



**STATEMENT OF
THOMAS W. ESSIG
CHIEF PROCUREMENT OFFICER
DEPARTMENT OF HOMELAND SECURITY**

**BEFORE THE
SUBCOMMITTEE ON EMERGING THREATS, CYBERSECURITY, AND SCIENCE
AND TECHNOLOGY
OF THE COMMITTEE ON HOMELAND SECURITY**

**UNITED STATES HOUSE OF REPRESENTATIVES
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Chairman Langevin, Ranking Member McCaul and Members of the Subcommittee, thank you for this opportunity to appear before you to discuss the Department of Homeland Security's (DHS) acquisition program and in particular, DHS' use of its Other Transaction Authority (OTA). I am the Chief Procurement Officer (CPO) for the Department. With me here today is Dr. Keith Ward from DHS' Science & Technology (S&T) Directorate.

As DHS' CPO, I am the lead executive responsible for the management, administration and oversight of the Department's acquisition programs. In that capacity, I oversee and support eight procurement offices within DHS – Customs and Border Protection (CBP), Federal Emergency Management Agency (FEMA), Immigration and Customs Enforcement (ICE), Transportation Security Administration (TSA), United States Coast Guard (USCG), United States Secret Service (USSS), Federal Law Enforcement Training Center (FLETC), and the Office of Procurement Operations (OPO). My office provides the acquisition policies, procedures, training and workforce initiatives that will that enable our acquisition professionals to support mission accomplishment while also being good stewards of taxpayer dollars.

Before addressing the subject of today's hearing, DHS' Other Transaction Authority, I would like to take this opportunity to summarize my background and convey my top priorities as the CPO. I am a career Federal employee, with more than thirty years of public service in the acquisition career field. I began my Federal career in 1976 when I entered the Navy's Contracting Intern Development Program. My initial assignment was with the Naval Sea Systems Command (NAVSEA), where I served as a contract specialist supporting various Naval weapon systems and shipbuilding programs. I was selected as a member of the Senior Executive Service in 1995 and served as the Director of the Surface Systems Contracts Division of NAVSEA. I have also held Senior Executive Service positions with the Navy Department as the

Executive Director of the Office of Special Projects, Director of the Navy Engineering Logistics Office, and Director for Program Analysis and Business Transformation in the Office of the Assistant Secretary of the Navy for Research, Development, and Acquisition. I joined DHS in May 2006 as the Deputy Chief Procurement Officer and was selected as the Chief Procurement Officer in January 2008. While most of my career has been in the area of contracting, my assignments have also given me responsibility for leadership of other critical acquisition functions. As a result, I am certified at Level III (the highest level) in both the contracting and program management career fields at both the Department of Defense (DoD) and DHS.

Earlier this year, I identified my top priorities for FY 2008. The first three priorities were initially established by my predecessor, Ms. Elaine Duke. While we have made significant progress on all three priorities, more remains to be done and I have, therefore, retained them for FY 2008.

Priority #1: To Make Good Business Deals

We need to make business decisions that enable us to accomplish our mission, while also being good stewards of taxpayer dollars. Within the Office of the CPO (OCPO), we are developing and implementing a policy and oversight framework that will facilitate the Department's ability to achieve this objective. We have, for example, recently issued policy and guidance on topics that include: goals for contract awards to small business and other socio-economic concerns; judicious use of the Alaska Native Corporation 8(a) program, including requirements to ensure the award is in the best interest of the Government; increasing the use of competition; and guidance documents on Source Selection, the use of Other Than Full and Open Competition, and acquisition planning.

Priority #2 – To Build and Sustain the DHS Acquisition Workforce

A key enabler of our ability to make good business deals is a highly skilled and motivated acquisition workforce. In FY 2008, we are focusing on four acquisition workforce initiatives: establishment of an acquisition intern program; identification of certification and training requirements for all acquisition functional areas; a centralized acquisition training fund; and centralized recruitment and hiring of acquisition personnel. I greatly appreciate the funding we received in FY 2008 in support of these initiatives.

Priority #3: To Perform Effective Contract Administration

In addition to making sure that our contract awards represent good business deals, we must perform effective contract administration in order to ensure that we get what we bargained for. In this area, we are leveraging support from the Defense Contract Management Agency to support a number of contract administration areas, including the performance of Earned Value Management (EVM) on DHS contracts. We are also conducting comprehensive reviews and improving communications with our contracting activities to identify and remedy issues that may occur over the life cycle of our contracts. Recently, these reviews led to a change in our Acquisition Manual to address specific Contracting Officer's Technical Representative oversight responsibilities associated with the review of contractor invoices (also referred to as vouchers)

for reasonableness and accuracy, and to ensure that deliverables have been provided in accordance with the terms of our contracts.

These first three priorities are largely focused on the contracting function. Recognizing, however, that successful acquisition programs require more than just good contracting, I have added a fourth priority this year:

Priority #4: To Improve the Quality of Program Management Throughout DHS

In order to deliver the capabilities to meet DHS' mission on schedule and within budget, we are working to strengthen program management, including related functions such as cost analysis, logistics, systems engineering, and test and evaluation. During the past year, we established a core group within OCPO and partnered with the Defense Acquisition University and the Homeland Security Institute to ensure we have the skills and experience necessary to assess the status of DHS' acquisition programs and put policies and procedures in place to improve the management of our acquisition programs. We are also working to ensure that our program management teams are appropriately staffed and trained. Our goal is to make certain we have the policies, processes, and skilled people in place to effectively manage our programs and ensure the successful achievement of our mission objectives.

OTHER TRANSACTION AUTHORITY (OTA)

There are many differences between a FAR-based contract and an Other Transaction or "OT". Contracts are procurement instruments and, as such, are governed by the FAR. Contracts are to be used when the principal purpose of the project is the acquisition of goods and services for the direct benefit of the Federal Government. In contrast, DHS OTs used by the DHS Science & Technology Directorate for prototype projects are used to acquire technologies that provide counter-terrorism tools and resources for our agents and first responders in the field to combat against those threatening our Homeland. Unlike traditional contracts, these OTs attract business entities that do not normally do business with the Federal Government, exploit the cost-reduction potential of accessing innovative or commercially-developed technologies, and tend to increase competition for follow-on efforts. The Contract Disputes Act and GAO protest rules do not apply to OTs for prototype projects; procedures for resolving disputes and filing protests are addressed in the actual OT.

OTs have only been issued by two of DHS' contracting activities: the Transportation Security Administration (TSA) and the Office of Procurement Operations (OPO) in support of DHS' Science & Technology Directorate. Their respective OT Authority comes from different sources

The focus of much of my testimony today is on the Department's OT Authority stemming from the Homeland Security Act of 2002 as well as the subject of the Government Accountability Office's (GAO) 2004 audit. However, I would first like to address the TSA's OT Authority which is derived from the Aviation and Transportation Security Act (P.L. 107-71).

TSA's OT Authority

TSA's primary use of its OT Authority has been for its Explosive Baggage Screening Program (EBSP) and its Closed Circuit TV (CCTV) Program at the Nation's airports. TSA's use of OTs is primarily as a mechanism for providing reimbursement funding and outlining the roles and responsibilities associated with these shared airport projects.

1. Explosive Baggage Screening Program (EBSP)

TSA's EBSP projects involve the modification and/or construction of a checked baggage inspection system in the Airport/Air Carrier baggage handling system through the installation of Explosive Detection Systems (EDS). The scope of each project includes, but is not limited to, design, construction of installation of new or renovation of existing baggage conveyor systems, modification and upgrade of existing mechanical, electrical, telecommunications infrastructure and plumbing equipment, and baggage handling screening matrix able to support EDS machines, and the installation of hardware and software for use with in-line baggage screening applications.

Each airport uses established contracting processes and contractors to design and perform necessary airport site preparation to support the project. The variety of local factors and conditions that affect airport funding and design decisions requires a partnership between TSA and each airport. Teaming with each airport ensures a mutually acceptable baggage screening solution to TSA and each airport and its associated air carriers. By providing funding to each airport via an OT that allows for the reimbursement of the baggage screening project costs, TSA benefits as the burden of the airport design work and the responsibility of the construction management, logistics, and work performance is shared with each airport. The OT outlines the responsibilities of the airport and the TSA as well as provides the funding for each airport project.

TSA uses an integrated and participatory approach to the project planning and design process with each airport to appropriately size the system for EDS equipment, providing the most cost-effective solution and ensuring optimal baggage screening performance standards are met. Using industry standards, TSA validates the cost estimate of the project based on information provided by each airport. Once the design effort is completed, the TSA Technical Representative monitors the airport construction effort.

TSA retains a percentage of the OT funds until the airport has successfully passed the TSA administered integrated baggage screening test. Reimbursement of costs by TSA is made to the airport on a documented cost basis. The use of an OT provides for airport performance of site preparation work, but allows TSA to retain oversight of the project and control over the reimbursement of costs. Additionally, TSA submits an annual spend-plan to Congressional Appropriators detailing planned locations and funding for its in-line systems. To date, for the EBSP, TSA has executed fifty-three (53) OTs valued at approximately \$320M. All of these OTs have been with airport operators which are public entities.

2. Closed Circuit Television (CCTV) Other Transaction Agreements

Expanding the views of an airport's CCTV camera system to include views of the passenger checkpoints and baggage screening areas allows TSA to enhance security situation awareness, deter theft, aid in the resolution of claims, and assist in the resolution of law enforcement issues. Each airport uses established contracting processes to perform installation work (electrical, network connectivity, camera mounting, media storage capability) necessary to support the TSA camera views of passenger screening and baggage screening areas. Given the variety of local factors and conditions that affect airport funding and design decisions, developing a partnership between TSA and each airport ensures a mutually acceptable CCTV screening solution.

TSA benefits from the business relationships each airport establishes with their CCTV vendors as each CCTV system is unique to a particular airport. By providing funds to each airport via an OT that allows for the reimbursement of the costs of the installation of CCTV cameras and media storage capability, TSA benefits by sharing the burden of the installation management, logistics, and work performance. The OTA outlines the responsibilities of the airport and the TSA as well as provides the funding for the project.

Each airport provides TSA a statement of work with a cost estimate for the camera views to be installed. The cost estimate is validated and an OT is executed with the airport for the project and monitored during the project's performance. Installed CCTV products supplement each airport's current CCTV system and are not owned by the TSA. Each airport is responsible for maintenance and repairs to ensure the uninterrupted operation of the CCTV system. To date, TSA has executed thirty-two (32) OTs valued at approximately \$32M for CCTV projects. All of these OTs have been with airport operators which are public entities.

S&T's OT Authority

DHS' OT Authority exercised by OPO in support of S&T is very different from that used by TSA. The OPO Authority is derived from the Homeland Security Act of 2002 and the subject of GAO's 2004 audit. Section 831 of Public Law 10-296, the Homeland Security Act of 2002, granted DHS its authority to enter into transactions (other than contracts, cooperative agreements, and grants) for basic, applied, and advanced research and development (R&D) projects as well as for prototype projects. This authority has since been codified in Title 6 of the United States Code (Subchapter VIII Part D Section 391, as amended. DHS' R&D OT Authority is based on DoD's authority (Section 2371 of Title 10, United States Code and Section 845 of Public Law 103-160). DHS appreciates that the recently passed DHS Appropriations Act (Public Law 110-161) includes a provision extending our OT R&D Authority through September 30, 2008, and we very much appreciate and fully support Ranking Member McCaul's efforts through H.R. 4290 *Homeland Security Technology Advancement Act* to further extend our R&D OT Authority through September 30, 2012.

This DHS R&D OT Authority provides a useful tool that enhances the Department's ability to carry out basic, applied and advanced research and development; advance the development, test and evaluation, and deployment of critical homeland security technologies; and accelerate the prototyping and deployment of technologies to address homeland security vulnerabilities. This

type of R&D OT Authority is especially useful in bringing non-traditional Government contractors to the Federal Research & Development environment, because the resultant OTs permit flexibilities in key areas to include application of cost accounting standards, submission of cost and pricing data, specific Federal Acquisition Regulation (FAR) provisions, and intellectual property rights. They are also useful for dual-use (Government/commercial) technologies in cases where the estimated cost of advancing those technologies is too great for industry to invest on its own or the risk is too immense for companies to commit to traditional contract terms and conditions. In these cases, OT Authority gives the Department access to more companies and commercially available technologies than would otherwise be the case and, in certain situations, is the only way to affordably advance the maturity level of technologies that will help us counter homeland security vulnerabilities.

I previously mentioned that my first priority as CPO is to “*make good business deals.*” R&D OT Authority supports that goal by enhancing our ability to share the costs of maturing certain dual-use technologies with industry, thereby lowering the overall cost to the taxpayer. In a traditional contract, the Government usually pays the full cost of maturing that technology. Our OT Authority also gives us the ability to reach agreements with a consortium of providers, where such arrangements are more advantageous to the Government than traditional contracts (through prime and subcontractor agreements or establishment of joint ventures).

I would like to take this opportunity to elaborate on several examples of DHS’ use of its OT Authority in support of the Under Secretary for Science & Technology:

1. Lightweight Autonomous Chemical Identification System (LACIS) Project

Under the LACIS Project, hand-held chemical agent detectors for first responders, e.g., fire departments, military HAZMAT teams, and industrial HAZMAT teams, are being developed by Sensor Research and Development, Corp., Smiths Detection – Edgewood, Inc., and Purdue University in collaboration with ICx Griffin Analytical Technologies. The current detectors, normally spectrometers, for chemical warfare agents and toxic industrial chemicals, tend to have a limited range, are expensive and are subject to false alarm from interferents. The LACIS Project has been on time and is overcoming limitations of the current technology at a relatively affordable cost. The use of an OT for this requirement has promoted flexibility in forming teaming arrangements involving both traditional and non-traditional participants.

2. Autonomous Rapid Facility Chemical Agent Monitor (ARFCAM)

Under the ARFCAM Project, autonomous chemical detectors for monitoring facilities, e.g., airports and train stations as well as other high-asset venues, are being developed by Hamilton Sundstrand Space Systems, Inc., Smiths Detection - Watford Inc., and Bruker Daltonics. The current commercial detectors, normally spectrometers, for chemical warfare agents and toxic industrial chemicals, tend to have a limited range, are expensive and are subject to false alarm from interferents. The ARFCAM Project has been on time and is overcoming limitations of the current technology at a relatively affordable cost. The use of an OT for this requirement has promoted flexibility in forming teaming arrangements involving both traditional and non-traditional participants.

3. BioWatch Generation 3 (BioAgent Autonomous Network Detector (BAND)) Program

The purpose of the BAND Program is to develop a detect-to-treat biological detection sensor system that provides more rapid indications of the presence of biological agents compared to current state-of-the-art technology. This program is developing the next generation of BioWatch detectors and is critical to the BioWatch program. Currently, the BioWatch system consists of distributed collectors that sample on filters that are collected and centrally processed at local laboratories. This process has not provided information in as timely a response as the Department would have liked.

With the use of our OT Authority, DHS has been able to prototype and test 3 BAND systems from three firms, IQuum, Inc., Microfluidic Systems, Inc., and U.S. Genomics, Inc. While each system is different, the systems have performed up to the rigorous objectives set by DHS. DHS objectives include having: a very high sensitivity in a cluttered background; an extended coverage area, i.e., with a networked system as opposed to a manual collection system; a very low false alarm rate, range of 1 per 10 to 100 years; and a low cost of ownership. Due to the projected reduced costs of these systems, a larger portion of the Nation's population will be protected without incurring additional costs and with equivalent or better performance.

Both the LACIS and BAND Programs resulted from Broad Agency Announcements (BAAs) designed to obtain proposals from teams that cut across organizational boundaries to achieve optimal mixes of talent and innovation. The BAAs specified that DHS would use its OT Authority to attract traditional and non-traditional firms individually and as teams.

4. Countermeasures for the Man-Portable Air Defense System (Counter MANPADS) Program

Under the DHS Counter-MANPADS Program, we have adapted military Directed InfraRed Counter Measure (DIRCM) technology to protect commercial transports from shoulder-launched surface-to-air missiles, called Man-Portable Air Defense Systems (MANPADS). The systems use existing military missile warning systems to detect MANPADS and cue an infrared laser to jam the missile guidance system. At the completion of the program, DHS expects to have two counter-MANPADS systems capable of being deployed on commercial transports.

DHS realized savings in time by the use of OT agreements. After a full and open competition, three six-month OTs were awarded for Phase I, which was less than eight weeks following program initiation. This rapid schedule was several months shorter than what would have been experienced for comparable programs of similar size and complexity using a FAR-based solicitation and contract award. The use of OT Authority for prototype projects will allow DHS to complete a three-phase system development, test, and operational evaluation program in five to six years compared to similar DoD programs that have been programmed since the mid-1990s. The use of OT Authority also allowed us to select teams that included non-traditional mixtures of military and commercial contractors that would not have been possible under FAR-based contracts.

In the second phase of the program, accomplished through a modification to an existing OT, design solutions were completed through prototype development and Federal Aviation Administration (FAA) certification for airworthiness. For this phase, the contractors fabricated, installed, and tested their prototypes on commercial aircraft. In the latest phase, the OT holders delivered and installed several complete countermeasure prototypes on commercial cargo and passenger aircraft and have continued demonstrating system performance. DHS is now evaluating the operational suitability and anticipated costs by collecting data during commercial airline operations for each of the systems. Performance results achieved to date would not have been possible without the OTs because the non-traditional contractors (commercial airlines and associated operation and maintenance companies) would not have participated under a FAR-based contract.

The following are Counter-MANPADS Program Highlights and Key Points:

- Program on schedule – to be completed early 2009
- Systems can protect commercial transports
- Live fire test demonstrations Fall 2007 (October - December)
- Four different FAA-certified installations
- Phase III reduced risk and cost of ownership
- DHS results are also improving DoD systems' reliability and performance
- No deployment decision yet made

OTs, however, are not right for every situation, as the rights provided to the Government under an OT differ significantly from those provided under a traditional contract. While OTs are an extremely useful tool, they should only be used in appropriate situations by personnel that are knowledgeable of the advantages and disadvantages of OTs versus contracts and who are able to make informed decisions regarding which method is anticipated to provide better value to the Government.

In that regard, on July 8, 2005, DHS issued Management Directive (MD) 0771.1, "*Other Transaction Authority*," to align OT Authority and accountability and provide policy and guidance on the Department's use of OT Authority for research as well as for prototype projects. In accordance with this MD, I, as the Chief Procurement Officer, am responsible for setting policy, conducting oversight, and approving the use of OT Authority pursuant to the Homeland Security Act of 2002. I have further designated the DHS Director, Strategic Initiatives within OCPO as the authority to make Department-level decisions on R&D OTs. As indicated earlier, the only Heads of Contracting Activity within the Department with approval to use OT Authority are the Head of the Contracting Activity (HCA) for the Office of Procurement Operations (OPO), who reports directly to me, and the HCA for TSA under the authority of the Aviation and Transportation Security Act.

While Other Transactions are not covered by the Competition in Contracting Act, OPO uses competitive procedures to the maximum extent practicable for its R&D OTs including soliciting through FedBizOpps and utilizing Broad Agency Announcements to reach a broad segment of the marketplace. For OTs where competition is determined not to be available or not appropriate (e.g., unsolicited proposals), the OT file is fully documented and, for OTs exceeding \$550,000,

documentation supporting the use of non-competitive procedures must be approved by the OPO Competition Advocate or higher (depending on OT total dollar value). Furthermore, OPO utilizes the audit services of the Defense Contract Audit Agency (DCAA) during its pre and post-award phases for its R&D OTs, as it normally would for traditional contracts.

GAO Review of DHS' Use of Its Research & Development Other Transaction Authority

In December 2004, the Government Accountability Office (GAO) released its report, *HOMELAND SECURITY: Further Action Needed to Promote Successful Use of Special DHS Acquisition Authority* in accordance with The Homeland Security Act of 2002 requirement for GAO to report annually to Congress on DHS' use of its OT Authority. To fulfill this obligation, GAO (1) evaluated whether DHS has developed policies and established a workforce to manage other transactions effectively and (2) evaluated how effectively DHS has used its other transactions authority to attract non-traditional Government contractors. In its report, GAO made the following recommendations:

- (1) Provide guidance on including audit provisions in other transactions agreements;
- (2) Develop a training program in the use of other transactions; and
- (3) Capture knowledge obtained during the acquisition process for use in planning and implementing future other transactions projects.

I am pleased to report that DHS has implemented all three GAO recommendations, as follows:

Recommendation #1: Provide guidance on including audit provision in other transactions agreements.

The Director of the Office of Procurement Operations (OPO), the primary HCA holding the Department's Other Transaction Authority, has established procedures for conducting internal reviews and audits of all procurement documentation to ensure compliance with applicable Federal and Departmental regulatory guidelines. The review and approval process for OTs has been integrated into OPO standard business processes. In accordance with established procedures, all OTs valued at \$550,000 or greater are reviewed by the Office of General Counsel and OPO Division Directors. OTs with an estimated value greater than \$10M are subject to additional review by the OPO Policy, Oversight and Customer Support Division, and OTs with an estimated value of \$25M or greater are reviewed by the OPO Acquisition Review Board, chaired by the OPO HCA and comprised of OPO Division Directors and representatives from S&T General Counsel. As the CPO, I approve all OPO OTs with a value over \$50M. OPO Contracting Officers assigned to support S&T are required to complete OT training. This training includes guidance on the appropriate audit provisions that should be included in OTs and securing audit services where appropriate. Currently, OPO Contracting Officers utilize the services of DCAA whenever possible for pre- and post award support in evaluating proposals and auditing of OTs.

Recommendation #2: *Develop a training program in the use of other transactions.*

Recognizing the specialized nature and inherent complexities required to establish and effectively administer OTs for research and development and prototype requirements, the DHS OPO established specialized, recurring OTA Training for the OPO Contracting Workforce supporting S&T and their customers. During FY 2006, two three-day OTA training sessions were conducted, and an additional two three-day sessions were conducted in FY 2007. OPO plans to continue this training in FY 2008. This comprehensive OTA training provides specific guidance on OTAs for Prototype Projects, Assistance OTs, the acquisition of property, and foreign access to technology. Very importantly, the class also includes the necessary foundation in FAR-based research and development contracting, with a particular emphasis on the contract types suitable for S&T contracts. This foundational knowledge provides the Contracting Officer and members of the program office with the understanding of R&D contracting to ensure that the appropriate method of acquisition is selected.

Recommendation #3: *Capture knowledge obtained during the acquisition process for use in planning and implementing future other transactions projects.*

In July 2005, DHS OPO solicited support services from leading industry experts on the appropriate use and implementation of OTs. This expertise was utilized by DHS to develop policies and procedures for implementing the OT Authority within the Department, and to maximize lessons-learned from the application of OT Authority by defense agencies, military services and other Federal agencies. OPO continues to enlist the services of these industry experts to provide specialized OT training for the DHS acquisition workforce. OPO personnel refer to the OTA lessons-learned and training material when formulating OTs and conducting OTA policy reviews.

In summary, OTs provide an essential tool to assist DHS with accomplishment of its mission. The tool is: especially useful in bringing non-traditional contractors to the Federal Research & Development environment; gives the Department access to more commercially available technologies than would otherwise be the case; promotes the development of dual-use technologies at a reduced overall cost to the taxpayer; and allows the Department to obtain proposals from teams that cut across organizational boundaries to achieve optimal mixes of talent and innovation. The tool, however, is not appropriate for all actions and requires an appropriate level of knowledge and experience to determine whether an OT or traditional contract provides the better value to the Government. As Chief Procurement Officer, I am responsible for setting policy, conducting oversight, and approving the use of OT Authority within DHS. We concur with the recommendations of the GAO and have implemented guidance, training, and knowledge sharing to ensure that our OTs are used appropriately. I have also directed that a statistical sample of TSA and OPO OTs be reviewed during regular Procurement Reviews and will update Departmental guidance, training and lessons-learned as appropriate. Additionally, I have directed a review of Management Directive (MD) 0771.1, “*Other Transaction Authority*,” and am assessing whether both OT Authorities should be covered by a single MD.

Thank you, Mr. Chairman for your interest in and continued support of the DHS Acquisition Program and for the opportunity to testify before the Subcommittee about the Department's Other Transaction Authority. I would be glad to answer any questions you or other Members of the Subcommittee may have for me.