

DEPARTMENT OF HOMELAND SECURITY
Office of Inspector General

Transportation Security Administration
Single Source (Noncompetitive)
Procurements





Homeland
Security

June 12, 2008

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.

This report addresses the strengths and weaknesses of the Transportation Security Administration's single source (noncompetitive) procurement process. We reviewed relevant policies and procedures, contract files, and applicable documents and interviewed employees and officials of the component agency.

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. It is our hope that this report will result in more effective, efficient, and economical operations. We express our appreciation to all of those who contributed to the preparation of this report.

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

Richard L. Skinner
Inspector General

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Abbreviations

DHS	Department of Homeland Security
GAO	Government Accountability Office
TSA	Transportation Security Administration

OIG

*Department of Homeland Security
Office of Inspector General*

Executive Summary

Transportation Security Administration policy promotes the use of competition to acquire goods and services and allows single source contracts when they are in the best interest of the agency and the rational basis is documented. This report describes the results of our audit to determine whether the Transportation Security Administration properly justified less than full and open competition for single source contracts. Specifically, we reviewed the Transportation Security Administration's compliance with policies and procedures applicable to fiscal year 2006, single source contracts.

The Transportation Security Administration complied with some policies and procedures for awarding single source procurements in fiscal year 2006, but did not comply with others, such as documenting market analysis, obtaining required prior concurrences and approvals, and describing actions to remove barriers to future competition. The explanations that contracting officers, program managers, and other knowledgeable individuals provided us for the noncompliances indicate that the Transportation Security Administration needs to improve its internal control environment.

The noncompliances prevent the Transportation Security Administration from readily substantiating that its single source procurements were appropriately awarded in 2006. Consequently, the Transportation Security Administration does not know whether it is involved in contractual arrangements that are in the best interest of or provide the best value for the government.

We are recommending measures that, when implemented, will increase the likelihood that the Transportation Security Administration's single source procurements comply with applicable policies and procedures, are fully justified, and are appropriate. The Transportation Security Administration concurred with the recommendations in this report.

Background

In the wake of the September 11, 2001, terrorist attacks, the Congress established the Transportation Security Administration (TSA) within the Department of Transportation. TSA's primary mission is to strengthen the security of all modes of transportation. Because TSA was created in part from components of the Federal Aviation Administration, TSA inherited the Federal Aviation Administration's exemption from the Federal Acquisition Regulation. This exemption allows TSA to contract with a single source when it is determined to be in the best interest of the agency and the rational basis is documented. In March 2003, TSA transferred to the Department of Homeland Security (DHS), but retained its Federal Acquisition Regulation exemption. TSA uses its own Transportation Security Administration Acquisition Management System, which has less stringent requirements for noncompetitive procurements than the Federal Acquisition Regulation. The *Consolidated Appropriations Act, 2008*, repealed TSA's exemption, effective June 2008.¹

TSA policy promotes the use of competition to award contracts.² Program managers and contracting officers are responsible for promoting a competitive environment, including structuring acquisition strategies to ensure the availability of competitive suppliers. TSA may contract with a single source when it is in the best interest of TSA and the program manager documents a rational basis, such as national emergency, standardization, or only one source available, in a business clearance memorandum, negotiation memorandum, or single source justification. The program manager also must include in the document a statement of actions the office plans to take to overcome barriers to future competition. Moreover, the program manager must obtain specified program, legal, and acquisition concurrences and approvals before contract award. The required concurrence and approval levels vary with the estimated cost of fulfilling the contract requirements. Noncompetitive contracts worth less than \$200,000 do not require approvals or concurrences above the contracting officer level.

¹ Section 568, Public Law 110-161

² TSA, *Competition and Single Source Acquisition*, Management Directive No. 300.4.

Except in national emergencies, a market analysis must support a single source procurement request. According to the Office of Acquisition *Concept of Contracting Operations*, the program office leads the market research effort; however, the contracting officer must ensure that contract documents, acquisition plans, and the solicitation appropriately consider the marketplace for the goods and services to be procured.

Results of Audit

In 2006, TSA complied with some policies and procedures for awarding single source procurements, but did not comply with others. TSA's internal control environment was not sufficient to ensure compliance with all requirements, such as market analysis, appropriate approvals, and plans to remove barriers to future competition. Consequently, TSA was not able to substantiate readily that its single source contracts awarded in 2006 were appropriate. Also, TSA does not know whether its commitment to competition was sufficient and its contractual arrangements are in the best interest of or provide the best value for the government.

TSA Complied with Some, But Not All, Procurement Requirements

TSA complied with some, but not all, requirements for its 16 single source contracts awarded in 2006 (Table 1). One contract, the \$225,000 spectrometer procurement, met all requirements, such as written rational basis, documented market analysis, concurrences and approvals, and actions to remove barriers to future competition. The remaining 15 contracts did not comply with at least one requirement. All of the contracts had the required written rational basis (Appendix D).

Table 1: Compliance with Key Requirements for TSA 2006, Single Source Contracts	
<i>Requirement</i>	<i>Contracts in Compliance (Percent of Total)</i>
Written rational basis for single source	16 (100%)
Market analysis documented	2 (13%)
Concurrences and approvals documented	4 (25%)
Actions to remove barriers to future competition described	10 * (77%)
* Two airport lease contracts and one small business set-aside contract did not require actions to remove barriers to competition.	
Source: OIG analysis of agency records.	

Market Analysis: TSA requires a market analysis to support a single source procurement decision. TSA defines a market analysis as “the review, comparison and evaluation of information gathered from the marketplace in order to determine how to design work statements and specifications, and how to effectively and efficiently engage industry when procuring required goods and services.”³

Fourteen of TSA’s single source contracts awarded in 2006 (87%) did not have a market analysis included in the contract file, described in the single source justification, or documented elsewhere. The contracting officers could not explain to us why market analyses were not in

the contract files or did not exist for these 14 contracts. TSA provided us market analyses for contracts L and O.⁴

The contracting officers for the contracts without market analyses emphasized to us that each single source justification contained a market analysis statement, implying that the statements fulfilled the market analysis requirement. However, these statements were too general to constitute market analyses. For example, the single source justification for the \$2 million fingerprint collection and processing contract included the statement, “No other vendor currently provides the complete range of services and infrastructure beyond fingerprint collection.” TSA provided no evidence for this contract of the review, comparison, and evaluation of information called for in the market analysis definition.

Of the 6 contracting officers responsible for the contract files in our review, 3 contracting officers told us that a market analysis

³ TSA, *Competition and Single Source Acquisition*, Management Directive No. 300.4, January 14, 2004.

⁴ We refer to each contract by a letter (A through P), rather than by vendor name.

should be a separate document in the contract file. Most contract files for our sample contracts included the *Contract Award File Content* coversheet specifying required elements; market analysis is the third item listed on this cover sheet. The other 3 contracting officers told us that a description of the market analysis should be in the single source justification document. They said that the market analysis is not required to be in the contract file as a separate document. The relevant management directive is not specific on the matter of how a market analysis should be documented.

Prior Concurrences and Approvals: The TSA contracting officers we interviewed correctly reflected written policy when they told us that a single source justification must have appropriate concurrence and approval signatures without exception before contract award. For example, the acquisition division director must approve single source justifications for requirements worth between \$200,001 and \$500,000 (Appendix E). In addition to the Division Director, the Deputy Assistant Administrator for Acquisition must approve single source justifications for requirements worth between \$500,001 and \$999,999.

Notwithstanding the contracting officers statements to us, 11 of the 16 contracts (69%) did not comply with all concurrence and approval requirements; the other 5 contracts complied. Three of the contracting officers who told us that the concurrence and approval policy had no exceptions awarded 4 of the contracts without some required concurrences (Table 2). These 4 noncomplying contracts are worth more than \$3.5 million.

Table 2: Contracts with Missing Concurrences and Approvals	
<i>Contract</i>	<i>Estimated Contract Value</i>
D	\$2,500,000
L	\$564,462
N	\$233,000
P	\$215,000
Total Value	\$3,512,462
Source: OIG analysis of agency data.	

In another instance, a contracting officer obtained the necessary concurrences and approvals for a single source justification, but contrary to TSA policy, not until after contract award. Specifically, for the \$2 million telecommunications procurement, the contracting officer obtained the signatures about 9 months after contract award. TSA awarded the base contract on December 15, 2005; the program office submitted the single source justification

to the Office of Acquisition on September 22, 2006. To explain the urgency for this contract, TSA staff told us the previous prime contractor was not paying its subcontractor. Consequently, TSA decided to contract directly with the subcontractor.

For this contract, program office staff told us the single source justification was completed on time, but review, concurrence, and approval took a long time due to changes in approval thresholds, key program and procurement personnel, and workload priorities. According to the single source justification, the TSA Assistant Administrator for Acquisition verbally approved the base contract award to ensure continuity of services. In an email to us, the Deputy Assistant Administrator for Acquisition agreed that the urgent and unusual nature of this award and a change in personnel meant, "Documentation was not completed as timely as one would normally expect."

The TSA management directive does not provide for waivers of concurrence requirements. However, 2 contracting officers told us they accept the signature of a program manager's superior when the program manager does not sign the single source justification as required. This scenario occurred for 6 of the 16 contracts (38%) in our audit. The negotiation memorandum for another contract included the statement, "It was agreed that no concurrence is required due to end of year workload and short manpower."

The Office of Acquisition created a single source justification template to facilitate the awarding of single source contracts. However, the program offices modified it, in some cases eliminating required signature lines. For example, the Threat Assessment and Credentialing office altered the template and did not include all required signature lines on the single source justifications for 4 of the 16 contracts we reviewed: B, G, I, and K. The required program manager signature line was missing on each of the 4 single source justifications; the program office director's signature line was missing on 3 of the 4 contracts; and the program office assistant administrator's signature line was missing on 2 of the 4 contracts.

Actions To Remove Barriers To Competition: TSA policy provides that TSA may award single source contracts because of urgency. At the same time, the policy requires action "to facilitate competition for requirements that extend beyond the period of

immediate urgent need,” and a description of such action in the single source justification.

Ten of 13 contracts (77%) complied with the requirement to describe in the single source justification actions to remove barriers to future competition; 3 contracts did not comply. The requirement did not apply to 3 other contracts.

Table 3: Contracts Without Actions to Remove Barriers to Future Competition Described		
<i>Contract</i>	<i>End of Last Option</i>	<i>Estimated Value (millions)</i>
K	Mar. 1, 2009	\$2.0
D	Apr. 30, 2010	\$2.5
B	Dec. 31, 2010	\$8.5
Total Value		\$13.0
Source: OIG analysis of agency data.		

The 3 non-complying contracts have several remaining option years (Table 3). Exercising these options without considering actions to remove barriers to competition might not provide TSA the best value for obtaining these goods and services.

Internal Controls Need Improvement

Contracting officers, program managers, and other knowledgeable individuals provided us a variety of explanations for the noncompliances on TSA’s single source contracts in 2006, such as personnel changes and urgency. Together, these reasons indicate that TSA’s internal control environment was not sufficient to ensure that most single source contracts complied with applicable requirements.

For example, contracting officers and program managers did not always properly execute single source transactions, as discussed above. Also, contracting specialists and contracting officers did not request or obtain sufficient supporting documentation and review it to determine that competition was not feasible or possible.

In addition, some internal controls were poorly designed. Regarding market analysis, for example, TSA’s management

directive provided vague guidance, leading contracting officers and program managers to interpret requirements as they saw fit. TSA's management directive is not clear as to whether the market analysis should be a separate document. Also, the directive does not have specific instructions on when and how the program office should submit the market analysis and to what extent contracting officers should verify its adequacy and accuracy. The market analysis is the most important element of the single source justification; the confusion and inconsistency consequent to the unclear guidance impedes TSA's ability to readily validate these contract awards.

TSA managers did not conduct routine reviews or self-assessments, by which they would become aware of the ongoing level of compliance. Had managers been aware of the noncompliances, they would have been positioned to take corrective action.

Finally, the weak internal control environment, i.e., the discipline, structure, and climate that influences the quality of internal control,⁵ likely contributed to these conditions. For example, the contracting officers' willingness to accept incomplete single source justifications indicates that their priority for servicing program offices exceeded their motivation to comply with TSA policies and procedures to promote the use of competition to award these contracts. Moreover, contracting officers, program managers, and their supervisors faced few, if any, professional consequences for failing to comply with single source policies and procedures. TSA did not provide evidence of counseling or disciplinary actions for the individuals responsible for the noncompliances we identified. TSA needs to improve its internal controls to increase compliance with single source procurements policy and requirements.

Noncompliances Prevent Appropriateness Determination

The noncompliances prevent TSA from readily substantiating that its single source procurements in 2006 were appropriately awarded. Without documented market analyses, TSA has no assurance that it was aware of and fully considered available sources for fulfilling mission requirements. Also, without

⁵ Government Accountability Office, *Standards for Internal Control in the Federal Government*, GAO/AIMD-00-21.3.1, November 1999, page 8.

evidence of required concurrences and approvals, TSA has no assurance that its managers were informed and properly oversaw the acquisition activities with which they were entrusted. Furthermore, without documented actions to remove barriers to competition and indications that it implemented such actions, TSA has no assurance that it pursued acquisition strategies that enhance future competition.

Consequently, TSA does not know whether its commitment to competition was sufficient and that it is involved in contractual arrangements that are in the best interest of or provide the best value for the government. TSA's implementation of the recommendations we make in this report will increase the likelihood that future single source procurements promote competition and are in the best interest of TSA.

Recommendations

We recommend that the Assistant Secretary:

Recommendation 1: Determine whether exercising options on existing single source contracts will provide the government the best value for fulfilling mission needs, and if so, verify that the contract files adequately document the basis for the determinations, including market analysis and description of actions to remove barriers to future competition.

Recommendation 2: Develop and implement a corrective action plan to improve internal controls associated with single source procurements. The plan should consider, at a minimum, the following measures:

- Updating management directives and guidance to clarify requirements for market analysis, such as the level of detail, the contracting officer's responsibility for assessing its quality, and submission and documentation.
- Implementing a single source justification template in which program offices cannot eliminate required elements.

-
- Establishing periodic reviews of single source justifications and contract awards to improve detection and remediation of noncompliances, and when necessary, hold individuals accountable for noncompliances.
 - Balancing incentives for contracting officers, program managers, and their supervisors to award contracts expeditiously while protecting TSA's interests and promoting competition.

Management Comments and OIG Analysis

TSA provided clarification and comments on 4 areas of concerns about our report. Where appropriate, we revised the report to reflect TSA's comments. TSA concurred with our recommendations and we consider them resolved.

TSA disagreed with our statement that TSA policy on other than full and open contract awards is less stringent than the Federal Acquisition Regulation. TSA cited its lower thresholds for managerial approvals. Our statement refers to the 7 circumstances in which the Federal Acquisition Regulation permits sole source contract awards compared to TSA's policy of single source contracting when it is in TSA's best interest and the rational basis is documented. We agree that TSA's levels of approval and required signatures start at a lower threshold. This distinction will cease to exist starting in June 2008, when new TSA contracts must comply with the Federal Acquisition Regulation.

TSA commented that our discussion about market analysis did not appear to be consistent with TSA's policy provision that the market analysis method and extent depend on the size, scope, and complexity of the procurement. However, TSA policy also specifies, "Mere conclusions without adequate objective supporting data are insufficient." Program offices provided us 2 market analyses with supporting documentation as noted in the report. Moreover, contracting officers told us that FedBizOpps notices do not fulfill the requirements for a market analysis.

Another TSA area of concern about our draft relates to concurrence and approval requirements in a changing organizational structure. TSA commented that most offices

stopped using the title *program office director* after 2004 when TSA issued the single source contracts management directive. Particularly with respect to contract A, TSA wrote that it met concurrence and approval requirements. We revised our report to clarify our results on contract A. TSA acknowledged that it has not updated its directive to reflect organizational changes.

TSA objected to our characterization of sample contracts as *large*. We revised the report to reflect this comment.

TSA concurred with our recommendation #1, citing its process to determine whether exercising each option is in the best interest of the government. However, TSA's response does not address verifying the market analysis and efforts to remove barriers to future competition in conjunction with a decision to exercise an option. Consequently, we consider this recommendation resolved, but open pending receipt of TSA plans to consider market analysis and efforts to remove barriers to future competition in option decisions.

TSA concurred with our recommendation #2, recognizing the need for training program office staff and TSA's June 2008 transition to FAR compliance. We agree that TSA has addressed part of our recommendation. Consequently, we consider this recommendation resolved, but open pending additional information about holding individuals accountable for awarding contracts expeditiously while protecting TSA's interests and promoting competition.

Appendix A

Purpose, Scope, and Methodology

Our audit objective was to determine whether TSA properly justified less than full and open competition for single source procurements. Specifically, we sought to answer the following questions:

- Did TSA comply with its policies and procedures for single source procurements?
- If non-compliances occurred, why did they occur?
- If non-compliances occurred, did they lead to improper contract awards?

To focus on single source contracts where TSA seemed to have the most discretion, we reviewed the 16 contracts that represented about 46.5% of TSA's obligations for not-competed procurements in fiscal year 2006 (Table 4). These contracts were about 15% of all TSA procurement obligations for fiscal year 2006 contracts and task orders. The 16 contracts were categorized as only one source, unique source, urgency, or follow-on. We did not review not-competed task orders for contracts TSA and GSA awarded before fiscal year 2006 and several other types of single source procurements, such as those authorized by statute, essential research and development, or standardization. We excluded contracts with life values of less than or equal to \$200,000, because they do not require approval beyond the contracting officer level, leaving the 16 contracts listed in Appendix C. One contract in our population, the information technology management contract, is worth \$750 million. The other 15 contracts total about \$32 million, with 10 contracts each worth \$1 million or more and 5 contracts worth less than \$1 million each. Relying on information from the Federal Procurement Data System – Next Generation and the TSA Office of Acquisition, we did not independently assess the reliability of computer-generated data.

Appendix A
Purpose, Scope, and Methodology

Table 4. TSA 2006 Contracts and Task Orders			
<i>TSA 2006</i>	<i>Number</i>	<i>Obligations</i>	<i>Percent of Obligations</i>
(A) All contract types and task orders		\$1,532,824,719*	100.0%
(B) Not-competed contracts and task orders		\$497,053,255	32.4%
(C) All single source contracts and task orders (excludes contracts authorized by statute, national security, essential research and development, etc.)		\$469,104,051	30.6%
(D) Contracts and task orders from only one source; unique; urgent; or follow-on	122	\$320,127,200	20.9%
(E) Contracts with estimated life value less than or equal to \$200,000	83	\$2,871,169	0.2%
(F) Contracts with estimated life value greater than \$200,000	16	\$230,940,961	15.1%

* As of December 2007

Source: Federal Procurement Data System – Next Generation ad hoc report as of May 2007, except as noted.

We reviewed TSA contract files for required documentation. We interviewed TSA procurement and program officials to obtain their understanding of the requirements for single source acquisitions, how these requirements are documented, and whether these contracts complied with TSA’s policies and regulations.

We conducted our fieldwork between May 2007 and August 2007 at TSA headquarters. The audit was conducted under authority of the *Inspector General Act of 1978*, as amended, and according to generally accepted government auditing standards issued by the Comptroller General of the United States.

Appendix B Management Comments on the Draft Report

Office of the Assistant Secretary

U.S. Department of Homeland Security
601 South 12th Street
Arlington, VA 22202-4220

MAY 06 2008



Transportation
Security
Administration

INFORMATION

MEMORANDUM FOR: Richard L. Skinner
Inspector General
Department of Homeland Security

FROM: Kip Hawley *KH*
Assistant Secretary

SUBJECT: Transportation Security Administration's (TSA) Response to
Department of Homeland Security (DHS) Office of Inspector
General's (OIG) Draft Report Titled "Transportation Security
Administration Single Source (Noncompetitive) Procurements,"
March 2008

Purpose

This memorandum constitutes TSA's formal Agency response to the DHS OIG draft report titled "Transportation Security Administration Single Source (Noncompetitive) Procurements," dated March 2008. TSA continues to foster an environment that increases competition across our acquisition portfolio, and we appreciate the opportunity to review and provide comments on your draft report.

Background

In January 2007, OIG initiated a survey of sole source acquisitions in DHS. In March 2007, OIG began a formal review of TSA's compliance with policies and procedures for awarding single source procurements in 2006. The objective of the audit was to determine whether TSA properly justified less than full and open competition for single source procurements. Specifically, OIG had three questions: 1) Did TSA comply with its policies and procedures for single source procurements? 2) If non-compliance occurred, why did it occur? 3) If non-compliance occurred, did it lead to improper contract awards?

OIG selected 16 contracts from 2006 that were not competed. The contracts were awarded on a single source basis and were supported by a documented rational basis in accordance with TSA's Acquisition Management System (AMS). Those 16 contracts represent about 15 percent of TSA's obligated contract dollars in 2006, as reported in the Federal Procurement Data System-Next Generation. OIG reviewed contract files and interviewed TSA Office of Acquisition and program office staff. As a result of this review, OIG concluded that TSA complied with some policies and procedures for awarding large, single source procurements in fiscal year (FY) 2006, but did not comply with others. The policies the OIG concluded that TSA did not comply with

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included documenting market analysis, obtaining required prior concurrences and approvals, and describing actions to remove barriers to future competition. The OIG stated that the non-compliances prevent TSA from readily substantiating that its large, single source procurements were appropriately awarded in 2006 and that the non-compliances indicate that the TSA needs to improve its internal control environment.

Discussion

While TSA generally concurs with OIG's recommendations, we are providing clarification and comment on four primary areas of concerns within the report: (1) Description of the differences between TSA's AMS and the Federal Acquisition Regulation (FAR) regarding single source contracting; (2) Characterization of the sample selection; (3) Discussion and findings on market analysis requirements and documentation; and (4) Discussion and findings on required concurrences and approvals.

1. OIG's statement that TSA's policy is less stringent than the FAR is not accurate

The Background section of the OIG report provides a discussion on the differences between TSA's acquisition policy in 2006 (the AMS and TSA Management Directive (MD) 300.4 "*Competition and Single Source Acquisition*") and the FAR. The FAR is the primary regulation of most agencies for Federal acquisition, including the other components within the Department of Homeland Security. As the report notes, TSA will transition to the FAR in June 2008, per the Consolidated Appropriations Act of 2008. That transition is well underway, led by the Office of Acquisition's Policy Branch, and includes transitioning to compliance with the Homeland Security Acquisition Regulation (HSAR) and Homeland Security Acquisition Manual (HSAM). The audit, however, reports on actions under AMS in 2006.

OIG asserts that TSA's policy "has less stringent requirements for noncompetitive procurements" than the FAR. However, a close review indicates that TSA's policies contain a higher standard for single source procurements, especially in terms of dollar thresholds and required signatures for approval. The report states that single source contracts "worth less than \$200,000 do not require approvals or concurrences above the contracting officer level." MD 300.4 requires not only the signature of the contracting officer, but also the concurrence of the cognizant program manager and the Office of Chief Counsel (OCC) for those actions. Further, the threshold at which a contracting officer's signature is the approval is lower under AMS than under FAR. FAR Part 6.304(a)(1) states that the contracting officer's certification will serve as approval for proposed contracts up to \$550,000—more than double the AMS threshold. On the program side, MD 300.4 requires the signature of the cognizant program manager for anything over \$10,000, and for the largest contracts, the signature of the cognizant Assistant Administrator. The FAR only requires the technical and/or requirements personnel to certify that the information that forms the basis for the action is complete and accurate (see FAR 6.303-2).

**Appendix B
Management Comments on the Draft Report**

2. *OIG's characterization of its selected sample as "large contracts" is misleading*

TSA does not agree with OIG's characterization of its contract selection as one focused on "large" contracts. OIG states that it selected the sample in order to "focus on large, single source contracts where TSA seemed to have the most discretion." In fact, OIG selected contracts over TSA's simplified acquisition threshold of \$200,000. Six of the 16 contracts had obligations below \$500,000, and another three had obligations below \$1 million. The report states that the contracts represented about 15 percent of TSA's reportable contract expenditures for 2006, but fails to note that the numbers are driven by TSA's single contract for information technology (IT) infrastructure, which alone accounted for 14 percent. The remaining contracts are not large and, even taken together, account for less than 1.5 percent of TSA's total reportable expenditures.

3. *OIG's findings regarding market analysis are not consistent with TSA's policy*

OIG's discussion and findings regarding market analysis do not appear to be consistent with TSA's policy on market analysis. MD 300.4 states that the decision should be supported by a market analysis, the method and extent of which is dependent on size, scope, and complexity of the requirements, as well as the general market for the required goods or services (See Section 6.B.). This is similar to FAR Part 10.002 that states that the extent of market research will vary, depending on such factors as urgency, estimated dollar value, complexity, and past experience. It appears that size, scope, and complexity were not adequately taken into account when OIG evaluated TSA's files for compliance based on its finding that only two files complied. Based on a review of the contract files, and as summarized in Table 1 below, an additional 11 files contain appropriate market research, considering the size, scope, and complexity of the action.

Contract	Description of Market Analysis
A	The approved justification notes that a market analysis was done, and that there were other firms with the capability to meet the requirements. As the cost to compete the requirement would have been exorbitant, the decision was made to single source. The approved justification notes that an announcement of intent to sole source was publicly posted on the Government's website for federal opportunities (FedBizOpps), and responses were referred to the vendor for subcontracting opportunities.
B	The approved justification notes that the additional licenses required were only available from the vendor due to the proprietary nature. It also noted that TSA evaluated products to perform the mission, including throughput and privacy requirements.
C	This action is a set-aside for a Service Disabled Veteran-Owned Small Business (SDVOSB). The contract file includes a justification that states that the Small Business Office conducted market research and determined, via TSA Form 200, that the vendor was the only source with appropriate qualifications.
D	The approved justification notes that an announcement of intent to sole source was publicly posted on FedBizOpps, resulting in two responses. One response was seeking subcontracting opportunities, and TSA reviewed the other response and determined the company was not a viable source.

Table 1—Analysis of Compliance with Market Analysis Requirements

**Appendix B
Management Comments on the Draft Report**

Contract	Description of Market Analysis
E	The approved justification notes that a market survey was conducted. Additionally, an announcement was publicly posted on FedBizOpps.
F, H	Contracts F and H were agreements for space for TSA staff at an airport. Considering the scope of the agreement—namely, break rooms and offices for TSA staff—no market analysis is necessary based on the general market of goods. That is, even if a market analysis would yield office space outside of the airport, nothing other than space at the airport would be considered appropriate for the scope.
I	The approved justification notes that the software is a commercial product and that TSA required configuration changes, development of additional functionality, and integration. The vendor is the proprietary owner of the software, and therefore no other source could provide the services.
J	The approved justification notes that TSA performed significant analysis of the market, including qualifications such as ability to support nationwide deployment and ability to interface with the Government’s finance center. TSA’s approved justification also noted that it included research into DHS’ market research. Additionally, an announcement was publicly posted on FedBizOpps.
K	The approved justification notes that similar services from two other providers were considered, but not found to be suitable. Additionally, an announcement was publicly posted on FedBizOpps.
P	The approved justification notes that TSA evaluated Department of Defense products and determined they failed to address commercial requirements. It further notes TSA’s review of the marketplace for processes, methodologies, and tools along with other Government agencies and international fora, upon which it was determined that only one source provides adequate software. Additionally, TSA publicly posted the intention to sole source on FedBizOpps. It evaluated two responses and determined that they did not meet the requirements.

Table 1—Analysis of Compliance with Market Analysis Requirements (continued)

4. *OIG did not consider TSA’s structure when reviewing concurrences and approvals*

The analysis in the report did not take organizational structure into account when it determined that five contracts did not have appropriate concurrences and approvals. The report highlights the large information technology contract with a ceiling value of \$750 million. Per MD 300.4, the approvals shown in Table 2 would be required on a single source justification of that size.

Program Office Concurrence	Acquisition Office Approval
Program Manager	Contracting Officer
Office of Chief Counsel	Division Director
Program Office Director	Deputy Assistant Administrator
Assistant Administrator	TSA Business Advocate

Table 2—Signature Requirements for Contract A

Appendix B Management Comments on the Draft Report

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The TSA organization changed multiple times in the first few years of existence because of the initial roll-out and urgency, followed by more standard practices and a maturing of the organization. Subsequent to the release of MD 300.4 in 2004, TSA continued to mature. When the MD was written and approved, the Program Office Director existed in most major offices. However, as the organization evolved, that position title was not commonly used. The Program Director position did not exist in May 2005 when the justification for Contract A was signed. Additionally, the Assistant Administrator for Information Technology is also the Chief Information Officer, who signed the justification. The justification for Contract A includes all required signatures, except for the Program Director, a position which did not exist at the time. Though not required, it is important to note that TSA requested and received signed approval on the justification from the DHS Chief Procurement Officer to ensure the action was appropriate. As the OIG notes elsewhere, the MD 300.4 may need to be updated to accommodate our maturing organization, but TSA disagrees with the report's suggestion that we did not get the required concurrences and approvals from positions that no longer existed.

Overall, your recommendations will help us continue improving effective oversight of IT investments. We generally concur with your recommendations and have already taken steps to address them.

Recommendation 1: Determine whether exercising options on the existing single source contracts will provide the Government the best value for fulfilling mission needs, and if so, verify that the contract files adequately document the basis for the determinations, including market analysis and description of actions to remove barriers to future competition.

TSA Concur: TSA has a process that evaluates each option exercise and determines whether or not it is in the best interest of the Government. Specifically, for each option exercise, per AMS (T3.2.4.A.9), the contracting officer makes a prudent business decision whether to exercise an option, including documenting the file as to the basis of the decision to exercise the option. The contracting officer consults with the program official and considers funding availability, option prices, and contractor performance when deciding to exercise an option. Option exercise decisions, usually called "Determination and Findings," are documented in the contract file.

Recommendation 2: Develop and implement a corrective action plan to improve internal controls associated with single source procurements. The plan should consider, at a minimum, the following measures:

- ▶ Updating management directives and guidance to clarify requirements for market analysis, such as the level of detail, the contracting officer's responsibility for assessing its quality, and submission and documentation.
- ▶ Implementing a single source justification template in which program offices cannot eliminate required elements.
- ▶ Establishing periodic reviews of single source justifications and contract awards to improve detection and remediation of non-compliance, and when necessary, hold individuals accountable for noncompliance.

Appendix B Management Comments on the Draft Report

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► **Balancing incentives for contracting officers, program managers, and their supervisors to award contracts expeditiously while protecting TSA's interests and promoting competition.**

TSA Concurs: The Office of Acquisition recognized the need to train and support market analysis by program offices, and introduced a Market Research Workshop in January 2005; we have held more than 35 workshops since then. We previously provided the materials to the OIG. Additionally, as part of a process standardization initiative within the Office of Acquisition, an 18-page guide to market research, titled *Procurement Request Package Manual, Market Research Report Section*, was developed to supplement the workshops. It presents clear guidance on market research, describes roles and responsibilities, and provides a template to report the results. A copy of that guide, released in January 2008, is attached. TSA will transition to the FAR in June 2008, per the Consolidated Appropriations Act of 2008. That transition is well underway, led by the Office of Acquisition's Policy Branch, and includes transitioning to compliance with the Homeland Security Acquisition Regulation (HSAR) and Homeland Security Acquisition Manual (HSAM). The HSAM provides clear guidance on market research and sole source acquisition. Due to its unique AMS, TSA developed its own directive on single source procurement and market analysis, but it will transition to compliance with the comprehensive procedures in FAR, HSAR, and the HSAM regarding market analysis (Part 10) and competition (Part 6). As such, TSA no longer requires its own MD and template, and TSA's MD 300.4 will be cancelled.

Similarly, TSA's use of the single source justification will transition to use of a justification and approval, per the requirements in FAR Part 6 and the Department's supplement. Chapter 3 of Appendix A to Chapter 3006 of the HSAM provides a guide to justification and approval documentation, including a required format with required approvals. In addition, as part of the Office of Acquisition process standardization initiative, TSA developed process maps, templates and guidance links in the proposal formulation/evaluation area, including assessing the appropriateness of single source acquisitions. This effort is complete, and the resulting guidance and templates are available to all TSA program and contracting personnel.

Additional oversight procedures are being implemented to provide an extra measure of assurance that acquisitions that are not conducted using full and open procedures are appropriately justified and documented. The Office of Acquisition's Contract Procurement and Monitoring Division (CPMD) has undertaken reviews of the Federal Procurement Data System-Next Generation data and contract files to ensure accurate reporting and documentation.

TSA takes competition seriously and recognizes the benefits from increased competition across its acquisition programs through better planning and robust requirements. As OIG's recommendation regarding incentives recognizes, balancing our transportation security mission with competition can be challenging. The Department's Chief Procurement Officer set a competition goal for TSA in FY 2008 of 70 percent—over 10 percent more than TSA achieved in FY 2007.

Attachment

Appendix C
TSA Single Source Contracts Awarded During Fiscal Year 2006

<i>Contract</i>	<i>Single Source Basis</i>	<i>Estimated Life Value</i>	<i>Obligations Through May 2007</i>	<i>Period of Performance</i>
A: Develop, deploy, and maintain information technology infrastructure.	Ensure no lapse in service	\$750,000,000	\$211,736,353	1-year base period and two 1-year options
B: Software for Office of Threat Assessment and Credentialing.	Only one source	\$8,480,000	\$2,420,000	1-year base period and four 1-year options
C: Data management support for Information Technology Division.	Unique knowledge and skill of senior consultant	\$2,926,002	\$1,438,632	1-year base period and two 1-year options
D: Specialized passenger and freight rail security and safety training.	Unique source	\$2,500,000	\$300,000	Through 2010
E: Software to support TSA staffing model.	Patent or data rights	\$2,400,000	\$2,250,000	2-year base period and one 1-year option
F: Lease space for TSA staff at an airport	TSA needs to occupy space	\$2,349,900	\$2,349,901	3-year base period and one 1-year option
G: Maintenance of C-3 circuits for telecommunication service between Annapolis Junction, Maryland, and Colorado Springs, Colorado.	Ensure continuity of services	\$1,958,772	\$849,372	1-year base period and four 1-year options
H: Lease space for TSA staff at an airport.	TSA needs to occupy space	\$1,448,598	\$426,059	8-month base period and 5-month option
I: Software for watch list activities for domestic air passengers.	Unique source, urgent	\$1,299,995	\$1,300,000	October 1, 2006, until April 30, 2007
J: Software and training to support electronic time and attendance system.	Standardization	\$5,420,584	\$5,420,584	6-month base period and one 1-year option

Appendix C
TSA Single Source Contracts Awarded During Fiscal Year 2006

<i>Contract</i>	<i>Single Source Basis</i>	<i>Estimated Life Value</i>	<i>Obligations Through May 2007</i>	<i>Period of Performance</i>
K: Operational support in the collection and processing of fingerprints for the TSA Alien Flight Students Program.	No vendor currently provides the complete range of services and infrastructure beyond fingerprint collection	\$2,000,000	\$730,000	1-year base period and three 1-year options
L: Hardware, software, and technical support of the high-speed solution for the TSA Remote Access to Classified Enclaves Remote Access Program.	Only one source	\$564,462	\$564,462	3 years
M: Root cause analysis of general ledger manual adjustments from 2002 to 2004, purchase order analysis, general ledger cleanup, budgetary transaction review, and final report.	Only one source	\$483,080	\$483,080	4 months
N: Enhanced metal detectors.	Existing source	\$233,000	\$233,000	2 years
O: Spectrometer for canine explosives training aid purposes.	Unique source	\$224,518	\$224,518	Delivery 4 months to 5 months after order
P: Software that calculates complex algorithms to identify potential launch areas and threat profiles within airport footprints.	Only one source	\$215,000	\$215,000	1 year
Total		\$782,503,911	\$230,940,961	

Source: OIG summary of agency data.

Appendix D
Compliance with Single Source Requirements

<i>Contract</i>	<i>Written Rational Basis for Single Source</i>	<i>Market Analysis Documented</i>	<i>Concurrences and Approvals Documented</i>	<i>Actions to Remove Barriers to Future Competition Described</i>
A	Yes	No	Yes	Yes
B	Yes	No	No	No
C*	Yes	No	Yes	n.a.
D	Yes	No	No	No
E	Yes	No	Yes	Yes
F**	Yes	No	Yes	n.a.
G	Yes	No	No	Yes
H**	Yes	No	No	n.a.
I	Yes	No	No	Yes
J	Yes	No	No	Yes
K	Yes	No	No	No
L	Yes	Yes	No	Yes
M	Yes	No	No	Yes
N	Yes	No	No	Yes
O	Yes	Yes	Yes	Yes
P	Yes	No	No	Yes
Total (Yes)	16	2	5	10

n.a. Not applicable.

* Small business set aside justification used instead of single source justification.

** Airport lease negotiation memorandum used instead of single source justification.

Source: OIG analysis of agency data.

Appendix E
Concurrence and Approval Levels for TSA Single Source Procurements

<i>Estimated Value of Requirements</i>	<i>Signatures Required Before Contract Award</i>	
	<i>Program Office Concurrence</i>	<i>Acquisition Office Approval</i>
\$1 to \$10,000	none	none
\$10,001 to \$200,000	a. Program Manager b. Office of Chief Counsel	i. Contracting Officer
\$200,001 to \$500,000	a. Program Manager b. Office of Chief Counsel c. Program Office Director	i. Contracting Officer ii. Division Director
\$500,001 to \$999,999	a. Program Manager b. Office of Chief Counsel c. Program Office Director d. Assistant Administrator	i. Contracting Officer ii. Division Director iii. Deputy Assistant Administrator
Over \$1,000,000	a. Program Manager b. Office of Chief Counsel c. Program Office Director d. Assistant Administrator	i. Contracting Officer ii. Division Director iii. Deputy Assistant Administrator iv. TSA Business Advocate

Source: TSA, *Competition & Single Source Acquisition*, TSA Management Directive No. 300.4, January 14, 2004.

Appendix F
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