



## **Better Oversight Needed of Support Services Contractors in Secure Border Initiative Programs**





Homeland  
Security

June 17, 2009

Preface

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

The attached report presents the results of our review to determine whether U.S. Customs and Border Protection (CBP) has established adequate controls and effective oversight of contract workers providing support services to Secure Border Initiative programs. It is based on interviews with CBP employees, direct observations, and a review of applicable documents.

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

A handwritten signature in cursive script that reads "Richard L. Skinner".

Richard L. Skinner  
Inspector General

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## Abbreviations

CBP	U.S. Customs and Border Protection
COTR	contracting officer’s technical representative
DHS	Department of Homeland Security
SBI	Secure Border Initiative

# OIG

*Department of Homeland Security  
Office of Inspector General*

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## **Executive Summary**

This report presents the results of our review to determine whether U.S. Customs and Border Protection has established adequate controls and effective oversight of contract workers providing support services to Secure Border Initiative programs.

U.S. Customs and Border Protection has not established adequate controls and effective oversight of contract workers responsible for providing Secure Border Initiative program support services. Because of the Department of Homeland Security's aggressive Secure Border Initiative program schedule coupled with shortages of government program managers and acquisition specialists, in the early years of the Secure Border Initiative program, U.S. Customs and Border Protection relied on contractors to fill the skills gap and get the program underway. U.S. Customs and Border Protection continues to rely heavily on contract personnel, who comprise more than 50% of the Secure Border Initiative workforce. Furthermore, U.S. Customs and Border Protection has not clearly distinguished between roles and responsibilities that are appropriate for contractors and those that must be performed by government employees. U.S. Customs and Border Protection also has not provided an adequate number of contracting officer's technical representatives to oversee support services contractors' performance. As a result, contractors are performing functions that should be performed by government workers. This heavy reliance on contractors increases the risk of U.S. Customs and Border Protection losing control of decision making in Secure Border Initiative program management.

Although U.S. Customs and Border Protection has recently taken steps to improve Secure Border Initiative program management by hiring knowledgeable and experienced program managers, additional controls are needed to ensure effective oversight of support contractor activities. We are recommending that U.S. Customs and Border Protection use only federal employees to perform inherently governmental functions, and hire additional contracting officer's technical representatives to oversee contractor performance.

## Background

In 2005, the Secure Border Initiative (SBI) was announced as a comprehensive, department-wide effort to secure the Nation's borders. The program was designed to help the department achieve its goal of gaining operational control of the southwest border within five years through new and improved strategies and programs, including (1) enhanced use of people, technology, and processes; (2) upgraded infrastructure, such as roads, fencing, and Border Patrol facilities; and (3) transportation of detainees from Border Patrol facilities to strategically located detention centers. U.S. Customs and Border Protection (CBP) was given responsibility for program planning, management, and contract administration.

The department established aggressive timeframes for completing significant portions of SBI, such as broad deployment of detection and surveillance technology along the southwest border in 2008. However, at the start of the program, neither CBP nor the Department of Homeland Security (DHS) as a whole had enough program managers and acquisition specialists to plan and manage such a large-scale, complex program. To fill the skills gap and get the program underway, CBP made extensive use of contractor support services. CBP established an SBI program management office as well as an acquisition office directly responsible for administering SBI contracts. Table 1 shows the number and mix of contractor and government personnel assigned to SBI program management since the program's inception.

**Table 1: Contract and Government Employees in SBI Programs**

	Program Startup		May 2007		November 2007		March 2008		November 2008*	
	Number	%	Number	%	Number	%	Number	%	Number	%
Contract	129	78	120	57	174	53	175	51	136	51
Government	<u>37</u>	22	<u>89</u>	43	<u>152</u>	47	<u>167</u>	49	<u>132</u>	49
<b>Total</b>	166		209		326		342		268	

\*The workforce reduction in November 2008 reflects the transportation program's removal from SBI.

CBP relied on monthly progress reports as its primary mechanism for overseeing support service contractors' performance.

### Better Oversight Needed of Support Services Contractors in Secure Border Initiative Programs

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## Results of Audit

CBP has not established adequate controls and effective oversight of contract workers responsible for providing SBI program support services. Given the department's aggressive SBI program schedule and shortages of program managers and acquisition specialists, CBP relied on contractors to fill the staffing needs and get the program underway. However, CBP has not clearly distinguished between roles and responsibilities that are appropriate for contractors and those that must be performed by government employees. CBP also has not provided an adequate number of contracting officer's technical representatives (COTRs) to oversee support services contractors' performance. As a result, contractors are performing functions that should be performed by government workers. This heavy reliance on contractors increases the risk of CBP relinquishing its responsibilities of SBI program decisions to support contractors while remaining responsible and accountable for program outcomes.

### **Contractors Performing Inherently Governmental Functions**

According to the Federal Acquisition Regulation, agencies should not use contractors to perform inherently governmental functions, such as drafting congressional testimony or responding to congressional correspondence and independent auditor reports. The Federal Acquisition Regulation also provides examples of functions that are generally not considered inherently governmental, but because of their nature, the manner in which the contractor performs them, or the manner in which the government administers the contract may approach the category of inherent governmental function. Such functions may involve or be related to planning, reorganization, acquisition support, contract management assistance, development of statements of work, and agency representation.<sup>1</sup>

Despite these regulations, CBP did not clearly distinguish between roles and responsibilities that were appropriate for contractors and those that must be performed by government workers because of the rush to fill program management positions and get SBI started. SBI progress reports for May and June 2007 showed that the largest support contractor performed activities that should have been the responsibility of government employees, such as drafting

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<sup>1</sup> FAR section 7.503, *Inherently Governmental Functions*.

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a statement for presentation by the Border Patrol chief and the SBI executive director at a Congressional hearing.

Similarly, a May 2007 progress report for the same support contractor showed that it performed functions that are generally not considered to be inherently governmental functions. However, these services and actions may approach that category because of the nature of the function, the manner in which the contractor performed the contract, or the manner in which the Government administered contractor performance. These activities included the following:

- Facilitating the planning and update of the SBI program management task order;
- Preparing an initial draft of the statement of work for command, control, communications, and intelligence design;
- Helping draft the acquisition plan for the command, control, communications, and intelligence common operating picture; and
- Providing coverage in the absence of SBI fencing and common operating picture project managers.

The Federal Acquisition Regulation cautions that contracts supporting government policymaking or decisionmaking require special management attention to ensure that contractors do not perform inherently governmental functions and that government officials properly exercise their authority.<sup>2</sup>

## **Contractor Oversight Needed**

SBI program management did not have enough COTRs to provide oversight of SBI support contractors. The shortage of COTRs resulted in the following situations:

- One contract without an assigned COTR;
- The contracting officer responsible for administering all 18 support services contracts also assigned as their COTR;
- The executive director, SBI Acquisition Office, serving as COTR; and
- A program manager responsible for managing the *SBI<sub>net</sub>* Test and Evaluation Plan assigned as COTR for a support services contract that supplied more than 100 workers across SBI

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<sup>2</sup> FAR section 37.114, *Special Acquisition Requirements*.

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program offices allowing only 1 hour per week for COTR responsibilities.

The Office of Management and Budget specifies as a best practice in contract administration that COTRs function as the “eyes and ears” of their contracting officers, monitoring technical performance and reporting any potential or actual problems that arise. COTRs must stay in close communication with the contracting officers, relaying any information that may affect contractual commitments and requirements.

COTRs assigned to SBI support services contracts did not take action or notify the contracting officers when progress reports showed that contractors were performing prohibited or questionable activities. Further, as the number of SBI contractors increased, the COTRs had little time for contract oversight duties beyond reviewing contractors’ time charges and travel claims.

COTRs assigned to SBI support services contracts told us that, because they were stretched so thin, the only way they would know whether a contractor was performing an inherently governmental function would be when a program manager brought it to their attention.

## **Continued Overreliance on Contractors Poses Program Risks**

Three years into the SBI program, CBP still has not reevaluated the mix of contractors and government employees assigned to SBI programs or delineated roles and responsibilities to ensure that contractors are not performing inherently governmental functions. Nor has CBP assigned an adequate number of COTRs to oversee support services contractors’ performance. Although in the past year CBP has hired a number of knowledgeable and experienced program managers and contracting officers, contractors still comprise more than 50% of the total SBI workforce.

With continued heavy reliance on contractor support services, CBP risks losing control of program decisions while remaining accountable for mission results. According to a Government Accountability Office report, the closer activities performed by contractors come to supporting inherently governmental functions, the greater the risk that contractors can influence decisionmaking.<sup>3</sup>

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<sup>3</sup> *Improved Assessment and Oversight Needed to Manage Risk of Contracting for Selected Services*, GAO-07-990, September 2007.

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Undue contractor influence with limited government oversight and control can result in decisions that are not in the best interest of the government and can increase vulnerability to waste, fraud, abuse, and mismanagement.

## **Recommendations**

We recommend the Commissioner, U.S. Customs and Border Protection:

**Recommendation #1:** Distinguish between the roles and responsibilities of SBI contractors and those of government employees to ensure that only the latter are performing inherently governmental functions.

**Recommendation #2:** Assign additional COTRs to oversee SBI support services contractor performance.

## **Management Comments and OIG Analysis**

CBP provided general and specific comments to the report and recommendations. We summarized and addressed these comments below. A copy of CBP's written response is included in Appendix B.

### **CBP's General Comments:**

CBP management stated that the interval between our field work and draft report resulted in the report containing outdated information and omitting significant progress made by the program office. CBP stated that inherently governmental positions and functions were identified as required by regulations. In addition, CBP stated that prohibited and questionable activities attributed to contract workers did not occur.

**OIG Analysis:** CBP accurately reported the timing of our field work and draft report. We based our audit findings and conclusions on information provided by CBP during field work. However, CBP did not provide information we specifically requested during field work, such as the annual inventories of inherently governmental functions required by Office of Management and Budget Circular A-76. SBI officials said they did not know whether the 2007 inventory included SBI since the

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inventory was conducted within a few months of the SBI program's initiation. Further, SBI officials did not provide a long-range plan for use of contractor support services or identify the appropriate mix of contractor and government workers. CBP did not provide this information until after completion of our field work, in response to a draft of this report.

The additional information provided by CBP corroborated the findings and conclusions we developed during field work. For example, the SBI Mission Action Plan, completed in February 2008, stated that SBI leadership had difficulty assessing and finalizing human capital needs. A later version of the plan extended the deadline for corrective action to clarify roles and responsibilities of acquisition management positions to September 30, 2009. Similarly, the Review of Organizational and Staffing Plans completed by CBP's Office of Human Resources Management in April 2008 stated that SBI management was reluctant to discuss its organization structure and staffing plans and needed to clearly define roles and responsibilities of operational personnel.

Our finding that contractors performed prohibited and questionable activities was based on documents provided by CBP. Monthly Progress Reports identified CBP support services contractors performing prohibited and questionable activities that should have been brought to the attention of the Contracting Officer. We could not trace these progress reports to specific workers or locations in order to determine whether the prohibited and questionable activities were accurately reported. Also, CBP could not demonstrate that the prohibited and questionable activities were brought to the attention of the Contracting Officer or that steps were taken to prevent similar questionable activities from occurring in the future.

**CBP's Comments to Recommendation #1:**

CBP concurred with this recommendation and said that it had provided documentation to the Office of Management and Budget distinguishing between the roles and responsibilities of contractors and government employees.

**OIG Analysis:** We recognize that CBP has actions underway to identify roles and responsibilities of acquisition positions, but these actions do not satisfy the intent of our recommendation. Office of Management and Budget Circular A-76 requires each federal agency to prepare and submit an inventory of commercial activities

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performed by federal employees; however, the inventory does not include activities performed by contractors. Further, SBI Strategic Human Capital Plans and Border Security, Fencing, Infrastructure and Technology Expenditure Plans described contractor activities in broad, general terms. The resource review performed by the Office of Human Resources supported our recommendation to clarify roles and responsibilities of operational personnel.

This recommendation will remain open until CBP identifies the roles and responsibilities of the SBI workforce, including contractors.

**CBP's Comment to Recommendation #2:**

CBP concurred with this recommendation and reported that it has increased its number of COTRs to 47.

**OIG Analysis:** We recognize the improvements CBP has made in increasing the number of COTRs to oversee the current contract. However, CBP has not finalized its Strategic Human Capital Framework, Plan of Action and Milestones, and Long-Range Human Capital Plan to identify all of the competencies and skill sets it will need to sustain operations and oversee future contract actions as the *SBI*net Program evolves and progresses.

This recommendation will remain open until the Strategic Human Capital Framework, Plan of Action and Milestones, and Long-Range Human Capital Plan are finalized.

## **Appendix A**

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

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The objective of our review was to determine whether U.S. Customs and Border Protection (CBP) has established adequate controls and effective oversight of contract workers providing support services to Secure Border Initiative (SBI) programs.

We interviewed government officials and contract employees at CBP headquarters in Washington, DC. We reviewed 18 service contracts and interagency agreements (11 labor and materials contracts, 6 estimated cost contracts, and 1 cost reimbursable contract) in place between October 1, 2006, and March 31, 2008. We developed an understanding of internal controls over service contracts and interagency agreements by focusing on risks identified in prior Government Accountability Office reports and congressional hearings and CBP's procedures to mitigate those risks; reviewing pertinent sections of the Federal Acquisition Regulation; and interviewing CBP officials responsible for administering the contracts and agreements. The understanding gained was used to plan the audit and determine the nature, timing, and extent of tests to be performed. In addition, we reviewed the methodology used and progress made in building organizational capacity at the SBI Program Executive Office; the *SBI*net, Tactical Infrastructure, and Transportation Program Management Offices; and the SBI Acquisition Office.

We conducted this performance audit between September 2007 and June 2008 according to generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. The evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

## Appendix B Management Comments to the Draft Report

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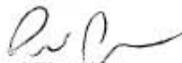
U.S. Department of Homeland Security  
Washington, DC 20229



U.S. Customs and  
Border Protection

May 06, 2009

MEMORANDUM FOR RICHARD L. SKINNER  
INSPECTOR GENERAL  
DEPARTMENT OF HOMELAND SECURITY

FROM: Acting Director   
Office of Policy and Planning  
U.S. Customs and Border Protection

SUBJECT: Response to the Office of Inspector General's Draft Report Entitled,  
"Better Oversight Needed of Support Services Contractors in Secure  
Border Initiative Programs"

Thank you for the opportunity to review and comment on the draft report entitled, "Better Oversight Needed of Support Services Contractors in Secure Border Initiative Programs," and the opportunity to discuss the issues in this report. The report summarizes the results of the Office of Inspector General's (OIG) audit on the management oversight of U.S. Customs and Border Protection's (CBP) Secure Border Initiative (SBI) Program support services contractors and identifies measures CBP should take to improve its oversight of these contracts.

The OIG identified several challenges that it believes the SBI program faces in overseeing its support services contractors. The OIG concluded that CBP has not established adequate controls and effective oversight of contract workers responsible for providing SBI acquisition program support services. CBP agrees that the two recommendations are essential to successful program management. However, CBP does not agree with the overall presentation of the message because the report contains outdated information and omits significant progress made by the program office. As the SBI program has grown, CBP has consistently managed contractor oversight by increasing the acquisition workforce and implementing risk mitigation strategies to oversee support services contract.

The OIG field work covered the period of September 2007 through June 2008. The Exit Conference was conducted in March 2009 and CBP received the draft report in April 2009. As a result of receiving the draft report 10 months after field work was conducted the value and usefulness of the report is diminished.

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The OIG stated that CBP did not clearly distinguish between roles and responsibilities that were appropriate for contractors and those that must be performed by government employees.

CBP has formally identified inherently-governmental positions and functions and reported these, as required by regulation, through its FAIR Act inventories for 2007 and 2008. The "Federal Activities Inventory Reform Act of 1998," P.L. 105-270 (the FAIR Act) directs Federal agencies to prepare each year an inventory of their commercial activities performed by Federal employees, and must compile their commercial and inherently governmental full-time employee inventories in accordance with Office of Management and Budget inventory guidance.

In addition, the OIG stated that based on its review of SBI contractor progress reports for May and June 2007 that contractors were performing inherently governmental functions. CBP verified with the contractor that the progress report statement at issue actually consisted of the contractor collecting and compiling talking points from previously-released public statements and was not in fact drafting testimony. Furthermore, CBP's Office of Congressional Affairs drafted the testimony in question not the SBI Acquisition or Program Office.

As for the example cited in the report "Providing coverage in the absence of SBI fencing and common operating picture project managers" the contractors indicated that "providing coverage" consisted of taking meeting notes and entering information into the task management system used by SBI to manage the program. These activities are not inherently governmental, nor do they approach that category.

CBP strongly believes that no inherently governmental function was performed by the support services contractors. CBP provides further details to these statements within our technical comments.

The OIG also stated that CBP did not have an adequate number of contracting officers' technical representatives (COTRs) to provide oversight of 18 SBI support contractors.

During the time of the OIG's review, the SBI Acquisition Office and SBI programs jointly developed a comprehensive program for contract oversight, including for professional support services, in anticipation of the growth in contracts expected from award of the SBI*net* contract. The SBI efforts in this area continue to be aggressive and robust. For example, in January 2008, SBI submitted a Mission Action Plan to the Department of Homeland Security that documented a formal plan for effective acquisition management and oversight for its programs. This plan was updated in January 2009, and progress is being made on its implementation. Moreover, these efforts were acknowledged in the Chief Procurement Officer's 2008 and 2009 SBI Border Security, Fencing, Infrastructure and Technology (BSFIT) Expenditure Plan certifications regarding the strength of the SBI procurement oversight process and its compliance with Federal acquisition rules, requirements, guidelines, and practices.

In addition, the SBI has continued to strengthen its control over support contracts in anticipation of sustained future growth. These efforts include:

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- Launched CAMP COTR and conducted a series of COTR focused workshops that familiarize COTR's with performance-based service contracts, COTR responsibilities, earned value management, the Contractor Performance System (FY 2008) and new Contractor Performance Assessment Report System (FY 2009).
- Mandated training for all SBI contracting and acquisition personnel regarding ethics and interacting with contractor and contract support personnel, this training was jointly sponsored by the SBI Acquisition Office and Office of Chief Counsel in December 2008 and April 2009.
- Issued a requirement for monthly COTR reporting whereby written reports from the COTR are provided to the Contracting Officer. Additionally, the COTR and Contracting Officer are required to meet with the contractor to discuss the report. We call this our "COTR Scorecard."
- Appointed trained COTRs for all support service contracts, delivery, and task orders - where deemed appropriate and necessary by the Contracting Officer.

These examples are illustrative of the types of controls SBI has in place to oversee work performed by its contractors. As a result, SBI continues to provide effective oversight of all its support services contractors.

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With regard to the classification of the draft report, CBP has not identified any information within this report that would warrant a "For Official Use Only" classification.

We appreciate the opportunity to assist in constructing a balance and accurate report. We place great value in resolving the issues discussed in the report.

If you have any questions regarding this response, please contact me or have a member of your staff contact Ms. Patty Quintana, Program Analyst, Office of Policy and Planning, at (202) 344-1038.

Attachments

## Appendix B Management Comments to the Draft Report

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### **Response to Recommendations in the Office of Inspector General's Draft Report "Better Oversight Needed of Support Services Contractors in Secure Border Initiative Programs"**

**Recommendation 1:** Distinguish between the roles and responsibilities of SBI contractors and those of government employees to ensure that only the latter are performing inherently governmental functions.

**CBP Response** – Concur. CBP believes that we have already implemented this recommendation. SBI provided extensive documentation to show that the roles and responsibilities of SBI contractors and those of government employees have already been distinguished and reported as required by law since 2008. This included:

- Formally identifying commercial and inherently governmental positions in its FAIR Act Inventory, as documented in its 2007 and 2008 submissions to OMB.
- Formally documenting the SBI programs' approach to executing its responsibilities, through both contractors and government employees, in its 2007 and 2009-2010 human capital plans; 2008 and 2009 BSFIT expenditure plans; and, resource review performed by CBP's Office of Human Resources.

CBP requests closure of this recommendation. Attached is documentation that shows that this action is complete.

**Recommendation #2:** Assign additional COTRs to oversee SBI support services contractor performance.

**CBP Response** – Concur. CBP has already implemented this recommendation. SBI has trained 47 COTRs, has assigned 33 COTRs to its 31 active contracts and interagency agreements, and has 14 unassigned COTR's available to perform in the capacity should it become necessary and to accommodate the anticipated future growth in contract actions.

CBP requests closure of this recommendation. Attached is documentation that shows that this action is complete.

**Appendix C**  
**Major Contributors to this Report**

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**Appendix D**  
**Report Distribution**

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