



Department of Homeland Security Office of Inspector General

U.S. Customs and Border Protection's Acquisition of 25 Acres of Land in Lordsburg, New Mexico



OIG-11-06

November 2010

Background

As a result of a citizen complaint, the U.S. Department of Homeland Security, Office of Inspector General, conducted a review of U.S. Customs and Border Protection's (CBP) purchase of 25 acres of land to construct a new Border Patrol facility in Lordsburg, New Mexico. The complaint raised concerns that the price CBP paid for the land was significantly more than it was worth and not consistent with similar property sales in the area.

CBP protects our Nation's borders from terrorism, human and drug smuggling, illegal migration, and agricultural pests, while simultaneously facilitating the flow of legitimate travel and trade. As part of CBP, the U.S. Border Patrol's mission is to detect and interdict terrorists and weapons of terror while accomplishing traditional missions such as detecting, apprehending, and deterring smugglers of humans, drugs, and contraband.

In 2006, to improve border security, President George W. Bush called for hiring more than 6,000 new Border Patrol agents. As a result, the existing Border Patrol facility in Lordsburg, New Mexico experienced overcrowding. The Lordsburg Border Patrol facility was originally built to accommodate approximately 50 agents, but in 2009 the station reached a staffing level of more than 250 agents.

CBP officials decided to replace the existing Lordsburg facility with another facility in Lordsburg.¹ CBP considered building a new facility on the existing site, but the site did not allow for expansion or the addition of helicopter pads, all-terrain vehicles, and equestrian services. Also, building on the existing site would have impacted ongoing Border Patrol operations. Therefore, in May 2006, CBP officials decided to acquire land in Lordsburg to build a replacement Border Patrol facility.

CBP's Facilities Management and Engineering Office and its regional facility centers oversee design and contract preparation for land acquisitions. The Office of Border Patrol determines operational and mission requirements for new facilities. In real estate acquisitions, CBP relies on the United States Army Corps of Engineers (USACE) to provide appraisals, environmental impact evaluations, and other related services.

Based on operational requirements, CBP identified three possible locations for a replacement Lordsburg Border Patrol facility. All three sites were near freeway interchanges on the outskirts of Lordsburg. The owners of these three sites were:

- U.S. Bureau of Land Management
- Hidalgo County
- State of New Mexico

¹ We did not evaluate CBP's process or reasoning used to determine that Lordsburg was the most appropriate location to build the replacement facility.

CBP officials determined that the site owned by the State of New Mexico was the preferred location. CBP eliminated the U.S. Bureau of Land Management site from consideration owing to the lack of utility service and possible groundwater contamination. According to CBP, these conditions would be expensive to mitigate. Office of Border Patrol officials determined that the Hidalgo County site was poorly suited for a Border Patrol station because it is surrounded by highways, a railroad, and commercial properties, which would limit its privacy and its ability to expand. CBP did not order appraisals of the value of any of the sites when determining which site was best. Figure 1 identifies the selected 25-acre parcel as the subject property.

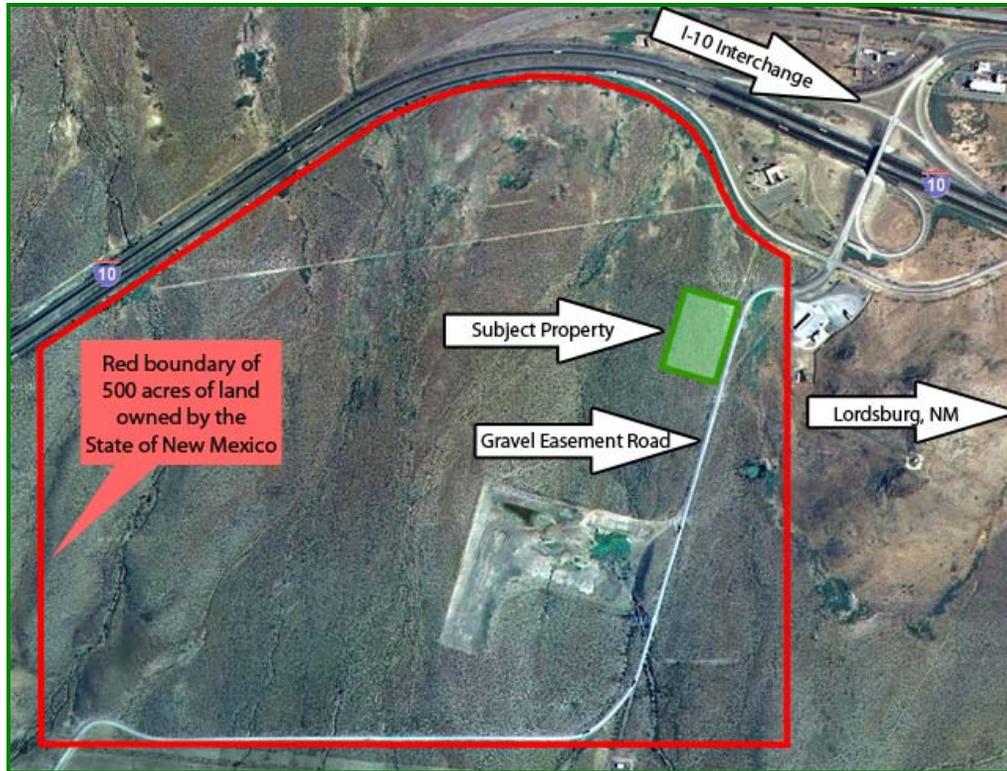


Figure 1 - Map of the Subject Property and Surrounding Area (Source: Google Maps))

In December 2006, CBP engaged USACE to appraise the value of the selected site. USACE contracted with a private appraiser, and in December 2006 the appraiser valued the subject property at \$37,500. The New Mexico State Land Office (NMSLO), which manages land for the State of New Mexico, rejected the appraised value and countered with an offer of \$544,500.

In February 2008, a different appraisal firm completed a second appraisal for USACE and valued the subject property at \$47,500. NMSLO rejected the second offer and countered with a \$1.25 million offer, based on an internal valuation of the property. The significant difference between the appraised values and the counteroffers was caused by the appraisers and NMSLO disagreeing on what constituted comparable sales. Some land in the area sold for \$1,000 to \$3,000 per acre, while other land sold for \$70,000 to \$100,000 per acre.

To resolve the valuation difference, CBP held a meeting with the NMSLO and USACE in June 2008. The meeting participants discussed a tentative price of \$750,000 for the property. In December 2008, a contract appraiser hired by the NMSLO appraised the property at \$750,000. To confirm this value, in January 2009, USACE conducted a third appraisal that valued the property at \$712,500. The appraiser attributed the increase in appraised value to a number of factors, including a reinterpretation of the highest and best use from the earlier appraisals. In February 2009, CBP rescinded the first two appraisals and said that those appraisals misinterpreted key elements of the property. In June 2009, CBP purchased the 25 acres for \$750,000.

Results of Audit

CBP's decision to build the Border Patrol facility in Lordsburg limited the number of available properties that could be used for that facility. Although CBP negotiated a price of \$750,000 with the NMSLO, the limited number of properties weakened CBP's negotiating position when determining that price. CBP adhered to DHS policies and procedures when purchasing this land.

Limiting Sites to Lordsburg, NM, Diminished CBP's Bargaining Position

CBP's decision to build in Lordsburg limited its options for acceptable properties. Lordsburg is a small town with only three nearby freeway interchanges from the I-10 interstate. Only two of these interchanges, Exit 20 to the west and Exit 24 to the east, provide immediate access to undeveloped land (Exit 22 leads directly to Main Street and the town center). The NMSLO owns a portion of the undeveloped land around Exit 20 and Exit 24, including the subject property. At the time of the purchase, other owners of nearby undeveloped land included Hidalgo County and the U.S. Bureau of Land Management. However, CBP determined that the only suitable land was the 25 acres owned by the NMSLO. As a result, CBP chose to acquire and build the facility on the subject property.

CBP paid \$750,000 for the subject property in Lordsburg after USACE conducted a third appraisal. However, CBP's negotiating position was weakened by only seriously considering one property for purchase. CBP chose to build the new facility in Lordsburg and determined that only one property in Lordsburg was suitable. Therefore, CBP had no option but to buy that property at the price that the State of New Mexico wanted.

CBP adhered to federal regulations when negotiating for the land. CBP must follow the *Uniform Relocation Act*² and its implementing regulations when acquiring real property, such as land and buildings. The implementing regulations allow for negotiation of a price above the appraised value through an option called an administrative settlement. According to the implementing regulations:

² 42 U.S.C. § 4651

“The purchase price for the property may exceed the amount offered as just compensation when reasonable efforts to negotiate an agreement at that amount have failed and an authorized Agency official approves such administrative settlement as being reasonable, prudent, and in the public interest.”

As described in the implementing regulations, CBP used an administrative settlement to negotiate a price for the Lordsburg property. According to this process, the Executive Director of CBP’s Facilities Management and Engineering Office must be satisfied that the purchase was reasonable, prudent, and in the public best interest.

CBP officials determined that the purchase was—

- Reasonable based on the USACE appraisal valuing the land at \$712,500, which was within a reasonable amount of the agreed-upon purchase price;
- Prudent because the cost of the land was deemed to be less than the cost, in both time and resources, of selecting a new site for the Border Patrol facility; and
- In the public’s best interest because a new Lordsburg Border Patrol facility was urgently needed to help reduce overcrowding at the existing Lordsburg facility.

We are not making any recommendations.

Management Comments and OIG Analysis

We obtained written comments to our draft report from the Assistant Commissioner, Office of Internal Affairs at CBP. We have included a copy of the comments in Appendix B. CBP generally concurred with the findings in this report. We also reviewed CBP’s technical comments and made changes where appropriate.

Appendix A

Purpose, Scope, and Methodology

We conducted this audit to determine whether the amount U.S. Customs and Border Protection (CBP) paid for 25 acres of land purchased from the State of New Mexico was fair, reasonable, and consistent with DHS policies and procedures.

We reviewed pertinent records and supporting documentation to address whether the basis, assumptions, and methodology used to purchase the 25 acres of land was in compliance with the *Uniform Appraisal Standards for Federal Land Acquisitions* and the *Uniform Relocation Act*. We reviewed planning documents and the three appraisals commissioned by USACE.

We interviewed CBP Headquarters officials with the Office of Facilities Management and Engineering and with the Office of Border Patrol to understand CBP's land acquisition process and CBP's land appraisal process, with a specific focus on the Lordsburg land acquisition. We visited CBP's Dallas Facility Center and interviewed CBP staff in charge of the Lordsburg land acquisition. We interviewed USACE officials involved with the Lordsburg land acquisition and obtained their views and opinions regarding the subject appraisal process.

We contracted with an independent federal appraiser to conduct a review of two of the appraisals to assess if the appraisals were conducted in accordance with the *Uniform Appraisal Standards for Federal Land Acquisitions*. The results of this review did not materially affect our conclusions.

We performed our audit between December 2009 and August 2010 at CBP Headquarters in Washington, DC, and at CBP's Dallas Facility Center in Dallas, TX. We did not make a site visit to Lordsburg, NM, to view the subject property. We did not evaluate CBP's site selection process to determine the thoroughness of its search, nor did we attempt to identify other suitable sites that might have been available at the time of purchase.

We conducted this audit under the authority of the *Inspector General Act of 1978*, as amended, and according to generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that 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

1300 Pennsylvania Avenue NW
Washington, DC 20229



**U.S. Customs and
Border Protection**

October 14, 2010

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

FROM: Assistant Commissioner
Office of Internal Affairs

SUBJECT: U.S. Customs and Border Protection's Response to the Office of Inspector
General's Draft Letter Report Entitled, "U.S. Customs and Border
Protection's Acquisition of 25 Acres of Land in Lordsburg, New Mexico"

Thank you for providing us with a copy of your draft letter report entitled "U.S. Customs and Border Protection's Acquisition of 25 Acres of Land in Lordsburg, New Mexico" and the opportunity to discuss the issues in the report. The Office of Inspector General (OIG) determined that U.S. Customs and Border Protection's (CBP) decision to build the Border Patrol facility in Lordsburg limited the number of available properties that could be used for the Border Patrol facility. The OIG reported that although CBP negotiated a sales price after several appraisals, the limited number of properties weakened CBP's negotiating position when determining that price. The OIG also determined that CBP adhered to department policies and procedures when purchasing this land. The OIG did not make any recommendations.

In general, CBP concurs with the OIG's findings, but we have provided some technical comments that relate to statements that need to be clarified prior to finalization of this report. With regard to the classification of the draft report, CBP has not identified any information within this report that warrants a "For Official Use Only" classification.

If you have any questions regarding this response, please contact me or have a member of your staff contact Ms. Lynn Richardson, CBP Audit Liaison, Office of Internal Affairs, at (202) 344-2953.

Attachment

Appendix C
Major Contributors to This Report

Brooke Bebow, Director
Lorinda Couch, Desk Officer
Richard Kotecki, Auditor-in-Charge
Brian Blaha, Auditor
Jeanne Genao, Program Analyst
Tristan Weir, Program Analyst
Brandon Landry, Independent Referencer

Appendix D
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