Contract Management Agency (DCMA) to provide for DCMA performance of Earned Value Management (EVM) services for DHS contracts. DCMA has already begun compliance reviews. When fully implemented, the MOA will provide an avenue to obtain EVM services needed to ensure appropriate oversight of major acquisitions for development.

- A series of online job-aids, targeted at the various elements that makeup contract administration, are being developed to support the just-in-time training needs of our contracting professionals.

- OCPO is developing a Government Furnished Equipment (GFE) "*Roadshow*" expected to be presented this fall at Component locations to further acquaint professionals with significant changes to policy on administration of GFE resulting from government-wide acquisition regulation changes.

CROSS-CUTTING INITIATIVES

There are number of OCPO accomplishments and on-going activities that cut across my three priorities which I would like to bring to your attention.

- DHS' Office of Small and Disadvantaged Business Utilization was recently recognized by the Small Business Administration in their first annual small business scorecard with a rating of green. Among twenty-four Federal departments, DHS was one of only seven to receive a green rating.

- During FY 2007, OCPO's Acquisition Oversight conducted comprehensive on-sight reviews at FLETC, OPO, FEMA and U.S. Citizenship and Immigration Services in addition to a number of targeted specialized reviews.

- In FY 2007, the DHS Strategic Sourcing Program (SSP) continued to leverage leading practices to optimize its program and ensure continued support for DHS' commodity councils and for Component-specific business efforts. Positive results include price reductions of almost $100M, cost avoidances of nearly $700K. Eight distinct strategically sourced vehicles will potentially place billions of dollars with small business while meeting the stringent operational requirements of DHS' end users.

- OCPO utilizes the Program Management Council, co-chaired by me and an operational program manager, as a department-wide forum for involvement as DHS builds acquisition expertise.

- Directly bearing on the topic of today's testimony is the reorganization of OCPO to include a Program Management SES-level directorate to develop and disseminate policy on program management to DHS Components. The organization is retooling the process for reviewing and approving major Department programs and will begin a review of existing programs. An element of these reviews will be to assess the balance between Government and contractor employees and appropriately influence requirements decisions to properly allocate the division.

- This year, my Acquisition Policy & Legislation group stood up the OCPO Acquisition Policy Board consisting of each Component's Contracting Office Policy Chief as well as a member of OCPO's Acquisition Oversight staff. The purpose of

the Board is to disseminate department-wide acquisition policy information and foster dialog between Component staff members to enable identification and adoption of best practices across the Department.

- OCPO Acquisition Policy & Legislation has also increased its engagement on legislative issues this year. It has provided significant input on the growing volume of proposed legislation on acquisition policy to ensure the best interests of the Department are represented and, where appropriate, that DHS acquisition-related legislation is not more restrictive than Federal-wide acquisition legislation. The range of legislation has been very broad – Buy American Act issues, lead system integrator contracts, competition, multiple award contracts, direct hire authorities, tax delinquency, small business, etc. Additionally, this year, not only has OCPO responded to proposed legislation, but it has submitted seven legislative proposals on a range of acquisition-related topics.

- OCPO participates on the Interagency Suspension and Debarment Committee (ISDC). ISDC issues guidance for procurement and non-procurement programs and also facilitates lead agency coordination, and serves as a forum to discuss current suspensions and debarments. OCPO is also participating in the discussion and analysis of an on-going ISDC Information Sharing project, in response to GAO's July 2005 study of six Federal agencies which includes management of "administrative agreements" and "compelling reason determinations" to continue performance.

- My office is developing an Emergency Procurement Tool Box/Framework with FEMA in order to expedite the acquisition function in the event of a significant national emergency, per the National Response Plan. The tool box will include core documents that would be necessary before, during and immediately following a disaster.

GOVERNMENT ACCOUNTABILITY OFFICE REVIEW OF SELECT DHS SERVICE CONTRACTS

Mr. Chairman, I along with DHS leadership share the Committee's concern with the Federal Government's increasing reliance on contractor services and the risk associated with contractors providing services that closely support mission critical functions. For the Department, it is not a question of whether we continue to utilize contractor services, but, rather, as the organization matures and evolves, about reaching the optimum balance between requirements being performed by Federal employees and contractors, how we capitalize on the energies and solutions industry can offer, and very critically, how we then manage the risks associated with the continued use of contracted services.

When the twenty-two legacy organizations were brought together in 2003 to form the Department, there was not an infrastructure upon which to build. The speed at which the Department stood-up and the government-wide shortages of Federal employees in a range of critical functional areas contributed to the Department's reliance on contractors.

That said, however, the Department does not envision as we move forward a sea-change where entire programs or functions that involve commercial activities will be manned solely by Federal employees. While it is critical that sufficient internal capability exist to carry out our core competencies, it is entirely appropriate upon the Department's identification of mission needs, followed by development of requirements and metrics, to seek industry input for the best solution and implementation of that solution. As the Department's Inspector General stated in February 6th Congressional testimony, "partnering with the private sector adds fresh perspective, insight, creative energy and innovation."

DHS was recently the subject of a GAO review. I appreciate this opportunity today to comment on the draft GAO report, GAO-07-990, *Department of Homeland Security: Improved Assessment and Oversight Needed to Manage Risk of Contracting for Selected Services* (GAO Job Code 120544) that resulted from the engagement.

The Department generally agrees with the draft report's five recommendations, four of which fall under the category of managing the risk associated with acquiring services that closely support inherently governmental functions including government control over and accountability for its decisions.

But, before I address what specific actions we are taking, I would like first to put the issue in a government-wide context. The "blended workforce" and "multi-sector workforce" are terms used to describe a mix of civil servants and uniformed personnel with contractor employees in the Federal workplace for the execution of agency tasks. The Services Acquisition Reform Act Acquisition Advisory Panel devoted a chapter entitled "*The Appropriate Role of Contractors Supporting the Government*" to this new environment in its recently issued final report. The chapter discusses a range of topics that are interesting, pertinent, and some would say, provocative.

At DHS, and many agencies across the Federal Government, contractor employees are in many respects indistinguishable from Government employees. In this environment, lines between inherently governmental and commercial and personal and non-personal service may become blurred. At DHS and across the Government, there is a need to be increasingly sensitive to organizational conflict of interest issues, contractor ethics, and avoiding crossing into the employer/employee relationship when our Federal employees interface with contractor employees.

- As I stated earlier, in concert with the DHS Chief Human Capital Officer, we are now planning staffing studies related to the skill sets of individuals and staffing levels of programs under the purview of the Department. Maintaining core functions will be a critical consideration as the staffing studies are accomplished.

- As part of the initiatives begun by DHS in the areas of program and project management, and in conjunction with the staffing studies discussed above, my office anticipates that an increased awareness and understanding of the risks associated with contracted services will be appropriately addressed more often in the future. There

has already been evidence of this recognition occurring at the U.S. Coast Guard, where the statement of work for the Office of Standards Evaluation and Development support contract was completely revised for the most recent award in order to address the very issue covered in the draft GAO report. Better requirements definition for service contracts will lead to fewer T&M type contracts and more effective use of Performance-Based Service Contracts throughout DHS. I note however, this objective will be very difficult to achieve, and it is far too early to place such progress on a timeline for completion. Nevertheless, DHS officials recognize that the need is critical and have begun to chart a way forward on the broad front of requirements definition.

- The process of assessing program office staff and expertise has already begun at the TSA. The TSA Assistant Administrator for Acquisition has developed a notional staffing plan for program and project offices that incorporates the examination of inherently governmental functions in the development of a staffing plan for a program office and related ethical issues, such as avoidance of conflicts of interest. The notional plan is accompanied by guides to the numbers, skill sets and assignments of Federal employees necessary to maintain program control, provide oversight and ensure that no inherently governmental functions are performed by service contractors. While this effort is being implemented on a Component scale at TSA, the Department is proceeding on a larger scale initiative to address many of these issues.

- Because we recognize the risk associated with service contracting, in August, I issued a memorandum to all DHS Component Heads of Contracting on *Improving DHS Service Contracting*. While I rely on DHS business owners to identify specific requirements in support of the Department's critical missions, our DHS Contracting Officers shoulder much of the burden of detecting, avoiding, neutralizing, or mitigating organizational conflicts of interest that are more apt to occur with increased contractor participation in agency operations, particularly in connection with the blended workforce. My memo emphasized that at DHS our Contracting Officers must ensure that contracting for services is in full compliance with all statutory, regulatory and policy requirements. The memo also stressed the need for vigilance to avoid inclusion of inherently governmental functions in performance work statements and absent specific authority, establishing personal services contracts. Other topical areas included T&M and labor hour contracts, the Intergovernmental Personnel Act, and Organizational Conflicts of Interest.

- The DHS Acquisition Planning Guide provides for the assessment of risk with respect to the planned acquisition processes and this requirement will be further emphasized during my discussions with the Heads of Contracting Activities as well as in the through an acquisition alert to Department contracting personnel.

- As a result of the information provided by the GAO during the engagement, the lack of agency guidance on the application of OFPP Letter 93-1, *Management Oversight of Service Contracting* (May 18, 1994) was brought to the Department's attention.

Further research on the part of OCPO officials confirmed that this policy letter was neither part of the regular training process for acquisition personnel at DHS nor at DAU. We have taken steps to ensure that this guidance is disseminated and discussed during the DHS training for Contracting Officers and Contracting Officer Technical Representatives (COTRs). DHS officials have also coordinated with DAU's course director for COTR training to ensure that coverage of OFPP Letter 93-1 is included in training at the university. Because DHS officials rely on DAU training and certification to a certain extent for COTRs, we intend to follow-up on the inclusion of the guidance on OFPP Letter 93-1 in the DAU training regimen.

- Recently, the FAR Secretariat published a proposed rule dealing with contractor ethics entitled *Contractor Code of Ethics and Business Conduct.* The rule, initiated by members of my OCPO staff in direct response to an inquiry by Senators Lieberman and Collins, establishes a clear and consistent policy regarding contractor code of ethics and business conduct, and responsibility to avoid improper business practices. Additionally, the proposed rule requires contractors to provide their employees with information on contacting the appropriate Inspector General to report potential wrongdoing and include posting this information on company internal websites and prominently displaying hotline posters. DHS supports a second and complementary government-wide FAR case, *Contractor Compliance Program and Integrity Reporting*, which would require contractors to establish and maintain internal controls to detect and prevent fraud in their government contracts, and to notify contracting offices without delay whenever they become aware of fraud.

- OCPO is collaborating with functional areas department-wide to update DHS directives and forms to ensure to the maximum extent possible no breach of personally identifiable information occurs. OCPO's role is focused on contractor roles and responsibilities and how best to capture and disseminate information and mechanisms.

PROGRAM MANAGEMENT FOCUSED INITIATIVES

The focus of much of the draft GAO report is not just on contracting, but on broader acquisition issues. Within the acquisition community, we make a very real distinction between the two. Acquisition is not just award of a contract, but an entire process that begins with identifying a mission need and developing a strategy to fulfill that need through a thoughtful, balanced approach, and very importantly, effectively managing the requirement through completion of the program's lifecycle.

I am among many who feel that the root cause of many of the reported problems with our contracts stem from failings in the broader acquisition process, i.e., requirements development and definition, program management, logistics, performance standards development, quality assurance planning, test and evaluation, etc. Therefore, the solution to identified problems in acquisition lies in applying the necessary energy and resources particularly to program management. We are doing that at DHS.

- As I stated earlier, OCPO has reorganized to include a Program Management SES-level directorate to develop and disseminate specific policy on program management to DHS Components. The directorate is installing a metrics system to measure cost, schedule and performance of major program, redesigning the investment review process, and has begun its review of existing programs to determine how to proceed.

- By direction of the Under Secretary of Management, OCPO is conducting "*Quick-Look*" reviews of all Department Level 1 acquisition programs. These reviews are designed to provide a rapid assessment of the risk in the Level 1 Acquisition Program Portfolio. The results will be used to identify any high risk programs for which a more in-depth review is necessary. These reviews will also provide insight into Component governance and oversight processes that DHS can leverage to refine Departmental acquisition policies and processes.

- The Department is increasingly focusing on the balance between contractors and government employees. In preparation of this year's budget submissions, each office was directed by the Deputy Secretary to assess their contracting needs and consider whether or not the particular need would be more appropriately filled with government employees. Within my office, we are exploring how we in procurement can, through coordination with the many stakeholders that support the missions, appropriately influence requirements decisions to properly allocate the division of agency work between Department staff and properly managed contractors.

- The Department is addressing GAO and DHS Office of Inspector General identified need for additional certified program managers through various DHS training programs resulting in certification of 237 program managers since December 2006, a 53% increase in just the past ten months.

- Last month, an MOA was signed between DoD and DHS. This strategic relationship enables DHS to take direct advantage of the DAU's acquisition, technology and logistics expertise in training, consulting, knowledge sharing, continuous learning, career workforce planning, and management services.

- To support my top priority to build a strong acquisition system, with the right people, OCPO is developing standards for all acquisition career fields. To date, DHS has three acquisition career fields for which DHS has certification standards (Contracting, Contracting Officer's Technical Representative, and Program Management). DHS will add certification standards for other acquisition career fields, including logistics, systems engineering, cost estimating, and test & evaluation as soon as practicable.

- In compliance with OCPO plans to establish career certification standard that satisfy both the civilian agency standards, where they exist (currently for Contracting and Program Management) as well as meeting the Defense Acquisition Workforce certification standards, OCPO is nearing completion of revised DHS program management certification requirements. This improved set of requirements will satisfy and bridge both the new Defense Acquisition Workforce Improvement Act

Program Management certification changes that will take effect April 1, 2008 and the Federal Acquisition Certification Project/Program Management ("FAC-P/PM") requirements. The required level of training, education, and experience will ensure that DHS has a highly skilled and well qualified acquisition program management workforce.

- OCPO is reaching out and identifying current program managers who require additional training and development to satisfy the certification requirements for their present positions. Our partnership with DAU enables us to secure more allocations in classes to increase our training throughput. CPO is concurrently investigating several other avenues to make training available, including commercial contractors and the Naval Post Graduate School's Advanced Acquisition Program. The U.S. Coast Guard was instrumental in coordinating this effort, which began in late FY 2007, and we are considering adding future offerings that would provide the training necessary for Level I, Level II and Level III acquisition program management certification. Our end-state objective is to have all incumbent program managers certified and have a strong cadre from which to select as future acquisition program manager positions needs are identified.

- OCPO is hiring experts in various acquisition career fields to build those competencies and systems throughout Department. Already, several program managers, cost estimators, test & evaluation specialists, and logisticians are on-board.

- OCPO has begun a major overhaul of the Department's COTR training. There are several major focuses of the FY 2008 changes. One is to expand on ethics and organizational conflict of interest specifically geared for the blended workforce environment. Another is to heighten the awareness of program officials and COTRs to be able to distinguish personal services and non-personal services and guard against incorporating any requirement or drafting statements of work or objectives that would be satisfied with unauthorized personal services. Further, additional emphasis will be included to ensure COTR oversight includes discouraging an environment or performance that gives rise to unauthorized personal services, and that COTRs are fully cognizant of their performance assessment responsibilities. OCPO plans to issue an HSAM Notice this month that addresses COTR specific oversight responsibilities associated with review of contractor vouchers for reasonableness and accuracy and ensuring that deliverables have been provided in accordance with the terms of the contract.

- The draft GAO report states that, "Prior GAO work has found that cost, schedule, and performance – common measures for products or major systems – may not be the most effective measures for assessing services." I would argue that these are the most basic measures that program and project managers are expected to define and against which they must evaluate services within their programs.. As I described earlier, OCPO negotiated with DCMA for more robust Earned Value Management services to enhance the Department's ability to monitor cost, schedule and performance.

DCMA has already provided a compliance review of U.S.-VISIT's EVM processes and procedures and a follow-up meeting to discuss findings has been scheduled.

GAO-IDENTIFIED CONTRACTS

In its draft report, GAO identified nine contracts for professional and management support services closely supporting inherently governmental functions. The contracts were from the early days of DHS existence; most are no longer in existence.

The GAO draft report faults DHS for not attending to the risk that government decisions may be influenced by, rather than independent from, contracting actions when contracting for services that closely support inherently governmental functions. While I understand the point GAO's draft report is making, it is a difficult objection to reconcile given that a purpose of many of the contracts is to provide services that involve analysis, feasibility studies, and strategy options to be used by agency personnel in developing policy. Agency officials are not, however, deprived of discretionary decision-making authority, limited to analyses, studies, and options presented by contractors, or otherwise circumscribed in their ability to analyze policy options or exercise discretion and decision-making.

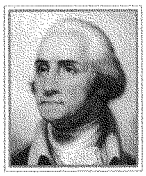
Mr. Chairman, thank you for the opportunity to testify before the Committee on this very important topic. The Department takes very seriously your concerns and has taken many steps to address them. As the Department matures and our initiatives to recruit and train a superb acquisition workforce come to fruition, our efforts to improve upon our service contracting will become that much more robust. And finally, because the topic is the focus of much attention government-wide and within industry, I would ask that as you deliberate on whether additional legislation is needed to address our shared concerns, that the Committee take a global government-wide approach to solutions.

I would be glad to answer any questions you or the Members of the Committee may have for me.

Testimony of
Professor Steven L. Schooner
Co-Director of the Government Procurement Law Program

Is DHS Too Dependent on Contractors to Do the Government's Work?

UNITED STATES SENATE, COMMITTEE ON HOMELAND SECURITY & GOVERNMENTAL AFFAIRS
Wednesday, October 17, 2007



THE GEORGE WASHINGTON UNIVERSITY LAW SCHOOL
WASHINGTON DC

Chairman Lieberman, Ranking Member Collins, and members of the Committee, I appreciate the opportunity to appear before you today to discuss the steps that the Department of Homeland Security could take to improve its management and oversight of its contractors.[1] This Committee's focus upon, and interest in improving, the procurement process is an important and valuable public service.[2] Also, I applaud the work of the Government Accountability Office (GAO) on this issue.[3]

Introduction: Benefits, Challenges, and Risks

You asked me to comment on the benefits, challenges, and risks of agencies' increased reliance on contractors to provide critical services. Briefly, some obvious benefits include (1) avoiding failure, particularly where the federal government lacks the ability or resources to perform its mission(s); (2) surge capacity or the ability to supplement limited government resources far more quickly, efficiently, and effectively than the existing federal personnel or acquisition regimes permit; and (3) flexibility, specifically the ability to employ superior technology, better talent, or different approaches than the government's existing workforce and capital resources would permit.[4] (Please note that I do not suggest, and take issue with those who

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[1] My statement derives from my experience in federal procurement policy, practice, and law. I have attached a brief biography.

[2] I support many of the initiatives in the current version of S.680, particularly the Acquisition Workforce Human Capital Succession Plan.

[3] GAO-07-990, *Department of Homeland Security: Improved Assessment and Oversight Needed to Manage Risk of Contracting for Selected Services* (September 2007).

[4] It has been more than a generation since the government abdicated its leadership role in spending on research, development, and innovation. For example, for too long the federal government has engaged in the short-sighted practice of requiring contractor "investment" in defense research and development. During that time, the private sector dramatically outpaced the government in the creation of new technology, both in terms of hardware solutions and business systems and processes. As a result, not surprisingly, as suggested below, the most talented workforce follows the technology, a trend that increasingly makes government work less

(continued...)

do suggest, that a *primary* benefit of reliance upon contractors is the potential for cost savings.[5])

The challenges associated with extensive contractor reliance include, among others: (1) planning, which includes understanding what outcome will be sought from the private sector; (2) both understanding and accurately describing that outcome (or task) to the private sector; (3) selecting appropriate, qualified contractors in a timely fashion; (4) negotiating cost-effective agreements and drafting clear contracts that contain effective incentives (or profit mechanisms) to maximize contractor performance; (5) managing the contractual relationship to ensure that the government receives value for its money; (6) providing appropriate oversight throughout the process to, among other things, avoid corruption; and, most importantly, (7) maintaining a sufficiently educated, experienced, and motivated government workforce (or augmented workforce) to take on these challenges.

Against that backdrop, the risks of relying upon contractors are constrained only by one's imagination. They include, among others,[6] (1) failure of the agency, or interference with the agency's ability, to accomplish its mission; (2) harm being inflicted upon the public, the government, or others; (3) loss of public confidence in government; and, of course, (4)

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[4](...continued)
attractive. Moreover, the combination of government recruiting policies, salaries, benefits, opportunities, and quality of work lag much of the private sector, particularly in high-demand career fields. Thus, the "market" reflects that the government undervalues critical skills.

[5] Slavish focus upon the relative cost of contractor support is misguided. Specifically, it is not productive to criticize agencies for paying contractors "too much" without: (1) permitting an agency to hire additional personnel; (2) confirming that sufficient personnel are available in the marketplace and willing to work for the government; (3) comparing "apples to apples," such as taking into account all of the costs of civil servants or members of the armed services; and (4) considering critical issues such as flexibility and surge capacity. For example, higher contractor salaries may be offset, at least in part, by long-run costs avoided. Indeed, a strong case could be made that, for *short-term* demands for additional resources, it makes sense to pay higher, and potentially significantly higher, amounts for contractor support (rather than incurring the cost of additional government employees). This complex topic is well beyond the scope of this testimony, but recent GAO testimony offers an interesting apples-to-apples anecdote. Statement of Joseph A. Christoff, Director International Affairs and Trade, *Peacekeeping: Observations on Costs, Strengths, and Limitations of U.S. and UN Operations*, GAO-07-998T (June 13, 2007). "The UN budgeted $25 million to deploy 872 civilian officers..., while we estimate that it would cost the United States $217 million to deploy the same number of civilian U.S. police officers. ... The UN budgeted $131 million for pay and support of military troops, while we estimate it would cost the United States $260 million for the same number of soldiers." *Id.* at 8.

[6] GAO artfully states that increasing reliance upon contractor services runs the risk that the "government [loses] control over and accountability for mission-related policy and program decisions." GAO 07-990 at 2.

expenditure of excessive amounts of public funds.

You also asked me to comment upon the adequacy of current laws and regulations governing issues arising from today's acquisition environment, including organizational and personal conflicts of interests. For the most part, I find that, while there is always room for improvement, the legal and regulatory regime is adequate.[7] Rather, I trace the lion's share of DHS's (and, for that matter, the government's) difficulties to *implementation* of those laws, regulations, and policies. Ultimately, I find the root cause of the problems to derive from resource deficiencies and, more specifically, an inadequate acquisition workforce.

It is easy to agree with GAO's recommendations.[8] But I am not optimistic that DHS will be able to meaningfully implement these actions. It is difficult to conceive of a higher priority for a heavily outsourced agency, such as DHS, than to "assess program office staff and expertise necessary to provide sufficient oversight" of its most important service contracts, and I applaud GAO for encouraging DHS to assess the risks of relying upon contractors as part the acquisition process. While DHS may have no choice but to rely upon contractors *despite those risks*, the discipline may result in contracts that more carefully attempt to control those risks. GAO is entirely correct that DHS should "define contract requirements to clearly describe roles, responsibilities, and limitations" as part of the acquisition planning process. Moreover, I would suggest that *any* additional energy devoted to acquisition planning will pay dividends during contract performance. Unfortunately, haste and lack of resources continue to frequently lead to inadequate acquisition planning. In the current environment, DHS will require strong, commited, and disciplined leadership to change this culture. Moreover, I fear that calling for "strategic-level guidance for determining the appropriate mix of government and contractor employees" will

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[7] One clear exception lies in the government's increasing and, frankly, disturbingly chaotic reliance upon private security. As recent events make clear, the risks in this area are particularly grave, the existing legal and regulatory regimes are inadequate to address them, and the government waited far too long to address them in a thoughtful and responsible manner. The events involving Blackwater on September 16, 2007, appear to have become the proverbial straw that broke the camel's back. Peter Singer's popular book, CORPORATE WARRIORS: THE RISE OF THE PRIVATIZED MILITARY INDUSTRY, was published in 2004; the popular FRONTLINE documentary *Private Warriors*, aired in 2005, *www.pbs.org/wgbh/pages/frontline/shows/warriors* ; the National Defense University's Industrial College of the Armed Forces (ICAF) twice has conducted lengthy studies on privatized military operations, *www.ndu.edu/ICAF/Industry/reports/2007/pdf/2007_PMOIS.pdf; www.ndu.edu/ICAF/Industry/reports/2006/pdf/2006_PMOIS.pdf*; and numerous issues remain unresolved, as a recent Princeton University Workshop, including senior military and government officials, contractors, academic experts and Washington policymakers, suggested, *http://lapa.princeton.edu/newsdetail.php?ID=17* and *http://lapa.princeton.edu/conferences/military07/MilCon_Workshop_Summary.pdf.*

[8] GAO-07-990 at 25.

result in empty rhetoric.

DHS (and, More Broadly, the Federal Government)
Has Little Choice But to Rely Upon Contractors

Thus, it oversimplifies the problem to suggest that DHS currently is too dependent upon contractors. As a matter of policy, it is possible that – under different circumstances – an outsourced and privatized DHS, might best serve the government's interest. This potentially fascinating debate – over how much we should outsource – quickly polarizes participants into two basic camps.

One staunchly advocates the (rapidly changing) status quo: that work historically (or currently) being performed by government employees should remain in house. This position idolizes, or at very least respects, both the ethos of public service and, more generally, public servants. The opposite camp advocates outsourcing or reliance upon the private sector, asserting that for-profit firms are capable of performing much of the Government's work and, if properly motivated and managed, should out-perform government employees (in terms of quality of service, price of service, or both).

At an abstract level, I find neither extreme position uniquely compelling. Empirical evidence is scant to demonstrate that government employees are more talented, committed, motivated, or honest than their private sector counterparts, and vice-versa. Where the two groups differ, however, is with regard to their incentive structures. The private sector's exposure to market forces, and the related corporate purpose of pursuing profit, permits (and, arguably, requires) a more diverse and potent arsenal of employee incentives and disincentives. These tools include compensation (salary, salary increases, bonuses, stock incentives), opportunity for advancement, and, of course, the risk of termination. While the Government can use similar tools, their impact (or the degree to which these tools can influence behavior) is at least perceived as far less dramatic, given a heavily constrained promotion and bonus regime and an impenetrable *de facto* tenure system. The private sector-government contrast is greatest at the extremes. The private sector offers far greater economic rewards for success and threatens more credible sanctions for less than desirable performance. While we continue to witness efforts to reform the civil service system and inject more potent performance incentives, history reminds us that this is a daunting task.

Ultimately, however, the debate is increasingly academic. The government today relies on the private sector because we have restricted the size of government or, more specifically, the number of government employees.[9] We can no longer claim to be surprised to find contractors

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[9] GAO aptly noted: "Decisions to contract for ... services were driven by the need for staff and expertise to get programs up and operations up and running.... [Yet, even where] the original justification for contracting, such as immediate need, had changed, ... components continued to

(continued...)

involved in almost every aspect of the United States Government's efforts in Iraq. While it is true that the Bush administration did not mask its preference for outsourcing, including "competitive sourcing" on the President's management agenda,[10] that initiative impacts a statistically insignificant percentage of service contracts.

At home, the governement currently has no short-term choice but to rely upon contractors for every conceivable task that it is understaffed to fulfill. In Iraq, our military relies upon contractor personnel not only for transportation, shelter, and food, but for unprecedented levels of battlefield and weaponry operation, support, and maintenance. Accordingly, defense experts now recognize that without contractors our military simply cannot project its awesome technical superiority abroad. But highly publicized incidents – whether of of prisoner abuse at Abu Ghraib or recent allegations of shooting of civilians by Blackwater – raise fundamental questions regarding to the tasking of contractor personnel and oversight of their performance.

I believe that DHS has no meaningful short-term alternatives for escaping its current predicament. It is not an option for DHS to consolidate its missions, jettison a number of its tasks, terminate contracts, and take on only those missions it is appropriately staffed to perform. Nor is it feasible for DHS to wait while it embarks upon an aggressive program to identify, recruit, hire, and retain an extraordinary number of civil servants. First, it is unclear (if not unlikely) whether there is political will (on either side of the aisle) to grow the federal workforce. Further, it would take many years build DHS into a significantly larger, cohesive organization. Finally, it is distinctly possible that, given the constraints of the federal service, particularly in terms of compensation, that DHS simply could not assemble a sufficiently talented organization. For example, the market for talent is now global, and the global shortage of engineers is increasingly well documented. Only serious, long term, far reaching personnel reforms can, in any meaningful manner, begin to reverse the current trend. Accordingly, DHS must continue to expend its best efforts to achieve its mission with the resources available, acknowledge that it is a rather "hollow" agency,[11] and invest significant energy and resources in improving its use of

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[9](...continued)
use contractors without reassessing who ... should perform a given function." GAO-07-990 at 3-4, 14-15.

[10] See, generally, Steven L. Schooner, *Competitive Sourcing Policy: More Sail Than Rudder*, 33 PUBLIC CONTRACT LAW JOURNAL 263 (2004), available at *http://ssrn.com/abstract=488266.*

[11] This includes conceding that contractors will continue to perform what historically have been perceived as inherently governmental functions. GAO accurately describes the conceptual framework under which government employees, rather than contractors, *should* perform inherently governmental functions, those functions that "require discretion in applying government authority or value judgments in making decisions for the government." GAO-07-990 at 6-7. But this discussion, and, in practice, the entire legal regime (encompassing
(continued...)

contractors to help it achieve its mission.[12]

Inadequate Investment in Acquisition Resources, Particularly Contract Management, Is Irresponsible Given DHS's Unavoidable Reliance Upon Contractors

> *Common themes and risks emerged ..., primarily the dominant influence of expediency, poorly defined requirements, and inadequate oversight that contributed to ineffective or inefficient results and increased costs.* [13]

The federal government must devote more resources to the acquisition function. This investment is urgent following the bipartisan 1990's Congressionally-mandated acquisition workforce reductions. Although no empirical evidence supported the reductions, the sustained reductions and subsequent failure to replenish the workforce created a generational void and

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[11](...continued)
"competitive sourcing" and OMB Circular A-76), is increasingly quaint, outmoded, anachronistic, or simply irrelevant. Experience suggests that, throughout the government, the private sector is intimately involved in functions perceived as inherently governmental, specifically including those where the risk level is deemed highest, such as acquisition support, engineering or technical services, intelligence services, policy development, and reorganization and planning. *Id.* at 19. See also the discussion GAO-07-990 at 8, including note 11, citing GAO-07-45SP, *Highlights of a GAO Forum: Federal Acquisition: Challenges and Opportunities in the 21st Century* (October 6, 2006) ("increasing reliance on contractors to perform services for core government activities challenges the capacity of federal officials to supervise and evaluate the performance of these activities").

[12] One oft-criticized practice, use of Lead Systems Integrator (LSI) strategies – with the most relevant example here being the Deepwater initiative – are a direct result of the human capital gap. The potential conflict that arise from these relationships are now well documented. See generally, GAO-07-874, *Coast Guard: Challenges Affecting Deepwater Asset Deployment and Management and Efforts to Address Them* (June 2007) ("Over the past several years, GAO has expressed concerns about the Coast Guard's ability to manage and oversee the Deepwater program. Specifically, the program has faced challenges in terms of management, contractor accountability, and cost control."). It may make sense for U.S. Coast Guard to bring the integration function back in house. But this ignores the reality that the Coast Guard originally turned to the private sector because it lacked the capacity to perform the task with internal resources. The Coast Guard will require additional program management and engineering support from contractors to replace the contractors that had been performing those roles. Accordingly, even as DHS increases its capacity, it still has no choice but to strategically supplement its workforce from outside.

[13] GAO-07-990 at 24, describing the DHS Inspector General's efforts.

devastated procurement personnel morale.[14] Simultaneously, the government skimped on training, while contracting officers faced increasing workloads and confronted increasingly complex contractual challenges. Despite the explosive growth in the reliance upon service contracts,[15] no emphasis was placed upon retaining or obtaining skilled professionals to plan for, compete, award, or manage sophisticated long-term service contracts. Thus, the macro (government-wide) and micro (acquisition workforce) effects of the 1990's downsizing frenzy left the federal government woefully unprepared to identify, recruit, manage, and incentivize the (hypothetically revolutionized) acquisition workforce envisioned by the 1990's acquisition reforms. The dramatic increase in procurement spending since the September 11, 2001 attacks[16] exacerbated the simmering workforce crisis. Congressional investment in the people who are responsible for that procurement has not kept pace. Quite simply, the Government continues to lacks sufficient qualified acquisition, contract management, and quality control personnel to handle the growth in service contracts. This insufficiency includes two separate deficiencies: (1) the number of people available and (2) the qualifications necessary for them to perform a complicated, highly discretionary task over extended periods of time.

As our procurement system has struggled throughout this decade, Congress has been quick to call for more auditors and inspectors general to scrutinize contracting. That's a responsible gesture. But the corresponding call – for more contracting experts to perform the many functions that are necessary for the procurement system to work well – has been both delayed and muted. In order to serve the taxpaying public and meet the needs of agency customers, acquisition professionals must promptly and accurately describe what the government wants to buy, identify and select quality suppliers, ensure fair prices, structure contracts with proper monetary incentives for good performance, and manage and evaluate contractor performance.[17]

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[14] See, e.g., the Professional Services Council (PSC) and Grant Thornton's Troubling Trends survey, *Acquisition Workforce Top Concern for Federal Managers, Survey Says, www.pscouncil.org/pdfs/2006PSCProcurementPolicySurvey.pdf.*

[15] See, e.g., GAO-07-990 at 5 (noting that services accounted for 67 percent of DHS contracting in FY 2005, which follows the governmentwide trend).

[16] See, Appendix A to this document, and, generally, Steven L. Schooner, *Feature Comment – Empty Promise for the Acquisition Workforce*, 47 THE GOVERNMENT CONTRACTOR ¶ 203 (May 4, 2005), available at *http://ssrn.com/abstract=719685.*

[17] The involvement of contractors in the Abu Ghraib prison provided a simple "lesson learned": if the government relies heavily upon contractors, there are unfortunate consequences when government fails to maintain, invest in, and apply appropriate acquisition professional resources to select, direct, and manage those contractors. See, generally, Steven L. Schooner, *Contractor Atrocities at Abu Ghraib: Compromised Accountability in a Streamlined, Outsourced Government*, 16 STANFORD LAW & POLICY REVIEW 549 (2005). For example, General Fay

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Accordingly, the contracting workforce – understaffed, under-resourced, and under-appreciated – desperately requires a dramatic recapitalization.[18] But acquiring the talent won't be easy. Senior procurement officials increasingly bemoan that no young person in his or her right mind would enter government contracting as a career.

An Anecdote:
Personal Services Contracting

In a classic (nonpersonal) services contract, the government delegates a function to a contractor. Conversely, in personal services contracts, the government retains the function, but contractor employees staff the effort. Despite longstanding legal and policy objections to the use of personal services contracts, we have witnessed an explosive growth in what we refer to as body shop or employee augmentation arrangements. As the name implies, the government uses this type of contract to hire contractor personnel to replace, supplement, or work alongside civil servants or members of the armed forces. This is the antithesis of the government's preferred approach, known as performance-based service contracting (PBSC). As a matter of practice and necessity, however, the federal government today relies heavily upon employee augmentation contracts. Civil servants work alongside, with, and at times, for, contractor employees who sit in seats previously occupied by government employees. Unfortunately, no one stopped to train the government workforce on how to operate in such an environment.

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[17](...continued)
poignantly articulated: "[T]here was no credible exercise of appropriate oversight of contract performance at Abu Ghraib." MG George R. Fay, Investigating Officer, *AR 15-6 Investigation of the Abu Ghraib Detention Facility and 205th Military Intelligence Brigade*, at 52 ("the Fay Report"). This problem exists government-wide: "[T]he administration of contracts[,] once they have been signed[,] has been the neglected stepchild of [procurement system reform] effort." Steven Kelman, *Strategic Contracting Management*, *in* MARKET BASED GOVERNANCE: SUPPLY SIDE, DEMAND SIDE, UPSIDE, AND DOWNSIDE at 89-90, 93 (John D. Donahue & Joseph S. Nye Jr. eds., 2002).

[18] The Acquisition Advisory Panel found that: "The federal government does not have the capacity in its current acquisition workforce necessary to meet the demands that have been placed on it." Acquisition Advisory Panel Final Report at 361, available at *www.acquisition.gov/comp/aap/finalaapreport.html.* The Report performed a valuable public service by raising awareness that: (1) agencies have failed to perform systematic human capital planning to assess their acquisition workforce, either in the present or with an eye towards the future; (2) despite the myriad methods in which the acquisition workforce has been defined and counted over time and among agencies, no one appears to be attempting to quantify contractor personnel that currently play an important role in assisting, supporting, and, yes, augmenting the acquisition workforce; and (3) "While the private sector invests substantially in a corps of highly sophisticated, credentialed and trained business managers to accomplish sourcing, procurement and management of functions, the government does not make comparable investments."

The worst-case scenarios have arisen where contractors have performed work under an open-ended contracts (e.g., with a vague or ambiguous statement of work) without guidance or management from a responsible government official (e.g., in the absence of an administrative contracting officer or a contracting officer's representative), typically facilitated by the reliance on interagency contracting vehicles. Increasing attention to this oversight vacuum has begun to reign in this practice.[19]

Across the government, the long-standing prohibitions against personal services contracting have become dead letter.[20] DHS already enjoys greater authority to employ personal services contracting authority in the Homeland Security Act (HSA).[21] What this means is that within DHS, contractors increasingly work alongside government employees, performing similar functions, in what increasingly is referred to as a blended workplace. In addition to the potential conflicts of interest, this raises a number of issues with regard to the management of human capital. In attempting to attract and retain a qualified workforce, DHS may find it increasingly difficult to articulate why individuals should come to work for, or stay employed by, DHS rather than its contractors. This problem is particularly acute where contractors (properly) employ incentives (including, among others, raises, bonuses, training opportunities, travel and entertainment, etc.) to reward and retain their top talent.

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[19] Steven L. Schooner, *Feature Comment – Risky Business: Managing Interagency Acquisition*, 47 THE GOVERNMENT CONTRACTOR ¶ 156 (April 6, 2005) (applauding GAO for adding interagency acquisition to its High Risk List).

[20] The Acquisition Advisory Panel Report began from the premise that "the ban . . . on personal service contracts ... doesn't take proper recognition of where we are as a work force today" and concludes that "the existing FAR prohibition on [personal services contracts] ... is not compelled by applicable statutes and case law[.]" Acquisition Advisory Panel Final Report 400-404, at *www.acquisition.gov/comp/aap/finalaapreport.html.*

[21] See, generally, Section 832 of the Homeland Security Act, 6 U.S.C. § 392, including authority to contract without regard to the pay limitation of 5 U.S.C. § 3109. Also, the Transportation Security Administration (TSA) retained separate authority to engage in personal services contracts that derives from the Federal Aviation Administration's procurement flexibilities. Moreover, the U.S. Coast Guard is specifically authorized to award medical personal services contracts, 10 U.S.C. §1091.

Conclusion

More than fifteen years of ill-conceived under-investment in the acquisition workforce, followed by a government-wide failure to respond to a dramatic increase in procurement activity has lead to a triage-type focus on buying, with insufficient the resources available for contract administration, management, and oversight.[22] The old adage – an ounce of prevention is worth a pound of cure – rings true. More auditors and inspectors general will guarantee a steady stream of scandals, but they'll neither help avoid the scandals nor improve the procurement system. Conversely, a prospective investment in upgrading the number, skills, and morale of government purchasing officials would reap huge dividends for the taxpayers.

That concludes my statement. Thank you for the opportunity to share these thoughts with you. I would be pleased to answer any questions.

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[22] It is not surprising that GAO "found cases in which the [DHS] components lacked the capacity to oversee contractor performance due to limited expertise and workload demands." GAO-07-990 at 22, 23 (acknowledging that "at DOD, we have found cases of insufficient numbers of trained contracting oversight personnel, and cases in which personnel were not provided enough time to complete surveillance tasks, in part due to limited staffing").

Appendix

Federal Procurement Spending
Trending Analysis Report Since Fiscal Year 2000[23]

Fiscal Year	Number of Actions (in Millions)	Dollar Value (in Billions)	Percentage Increase From Previous Year
2006	8.3	**$415.4**	6.6
2005	11.2	$389.6	8.9
2004	10.6	$357.7	9.6
2003	11.6	$326.4	18.6
2002	8.2	$275.2	17.0
2001	9.0	$235.2	7.2
2000	9.8	$219.3	

[23] See, Federal Procurement Data System, *www.fpdsng.com/downloads/top_requests/FPDSNG5YearViewOnTotals.xls*

Post-Hearing Questions for the Record
Submitted to Elaine C. Duke
From Senator Joseph I. Lieberman

Question#:	1
Topic:	competitive sourcing
Hearing:	Is DHS Too Dependent on Contractors to Do the Government's Work?
Primary:	The Honorable Joseph I. Lieberman
Committee:	HOMELAND SECURITY (SENATE)

Question: One of the examples cited in the Government Accountability Office (GAO) report, "Department of Homeland Security: Improved Assessment and Oversight Needed to Manage Risk of Contracting for Selected Services" (GAO-07-990), involved DHS awarding a contract to establish a competitive sourcing program at the Coast Guard. In this case, GAO reported that the Coast Guard had only one federal employee in place to administer the competitive sourcing program when new requirements were established. However, I understand that the contract has been extended through August 2009, by which time it will have been in place for more than five years. It strikes me as ironic that DHS would hire a contractor to help it manage the process that determines which functions that are currently being performed by federal employees should competed with the private sector. Do you think helping manage a competitive sourcing program is an appropriate role for a contractor? Do you think that after five years the Coast Guard should have the capacity to make competitive sourcing decisions without the assistance of a contractor?

Answer:

From the inception of the Coast Guard's competitive sourcing program, it has been managed by federal employees. The support contractor provides technical support only. No competitive sourcing plans or decisions are made by contractors. In determining which functions to compete, a panel of Coast Guard employees conducts a rigorous review of the FAIR Act Inventory and identifies potential commercial functions that should be competed in the upcoming year as part of the Coast Guard's Competitive Sourcing Green Plan. These recommendations are reviewed by the Coast Guard's Logistics Advisory Council, a forum of senior leaders in the logistics community, and the Competitive Sourcing Official (CSO) prior to being approved by the Coast Guard's Chief of Staff and submitted to Department of Homeland Security (DHS) and OMB as part of the agency's Green Plan.

The Coast Guard's Competitive Sourcing Program Office currently has one GS-15 employee and one GS-14 employee managing the program. Additionally, each competitive sourcing study team is staffed with federal employees and all of the Coast Guard's competitive sourcing officials are inherently governmental agency officials.

The Coast Guard's competitive sourcing program support contract was awarded competitively in September 2004 with one base year and four option years. The time and materials-type contract has since been modified to reduce option year three to six months and to delete option year four. This modified contract expires in February 2008. The Coast Guard is continually evaluating its technical support needs to better align its requirements with the current program state. Any subsequent contract will be awarded competitively as well.

Question#:	2
Topic:	PCII
Hearing:	Is DHS Too Dependent on Contractors to Do the Government's Work?
Primary:	The Honorable Joseph I. Lieberman
Committee:	HOMELAND SECURITY (SENATE)

Question: DHS recently awarded a new professional services contract to help implement new security standards for facilities handling large quantities of chemicals, petroleum and natural gas. Under the terms of the contract, the contractor will provide support in the areas of program management, communications and acquisitions management. The company also will assist with administration, business and enterprise planning and operation and maintenance of program tools and tracking systems in support of putting the new standards into effect.
I also understand that DHS recently issued a request for information seeking input on DHS's Protected Critical Infrastructure Information Program (PCII). According to DHS's draft statement of work, the contractor will perform such services as assisting the program office in developing or revising PCII program policies, including those implementing the Critical Infrastructure Information Act of 2002; providing expertise and advice on regulations and legislative matters to the program manager; providing training to the program manager and other DHS staff; and preparing budget submissions to OMB for information technology efforts.

Are you satisfied that the DHS program offices responsible for these contracts have fully considered the risks, implications and contract oversight needs for this effort?

Can we be assured that the same problems identified by GAO in its recent report will not play out again with this new contract?

Answer:

Both the recently awarded Chemical Security professional services contract and the contract associated with the Request for Information submitted on behalf of the Protected Critical Infrastructure Information PCII program are mission-support related. Both will be managed at the program/project level via a Contracting Officer's Technical Representative and the Program Manager, both of whom are federal employees.
To mitigate risks associated with multiple mission support contracts as outlined in the GAO report, the Office of Infrastructure Protection (OIP) is in the process of consolidating mission support functions across its divisions and/or offices. In addition, the National Protection Programs Directorate has initiated a workforce analysis to determine the appropriate ratio of federal employees to contractors. Through the workforce analysis and consolidating mission support requirements, OIP will be able to: (a) centrally manage mission support functions at the OIP level; (b) decrease reliance on contractors where appropriate; and (c) increase Federal Full Time Equivalent positions to provide mission-support type functions, thereby reducing projected contractual spending and risk.

The Office of Procurement Operations will work with the program office to ensure the appropriate level and type of contract oversight is provided and ensure work performed by the contractor is appropriate for private sector performance and consistent with the contract and applicable procurement statutes, regulations, and policy.

Question#:	3
Topic:	contract employees
Hearing:	Is DHS Too Dependent on Contractors to Do the Government's Work?
Primary:	The Honorable Joseph I. Lieberman
Committee:	HOMELAND SECURITY (SENATE)

Question: In its review of DHS service contracts, GAO noted that in several instances, contractor employees worked side-by-side with DHS employees doing the same work, and in certain instances appeared to be operating pursuant to personal services contracts, which are currently prohibited by the FAR without specific authorization.

How do you ensure that federal employees have sufficient knowledge of the contractor's performance and work products without crossing the line into personal services contracts?

Answer:

The Office of the Chief Procurement Officer has begun a major overhaul of the Department's Contracting Officer's Technical Representative (COTR) training. Changes to the Fiscal Year 2008 training are focused on areas relevant to this question. One is to expand on ethics and organizational conflict of interest training that is specifically geared to the blended workforce. Another focus will be to heighten the awareness of program officials and COTRs to the distinctions between personal services and the services of independent contractor personnel. Further, additional emphasis will be placed on ensuring that COTR oversight includes the discouragement of an environment or performance that amounts to or gives rise to unauthorized personal services, and that COTRs are fully cognizant of their performance assessment responsibilities.

DHS Component Heads of Contracting Activity have been advised of an increased expectation for monitoring the nature and manner of contractor personnel activity in our blended workforce. With the growth of the "blended" or "multi-sector" workforce, it is more important than ever for DHS contracting officers to be vigilant in avoiding the inclusion of "inherently governmental" functions in performance work statements and, absent specific authority, establishing personal services contracts. It is also very important to direct special management attention to contracts that have a pronounced potential for influencing the authority and accountability of Government officers. DHS contracting officers shoulder a heavy responsibility for avoiding, neutralizing or mitigating any occurrences of organizational conflicts of interest that may occur due to increased contractor participation in agency operations. In a memorandum I distributed in July regarding performance-based acquisition requirements, I advised the Component Heads of Contracting Activity that requirements for services must be clearly defined with appropriate performance standards and, to the maximum extent practicable, structured as performance-based. This applies also to contracts for services that involve the "blended

Question#:	3
Topic:	contract employees
Hearing:	Is DHS Too Dependent on Contractors to Do the Government's Work?
Primary:	The Honorable Joseph I. Lieberman
Committee:	HOMELAND SECURITY (SENATE)

workforce." Components should avoid using an acquisition strategy involving time and material or labor hour contracts for service-type requirements where less risk prone contracts types are more appropriate.

Question: In cases in which DHS employees are working side-by-side contractor employees, does the Department know what it costs to hire a contractor versus a federal employee to provide the same services? If not, how do we know whether it is more cost-effective to use contractor support rather than developing an in-house capability?

Answer:

DHS contracting officers make a determination of fair and reasonable contract pricing prior to awarding contracts for on-site support services. Additionally, DHS is increasing its focus on the balance between contractors and government employees. In preparation of this year's budget submissions, each office was directed by the Deputy Secretary to assess their recurring contracting needs and consider whether or not the particular need would be more appropriately filled with government employees.

The Services Acquisition Reform Act Acquisition Advisory Panel devoted a chapter entitled "*The Appropriate Role of Contractors Supporting the Government*" to the "blended workplace" environment in its final report. For Federal agencies, this practice is a reality of mission fulfillment when considering budget constraints, availability of qualified government employee candidates, and the location of needed critical skills and technology.

Question#:	4
Topic:	FPS
Hearing:	Is DHS Too Dependent on Contractors to Do the Government's Work?
Primary:	The Honorable Joseph I. Lieberman
Committee:	HOMELAND SECURITY (SENATE)

Question: The Administration announced a plan earlier this year to revamp the Federal Protective Service (FPS) – the agency charged with providing physical security for some 8,800 federal buildings and installations around the country and the federal employees working in them. This includes FBI and IRS buildings and even buildings with State and district officer for Members of Congress – all of which are possible terrorist targets. The proposal would reduce the total number of FPS employees by more than 25%, and would phase out the existing uniformed security service of the agency. The FPS already utilizes more than 15,000 contract security officers to supplement the 1,200 law enforcement officers it employs. The plan to revamp the FPS would significantly limit the number of federal law enforcement officers nationwide, and further extend the agency's reliance on contract security officers and local law enforcement.

How does DHS determine where it is appropriate to employ or station an FPS officer versus a contract security officer?

Answer:
The determination of placing a contract security officer is only one facet of an overall security plan. A certified FPS uniformed Inspector conducts a complete Building Security Assessment (BSA), which takes all available risk information into consideration to build a security plan. As part of that plan, security counter measures are recommended as appropriate measures to mitigate identified risk. These mitigating countermeasures include barrier plans, surveillance systems, sensors, access control measures, etc. Each countermeasure is part of an integrated security plan, each element dependent on the other to strengthen the security of the building(s). FPS Inspectors are certified Law Enforcement Officers and certified Physical Security Specialists. This unique and complimentary set of skills allows FPS Inspectors and Building Security Councils (BSC) to determine the appropriate mix of contract security officers that who serve as extensions of the FPS law enforcement in deterring criminal and terrorist activity.

FPS Inspectors serve a fundamentally different role than a contract security guard. A 0080 job series FPS Inspector has successfully completed basic law enforcement training and is a certified law enforcement officer (LEO) with full arrest authority. The LEO has successfully completed the FPS Physical Security Academy (PSA) and is fully accredited and certified to conduct a Building Security Assessment (BSA) and recommend the placement of security counter measures in conjunction with the Building Security Committee (BSC) for each GSA owned or leased facility under their control. In addition, most FPS Inspectors are trained as Contracting Officer Technical Representatives (COTR) and are qualified to work with FPS Contracting Officers and Agency Technical

Question#:	4
Topic:	FPS
Hearing:	Is DHS Too Dependent on Contractors to Do the Government's Work?
Primary:	The Honorable Joseph I. Lieberman
Committee:	HOMELAND SECURITY (SENATE)

Representatives in the development, writing, and monitoring of contracts, including the contracting of security guards as an integrated countermeasure.

The contract security guard serves as an extension of the overall security plan for each facility under the oversight of the FPS Inspector. A contract security guard serves as a deterrent to criminals and terrorists. A contract security guard serves as an extension of the security sensor system by adding visibility and judgment to any situation, and serves to assist law enforcement operations by identifying and containing volatile situations when deterrence fails.

Question:

Has the department made a formal determination that the protection of federal buildings and employees is not inherently governmental work? If so, based on what criteria?

Answer:

The overall responsibility for protecting federal buildings and their employees is inherently governmental, hence the creation of the Federal Protective Service (FPS) in 1971. However, each task that must be executed to carry out an overall security effort does not require the same level of expertise or training; nor is every such task inherently governmental in nature. As explained above, there are two fundamentally different tasks to be accomplished in the overall security of federal facilities.

The relationship between FPS Inspectors and contract security guards is designed to be complementary, each skill set dependent on the expertise and capabilities of the other, centrally controlled and guided by FPS. Because of the geographic expanse, multitude of GSA owned and leased facilities and individual security demands of each separate facility, there is a requirement for a centrally controlled but decentralized execution, standardized security plan.

FPS provides a unified and standardized process that considers overall risk and determines appropriate security plans and placement of countermeasures for each separate facility. Success is dependent on these components being inextricably tied to each other component with one central responsibility for control. The performance of the guards, the contract and the adherence to identified standards and requirements must be under the Federal Protective Service. Depending on risk, location, and available resources, an integrated security plan that encompasses security measures, which in many cases includes contract security guards, is developed jointly by certified FPS Inspectors with Law Enforcement and Physical Security Assessment certifications and individual facility BSCs, but the FPS Inspector must remain responsible for the coordination of the entire effort. This plan will include countermeasures, federal law enforcement, state and local law enforcement, emergency planning, and measures of effectiveness, all of which are designed to mitigate identified risks. Each component of this plan is interdependent and centrally coordinated by the Federal Protective Service.

Post-Hearing Questions for the Record
Submitted to Elaine C. Duke
From Senator Daniel K. Akaka

Question#:	5
Topic:	inherently governmental
Hearing:	Is DHS Too Dependent on Contractors to Do the Government's Work?
Primary:	The Honorable Daniel K. Akaka
Committee:	HOMELAND SECURITY (SENATE)

Question: Current rules for contracting prohibit certain types of activities from contracting if they are inherently governmental. However, if a violation or supposed violation of federal acquisition regulations occurred, what process is in place to adjudicate such an accusation, and if proven true, how would the situation be mitigated?

Answer:

If, upon review, a currently contracted activity is determined to be inherently governmental, in accordance with the Federal Activities Inventory Reform (FAIR) Act, the OMB Circular A-76 and DHS Management Directive 0476, the contract would be immediately modified or terminated and the work brought back in-house.

Due in part to the timeframes given to stand-up its homeland security operations and mission growth, DHS has relied heavily on a mix of in-house and contract resources to provide the technical and other mission support capabilities required. In some cases, commercial work is currently being provided by both legacy federal employees and by support contractors. In other cases, contractors have been brought on board until determinations can be made regarding the recurring nature of the required work, as compared to our shorter-term project requirements, systems development efforts or due to the need to immediately bring on a strong cadre of skills and oversight capabilities.

Working within the requirements and approval structure of the DHS Workforce Planning Guide, the FAIR Act, and the OMB Circular A-76, DHS Headquarters and Component organizations have been requested to prioritize and review their current service contract workload to discern whether that currently contracted work is: (a) inherently governmental and must be consistently and immediately converted to in-house performance as a matter of law; (b) is commercial but otherwise not appropriate for private sector performance under FAIR Act Reason Code "A" and associated guidance (such as where contracting out all or part of an activity presents too much risk to the agency's continuity of operations, ability to provide appropriate oversight, or employee skills development to assure assignment flexibility); or (c) is commercial in nature, but the cost of contract performance appears excessive and may warrant a competition – conducted on a level cost and performance playing field – to determine whether a conversion from contract to in-house performance should be authorized.

Question#:	6
Topic:	contracted personnel
Hearing:	Is DHS Too Dependent on Contractors to Do the Government's Work?
Primary:	The Honorable Daniel K. Akaka
Committee:	HOMELAND SECURITY (SENATE)

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Question: How many contracted personnel currently work in Department of Homeland Security facilities?

Response:
This question requests information that DHS does not currently collect and that is not available through any existing automated procurement system, either within DHS or through the Federal Procurement Data System.
In Federal procurement today, the designated best practice is to have service contracts with performance-based objectives resulting in the delivery of a specified service. Clear contract requirements, measurable contract performance standards, and effective government surveillance plans are the best tools for protecting taxpayer interests, enabling our contract specialists to hold contractors accountable for timely, cost-effective, and quality performance. The contractor usually determines not only the labor mix required to satisfy contract requirements but also whether to use full or part-time employees. To the extent possible, the number of employees used by our contractors to satisfy DHS contractual requirements is left to contractor discretion, as they maintain responsibility for the supervision of their employees. Contract management and oversight focuses on contractor performance outcomes and deliverables per the terms and conditions of the contract. However, DHS recognizes that the growth of services contracting and the increased reliance on contractors to perform mission-critical services requires a fresh look at this policy, and as I stated in my testimony, we are currently examining this issue.

Question#:	7
Topic:	security badges - contractors
Hearing:	Is DHS Too Dependent on Contractors to Do the Government's Work?
Primary:	The Honorable Daniel K. Akaka
Committee:	HOMELAND SECURITY (SENATE)

Question: How many security badges have been issued to contractors at the Department of Homeland Security?

Answer:

7,614 Contractor access cards have been issued for DHS Headquarters, of which 3,937 are currently active.

Question#:	8
Topic:	security badges - government employees
Hearing:	Is DHS Too Dependent on Contractors to Do the Government's Work?
Primary:	The Honorable Daniel K. Akaka
Committee:	HOMELAND SECURITY (SENATE)

Question: How many security badges have been issued to government employees at the Department of Homeland Security?

Answer:

4,290 federal employee access cards have been issued for DHS Headquarters, of which 2,814 are currently active.

Question#:	9
Topic:	resources
Hearing:	Is DHS Too Dependent on Contractors to Do the Government's Work?
Primary:	The Honorable Daniel K. Akaka
Committee:	HOMELAND SECURITY (SENATE)

Question: What resources and training does the Department provide to assist individuals become contracting officers?

Answer:

The agency's contracting officer warrant program blends basic and annual skills currency training with experience requirements as a minimum for providing warrants. Higher warrant levels require more and more in-depth and diverse training and longer and more progressively more sophisticated experience. The Federal Acquisition Institute (FAI) provides training in contracting for the Federal civilian agencies. FAI uses the Defense Acquisition University (DAU) as well as commercial providers to deliver the courses. FAI is DHS's first choice for training in contracting. DHS supplements the training provided by FAI by contracting with commercial providers to ensure that enough training is available to the DHS contracting workforce throughout the year. The following are additional efforts and initiatives that are ongoing at DHS to support the contracting workforce:

- In fiscal year (FY) 2007, the DHS Under Secretary for Management (USM) signed a partnership agreement with the Under Secretary of Defense (Acquisition, Technology, and Logistics) and the President of the DAU to leverage existing Department of Defense (DOD) training and development opportunities. This agreement enables DHS to use DOD's capabilities and talent pool to help develop the DHS contracting workforce on a long-term partnership basis.

- DHS is having specialized targeted training developed to supplement the FAI, DAU, and commercially contracted courses. In FY 2007, DHS awarded contracts to several commercial providers for the development of contracting courses and modules to be developed on Contract Administration, Buy American Act/Trade Agreement/FAR Part 25, Procurement Initiation Training, and Contract Cost and Pricing. In FY 2008, DHS is planning on the development of additional targeted courses once the Continuing Resolution is resolved.

- DHS has a robust continuing education program for contracting, including such programs as the Excellence in Contracting series. This series makes experts on various topics in Federal contracting available once a month to the contracting workforce. Each of the components within DHS supplements that series with

Question#:	9
Topic:	resources
Hearing:	Is DHS Too Dependent on Contractors to Do the Government's Work?
Primary:	The Honorable Daniel K. Akaka
Committee:	HOMELAND SECURITY (SENATE)

their own luncheon series of speakers covering topics in contracting of specific interest to them.

- Acquisition Workforce Training is being centralized at the DHS HQ level. Contract training is the major component of the centralized fund. By centralizing the training program, DHS is better positioned to deliver a unified training program that enables our contracting professionals to develop the necessary skills and competencies necessary to achieve the appropriate certification levels.

- In order to satisfy the long term need for qualified acquisition personnel, DHS's Office of the Chief Procurement Officer is initiating a centrally funded DHS Acquisition Intern Program. In the President's budget, DHS has funding to begin with 66 participants and grow incrementally each year to a goal of 300 participants. The first set of participants will be working in the Federal government's contracting career field. During their three-year program, they will rotate through three contracting offices at different components within DHS, as well as complete all the necessary training to become certified Federal contracting professionals at the journey-man level. This is a robust program modeled after highly successful Department of Defense programs.

Question#:	10
Topic:	pass rate
Hearing:	Is DHS Too Dependent on Contractors to Do the Government's Work?
Primary:	The Honorable Daniel K. Akaka
Committee:	HOMELAND SECURITY (SENATE)

Question: What is the pass rate for Department of Homeland Security government employees taking certification tests for becoming contract officers?

The Federal Government certification program for the Contracting Career Field (GS 1102's, which includes contracting officers) does not use a "certification test" similar to the CPA Exam, the Professional Engineer Exam, the Program Management Institute's PMI exam, etc. Like many professional certifications, the Federal Government's contracting certification program, as defined by the Office of Federal Procurement Policy (OFPP) and the Federal Acquisition Institute (FAI), is competency-based with specified training, education, and experience criteria for each certification level.

Certification is accomplished by demonstrating that a person has met a series of competencies that were identified by a group of highly experienced Federal contracting personnel as necessary to be able to perform in contracting in the Federal Government. FAI and OFPP worked with the Defense Acquisition University (DAU) to identify education and work experience, as well as a series of courses that Federal employees could take in order to achieve the competencies. Each of the courses identified by FAI/DAU has an assessment strategy and, in order to complete the course, each employee must successfully complete the assessment. An assessment is a demonstration by the employee that they have met the competencies the courses were designed around and can be a test (multiple choice, fill in the blank, essay, etc.), writing a paper, preparing and presenting research, etc. An employee may not receive a contracting officer's warrant until he or she has met the requisite education, training, and experience requirements. In accordance with OFPP Policy letter 05-1, "Federal Acquisition Certification in Contracting (FAC-D): Contracting Officer", warrants may only be issued to an individual certified at an appropriate level to support their warrant obligations. Only the Senior Procurement Executive may waive the requirement for obtaining FAC-C certification for warranting purposes, if it is in the best interest of the agency.

Post-Hearing Questions for the Record
Submitted to Ms. Elaine C. Duke
From Senator Susan M. Collins

Question#:	11
Topic:	Deepwater
Hearing:	Is DHS Too Dependent on Contractors to Do the Government's Work?
Primary:	The Honorable Susan M. Collins
Committee:	HOMELAND SECURITY (SENATE)

Question: In July of this year, the Coast Guard established its new Office of Acquisitions to improve the management of the Deepwater program, among other things. The Coast Guard reported at the time that one of the new Offices' first actions would be to conduct a comprehensive Alternatives Analysis of the Deepwater program. The purpose of the Analysis is to identify and document the most resource efficient method of satisfying an identified mission capability gap. I understand that this Analysis is supposed to be completed by the end of the calendar year. Can you give us an update on the status of the Analysis and in particular, what components of the Deepwater program will be most affected?

Response:
The Alternatives Analysis (AA) is focused on the Surface, Aviation and Command, Control, Communications, Computers, Intelligence, Surveillance and Reconnaissance (C4ISR) assets being acquired as part of the Integrated Deepwater System (IDS) acquisition. Specifically, the AA is conducting analysis based on the approved Acquisition Program Baseline (APB) and Mission Need Statement, addressing the capabilities currently planned to be provided by the National Security Cutter (NSC), Offshore Patrol Cutter (OPC), Fast Response Cutter (FRC), Maritime Patrol Aircraft (MPA), and the Vertical Takeoff and Landing Unmanned Aerial Vehicle (VUAV). Other assets included in the APB (e.g. Medium Range Recovery Aircraft (HH-60J), Multi-Mission Cutter Aircraft (HH-65), and Long Range Surveillance Aircraft (HC-130J, HC-130H)) will not be included as part of the initial analysis due to their relative program maturity and desire to complete the analysis in a timely manner. A Quicklook Report of the analysis will be delivered in late December. Although the Quicklook Report is expected to contain preliminary alternatives, sensitivity analysis will be conducted and refined alternatives will be provided in the Final AA Report delivered in late February 2008.

The Coast Guard included options in the independent evaluations contract in case the government determined further analysis was warranted.

Post-Hearing Question for the Record
Submitted to Steven L. Schooner
From Senator Susan M. Collins

"Is DHS Too Dependent on Contractors to Do the Government's Work?"
October 17, 2007

In your testimony you talk about the issues associated with the acquisition workforce and the work done on this issue by the Acquisition Advisory Panel. What do you think we should do to address both the short and long term issues associated with the government's acquisition workforce.

The government needs to invest resources (time, money, and energy) to recruit, train, incentivize, and retain an expanded acquisition workforce. The government needs to promptly and aggressively recruit a huge number of new business-minded professionals. In addition, the government needs to train the new personnel, and provide supplemental training to the existing workforce, to enhance their competence and expertise. Further, the government needs to provide meaningful incentives for the acquisition workforce and come up with creative solutions to retain, over time, (or, of course, continually recruit and train) the best, most experienced professionals.

Frankly, I am not optimistic that there are any satisfactory short-term solutions. I see little short-term alternative (to the status quo) other than selectively outsourcing the procurement function. (While there a number of reasons why this approach is sub-optimal, it is a commonly accepted approach in developing countries.) Unfortunately, a personnel crisis methodically orchestrated over a more than fifteen-year period cannot be ameliorated over night. For example, my sense is that, even if, for the foreseeable future, the government hired every qualified acquisition professional willing to work for the government, that would prove insufficient to meet the government's needs (and that is before the potential exodus of retirement-eligible acquisition personnel). Moreover, I am pessimistic about the government's ability to promptly and effectively train such an influx of people. Similarly, demographic information suggests that entry-level workers are far more mobile than their predecessors, which may make retention of this new talent difficult.

As for long-term solutions, I believe the specifics – how many thousands more acquisition professionals – 5,000, 10,000, or more – must be hired,[1] how should the

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[1] The recent Army study, referenced below, recommended increasing the Army's contracting workforce by 1,400 professionals, which would involve about a 25 percent increase. While the Army is typically one of the largest procuring agencies, it accounts (in any given year) for 15-25 percent of the federal acquisition budget and, historically, has better staffed the procurement function than many civilian agencies (such as, for example, the Department of Homeland Security).

community receive meaningful hands-on training, how should these professionals be incentivized, etc. – are far less important than the threshold issue or predicate. Congress must invest, heavily and aggressively, in rebuilding the acquisition workforce. In other words, we cannot expect significant improvement without a clear message from Congress, *accompanied by sustained, dramatic increases in appropriations* specifically for acquisition personnel. Flexible recruitment and hiring authority, as well as increased flexibility with regard to compensation and incentives, may also prove necessary. Absent such a commitment, any attempted solution will serve as little more than a finger in the dike.

As for small-scale steps than can be taken to improve the acquisition workforce, recommendations are plentiful and diverse. In addition to Chapter 5 of the Acquisition Advisory Panel report, *www.acquisition.gov/comp/aap/documents/Chapter5.pdf*, I also recommend reading: (1) the Procurement Round Table paper on the acquisition workforce, available at: *www.procurementroundtable.org/AttractingandRetaining.pdf*, and (2) the compelling study recently presented to the Army, *Urgent Reform Required: Army Expeditionary Contracting*, available at *www.army.mil/docs/Gansler_Commission_Report_Final_071031.pdf.*

United States Government Accountability Office

GAO

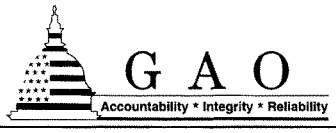
Report to Congressional Requesters

September 2007

DEPARTMENT OF HOMELAND SECURITY

Improved Assessment and Oversight Needed to Manage Risk of Contracting for Selected Services

This Report Is Temporarily Restricted Pending Official Public Release.



GAO-07-990

September 2007

GAO
Accountability·Integrity·Reliability

Highlights

Highlights of GAO-07-990, a report to congressional requesters

DEPARTMENT OF HOMELAND SECURITY
Improved Assessment and Oversight Needed to Manage Risk of Contracting for Selected Services

Why GAO Did This Study

In fiscal year 2005, the Department of Homeland Security (DHS) obligated $1.2 billion to procure four types of professional and management support services—program management and support, engineering and technical, other professional, and other management support. While contracting for such services can help DHS meet its needs, there is risk associated with contractors closely supporting inherently governmental functions—functions that should be performed only by government employees.

This report (1) describes the contracted services, (2) identifies potential risk and the extent to which DHS considered risk when deciding to contract for these services, and (3) assesses DHS's approach to managing and overseeing these services.

GAO analyzed 117 judgmentally selected statements of work and 9 cases in detail for contracts awarded in fiscal year 2005 by the Coast Guard, the Office of Procurement Operations (OPO), and the Transportation Security Administration (TSA).

What GAO Recommends

GAO recommends that DHS take actions to improve its ability to manage risk and ensure government control over and accountability for decisions resulting from services that closely support inherently governmental functions. DHS generally agreed with these recommendations.

www.gao.gov/cgi-bin/getrpt?GAO-07-990.

To view the full product, including the scope and methodology, click on the link above. For more information, contact John Hutton at (202) 512-4841 or huttonj@gao.gov.

What GAO Found

More than half of the 117 statements of work that GAO reviewed provided for reorganization and planning activities, policy development, and acquisition support—services that closely support the performance of inherently governmental functions. Other such services supporting a broad range of programs and operations at Coast Guard, OPO, and TSA included budget preparation, regulation development, and employee relations.

Decisions to contract for professional and management support services were driven by the need for staff and expertise to get programs and operations up and running. However, for the nine cases we reviewed, program officials did not assess the risk that government decisions may be influenced by, rather than independent from, contractor judgments. These cases included services that have the potential to increase this risk. For example, contractors directly supported DHS missions and performed on an ongoing basis work comparable to that of government employees. Most of the nine contracts also lacked detail or covered a wide range of services. Conditions such as these need to be carefully monitored to ensure the government does not lose control over and accountability for mission-related decisions. DHS has not explored ways to manage the risk of these contractor services, such as through total workforce deployment across the organization.

The level of oversight DHS provided did not always ensure accountability for decisions or the ability to judge whether the contractor was performing as required. Federal acquisition policy requires enhanced oversight of contracts for services that can affect government decision making, policy development, or program management. While contracting officers and program officials acknowledged their professional and management support services contracts closely supported inherently governmental functions, they did not see a need for increased oversight. Insufficient oversight increases the potential for a loss of management control and the ability to ensure intended outcomes are achieved.

Range of Contracted Services and Related Risk Level

Basic services	Professional and management support services that do not closely support inherently governmental functions	Professional and management support services that closely support inherently governmental functions
• Custodial • Food • Landscaping • Snow removal • Storage • Trash collection	• Advertising • Banking • Parking • Records maintenance	• Acquisition support • Budget preparation • Developing or interpreting regulations • Engineering and technical services • Intelligence services • Policy development • Reorganization and planning
Low	← Risk level →	High

Source: GAO analysis.

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Abbreviations

COTR	Contracting Officer's Technical Representative
DHS	Department of Homeland Security
DOD	Department of Defense
DOE	Department of Energy
FAR	Federal Acquisition Regulation
FEMA	Federal Emergency Management Agency
FPDS-NG	Federal Procurement Data System-Next Generation
OFPP	Office of Federal Procurement Policy
OMB	Office of Management and Budget
OPO	Office of Procurement Operations
TSA	Transportation Security Administration

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United States Government Accountability Office
Washington, DC 20548

September 17, 2007

The Honorable Joseph I. Lieberman
Chairman
The Honorable Susan M. Collins
Ranking Member
Committee on Homeland Security and Governmental Affairs
United States Senate

The Honorable Daniel K. Akaka
Chairman
The Honorable George V. Voinovich
Ranking Member
Subcommittee on Oversight of Government Management, the Federal Workforce, and the District of Columbia
Committee on Homeland Security and Governmental Affairs
United States Senate

The Honorable Bennie G. Thompson
Chairman
Committee on Homeland Security
House of Representatives

In fiscal year 2006, the Department of Homeland Security (DHS) obligated $15.7 billion for the procurement of goods and services,[1] making it the third largest department in terms of procurement spending in the federal government. Of this amount, DHS obligated over $5 billion on contracts for services categorized as professional and management support, such as strategic planning, human resources development, and acquisition support.

While there are benefits to using contractors to perform services for the government—such as increased flexibility in fulfilling immediate needs—GAO and others have raised concerns about the federal government's increasing reliance on contractor services. Of key concern is the risk associated with contractors providing services that closely support

[1]This amount includes procurement obligations as reported by DHS in the Federal Procurement Data System–Next Generation, the governmentwide database for federal procurement spending. This system does not include all actions, such as those under interagency agreements.

inherently governmental functions: the loss of government control over and accountability for mission-related policy and program decisions. Federal guidance requires agencies to assess this risk and provide oversight accordingly.

Given the dollars obligated for professional and management support services contracts and the associated risk, you asked us to review DHS's use of contracts for services that closely support inherently governmental functions. Specifically, you asked us to (1) describe the types of services DHS requested through these contracts, (2) identify potential risk in these contracts and the extent to which DHS considered risk when deciding to use these contracts, and (3) assess DHS's approach to managing and overseeing contracts for these types of services.

To conduct our work, we reviewed applicable federal procurement policies and data from the Federal Procurement Data System-Next Generation (FPDS-NG) for fiscal year 2005, the most recent year for which complete data were available at the time we began our review. To identify services that closely support inherently governmental functions, we reviewed federal acquisition guidance that describes these functions and FPDS-NG service codes. We selected the four professional and management support services for which DHS obligated the most dollars in fiscal year 2005—program management and support services, engineering and technical services, other professional services, and other management support services. Because FPDS-NG does not provide definitions for service codes, to better understand the services provided, we judgmentally selected 125 contract statements of work for the four types of professional and management support services. We selected contracts and orders[2] awarded by DHS components, excluding the Federal Emergency Management Agency (FEMA)[3] that had obligated the most on these services at the time we began our review—the Coast Guard, the Office of Procurement Operations (OPO), and the Transportation Security Administration (TSA). From our selected statements of work, we received and reviewed 117 statements and judgmentally selected and conducted a more detailed review of 9 cases from the three components. These cases totaled over $82.1 million, ranging in value from $1.3 million to

[2]Order refers to a task order for services placed against an established contract.

[3]FEMA obligated the third highest amount for the selected services in fiscal year 2005. We excluded FEMA from our sample because of atypical fiscal year 2005 spending on hurricane relief efforts.

$42.4 million, and represented a variety of services that closely support inherently governmental functions. For the 9 cases, we reviewed contract files and interviewed contracting officers, program officials, and contractors. In addition, we interviewed staff from the Office of Management and Budget's (OMB) Office of Federal Procurement Policy (OFPP), the component heads of contracting activity at OPO and TSA, and the Chief of the Office of Procurement Policy at the Coast Guard. Appendix I provides more information on our scope and methodology. We conducted our review between April 2006 and August 2007 in accordance with generally accepted government auditing standards.

Results in Brief

More than half of the 117 statements of work we reviewed provided for reorganization and planning activities, policy development, and acquisition support—services that closely support the performance of inherently governmental functions. For example, contractors provided reorganization and planning services for the Coast Guard's fleet modernization effort—the Integrated Deepwater System. In another case, contractors provided a range of professional services including strategic planning and legislative support for TSA's Transportation Worker Identification Credential Program. Employee relations, budget preparation, and regulation development were also among the services provided at the Coast Guard, OPO, and TSA.

Decisions to contract for professional and management support services were driven by the need for staff and expertise to get programs and operations up and running. However, for the nine cases we reviewed, program officials did not assess the risk that government decisions may be influenced by, rather than independent from, contractor judgments. Long-standing federal procurement policy requires attention to this risk. Each of the nine cases we reviewed included services that have the potential to increase this risk. Specifically, the contracts included services that directly supported DHS missions; in some cases, contractors were performing on an ongoing basis work also performed by government employees, such as intelligence analysis and strategic planning. And in most cases, we found the original justification for contracting, such as immediate need, had changed, but components continued to use contractors without reassessing who—private companies or federal employees—should perform a given function. In addition, six of the nine contracts lacked detail or covered a wide range of services. These conditions need to be carefully monitored to ensure the government does not lose control over and accountability for mission-related decisions. DHS has not explored ways to manage the risk of contracting for these services, such as through

total workforce deployment across the organization, which includes the flexible use of the workforce to reduce skill gaps.

DHS management and oversight of contracts for selected services did not provide assurance that DHS had adequately mitigated the related risk. Federal acquisition policy requires enhanced oversight of contractors providing professional and management support services that can affect government decision making, support or influence policy development, or affect program management. However, most contracting officers and program officials we spoke with were unaware of this requirement and, in general, did not see a need for enhanced oversight of their professional and management support services contracts—even though they acknowledged these contracts closely supported inherently governmental functions. According to some officials, their contracting experience and training enabled them to determine if enhanced oversight was needed. However, we found the level of oversight provided did not always ensure accountability for decisions or the ability to judge whether the contractor was performing as required. In addition, training was not targeted to provide the necessary skills to determine whether enhanced oversight was needed. Failure to ensure appropriate oversight increases the potential for a loss of management control and ability to ensure intended outcomes are achieved.

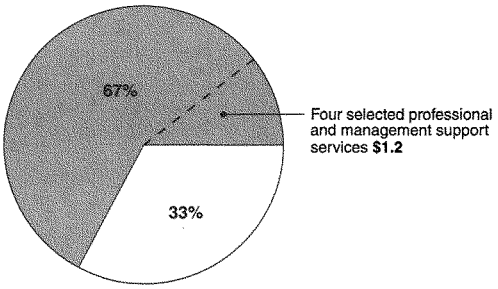
To improve DHS's ability to manage the risk of selected services that closely support inherently governmental functions as well as government control over and accountability for decisions, we are recommending that the Secretary of Homeland Security take several actions. These actions include establishing strategic-level guidance on and routinely assessing the risk of using contractors for selected services, more clearly defining contract requirements, and assessing the ability of the workforce to provide sufficient oversight when using selected services. In written comments on a draft of this report, DHS concurred with most of our recommendations and provided information on what action would be taken to address them. However, DHS partially concurred with our recommendation to assess the risk of selected services as part of the acquisition planning process and modify existing guidance and training, noting that its acquisition planning guidance already provides for the assessment of risk. However, our review found that this guidance does not address the specific risk of services that closely support the performance of inherently governmental functions. DHS also partially concurred with our recommendation to review selected services contracts as part of the acquisition oversight program, stating that instead, the Chief Procurement Officer will direct a special investigation on selected issues as needed. We

did not intend for the formal oversight plan to be modified and leave it to the discretion of the Chief Procurement Officer to determine how to implement the recommendation. DHS's comments are reproduced in their entirety in appendix IV.

Background

Governmentwide, spending on services contracts has grown substantially over the past several years. At DHS, in fiscal year 2005 services accounted for $7.9 billion, or 67 percent, of total procurement obligations,[4] with $1.2 billion obligated for four types of professional and management support services: program management and support, engineering and technical, other professional, and other management support (see fig. 1). More than two-thirds of DHS's obligations for these services ($805 million) were to support the Coast Guard, OPO, and TSA.

Figure 1: DHS Contracting in Fiscal Year 2005



Source GAO analysis of FPDS-NG data.

[4]In fiscal year 2006, obligations for services increased to 82 percent of DHS's total procurement obligations, largely due to spending by FEMA for Gulf Coast hurricane relief efforts.

The services federal agencies buy are organized under more than 300 codes in FPDS-NG and range from basic services, such as custodial and landscaping, to more complex professional and management support services, which may closely support the performance of inherently governmental functions. Inherently governmental functions require discretion in applying government authority or value judgments in making decisions for the government; as such, they should be performed by government employees, not private contractors.[5] The Federal Acquisition Regulation (FAR) provides 20 examples of functions considered to be, or to be treated as, inherently governmental, including

- determining agency policy and priorities for budget requests,
- directing and controlling intelligence operations,
- approving contractual requirements, and
- selecting individuals for government employment.

The closer contractor services come to supporting inherently governmental functions, the greater the risk of their influencing the government's control over and accountability for decisions that may be based, in part, on contractor work. This may result in decisions that are not in the best interest of the government, and may increase vulnerability to waste, fraud, or abuse. The FAR provides 19 examples of services and actions that may approach the category of inherently governmental because of the nature of the function, the manner in which the contractor performs the contracted services, or the manner in which the government administers contractor performance.[6] Table 1 provides examples of these services and their relative risk of influencing government decision making.

[5]Federal acquisition policy states that contracts shall not be used for the performance of inherently governmental functions.

[6]FAR section 7.503 includes examples of both inherently governmental functions and services that may approach being inherently governmental. See appendix II for a complete list of these services.

Table 1: Range of Contracted Services and Related Risk Level

Basic services	Professional and management support services that do not closely support inherently governmental functions	Professional and management support services that closely support inherently governmental functions
• Custodial • Food • Landscaping • Snow removal • Storage • Trash collection	• Advertising • Banking • Parking • Records maintenance	• Acquisition support • Budget preparation • Developing or interpreting regulations • Engineering and technical services • Intelligence services • Policy development • Reorganization and planning
Low	**← Risk level →**	**High**

Source: GAO analysis of selected FPDS-NG and FAR subpart 7 5 categories of services, and OFPP Policy Letter 93-1

Note: Professional and management support services consists of 42 codes in FPDS-NG.

FAR and OFPP guidance address contracting for services that closely support the performance of inherently governmental functions, including professional and management support services, due to their potential for influencing the authority, accountability, and responsibilities of government officials. In particular, the guidance states that services that tend to affect government decision making, support or influence policy development, or affect program management are susceptible to abuse and require a greater level of scrutiny. Such services include advisory and assistance, which includes expert advice, opinions, and other types of consulting services. The guidance requires agencies to provide greater scrutiny of these services and an enhanced degree of management oversight. This would include assigning a sufficient number of qualified government employees to provide oversight and to ensure that agency officials retain control over and remain accountable for policy decisions that may be based in part on a contractor's performance and work products.[7]

The potential for the loss of government management control associated with contracting for services that closely support the performance of inherently governmental functions or that should be performed by government employees is a long-standing governmentwide concern. For

[7]FAR section 37.114, Special acquisition requirements; OFPP Policy Letter 93-1: *Management Oversight of Service Contracting*, Office of Federal Procurement Policy, May 18, 1994.

example, in 1981, GAO found that contractors' level of involvement in management functions at the Departments of Energy (DOE) and Defense (DOD) was so extensive that the agencies' ability to develop options other than those proposed by the contractors was limited.[8] A decade later, in 1991, GAO reported that DOE had contracted extensively for support in planning, managing, and carrying out its work because it lacked sufficient resources to perform the work itself.[9] We noted that while support service contracts are appropriate for fulfilling specialized needs or needs of a short-term or intermittent nature, the contracts we reviewed at DOE were not justified on these bases. In that same year, GAO reported that three agencies—DOE, the Environmental Protection Agency, and the National Aeronautics and Space Administration—may have relinquished government control and relied on contractors to administer some functions that may have been governmental in nature.[10]

More recently, government, industry, and academic participants in GAO's 2006 forum on federal acquisition challenges and opportunities[11] and the congressionally mandated Acquisition Advisory Panel[12] noted how an increasing reliance on contractors to perform services for core government activities challenges the capacity of federal officials to supervise and evaluate the performance of these activities. The panel also noted that contracts for professional services are often performed with close contact between the federal government and contractor employees, which approaches the line between personal and nonpersonal services. Personal services are prohibited by the FAR, unless specifically authorized, and are indicated when the government exercises relatively continuous supervision and control over the contractor. Both the panel and GAO acquisition forum participants noted the large growth in

[8]GAO, *Civil Servants and Contract Employees: Who Should Do What for the Federal Government?* FPCD-81-43 (Washington, D.C.: June 19, 1981).

[9]GAO, *Energy Management: Using DOE Employees Can Reduce Costs for Some Support Services*, GAO/RCED-91-186 (Washington, D.C.: Aug. 16, 1991).

[10]GAO, *Government Contractors: Are Service Contractors Performing Inherently Governmental Functions?* GAO/GGD-92-11 (Washington, D.C.: Nov. 18, 1991).

[11]GAO, *Highlights of a GAO Forum: Federal Acquisition Challenges and Opportunities in the 21st Century*, GAO-07-45SP (Washington, D.C.: Oct. 6, 2006).

[12]*Report of the Acquisition Advisory Panel to the Office of Federal Procurement Policy and the United States Congress*, January 2007; see Services Acquisition Reform Act of 2003, Pub. L. No. 108-136, Title XIV, § 1423.

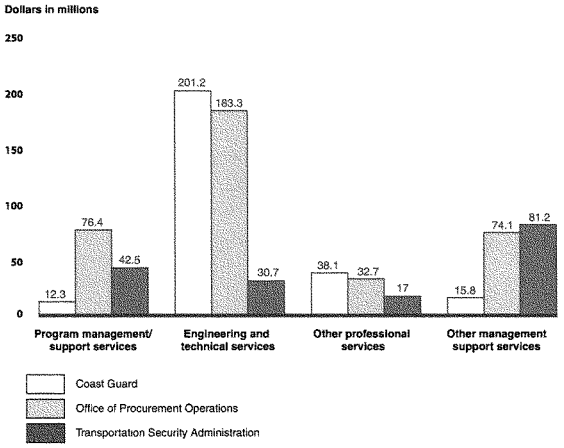
contracting for complex and sophisticated services has increased attention to the appropriate use of contractors.

DHS Contracts for Selected Services Covered a Range of Activities Closely Supporting Inherently Governmental Functions

A broad range of activities related to specific programs and administrative operations was performed under the professional and management support services contracts we reviewed. In most cases, the services provided—such as policy development, reorganization and planning activities, and acquisition support—closely supported the performance of inherently governmental functions. Contractor involvement in the nine cases we reviewed in detail ranged from providing two to three supplemental personnel to staffing an entire office.

Of the $805 million obligated by the Coast Guard, OPO, and TSA in fiscal year 2005 to procure four types of professional and management support services, more than one-half of the obligations was for engineering and technical services—most of which was contracted by the Coast Guard and OPO. Figure 2 provides a breakdown of contracting dollars for the four selected professional and management support services by the three DHS components.

Figure 2: Coast Guard, OPO, and TSA Contracting for Selected Professional and Management Support Services in Fiscal Year 2005



Source GAO analysis of FPDS-NG data

Some of the 117 statements of work we reviewed were for services that did not closely support inherently governmental functions. These included a TSA contract for employee parking services at airports and a Coast Guard contract to maintain historic human resource records and perform data entry. However, most of the selected statements of work we reviewed did request reorganization and planning activities, acquisition support, and policy development—services that closely supported inherently governmental functions.[13] Of the 117 statements of work that we reviewed, 71 included a total of 122 services that fell into these three categories—with reorganization and planning activities requested most often. For

[13]For the purposes of our review, acquisition support includes assisting with acquisition planning, contract management, and developing contract requirements such as statements of work.

example, the Coast Guard obligated $500,000 for a contractor to provide services for the Nationwide Automatic Identification System to identify and monitor vessels approaching or navigating in U.S. waters. The services included advising and providing recommendations on strategies for project planning, risk management, and measuring the performance and progress of the system. Additionally, the tasks included assisting with the development of earned value management reviews, life-cycle cost estimates, and cost-benefit analyses. In another example, TSA obligated $1.2 million to acquire contractor support for its Acquisition and Program Management Support Division, which included assisting with the development of acquisition plans and hands-on assistance to program offices to prepare acquisition documents.

Because contract statements of work can be broad, or contain requirements that the contractor may not ultimately perform, we conducted a more detailed review of nine cases to verify the work performed. In these nine cases, we found that contractors provided a broad array of services to sustain a range of programs and administrative operations, with the categories of reorganization and planning, policy development, and acquisition support requested most often. For example, $2.1 million in orders supporting the Coast Guard's fleet modernization effort—the Integrated Deepwater System—included modeling and simulation services to analyze the operational performance and effectiveness of various fleet scenarios for program planning. A $42.4 million OPO order for professional, technical, and administrative services for multiple offices in DHS's Information Analysis and Infrastructure Protection Directorate[14] included tasks to assist in developing policies, budget formulation, and defining information technology requirements.[15] Specifically, contractor personnel provided general acquisition advice and support to the Information Analysis and Infrastructure Protection business office, which included the management, execution, process improvement, and status reporting of procurement requests. For another office, the contractor provided an analysis of intelligence threats. A $7.9 million OPO human capital services order

[14]In July 2005, DHS announced that the information analysis function of the Information Analysis and Infrastructure Protection Directorate would be moved to the newly created Office of Intelligence and Analysis in an effort to strengthen intelligence functions and information sharing. Infrastructure protection became a component within the National Protection and Programs Directorate.

[15]The Department of Veterans Affairs awarded and originally managed this order on behalf of DHS; OPO assumed administration duties for DHS in December 2004.

provided a full range of personnel and staffing services to support DHS's headquarters offices, including writing position descriptions, signing official offer letters, and meeting new employees at DHS headquarters for their first day of work.

The extent of contractor involvement in the nine case studies varied from providing two to three supplemental personnel to staffing an entire office, and in most cases contractor staff performed services on-site at DHS facilities. Figure 3 shows the type and range of services provided in the nine case studies and the location of contractor performance.

Figure 3: Professional and Management Support Services Closely Supporting Inherently Governmental Functions in Nine Cases Reviewed

DHS program or office supported, by component	Total[a] (dollars in millions)	Service provided: Budget preparation	Policy development	Acquisition support	Developing or interpreting regulations	Reorganization and planning	Contractor representing component[b]	Contractor responding to Freedom of Information Act request	Program support	Service type: Administrative operations	Location: Performed on-site at DHS	Performed at contractor facility
Coast Guard												
Integrated Deepwater System, Modeling and Simulation Services	$2.1					●			●			●
Competitive Sourcing Program	1.7	●	●	●		●			●		●	
Office of Standards, Evaluation, and Development	1.3		●		●				●		●	
Office of Procurement Operations												
Information Analysis and Infrastructure Protection Directorate	42.4	●	●	●	●	●	●	●	●	●	●	
U.S. Visitor and Immigration Status Indicator Technology	11.8			●		●			●			●
DHS Headquarters Human Capital Services	7.9					●	●			●	●	●
Transportation Security Administration												
Transportation Worker Identification Credential Program	7.9	●	●	●	●	●	●		●		●	
Employee Relations Support Services	5.4		●				●			●	●	
Secure Flight	1.6	●		●	●	●	●		●	●	●	

Source: GAO analysis

Note: Categories are based on services that approach being inherently governmental in FAR subpart 7.5 and therefore may not include all the services provided by contractors in each of the nine cases.

[a]Obligations based on information provided by DHS at the time of our review.

[b]Situations in which contactors might be assumed to be agency employees or representatives. FAR section 7.503(d)(13).

DHS Did Not Consider Risk when Deciding to Contract for Selected Services

A lack of staff and expertise to get programs and operations up and running drove decisions to contract for professional and management support services. While program officials generally acknowledged that these contracts closely supported the performance of inherently governmental functions, they did not assess the risk that government decisions may be influenced by, rather than independent from, contractor

judgments. In the nine cases we reviewed, we found contractors providing services integral to an agency's mission and comparable to those provided by government employees, and contracts with broadly defined requirements. These conditions need to be carefully monitored to ensure the government does not lose control over and accountability for mission related decisions. DHS has not explored ways to manage the risk of contracting for these services such as determining the right mix of government-performed and contractor-performed services or assessing total workforce deployment across the department. DHS's human capital strategic plan notes the department has identified core mission critical occupations and plans to reduce skill gaps in core and key competencies. However, it is unclear how this will be achieved and whether it will inform the department's use of contractors for services that closely support inherently governmental functions.

DHS Contracting Decisions Were Largely Driven by a Lack of Staff and Expertise and Immediacy of Need

The reasons most often cited by program officials for contracting for services was the need for employees—to start up a new program or administrative operation, provide specific expertise, or meet immediate mission needs. When DHS was established in 2003, it was charged with developing strategies, programs, and projects to meet a new mission while facing skill gaps in core and key competencies. For example, at TSA—a component built from the ground up—according to program officials, the lack of federal staff to provide acquisition support led to hiring contractors for its Secure Flight program. Federal staff limitations was also a reason for TSA's contract for employee relations support services. Many TSA, DHS human capital, and Information Analysis and Infrastructure Protection program officials said that contracting for services was necessary because they were under pressure to get program and administrative offices up and running quickly, and they did not have enough time to hire staff with the right expertise through the federal hiring process. In another case, in prior work we found that when OPO was established, the office had only seven staff to serve more than 20 organizations.[16] Since that time, OPO has expanded and adjusted the use of contractors for specific functions, such as acquisition support.

In the case of TSA, the agency needed to immediately establish an employee relations office capable of serving 60,000 newly hired airport

[16]GAO, *Homeland Security: Successes and Challenges in DHS's Efforts to Create an Effective Acquisition Organization*, GAO-05-179 (Washington, D.C.: Mar. 29, 2005).

screeners—an undertaking TSA Office of Human Resources officials said would have taken several years to accomplish if they hired qualified federal employees. In another case, DHS human capital officials said there were only two staff to manage human resources for approximately 800 employees, and it would have taken 3 to 5 years to hire and train federal employees to provide the necessary services. Similarly, the Coast Guard, a more established agency, lacked the personnel needed to address new requirements for its competitive sourcing program. According to Coast Guard program officials, only one federal employee was in place when the new requirements were established. An acquisition plan for modeling and simulation services in support of the Coast Guard's Integrated Deepwater System cited the need for technological expertise as one of the reasons for hiring contractors. According to program officials, contracting for such technological capabilities is routine at the Coast Guard.

Several officials also described a perception of a management preference for contracting. For example, an OPO contracting officer said governmentwide strategies to use contractors influenced program decisions to award services contracts. TSA program and senior officials also said decisions to contract were in keeping with a conscious decision to build a lean organization. For example, in prior work, we found that TSA contracted extensively to manage human resource needs, develop and manufacture screening equipment, and provide the information technology systems it uses to manage day-to-day operations. In fact, such service contracts represented about 48 percent of TSA's fiscal year 2003 budget.[17]

Selected Cases May Have Been at Risk of Contractors Influencing Government Decisions

To ensure the government does not lose control over and accountability for mission-related decisions, long-standing federal procurement policy requires attention to the risk that government decisions may be influenced by, rather than independent from, contractor actions when contracting for services that closely support inherently governmental functions. Distinguishing roles and responsibilities of contractors and government employees and carefully defining requirements for contractor services become especially important when contracting for professional and management support services since contractors often work closely with government employees to provide these services. To manage risk,

[17]GAO, *Transportation Security Administration: High-Level Attention Needed to Strengthen Acquisition Function*, GAO-04-544 (Washington, D.C.: May 28, 2004).

participants in GAO's acquisition forum stated that agencies need to determine the right mix of government-performed and contractor-performed work in particular settings, and that planning for contracting outcomes and measurable results is a critical element in managing a multisector workforce of government employees and contractors. The nine cases we reviewed provided examples of contractors performing services integral to an agency's mission and comparable to those performed by government employees, contractors providing ongoing support, and broadly defined contract requirements—conditions that need to be carefully monitored to ensure the government does not lose control over and accountability for mission-related decisions.

Contractor Services Integral to DHS's Mission and Comparable to Work Performed by Government Employees

In seven of the nine cases, contractors provided services that were integral to DHS's mission or comparable to work performed by government employees. For example:

- A contractor directly supported DHS efforts to hire federal employees, including signing offer letters.
- The contractor for the component's employee relations office provided advice to supervisors on cases, a function also performed by federal employees in that office.
- A contractor provided acquisition advice and support to the Information Analysis and Infrastructure Protection Directorate business office, working alongside federal employees and performing the same tasks.

In some of these cases officials said contractors were used to fill staff shortages. We also found that government employees may have supervised contractor employees. For example, one contractor performed mission-related budget, program management, and acquisition services and was located at government operations centers to provide opportunities for direct review of the contractor's activities. This type of close supervision of contractor personnel may constitute personal services—a contracting arrangement that is prohibited by the FAR, unless specifically authorized.[18]

[18]See FAR section 37.104 regarding personal services. Under certain circumstances, DHS is authorized to procure personal services; the contracts we reviewed were not awarded under this authority.

Ongoing Contractor Support

In all nine cases, the contractor provided services that lasted for more than 1 year. Given the risk of contracting for selected services, it is appropriate to periodically reexamine who—private companies or federal employees—should perform certain services. However, in five of the nine cases, the original justification for contracting—to quickly establish a new office or function—had changed, but the components extended or recompeted services without considering this change. For example:

- To establish a competitive sourcing program, the Coast Guard hired a contractor to provide budget, policy, acquisition support, and reorganization and planning for more than 5 years. These services have been extended through August 2009.
- OPO established a temporary "bridge" arrangement without competition to avoid disruption of critical support including budget, policy, and intelligence services. Although this arrangement was intended to be temporary, the order was modified 20 times and extended for almost 18 months. Subsequently, these services were competed and awarded to the original contractor under six separate contracts. DHS provided information stating that five of the six contracts expire by the end of September 2007. However, as of August 2007 DHS had yet to provide a plan for carrying out these services in the future.
- In another OPO case, a contractor was hired to develop a strategic plan for the US-VISIT program. While the task was completed in less than a year, the contractor continued to provide related services in two subsequent orders.

Continuing to contract for these types of services is particularly risky since the initial contracting decisions did not include an assessment of risk.

Broadly Defined Requirements

Describing in detail the work to be performed under a contract helps to minimize the risk of paying too much for services provided, acquiring services that do not meet needs, or entering too quickly into sensitive arrangements. Well-defined contract requirements can also help minimize the risk of contractors performing inherently governmental functions. Defining requirements is a part of the acquisition planning process and

prior GAO work has emphasized the importance of clearly defined requirements to obtain the right outcome.[19]

Broadly defined requirements were also apparent in the 117 statements of work that we reviewed. For example, at TSA we found multiple statements of work requesting a similar set of services—including acquisition and strategic planning, contingency planning, program oversight, and government cost estimating—in support of different program offices.

In six of our nine case studies, the requirements as written in the statements of work were often broadly defined. In four cases, the statements of work lacked specific details about activities that closely support inherently governmental functions. For example, the initial statement of work for a $7.9 million OPO order for human resources support broadly stated that the contractor would rank candidates for DHS positions. Without specifying how the contractor was to perform this task, it was unclear how OPO would hold the contractor accountable for outcomes. The later contract specified how the contractor was to rank candidates, including the criteria, processes, and policies to be used. In the other two cases, the statements of work included an indiscriminate mix of services.

- A $7.9 million TSA contract included program management support activities, including professional and technical advice, strategic planning, performance monitoring, conference support, briefing preparation, project documentation, technical research and analysis, and stakeholder relations. Some of these activities fit the description of advisory and assistance services.

- Similarly, a single $42.4 million OPO order included 58 tasks to provide a diverse range of services throughout the Information Analysis and Infrastructure Protection Directorate in support of over 15 program offices and 10 separate directoratewide administrative efforts. Services included providing strategic communications planning expertise and representing the directorate as a member of the DHS-wide Homeland Security Operations Center, providing intelligence analysis for Immigration and Customs Enforcement and Customs and Border

[19]GAO, *Defense Acquisitions: Tailored Approach Needed to Improve Service Acquisition Outcomes*, GAO-07-20 (Washington, D.C.: Nov. 9, 2006), and GAO, *Interagency Contracting: Franchise Funds Provide Convenience, but Value to DOD Is Not Demonstrated*, GAO-05-456 (Washington, D.C.: July 29, 2005).

Protection, supporting administrative functions such as acquisition planning and human capital management, and defining information technology requirements for the directorate. Other services included helping respond to congressional and Freedom of Information Act requests and preparing budget justification documents and related briefing materials.

Several program officials noted that the statements of work did not accurately reflect the program's needs or the work the contractors actually performed. For example, one statement of work for a $1.7 million Coast Guard order included advisory and assistance services. However, program officials said the contractor never provided these services. Another Coast Guard statement of work for a $1.3 million order initially included developing policy, conducting cost-benefit analyses, and conducting regulatory assessments, though program officials told us the contractors provided only technical regulatory writing and editing support. The statement of work was revised in a later contract to better define requirements.

Officials Generally Did Not Address Risk when Contracting for Selected Services

Contracting officers and program officials for the nine case studies generally acknowledged that their professional and management support services contracts closely supported the performance of inherently governmental functions. However, none assessed whether these contracts could result in the loss of control over and accountability for mission-related decisions. DHS has not explored ways to address the risk of contracting for these services such as determining the right mix of government performed or contractor performed services or assessing total workforce deployment across the department.

Federal acquisition guidance highlights the risk inherent in service contracting—particularly those for professional and management support—and federal internal control standards require assessment of risks. Internal control standards provide a framework to identify and address areas at greatest risk of mismanagement, waste, fraud, and abuse.[20] OFPP staff we met with also emphasized the importance of assessing the risk associated with contracting for services that closely support the performance of inherently governmental functions and

[20]GAO, *Standards for Internal Control in the Federal Government*, GAO/AIMD-00-21.3.1 (Washington, D.C.: November 1999).

establishing effective internal management controls to ensure agency staff are aware of this risk consistent with the OFPP guidance. While DHS acquisition planning guidance requires identification of such acquisition risks as cost, schedule, and performance, or political or organizational factors, it does not address the specific risk of services that closely support the performance of inherently governmental functions.[21] Prior GAO work has found that cost, schedule, and performance—common measures for products or major systems—may not be the most effective measures for assessing services.[22]

DHS's human capital strategic plan notes the department has identified core mission critical occupations and plans to reduce skill gaps in core and key competencies. However, prior GAO work found that DHS had not provided details on the specific human capital resources needed to achieve its long-term strategic goals.[23] Human capital planning strategies should be linked to current and future human capital needs, including the total workforce of federal employees and contractors; its deployment across the organization; and the knowledge, skills, and abilities needed by agencies.[24] Deployment includes the flexible use of the workforce, such as putting the right employees in the right roles according to their skills, and relying on staff drawn from various organizational components and functions and using "just-in-time" or "virtual" teams to focus the right talent on specific tasks. We have also noted the importance of focusing greater attention on which types of functions and activities should be contracted out and which ones should not while considering other reasons for using contractors, such as a limited number of federal employees. DHS's human capital plan is unclear as to how this could be achieved and whether it will inform the department's use of contractors for services that closely support the performance of inherently governmental functions.

[21]DHS requires acquisition planning and documentation for all procurements and a formal, written, and approved plan for acquisitions exceeding $5 million.

[22]GAO-07-20.

[23]GAO, *Results-Oriented Government: Improvements to DHS's Planning Process Would Enhance Usefulness and Accountability*, GAO-05-300 (Washington, D.C.: Mar. 31, 2005).

[24]GAO, *Human Capital: A Self-Assessment Checklist for Agency Leaders*, GAO/GGD-99-179 (Washington, D.C.: September 1999).

Management of Contracts for Selected Services May Not Have Been Sufficient to Mitigate Risk

None of the program officials and contracting officers we spoke with were aware of the federal acquisition policy requirement for enhanced oversight of contracts for services that closely support the performance of inherently governmental functions. Further, few believed that their professional and management support service contracts required an enhanced level of scrutiny. For the nine cases we reviewed, the level of oversight DHS provided did not always ensure accountability for decisions—as called for in federal guidance—or the ability to judge whether contractors were performing as required. DHS's Chief Procurement Officer and Inspector General each have ongoing efforts to improve procurement oversight. These efforts have the potential to include reviews of contracting for services that closely support the performance of inherently governmental functions.

Officials Did Not Provide Required Oversight of Contracts for Selected Services

The FAR and OFPP require agencies to provide enhanced oversight of contracts for services that closely support the performance of inherently governmental functions to ensure these services do not compromise the independence of government decision making.[25] DHS contracting officers and program officials from our nine case studies were unaware of these oversight policies. While these officials acknowledged the professional and management support services provided under these contracts closely supported the performance of inherently governmental functions, most did not believe enhanced oversight of the contracts was warranted.

According to DHS contracting officers and program officials, cost, complexity, and visibility are risk factors that trigger the need for enhanced oversight. Neither these officials nor DHS acquisition planning guidance cite services that closely support the performance of inherently governmental functions as a risk factor. In five of the nine cases we reviewed, contract documents outlined routine oversight responsibilities for the Contracting Officer's Technical Representative (COTR) but did not address the need for enhanced oversight as a result of the type of service. Prior GAO work has found that because services involve a wide range of activities, management and oversight of service acquisitions may need to

[25]FAR subpart 37.5 and OFPP Policy Letter 93-1 state that contracting officers should ensure that "best practices" techniques are used when contracting for services and in contract management and administration.

be tailored to the specific circumstances, including developing different measures of quality or performance.[26]

In four of the case studies, contracting officers and program officials believed their experience and training enabled them to determine whether or not enhanced oversight was needed. However, none of the training policies and documents we reviewed—including DHS's directive for COTR certification and the Defense Acquisition University's training curriculum—alerted COTRs to federal policy requiring enhanced oversight for contracts that closely support inherently governmental functions or to the risk of such contracts.

Control and Accountability Were Limited

Federal acquisition guidance requires agencies to retain control over and remain accountable for decisions that may be based, in part, on a contractor's performance and work products. This includes making sound judgments on requirements, costs, and contractor performance. Both the FAR and OFPP policy state that when contracting for services—particularly for professional and management support services that closely support the performance of inherently governmental functions—a sufficient number of qualified government employees assigned to plan and oversee contractor activities is needed to maintain control and accountability. However, we found cases in which the components lacked the capacity to oversee contractor performance due to limited expertise and workload demands (see table 2). These deficiencies may have resulted in a lack of control over and accountability for decisions.

[26]GAO-07-20.

Table 2: Examples of Limited Control over and Accountability for Contracts for Selected Services

DHS program or office supported, by component	Total dollars (in millions)	Example of limited control and accountability
Coast Guard		
Integrated Deepwater System, Modeling and Simulation Services	$2.1	Coast Guard program officials said they lacked the technical expertise needed to determine what it would take to perform a particular task. In one case, they anticipated that it would take about 4 hours to modify a simulation. Later, the contractor estimated the modification would take 120 hours. Such a discrepancy illustrates the potential problems that can occur—such as underestimating costs—when government personnel lack the expertise needed to independently plan for contracted work.
Office of Procurement Operations		
Information Analysis and Infrastructure Protection Directorate	42.4	One COTR was assigned to oversee 58 different tasks, ranging from acquisition support to intelligence analysis to budget formulation and planning, across multiple offices and locations. Program and contracting officials noted the resulting oversight was likely insufficient. To provide better oversight for one of the follow-on contracts, the program official assigned a new COTR to oversee just the intelligence work and established monthly meetings between the COTR and program office to discuss the contract. However, according to the program official, this change was made to ensure that the contract deliverables and payments were in order rather than to address the inherent risk of the services performed.
DHS Headquarters Human Capital Services	7.9	The COTR assigned to oversee the extensive range of personnel services provided by the contractor lacked technical expertise, which the program manager believed affected the quality of oversight provided. To improve oversight for the follow-on contract, the program manager assigned a COTR with more human resources experience along with an employee with human resources expertise to assist the COTR.

Source: GAO analysis

Prior GAO work has shown similar examples of oversight deficiencies that can contribute to poor outcomes. For example, in work examining contracts undertaken in support of response and recovery efforts for Hurricanes Katrina and Rita, we found that the number of monitoring staff available at DHS was not always sufficient or effectively deployed to provide oversight.[27] Similarly, in work at DOD, we have found cases of insufficient numbers of trained contracting oversight personnel, and cases in which personnel were not provided enough time to complete surveillance tasks, in part due to limited staffing.[28]

[27]GAO, *Hurricane Katrina: Improving Federal Contracting Practices in Disaster Recovery Operations*, GAO-06-714T (Washington, D.C.: May 4, 2006).

[28]GAO, *Contract Management: Opportunities to Improve Surveillance on Department of Defense Service Contracts*, GAO-05-274 (Washington, D.C.: Mar. 17, 2005).

Establishing measurable outcomes for services contracts and assessing contractor performance are necessary to ensure control and accountability. DHS components were limited in their ability to assess contractor performance in a way that addressed the risk of contracting for professional and management support services that closely support the performance of inherently governmental functions. Assessing contractor performance requires a plan that outlines how services will be delivered. However, none of the related oversight plans and contract documents we reviewed contained specific measures for assessing contractors' performance of these services.

DHS Is Implementing Oversight Initiatives

DHS's Chief Procurement Officer and the Inspector General each have ongoing efforts to assess DHS contract management. The Chief Procurement Officer is in the process of implementing an acquisition oversight program, which is intended to assess (1) compliance with federal acquisition guidance, (2) contract administration, and (3) business judgment.[29] This program was designed with flexibility to address specific procurement issues, as necessary, and is based on a series of reviews at the component level. For example, the on-site review incorporates assessments of individual procurement actions. These reviews have potential to include contracting for services that closely support inherently governmental functions.

The Inspector General also has recently increased its procurement oversight (see app. III). Common themes and risks emerged from this work, primarily the dominant influence of expediency, poorly defined requirements, and inadequate oversight that contributed to ineffective or inefficient results and increased costs. Inspector General reviews also noted that many DHS procurement offices reported that their lack of staffing prevents proper procurement planning and severely limits their ability to monitor contractor performance and conduct effective contract administration. While these findings have broad application to services, OFPP Policy Letter 93-1 encourages the Inspectors General to also conduct vulnerability assessments of services contracting—which would include services that closely support inherently governmental functions—to ensure compliance with related guidance.

[29]GAO, *Department of Homeland Security: Progress and Challenges in Implementing the Department's Acquisition Oversight Plan*, GAO-07-900 (Washington, D.C.: June 13, 2007).

Conclusions

When DHS was established in 2003, it faced an enormous challenge to quickly set up numerous offices and programs that would provide wide-ranging and complex services critical to ensuring the nation's security. With limited staffing options, the department relied on contractors to perform mission-related services that closely support the performance of inherently governmental functions. However, the tasks assigned to contractors were not always clearly defined up front, and the breadth and depth of contractor involvement were extensive in some cases. Four years later, the department continues to rely heavily on contractors to fulfill its mission with little emphasis on assessing the risk and ensuring management control and accountability. Given its use of contractors to provide selected services, it is critical for DHS to strategically address workforce deployment and determine the appropriate role of contractors in meeting its mission. Until the department emplaces the staff and expertise needed to oversee selected services, it will continue to risk transferring government responsibility to contractors.

Recommendations for Executive Action

To improve the department's ability to manage the risk of selected services that closely support inherently governmental functions as well as government control over and accountability for decisions, we recommend that the Secretary of Homeland Security implement the following five actions:

- establish strategic-level guidance for determining the appropriate mix of government and contractor employees to meet mission needs;
- assess the risk of selected contractor services as part of the acquisition planning process, and modify existing acquisition guidance and training to address when to use and how to oversee those services in accordance with federal acquisition policy;
- define contract requirements to clearly describe roles, responsibilities, and limitations of selected contractor services as part of the acquisition planning process;
- assess program office staff and expertise necessary to provide sufficient oversight of selected contractor services; and
- review contracts for selected services as part of the acquisition oversight program.

Agency Comments and Our Evaluation

We provided a draft of this report to OMB and DHS for review and comment. In written comments, DHS generally concurred with our recommendations and provided information on what action would be taken to address them. The department's comments are reprinted in appendix IV. OMB did not comment on the findings or conclusions of this report.

DHS concurred with three of our recommendations, and partially concurred with the other two. Regarding the first recommendation, to establish strategic guidance for determining the appropriate mix of government and contractor employees, DHS agreed and stated that its Chief Human Capital and Chief Procurement Officers plan to initiate staffing studies and recommend the number and skill sets of federal employees required to successfully manage its long-term projects and programs. We agree that such action should provide the basis for developing a strategic approach to managing the risk of contracting for selected services.

DHS partially concurred with our recommendation to assess the risk of selected contractor services as part of the acquisition planning process and to modify existing acquisition guidance and training accordingly. DHS agreed that its training for contracting officers and contracting officer's technical representatives should include the guidance in OFPP Policy Letter 93-1. DHS stated the Chief Procurement Officer plans to emphasize this requirement to the component Heads of Contracting Activity and to department contracting personnel and to coordinate with the Defense Acquisition University to ensure that guidance is also included in its training. However, DHS stated that its *Acquisition Planning Guide* already provides for the assessment of risk. Our review of the acquisition planning guidance found that it addresses risk factors such as cost, schedule, and performance, but it does not address the specific risk of services that closely support the performance of inherently governmental functions. As we note in our report, these types of services carry additional risk that should be considered when making contracting decisions.

Concerning the third recommendation, to define contract requirements to clearly describe roles, responsibilities, and limitations of selected contractor services, DHS concurred and anticipated that the risk of contracting for selected services will be appropriately addressed more often in the future. However, DHS did not specify related initiatives. Because developing well-defined requirements can be challenging but is

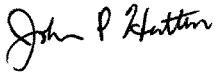
essential for obtaining the right outcome, we believe this effort will require sustained attention from DHS.

DHS also concurred with our fourth recommendation, to assess the program office staff and expertise necessary to provide sufficient oversight of selected contractor services. DHS stated that this process has already begun at TSA and that it plans to proceed on a larger-scale initiative as part of its overall human capital planning.

With respect to our recommendation that DHS review selected services contracts as part of the acquisition oversight program, DHS agreed that these types of services require special assessment, but stated that the Chief Procurement Officer will direct a special investigation on selected issues as needed rather than as part of the routine acquisition oversight reviews. We did not intend that the formal oversight plan be modified. Rather, we recognize that the acquisition oversight program was designed with flexibility to address specific procurement issues as necessary. We leave it to the discretion of the Chief Procurement Officer to determine how to implement the recommendation to ensure proper oversight.

As agreed with your offices, unless you publicly announce the contents of this report, we plan no further distribution for 30 days from the report date. At that time, we will send copies of this report to the Secretary of Homeland Security, the Director of the Office of Management and Budget, and other interested congressional committees. We will also make copies available to others upon request. In addition, this report will be available at no charge on the GAO Web site at http://www.gao.gov.

If you have questions about this report or need additional information, please contact me at (202) 512-4841 or huttonj@gao.gov. Contact points for our Offices of Congressional Relations and Public Affairs may be found on the last page of this report. Other staff making key contributions to this report were Amelia Shachoy, Assistant Director; Katherine Trimble; Jennifer Dougherty; Cardell Johnson; Matthew Saradjian; David Schilling; Karen Sloan; Julia Kennon; Alison Martin; Noah Bleicher; and Kenneth Patton.



John P. Hutton, Director
Acquisition and Sourcing Management

Appendix I: Scope and Methodology

To describe the types of services the Department of Homeland Security (DHS) requested through these contracts, we compiled information from the Federal Procurement Data System-Next Generation (FPDS-NG) on procurement spending at DHS and its components for fiscal years 2005 and 2006. To supplement our review of information from FPDS-NG, we reviewed 117 statements of work and conducted more detailed reviews of nine cases from fiscal year 2005—the year for which the most complete data were available at the time we began our review. For the 117 statements of work, we used federal acquisition guidance on services that closely support the performance of inherently governmental functions as criteria to describe the types of services DHS requested. Within those services, we selected three broad categories for more detailed review—reorganization and planning activities, policy development, and acquisition support.

To identify potential risk and the extent to which DHS considered risk when deciding to use contracts for selected professional and management support services that closely support the performance of inherently governmental functions, and to assess DHS's management and oversight of contracts for these types of services, we conducted a detailed review of nine case studies—three at each component. For each case study, we reviewed contract documentation, including available acquisition plans, oversight plans, and records, and interviewed procurement and program officials at the three components about the decision to use contractors and contractor oversight, including any processes and guidance used. We interviewed contractors for seven of the nine cases about their working relationship with the component offices, the work performed, and the oversight provided by the component. For the other two cases, we requested interviews, but the contractors were not available. We also spoke with the heads of contracting activity at the Office of Procurement Operations (OPO) and the Transportation Security Administration (TSA), the Chief of the Office of Procurement Policy at the Coast Guard, and staff at the Office of Management and Budget's (OMB) Office of Federal Procurement Policy (OFPP).

Selection of Services and Contracts

To develop criteria for services that closely support the performance of inherently governmental functions, we reviewed Federal Acquisition Regulation (FAR) subpart 7.5 on inherently governmental functions and FAR section 37.114 on special acquisition requirements, and the Office of Management and Budget's Office of Federal Procurement Policy Letter 93-1 on management oversight of service contracts.[1]

To select services to review, a GAO contracting officer reviewed the FPDS-NG *Product and Service Codes Manual* and identified over 30 services considered to closely support the performance of inherently governmental functions across the following categories: research and development; special studies and analyses; professional, administrative, and management support services; and education and training. To confirm the selection, we then compared each of the services to federal acquisition guidance that describes inherently governmental functions and services approaching inherently governmental functions. On the basis of this review, we gathered and analyzed data from the FPDS-NG on DHS's fiscal year 2005 obligations for 29 services. Sixteen of the 29 services fell into the professional, administrative, and management support services category. From this category, we selected the 4 services for which DHS obligated the most in fiscal year 2005—program management and support services, engineering and technical services, other professional services, and other management support services. We reviewed these criteria with DHS acquisition policy and oversight officials, focusing on the link between the 4 selected services and federal acquisition guidance. Finally, we selected the three DHS components, excluding the Federal Emergency Management Agency (FEMA), that had obligated the most for those services at the time we began our review—the Coast Guard, OPO, and TSA.[2]

To select contracts to review, we compiled data from FPDS-NG on all fiscal year 2005 contract actions as of the time we began our review for the 4 services at the three components. Using the brief contract description available through FPDS-NG, we used FAR guidance to identify services

[1]While TSA is exempt from the FAR, it follows the Acquisition Management System, developed by the Federal Aviation Administration, which adheres as a matter of policy to certain governmentwide laws, regulations, and executive agency requirements.

[2]The Federal Emergency Management Agency obligated the third highest amount for the selected services in fiscal year 2005. We excluded FEMA from our sample because of atypical fiscal year 2005 spending on hurricane relief efforts.

that closely support the performance of inherently governmental functions to select a total of 125 statements of work for the 4 services: 42 from Coast Guard, 43 from OPO, and 40 from TSA (see table 3).

Table 3: Requested Fiscal Year 2005 Contract Statements of Work

Component	Program management/ support services	Engineering and technical services	Other professional services	Other management support services	Total by component
Coast Guard	8	14	11	9	**42**
OPO	6	8	6	23	**43**
TSA	17	1	10	12	**40**
Total by service type	**31**	**23**	**27**	**44**	**125**

Source GAO analysis of fiscal year 2005 FPDS-NG data

Of the 125 requested, we received 117 statements of work within the 11-week time period we allowed. In some cases, DHS was unable to locate files or FPDS-NG entries were unclear or incorrect. Using the more detailed description of services included in the 117 statements of work, we again used FAR guidance to identify services that appeared to closely support the performance of inherently governmental functions to select three contracts from each component on which to perform a total of nine case studies. The nine cases we reviewed in detail represented the 4 types of professional and management support services and ranged in value from $1.3 million to $42.4 million. Table 4 provides details on the case study selection process and the cases reviewed.

Table 4: Fiscal Year 2005 Contracts Reviewed

Dollars in millions

For Coast Guard, OPO, and TSA	Cases	Total dollars	Selection criteria
Contracts for four selected professional and management support services	942	$805.6	All contracts with dollars obligated in fiscal year 2005, as reported in FPDS-NG.
Statements of work for four selected professional and management support services	125	$229.2	Nonprobability sample selected from 942 contracts in FPDS-NG. Selection based on comparing the contract description with FAR guidance for services closely supporting inherently governmental functions. We selected 110 contracts as potentially supporting inherently governmental functions and an additional 15 contracts based on the contract description and to represent a range of dollar values.
Case studies for four selected professional and management support services	9	$82.1	Nonprobability sample selected from 117 statements of work received from DHS. Selection based on comparing the statement of work description to FAR guidance that describes services closely supporting inherently governmental functions. Cases represent a variety of services and dollar values among the three components.

Source GAO

Note: Of the 125 statements of work requested, DHS provided 117, totaling $207.1 million.

We conducted our review between April 2006 and August 2007 in accordance with generally accepted government auditing standards.

Appendix II: Examples of Inherently Governmental and Approaching Inherently Governmental Functions

Federal Acquisition Regulation section 7.503 provides examples of inherently governmental functions and services or actions that are not inherently governmental, but may approach being inherently governmental functions based on the nature of the function, the manner in which the contractor performs the contract, or the manner in which the government administers contractor performance. These examples are listed in tables 5 and 6 below.

Table 5: Examples of Inherently Governmental Functions

1	Directly conduct criminal investigations.
2	Control prosecutions and perform adjudicatory functions other than arbitration.
3	Command military forces.
4	Conduct foreign relations and determine foreign policy.
5	Determine agency policy, including regulations.
6	Determine federal program priorities for budget requests.
7	Direct and control federal employees.
8	Direct and control intelligence and counterintelligence operations.
9	Select individuals for federal government employment.
10	Approve position descriptions and performance standards for federal employees.
11	Determine the disposal of government property.
12	In federal procurement activities with respect to prime contracts: Determine the supplies or services acquired by the government; participate as a voting member on any source selection boards; approve contractual documents, including documents defining requirements, incentive plans, and evaluation criteria; award contracts; administer contracts; terminate contracts; determine whether contract costs are reasonable, allocable, and allowable; and participate as a voting member on performance evaluation boards.
13	Approve agency responses to Freedom of Information Act requests.
14	Conduct administrative hearings to determine eligibility for security clearances, or that affect personal reputation or eligibility to participate in government programs.
15	Approve federal licensing actions and inspections.
16	Determine budget policy, guidance, and strategy.
17	Collect, control, and disburse public funds, unless authorized by statute. Does not include the collection of public charges to mess halls, national parks, and similar entities and routine voucher and invoice examination.
18	Control treasury accounts.
19	Administer public trusts.
20	Draft congressional testimony, responses to congressional correspondence, or agency responses to audit reports.

Source GAO analysis of FAR section 7 503(c)

Table 6: Examples of Services That May Approach Being Inherently Governmental Functions

1	Involve or relate to budget preparation.
2	Involve or relate to reorganization and planning activities.
3	Involve or relate to analyses, feasibility studies, and strategy options to be used in developing policy.
4	Involve or relate to developing regulations.
5	Involve or relate to evaluating another contractor's performance.
6	Support acquisition planning.
7	Assist in contract management.
8	Provide technical evaluation of contract proposals.
9	Assist in developing statements of work.
10	Support the preparation of responses to Freedom of Information Act requests.
11	Work in situations that may permit access to confidential business information.
12	Provide information regarding agency policies or regulations.
13	Participate in situations where contractors may be assumed to be agency employees or representatives.
14	Participate as technical advisors to source selection boards or as members of a source evaluation board.
15	Serve as arbitrators or provide alternative methods of dispute resolution.
16	Construct buildings intended to be secure.
17	Provide inspection services.
18	Provide legal advice and interpret regulations and statutes for government officials.
19	Provide non-law enforcement security activities that do not directly involve criminal investigations.

Source: GAO analysis of FAR section 7.503(d)

Appendix III: Department of Homeland Security Inspector General Oversight

GAO designated DHS as a high-risk organization in 2003 due to the serious implications for our national security that result from the management challenges and program risks associated with implementing and transforming the department from 22 agencies. In addition, the DHS Inspector General has identified major management challenges facing the department, which are updated annually as required by the Reports Consolidation Act of 2000.[1]

Acquisition and contract management are included as a management challenge identified by the Inspector General. Other management challenges identified by the Inspector General include catastrophic disaster response and recovery including FEMA activities and grants management; financial management; information technology management, including the National Asset Database to coordinate infrastructure protection activity; border security; transportation security; and trade operations and security mainly through the work of customs and border protection.

The Inspector General provided oversight coverage of DHS and the identified management challenges during fiscal years 2005 and 2006 through audits, inspections, memos, management reports, and investigations. The Inspector General issued 106 reports during fiscal year 2005 and closed 639 investigations. In fiscal year 2006 the Inspector General issued 133 reports and closed 507 investigations. As a result, the Inspector General reported over $271.7 million in questioned costs, unsupported costs, and better use of funds, and over $157 million in recoveries, fines, and restitutions resulting from investigations over the 2-year period.

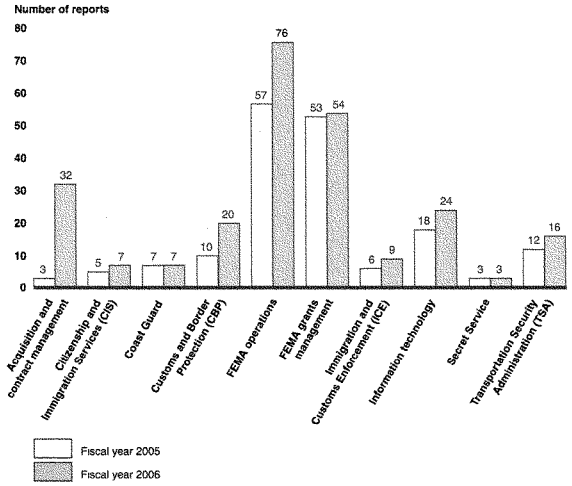
On August 29, 2005, Hurricane Katrina hit the Gulf Coast states, causing catastrophic damage to the region, and by September 2005, Congress had passed legislation that provided approximately $63 billion for disaster relief, the bulk of which went to the Federal Emergency Management Agency. Consequently, the DHS Inspector General issued a significant number of reports that addressed FEMA operations and grantees (see fig. 4).

The DHS Inspector General increased the number of reports related to contract and acquisition management from 3 in fiscal year 2005 to 32 in

[1]Pub. L. No. 106-531, 114 Stat. 2537 (Nov. 22, 2000).

fiscal year 2006 (see fig. 4). These reports ranged from audits of specific contracts to overall acquisition management by DHS. For example, the Inspector General reviewed individual contracts for disaster recovery from Hurricane Katrina, including debris removal, and also provided a review of the weaknesses in the procurement and program management operations throughout DHS. In addition to the DHS Inspector General's reports, the Defense Contract Audit Agency increased the number of DHS contract audits from 83 reports to 121 reports over the same fiscal years.

Figure 4: Inspector General Coverage of DHS Offices and Management Challenges



Source: GAO analysis of DHS Inspector General audits, inspections, memos, and management reports

Appendix IV: Comments from the Department of Homeland Security

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

September 10, 2007

Mr. John P. Hutton
Director, Acquisition and Sourcing Management
U.S. Government Accountability Office
441 G Street, N.W.
Washington, DC 20548

Dear Mr. Hutton:

RE: Draft Report GAO-07-990, Department of Homeland Security: Improved Assessment and Oversight Needed to Manage Risk of Contracting for Selected Services (GAO Job Code 120544)

The Department of Homeland Security (DHS) appreciates the opportunity to review and comment on the draft report referenced above. The U.S. Government Accountability Office (GAO) makes five recommendations to improve the Department's ability to manage the risk of selected services that closely support inherently governmental functions as well as government control over and accountability for decisions. As detailed below, we agree with three recommendations and partially agree with the other two.

Recommendation 1: Establish strategic level guidance for determining the appropriate mix of government and contractor employees to meet mission needs.

We agree with the recommendation. In concert with the DHS Chief Human Capital Officer, personnel within the Office of the Chief Procurement Officer (OCPO) plan to initiate staffing studies related to the skill sets of individuals and staffing levels of programs under the purview of the Department. The outcome of this study will include recommendations for the number and skill sets of federal employees required to successfully manage long term projects and programs at the Department. This effort, in conjunction with overall human capital planning at the Department, should address the concerns relative to this recommendation.

Recommendation 2: Assess the risk of selected contractor services as part of the acquisition planning process, and modify existing acquisition guidance and training to address when to use and how to oversee those services in accordance with federal acquisition policy.

www.dhs.gov

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We partially agree with the recommendation. The DHS Acquisition Planning Guide already provides for the assessment of risk with respect to the planned acquisition processes and this requirement will be emphasized during OCPO discussions with the Heads of Contracting Activities as well as through an acquisition alert to Department contracting personnel.

As a result of the information provided by the GAO during the engagement, the application of OFPP Letter 93-1, Management Oversight of Service Contracting (May 18, 1994) was brought to the Department's attention. Further research on the part of OCPO officials led to the realization that this particular guidance was not part of the regular training process for acquisition personnel, not only at DHS but also at the Defense Acquisition University (DAU). We have taken steps to ensure that this guidance is disseminated and discussed during DHS training for Contracting Officers and Contracting Officer Technical Representatives (COTRs) prior to the certification of the COTRs. DHS officials have also coordinated with the DAU course director for the COTR training to ensure that OFPP Letter 91.3 guidance is included in training at the university. Since DHS officials rely on DAU training and certification to a certain extent for COTRs, we intend to follow-up on the inclusion of the guidance in OFPP Letter 93-1 in the DAU training regimen.

Recommendation 3: Define contract requirements to clearly describe roles, responsibilities, and limitations of selected contractor services as part of the acquisition planning process.

OCPO officials agree that implementing this recommendation is the key to the eventual success of the efforts to address the risks of contracts for services. As part of the initiatives begun by DHS in the areas of program and project management, and in conjunction with the staffing studies discussed above, OCPO officials anticipate that an increased awareness and understanding of the risks associated with contracted services will be appropriately addressed more often in the future. There has already been evidence of this recognition occurring at the Coast Guard, where the Statement of Work for the contract for the Office of Standards Evaluation and Development support was completely revised for the most recent award in order to address the very issue covered in this report. Better requirements definition for service contracts will lead to fewer Time and Materials type contracts and more effective use of Performance Based Service Contracts throughout DHS. This objective will be very difficult to achieve, and it is far too early to place such progress on a timeline for completion. Nevertheless, DHS officials recognize the criticality of the need and have begun to chart a way forward on the broad front of requirements definition.

Recommendation 4: Assess program office staff and expertise necessary to provide sufficient oversight of selected contractor services.

We agree. This process has already begun at the Transportation Security Administration (TSA). The TSA Assistant Administrator for Acquisition has developed a notional staffing plan for program and project offices that incorporates both ethical aspects, such

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as conflicts of interest, and the examination of inherently governmental functions in the development of a staffing plan for a program office. The notional plan is accompanied by a training program as well as guides to the numbers, skill sets and assignments of federal employees necessary to maintain program control, provide oversight and ensure that no inherently governmental functions are performed by service contractors. While this effort is being implemented on a component scale at TSA, the Department is proceeding on a larger scale initiative to address many of the same issues as mentioned in our response to the first recommendation.

Recommendation 5: Review contracts for selected services as part of the acquisition oversight program.

We partially agree with the recommendation in so far as to agree that the Director of Acquisition Oversight at the direction of the Chief Procurement Officer intends to specifically assess the issue raised in the report and related recommendation. DHS does not concur that the recommended practice should be incorporated into the routine acquisition oversight reviews contemplated, planned and executed in accordance with DHS Directive 0784, Acquisition Oversight Plan and Guidance. It would be counterproductive to modify the formal Oversight Plan for each issue raised by an individual GAO or DHS Office of Inspector General engagement. To do so would disrupt the workflow of routine oversight assessments and inevitably result in the devolution of the corporate wide plan into a series of special reports and jeopardize the intended planned assessments. OCPO senior personnel agree that the issue of the appropriate use of service contracts is worthy of special interest as the rest of the responses to this report are implemented and will direct a special investigation on selected issues at the appropriate time.

Sincerely,

Steven J. Pecinovsky

Steven J. Pecinovsky
Director
Departmental GAO/OIG Liaison Office

MMcP