OFFICE OF INSPECTOR GENERAL

Audit of DHS' Issuance and Management of Other Transaction Agreements Involving Consortium Activities

Homeland Security

May 30, 2019

OIG-19-44

DHS OIG HIGHLIGHTS

Audit of DHS' Issuance and Management of Other Transaction Agreements Involving Consortium Activities

May 30, 2019

Why We Did This Audit

The Department of Homeland Security retains authority to enter into other transaction agreements (OTA) to meet research or prototype project requirements and mission needs. OTAs are not subject to the Federal Acquisition Regulation, increasing DHS flexibility but also increasing risk. In consortia OTAs, DHS uses consortium leaders as its lead point of contact and third-party intermediary between the Department and consortium members. Our audit objective was to determine to what extent DHS has controls for issuing and managing OTAs involving consortium activities.

What We Recommend

We recommend DHS update its OTA policy to require periodic reassessment of existing OTAs to ensure it is receiving the most effective research and using its staffing resources efficiently.

For Further Information:
Contact our Office of Public Affairs at (202) 981-6000, or email us at DHS-OIG.OfficePublicAffairs@oig.dhs.gov

What We Found

DHS had controls in place when it issued, solicited, selected, and mitigated risks for its three OTAs involving consortia organizations, active in fiscal year 2017, to research critical infrastructure protection and develop prototypes for border and cyber security. However, the Department could better manage consortia OTAs by periodically reassessing the need for them. Specifically, DHS:

- has retained an OTA involving consortium activities valued at approximately $87 million, which is more than 10 years old, without evaluating whether the services provided are the most effective; and

- has allocated management, contracting, and legal counsel staffing resources to a more than 2-year-old consortia OTA with an estimated value of $125 million, which has not yet been used to develop border security prototypes.

The Department's current OTA policy, last updated in July 2018, contains minimal guidance addressing controls and oversight of consortia OTAs. Without periodically reassessing consortia OTAs' continued use, DHS cannot ensure it is receiving the most effective research or is using its staffing resources efficiently.

DHS Response

DHS concurred with our report recommendation. The recommendation is resolved and will remain open until the Department provides evidence to support that corrective actions are completed.

OFFICE OF INSPECTOR GENERAL
Department of Homeland Security

Washington, DC 20528 / www.oig.dhs.gov

May 30, 2019

MEMORANDUM FOR: Soraya Correa
Chief Procurement Officer
Office of the Chief Procurement Officer

FROM: Sondra F. McCauley
Assistant Inspector General for Audits

SUBJECT: *Audit of DHS' Issuance and Management of Other Transaction Agreements Involving Consortium Activities*

For your action is our final report, *Audit of DHS' Issuance and Management of Other Transaction Agreements Involving Consortium Activities.* We incorporated the formal comments provided by your office.

The report contains one recommendation aimed at improving DHS' management of OTAs involving consortium activities. Your office concurred with our recommendation. Based on information provided in your response to the draft report, we consider the recommendation open and resolved. Once your office has fully implemented the recommendation, please submit a formal closeout letter to us within 30 days so that we may close the recommendation. The memorandum should be accompanied by evidence of completion of agreed-upon corrective actions and of the disposition of any monetary amounts.

Please send your response or closure request to OIGAuditsFollowup@oig.dhs.gov.

Consistent with our responsibility under the *Inspector General Act*, we will provide copies of our report to congressional committees with oversight and appropriation responsibility over the Department of Homeland Security. We will post the report on our website for public dissemination.

Please call me with any questions, or your staff may contact Maureen Duddy, Deputy Assistant Inspector General for Audits, at (617) 565-8723.

Background

The Department of Homeland Security retains authority to enter into other transaction agreements (OTA) to meet research and development (research) or prototype project requirements and mission needs. The *Homeland Security Act of 2002*, Section 831, authorizes the Secretary of Homeland Security to exercise the same other transaction authorities granted to the Secretary of Defense under the United States Code (10 U.S.C. § 2371, as revised). The Secretary of Homeland Security attained this authority on November 25, 2002, for 5 years. Congress has repeatedly extended this provision to prevent expiration of the Secretary's authority.

According to the *Homeland Security Act of 2002*, DHS may enter into OTAs only for research and prototype projects. Additional conditions for DHS' use of OTAs are identified in Section 845 of the *National Defense Authorization Act for Fiscal Year 1994* (codified as 10 U.S.C. § 2371, as revised). OTAs are not subject to the Federal Acquisition Regulation. In using consortia OTAs, DHS uses consortium leaders as the Department's lead point of contact and third-party intermediary between the Department and consortium members. Each consortium potentially encompasses multiple entities; further, a consortium may not always be registered with a state as a recognized business organization.

In July 2018, DHS issued a revised OTA policy, but it included the same minimal guidance specific to consortia OTAs that was included in the previous 2013 policy. Prior to the issuance of the updated policy in July 2018, DHS draft policy included a definition defining a consortium as an association of two or more individuals, companies, organizations, or governments (or any combination of these entities), with the objective of participating in a common activity or pooling their resources to achieve a common goal. DHS policy requires consortia to have the legal capacity to enter into binding agreements.

Our review focused on those OTAs involving consortium activities that had procurement actions between FYs 2014 and 2017. As of FY 2017, DHS maintained three consortia OTAs for research in critical infrastructure protection and development of prototypes for border and cyber security:

- National Institute of Hometown Security – To support existing work in research, development, and application of technology for community-based critical infrastructure protection efforts. The original estimated value of the OTA, awarded in June 2007, was $36.5 million. With subsequent modifications to the agreement, it is now valued at more than $87 million.

- Border Security Technology Consortium – To establish an environment of innovation that provides opportunities to improve border security; improve the DHS Science and Technology Directorate's (S&T) ability to engage industry, especially small business and non-traditional suppliers; rapidly develop pilots and prototypes in response to emerging and evolving border security threats; and exploit technology breakthroughs that can enhance border security. Awarded in September 2015, this OTA has an estimated value of $125 million.

- Cyber Apex Solutions – To provide the Nation's financial sector with the tools and technologies to meet its cyber security requirements and needs. The OTA, awarded in March 2017, has an estimated value of $70 million.

Results of Audit

DHS Does Not Periodically Reassess Effectiveness of Its Consortia OTAs

DHS had controls in place when it issued, solicited, selected, and mitigated risks for its three ongoing consortia OTAs, and we did not identify reportable concerns within these areas. However, DHS could better manage consortia OTAs by periodically reassessing their continued use to ensure the Department is receiving the most effective research and efficiently using its staffing resources.

National Institute of Hometown Security OTA

DHS had controls in place when it issued, solicited, selected, and mitigated risks for the National Institute of Hometown Security OTA. However, DHS has not determined whether the research under this agreement could be done at lower cost. DHS has modified the agreement 28 times without an assessment, increasing its value from an initial estimated value of $36.5 million in 2007 to more than $87 million. As of August 2018, data showed that DHS had expended the majority of the OTA's estimated value, with only $68,000 remaining.

Federal regulations do not restrict OTAs involving consortium activities from remaining open indefinitely. At the time of our audit, DHS continued to use this more than 10-year-old OTA. At each new phase of an OTA, DHS requires

an agreement analysis to determine continued use of its other transaction authority.

However, DHS does not require an assessment of an OTA's effectiveness in meeting research requirements and needs. To date, DHS has not reassessed the OTA's effectiveness.

Border Security Technology Consortium OTA

DHS had controls in place when it issued, solicited, selected, and mitigated risks for the Border Security Technology Consortium OTA. However, the agreement has had minimal activity, border security prototypes have yet to be developed, and DHS has not reassessed the OTA's effectiveness. The OTA was awarded in September 2015 without identifying specific prototype technologies that were to be developed. Instead, DHS awarded the OTA, with an estimated value of $125 million, to provide a mechanism for DHS to fund future prototype work with the consortium. DHS envisioned developing border security-related OTA prototypes if it eventually had a need for them.

In March 2017, DHS attempted to initiate its first project under the OTA, in the amount of $1.9 million, for a prototype to demonstrate the mission utility of small unmanned aircraft systems. The Department used its staff resources to evaluate proposals submitted by members of the Border Security Technology Consortium. DHS staff reported eventually canceling the project because U.S. Customs and Border Protection determined the consortium's proposals displayed a weak understanding of Border Patrol challenges and field activities and did not offer groundbreaking solutions or sought-after technology improvements. Nonetheless, DHS still retains a Program Manager assigned to the OTA.

As of March 2018, the Department had only incurred approximately $15,000 in agreement costs. DHS had already dedicated program management, procurement, and legal counsel resources to develop, initiate, and award the OTA. Specifically, the agreement required multiple Office of Procurement Operations and legal counsel reviews because, in part, DHS initially awarded the OTA before completion of all agreement requirements. The agreement requirements were not completed until 10 months after the OTA award. At the time of our audit, no prototype projects were completed, but two additional proposed projects were under review. To date, DHS has not reassessed the OTA's effectiveness.

Cyber Apex Solutions OTA

DHS had controls in place when it issued, solicited, selected, and mitigated risks for the Cyber Apex Solutions OTA, its most recent consortium OTA, which was awarded in 2017 for cyber security prototypes. Because the OTA was awarded less than a year prior to our audit, we could not determine whether this OTA had met its goals or whether it should be reassessed.

Conclusion

Without periodically reassessing consortia OTAs' continued use, DHS cannot ensure it is receiving the most effective research or is using its staffing resources efficiently. The Department's current guidance for addressing controls and oversight of consortia OTAs is minimal. DHS should update its policy to include a requirement to reassess existing consortia OTAs periodically to ensure they remain effective.

Recommendation

Recommendation 1: We recommend the DHS Chief Procurement Officer direct the Department to update its other transaction agreements policy to include periodically documenting its reassessment of ongoing other transaction agreements to ensure those agreements remain effective vehicles for achieving the goals of research or prototype projects.

Management Comments and OIG Analysis

In its response to our draft report, DHS concurred with our recommendation. We analyzed DHS' response to our recommendation, and include a copy of the management comments in their entirety in appendix A. We also received technical comments and made revisions to the report as appropriate.

DHS Response to the Recommendation: Concur. The Department currently conducts periodic assessments of its OTAs when it prepares and submits its annual report to Congress on the Department's use of the Other Transaction authority. However, the DHS Office of Chief Procurement Officer will also update the DHS Other Transaction for Research and Prototype Projects Guide to require that the program office document its assessment of consortium OTAs for inclusion in corresponding OTA contract files. Estimated Completion Date: September 30, 2019.

OIG Analysis: DHS' corrective action is responsive to the recommendation. The recommendation is resolved and will remain open until the Department provides evidence to support that the corrective action is complete.

In its response to our draft report, DHS took issue with our characterization of the National Institute of Hometown Security (NIHS) as a consortia OTA. We reviewed the signed NIHS Other Transaction Agreement, its Acquisition Strategy, confirmed with a senior official, and analyzed the Department's legal counsel reviews of the NIHS OTA. Documentation provided to us supported our report's characterization of the NIHS OTA as a consortium OTA. The senior procurement official also confirmed our interpretation. Our final report does not provide the specific details of Department's legal review due to DHS' concern for protecting attorney client privilege; however, we determined the counsel's review further corroborated our analysis. In its reports to Congress, DHS has categorized this OTA as a consortium since at least FY 2013. However, DHS acknowledged that it informed Congress of its mischaracterization in September 2018, which occurred after our audit fieldwork was complete.

After receiving the Department's response, we compared the NIHS OTA to another ongoing consortium OTA. Even though both the National Institute of Hometown Security and Cyber Apex Solutions had similar responsibilities under their respective OTAs, and both OTAs involved companies that reportedly managed a consortium, DHS chose to change how it characterized the NIHS OTA. However, DHS did not take issue with our inclusion of the Cyber Apex Solutions OTA during our audit. As a result, our draft report characterized the NIHS OTA as a consortium OTA in the same way the Department previously characterized the OTA to Congress.

Further, the Department's response details its concerns regarding how our report characterized the Border Security Technology Consortium OTA, and incorrectly asserts that OIG has reported on the OTA's effectiveness. We did not measure the Border Security Technology Consortium's effectiveness; rather, we reported the Department has not performed its own assessment. We described the history of the Border Security Technology Consortium in order to provide additional context that the OTA had not developed a prototype since its award in 2015.

Lastly, the Department expressed concerns about the OIG's reference to a definition of "consortium" in a draft policy that the Department did not issue. The Department claimed this information should not be included in our report because it is protected from disclosure under the deliberative process privilege. We did not agree, and did not delete, the draft definition from our report. Invoking the privilege in this instance would deviate from standard OIG practice and would hamper our ability to inform Department stakeholders and Congress, as required by the IG Act.

Objective, Scope, and Methodology

DHS OIG was established by the *Homeland Security Act of 2002* (Public Law 107–296) by amendment to the *Inspector General Act of 1978*.

The objective of our audit was to determine to what extent DHS has controls in place for issuing and managing OTAs involving consortium activities.[1] The scope of our audit included DHS Directorates and Offices with consortia OTA procurement activity between FYs 2014 and 2017.

To answer our objective, we reviewed how DHS issued, solicited, selected, mitigated risks for, and managed consortia OTAs within the Office of Procurement Operations, S&T, and National Protection and Programs Directorate.[2] We identified and reviewed pertinent Federal law and regulations, as well as departmental policies, procedures, and directives.

We interviewed DHS headquarters officials from the Office of the Chief Procurement Officer, the Office of Procurement Operations, S&T, and the National Protection and Programs Directorate who are responsible for the management, oversight, and execution of OTAs. We also interviewed officials from the Department of Defense to identify any best practices associated with consortia OTA.

We used our review of the Federal Procurement Database System from our previous audit of OTAs to identify OTAs administered and awarded by the Office of Procurement Operations with procurement activity between FYs 2014 and 2016. During that audit's review of the OTA files, we identified two OTAs that utilized consortia. In addition, in discussions with DHS, we identified a third consortium OTA awarded in FY 2017. Therefore, we included it in this consortia OTA review. These three consortia OTAs have an estimated value of approximately $282 million.

Based on our review of available data, as well as the results reported in our previous OTA OIG report,[3] we believe the universe of consortia OTAs is accurate and supports the conclusions in this report. We reviewed documentation from OTA files that DHS officials provided and tested them against the Department's OTA policies. We did not assess the reliability of the

[1] The Department changed the way it characterized one of the identified consortium OTAs; therefore, we modified our objective to ensure the OTA was correctly characterized in this report.
[2] The directorate has since been renamed to the Cybersecurity and Infrastructure Security Agency.
[3] *Department of Homeland Security's Use of Other Transaction Authority*, OIG-18-24, November 30, 2017.

Federal Procurement Database System as a data system, but compared data from the system to hardcopy files, a DHS internal tracking system, and the Department's OTA annual report to Congress. We also did not audit the reliability of the Federal Financial Management System as a data system, but we relied on the Department's OTA expenditure information recorded in the system to identify reported expenditures.

We conducted this audit between May 2017 and August 2018 pursuant to 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 upon our audit objectives. We believe the evidence obtained provides a reasonable basis for our findings and conclusions based upon our audit objective.

The Office of Audits major contributors to this report are Carolyn Hicks, Audit Director; Shamika Morris, Audit Manager; Matthew Noll, Auditor-In-Charge; Shawn Hatch, Auditor; Jessica Jackson, Auditor; Otis Uwagbai, Program Analyst; Thomas Hamlin, Communications Analyst; Kelly Herberger, Supervisory Communications Analyst; Heather Hubbard, Independent Referencer and Priscilla Cast, Independent Referencer.

Appendix A
DHS Comments to the Draft Report

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

Homeland Security

April 3, 2019

MEMORANDUM FOR: Sondra F. McCauley
Assistant Inspector General for Audits
Office of Inspector General

FROM: Jim H. Crumpacker, CIA, CFE
Director
Departmental GAO-OIG Liaison Office

SUBJECT: Management Response to OIG Draft Report: "Audit of DHS' Issuance and Management of Other Transaction Agreements with Consortia Organizations" (Project No. 17-067-AUD-DHS)

Thank you for the opportunity to review and comment on this draft report. The U.S. Department of Homeland Security (DHS) appreciates the work of the Office of Inspector General (OIG) in planning and conducting its review and issuing this report.

The Department is pleased to note the OIG's positive recognition of the controls the Department had in place to mitigate risks for its consortia other transaction agreements (OTAs) during fiscal year 2017. DHS remains committed to the appropriate use of OTAs to meet its research and development or prototype project requirements and mission needs in a manner that minimizes potential risk in as much as possible understanding that these agreements are not subject to the Federal Acquisition Regulation.

It is important to note, however, that the Department is concerned with the OIG's assessment and factual representations of the Technology Development and Deployment Program (TDDP) (referenced throughout the draft report as "National Institute of Hometown Security (NIHS) OTA") and the Border Security Technology Consortium (BSTC) OTAs. The primary concern is that the OIG identifies the TDDP OTA as a consortium OTA despite the Department's repeated explanations to the contrary. While DHS previously, in its annual report to Congress on the Department's use of OTAs, characterized this OTA as a consortium, during this audit, DHS reviewed all available records related to this agreement and determined that the prior characterization was inaccurate. NIHS is not a consortium entity and has never operated as one.

More specifically, in the articles of the OTA, the Department describes how the NIHS will recruit capable subcontractors to perform research and development, and references the Kentucky Homeland Security University Consortium (KHSUC) as a possible source for research. KHSUC, however, is not a party to the OTA. NIHS confirmed with the Department that it is not and has never operated as a consortium entity. On September 25, 2018, in DHS's fiscal year 2017 OTA report, DHS notified Congress of the mischaracterization. The Department also provided a copy of the report to the OIG. For these reasons, DHS believes the TDDP OTA should not have been included in this audit.

In addition, in assessing the BSTC OTA, the OIG concluded that while DHS had controls in place that mitigated risks when it solicited and awarded this OTA, the OTA may not be effective because:

(1) The OTA is structured as an overarching agreement that allows the Department to determine whether to fund prospective prototype projects;
(2) The OTA has only solicited proposals four times since the OTA's inception; and
(3) The OTA has not yet resulted in a prototype. In addition, the OIG notes that the use of resources to evaluate proposals received under the OTA and the assignment of a Program Manager to the OTA to be an ineffective use of resources.

The Department's OT authority, 6 U.S.C. 391 (as amended), however, does not preclude DHS from structuring OTAs as overarching agreements that address a broad need, nor does it prescribe a specific constitution for consortium OTAs. Under this structure, a consortium may propose research or prototypes for consideration in response to a requirement communicated to the consortium by the DHS. Under the BSTC OTA, when called upon, the consortium proposes prototypes to address new and evolving threats relevant to border security. DHS uses resources to assess these proposals and fund only those that meet statutory requirements for award and that the Department determines to be viable. As with all acquisitions in the federal government, resources are allocated to evaluate proposals when received to determine whether the proposed solutions are suitable for award. During this audit, DHS continued to pursue projects with the BSTC. Presently, there are two projects in progress and four projects in the proposal review stage; and DHS is considering executing three additional projects through the BSTC.

Of additional concern is OIG's planned disclosure of information that is protected by the deliberative process privilege. Specifically, on February 13 and 15, 2019, DHS asserted deliberative process privilege when asking that the OIG not comment on what DHS considered in a draft policy update but did not adopt in the final update. DHS and OIG disagree on this issue. The OIG cites its policy of reporting on the rationale for agency decision-making as the rationale for including the information in its report, but is not

reporting on this rationale. DHS objects to the inclusion of the information in the report as the information was taken from a "draft" pre-decisional document that does not represent a final agency action or decision.

The deliberative process privilege is meant to protect draft reports, recommendations, opinions, and conclusions considered while developing an agency policy. Disclosing this information deprives the agency of the ability to engage in full and open discussion and creates a chilling effect on its willingness to flesh out ideas in its deliberations.

The draft report contained one recommendation, with which the Department concurs. Attached find our detailed response to the recommendation. Technical comments were previously provided under separate cover.

Again, thank you for the opportunity to review and comment on this draft report. Please feel free to contact me if you have any questions. We look forward to working with you again in the future.

Attachment

Attachment: Management Response to Recommendations Contained in OIG-17-067-AUD-DHS

The OIG recommended that the DHS Chief Procurement Officer:

Recommendation 1: Direct the Department to update its other transaction agreements policy to include periodically documenting its reassessment of ongoing other transaction agreements to ensure those agreements remain effective vehicles for achieving the goals of research or prototype projects.

Response: Concur. The Department currently conducts periodic assessments of its OTAs when it prepares and submits its annual report to Congress on the Department's use of Other Transaction (OT) authority. However, the DHS Office of the Chief Procurement Officer will also update the DHS Other Transactions for Research and Prototype Projects Guide to require that the program office document its assessment of consortium OTAs for inclusion in corresponding OTA contract files. Estimated Completion Date (ECD): September 30, 2019.

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Appendix B
Report Distribution

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