

**DHS Grants and Contracts  
Awarded through Other Than  
Full and Open Competition,  
FYs 2018 and 2019**





## OFFICE OF INSPECTOR GENERAL

Department of Homeland Security

Washington, DC 20528 / [www.oig.dhs.gov](http://www.oig.dhs.gov)

February 1, 2021

MEMORANDUM FOR: Soraya Correa  
Chief Procurement Officer  
Department of Homeland Security

Stacy Marcott  
Acting Chief Financial Officer  
Department of Homeland Security

FROM: Joseph V. Cuffari, Ph.D.  
Inspector General

JOSEPH V  
CUFFARI

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SUBJECT: *DHS Grants and Contracts Awarded through Other  
Than Full and Open Competition, FYs 2018 and 2019*

For your action is our final report, *DHS Grants and Contracts Awarded through Other Than Full and Open Competition, FYs 2018 and 2019*. We incorporated the formal comments provided by your office.

The report contains two recommendations aimed at improving the Department's procedures to ensure future reporting submissions are accurate. Your office concurred with the two recommendations. Based on information provided in your response, we consider the two recommendations open and resolved. Once your office has fully implemented the recommendations, please submit a formal closeout letter to us within 30 days so that we may close the recommendations. The memorandum should be accompanied by evidence of completion of agreed-upon corrective actions. Please send your response or closure request to [OIGAuditsFollowup@oig.dhs.gov](mailto:OIGAuditsFollowup@oig.dhs.gov).

Consistent with our responsibility under the *Inspector General Act of 1978, as amended*, 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 Thomas Kait, Acting Assistant Inspector General for Audits, at (202) 981-6000.

Attachment



# DHS OIG HIGHLIGHTS

## *DHS Grants and Contracts Awarded through Other Than Full and Open Competition, FYs 2018 and 2019*

February 1, 2021

### Why We Did This Audit

The *Department of Homeland Security Appropriations Act, 2019* required DHS to submit a report to the Office of Inspector General listing all grants and contracts awarded by any means other than full and open competition (OTFOC) during fiscal years 2018 and 2019. We reviewed the report to assess DHS' compliance with applicable laws and regulations.

### What We Recommend

This report contains two recommendations aimed at improving DHS' future reporting submissions.

#### **For Further Information:**

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

### What We Found

Based on our review of 45 judgmentally sampled awards (15 non-competitive grants and 30 OTFOC contracts), we found DHS complied with applicable laws and regulations. DHS officials supported award decisions with the required planning, market research, justification, and approval documentation to ensure effective stewardship of taxpayer dollars. We identified no systemic instances of noncompliance.

However, we determined the Department's report was inaccurate because DHS did not sufficiently identify, review, and validate the award information. Rather, DHS officials included competitive contract awards and other contract awards not subject to competition requirements in the report. In addition, the report included competitive grant awards and was missing non-competitive grant awards, because officials did not verify the award information with DHS financial assistance offices prior to finalizing the report. Although we worked with DHS officials to ensure we had an accurate population for our testing purposes, inaccurate data in the report could hinder our ability to assess the Department's compliance with applicable laws and regulations in future reporting submissions.

### DHS Response

DHS concurred with the two recommendations. Appendix B contains the Department's management response in its entirety. All recommendations will remain open pending evidence to support completion of the corrective actions.



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**Abbreviations**

C.F.R.	Code of Federal Regulations
FAO	financial assistance office
FAPO	Financial Assistance Policy and Oversight Division
FAR	Federal Acquisition Regulation
FEMA	Federal Emergency Management Agency
FPDS-NG	Federal Procurement Data System-Next Generation
HSAM	<i>Homeland Security Acquisition Manual</i>
NOFO	notice of funding opportunity
OCPO	Office of the Chief Procurement Officer
OTFOC	other than full and open competition



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### Background

On February 15, 2019, Congress enacted the *Department of Homeland Security Appropriations Act, 2019*. The Act required the Secretary of Homeland Security to submit a report to the DHS Office of Inspector General listing all grants and contracts awarded by any means other than full and open competition (OTFOC)<sup>1</sup> during fiscal years 2018 and 2019. The Act also required OIG to review DHS' report to assess departmental compliance with applicable laws and regulations and to report the results of that review to the Committees on Appropriations of the Senate and House of Representatives.<sup>2</sup>

### Competition in Federal Contracts

The *Competition in Contracting Act of 1984* generally requires full and open competition in Federal contracting. The Federal Acquisition Regulation (FAR) requires contracting officers to provide for full and open competition to ensure all responsible sources are permitted to compete for contract awards.<sup>3</sup> Certain acquisitions are not subject to competition requirements in FAR Part 6 such as simplified acquisitions under FAR Part 13, contract modifications evaluated as part of the original competition, task or delivery orders awarded under FAR Part 16, and orders or blanket purchase agreements awarded under FAR Part 8.

Additionally, FAR § 6.302 recognizes that full and open competition is not always feasible and authorizes agencies to use OTFOC exceptions that permit contracting without full and open competition. Examples of exceptions include when the contractor is the only responsible source and no other supplies or services will satisfy agency requirements, and when disclosure of the agency's need would compromise national security.

The FAR and *Homeland Security Acquisition Manual* (HSAM) require DHS officials to take a number of actions before awarding OTFOC contracts, such as conducting market research, acquisition planning, and preparing justifications. Market research helps determine the most suitable approach to acquire, distribute, and manage supplies and services to support the agency's mission. Acquisition planning helps ensure the Government is meeting its needs in the most effective, economical, and timely manner. Agencies must also support OTFOC contract awards with written justifications<sup>4</sup> that provide sufficient facts and rationale to justify use of the specific exception to competition.

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<sup>1</sup> Hereafter, we will refer to OTFOC as non-competitive grants and OTFOC contracts.

<sup>2</sup> Public Law 116-6, Division A, Title I §§ 102(a), 102(b).

<sup>3</sup> FAR Subpart 2.1 and § 6.101.

<sup>4</sup> According to FAR § 6.303, written justifications are not required in certain circumstances such as sole source 8(a) awards less than or equal to \$22 million.



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FAR § 4.603 requires agencies to report unclassified contract actions exceeding the micro-purchase threshold to the Federal Procurement Data System-Next Generation (FPDS-NG). The Government uses the data in FPDS-NG to measure and assess the impact of Federal procurement on the Nation's economy. The system includes information on funds obligated, total contract value, the extent of competition, and the authority used to award OTFOC contracts.

### **Competition in Federal Financial Assistance<sup>5</sup>**

The *Federal Grant and Cooperative Agreement Act* encourages competition in grant programs to identify and fund the best possible projects to achieve program objectives. Federal grants provide financial assistance to non-Federal entities such as states, local governments, and certain nonprofit organizations to carry out a public purpose authorized by law. Guidance governing grants is contained in Title 2 of the Code of Federal Regulations (C.F.R),<sup>6</sup> the DHS *Financial Management Policy Manual*,<sup>7</sup> and DHS component standard operating procedures. Grant programs are either non-discretionary or discretionary:

- In non-discretionary programs, Congress directs Federal agencies to award grants to specific recipients in accordance with statutory, eligibility, and compliance requirements. Agencies cannot exercise discretion in selecting the recipients due to the mandatory nature of the award requirements.
- In discretionary programs, Federal agencies may award grants on a competitive or a non-competitive basis. Continuation grants renew program funding for additional budget periods on multiyear projects, on a non-competitive basis. Agencies typically restrict continuations to current recipients based on successful performance.

Within DHS, the Office of the Chief Financial Officer's Financial Assistance Policy and Oversight Division (FAPO) provides technical assistance and oversight to DHS' financial assistance offices (FAO) to ensure compliance with grant requirements. DHS FAOs are responsible for the planning, implementation, and/or oversight for financial assistance programs, and ensuring that recipients comply with the Federal financial assistance award terms and conditions and approved program activities. The Federal Emergency Management Agency

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<sup>5</sup> Federal financial assistance includes grants, cooperative agreements, and other forms of assistance. We limited our review to grants and cooperative agreements and, for simplicity, refer to them hereafter as grants.

<sup>6</sup> 2 C.F.R. Part 200, *Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards*.

<sup>7</sup> DHS *Financial Management Policy Manual*, Chapter 6, *Financial Assistance Performance Management*.



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(FEMA), United States Coast Guard, and the DHS Office of the Chief Procurement Officer's (OCPO) Grants and Financial Assistance Division each have a FAO. The Grants and Financial Assistance Division is the FAO for Countering Weapons of Mass Destruction, Cybersecurity and Infrastructure Security Agency, Science and Technology Directorate, U.S. Citizenship and Immigration Services, and U.S. Immigration and Customs Enforcement.

Public announcements, merit reviews, and risk assessments are required for competitive grant awards. Competition occurs in the pre-award phase when Federal agencies publicly announce notices of funding opportunities (NOFO) on Grants.gov,<sup>8</sup> design and execute a merit review process for proposals submitted in response to announcements, assess risk posed by applicants, and select the applicants most likely to successfully deliver results based on the program objectives. Public announcements, merit reviews, and risk assessments are optional for non-competitive grant awards.

The *Federal Funding Accountability and Transparency Act of 2006*, as amended by the *Digital Accountability and Transparency Act of 2014*, requires Federal agencies to report grant award information to USAspending.gov.<sup>9</sup> Classified awards and awards less than \$25,000 are exempt from the reporting requirement. Award information reported to USAspending.gov includes the award recipient, the Assistance Listings<sup>10</sup> under which the agency made the award, the period of performance, and the obligation amount.

### Results of Audit

Pursuant to the *Department of Homeland Security Appropriations Act, 2019*, DHS submitted a report to us listing all non-competitive grants and OTFOC contracts awarded in FYs 2018 and 2019. Based on our review of 45 judgmentally sampled awards (15 non-competitive grants and 30 OTFOC contracts), we found DHS complied with applicable laws and regulations. DHS officials supported award decisions with the required planning, market research, justification, and approval documentation to ensure effective stewardship of taxpayer dollars. We identified no systemic instances of noncompliance.

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<sup>8</sup> Grants.gov is the central repository for finding and applying for Federal grant opportunities.

<sup>9</sup> USAspending.gov is a searchable database for Federal contract and grant awards.

<sup>10</sup> The Assistance Listings, formerly known as the Catalog of Federal Domestic Assistance, describes the legal authority and purpose of Federal programs that provide financial assistance to the American public. Agencies generally may not award a Federal grant without assigning the award to an Assistance Listings program.



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However, we determined the Department's report was inaccurate because DHS did not sufficiently identify, review, and validate the award information. Rather, DHS officials included competitive contract awards and other contract awards not subject to competition requirements in the report. Also, the report included competitive grant awards and was missing non-competitive grant awards, because officials did not verify the award information with DHS FAOs prior to finalizing the report. Although we worked with DHS officials to ensure we had an accurate population for our testing purposes, inaccurate data in the report could hinder our ability to assess the Department's compliance with applicable laws and regulations in future reporting submissions.

### **DHS Complied with Applicable Laws and Regulations for Sampled Non-Competitive Grants and OTFOC Contracts**

Based on our review of 45 judgmentally sampled awards (15 non-competitive grants and 30 OTFOC contracts) in FYs 2018 and 2019, we found DHS complied with applicable laws and regulations. DHS officials supported award decisions with the required planning, market research, justification, and approval documentation to ensure effective stewardship of taxpayer dollars. We found no systemic instances of noncompliance.

### **DHS Supported Award Decisions for Sampled OTFOC Contracts**

The FAR and HSAM require DHS officials to take a number of actions before awarding contracts without full and open competition. These pre-award actions include conducting market research, acquisition planning, and preparing justification and approval forms to ensure acquisitions are properly planned, award decisions are justified, and prices are fair and reasonable.

From a universe of 789 OTFOC contracts that DHS awarded in FYs 2018 and 2019, with a total estimated value about \$4.4 billion, we selected a judgmental sample of 30 contracts with a total estimated value of about \$2.1 billion. We tested the sample by obtaining supporting documentation, such as the contracts, justification and approval forms, market research reports, and evidence of a review process. Based on our review, we determined DHS complied with key requirements in the FAR and HSAM for the 30 sampled OTFOC contract awards. Specifically, DHS contracting personnel:

- conducted proper acquisition planning and market research to establish the most suitable approach to satisfy the Department's needs, obtain competition to the maximum extent practicable, and determine the anticipated price was fair and reasonable prior to contract award;



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- developed written justification and approval forms with sufficient facts and rationale to justify use of the specific exception to competition; and
- obtained appropriate reviews and approvals.

Additionally, for each sampled contract, we tested the quality of key data elements DHS reported in FPDS-NG — award identification number, contract date signed, OTFOC authority, and total contract value. FAR Subpart 4.6 requires agencies to report unclassified Federal award data in FPDS-NG. The data must also be complete and accurate. Based on our review of supporting documents from the contract file, we concluded DHS complied with reporting standards and these data elements were complete and generally accurate.

During our sample review, we noted the following minor instances of noncompliance:

- Four justification and approval forms were not made publicly available on the government-wide website within the required timeframe after contract award.<sup>11</sup> Two forms were not posted until 5 to 6 days after the required timeframe. For the other two forms, DHS officials could not provide documentary evidence of publicly posting the forms after award.
- One contract file did not include required documentation<sup>12</sup> showing the contracting officer reviewed the Federal Awardee Performance and Integrity Information System before contract award to ensure the offeror had no criminal, civil, or administrative proceedings in connection with previous contracts. The contracting officer recalled checking the system, but could not locate the information in the file. We verified there were no past performance issues noted in the system.
- One market research report did not fully address two of the four elements required by HSAM § 3010.001(f). The report identified the methods used and the outcome of the market research, but did not include the names of all participants involved in the market research effort or the specific timeframes when participants conducted the market research.

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<sup>11</sup> FAR § 6.305 generally requires justifications for other than full and open competition to be made publicly available within 14 days after award. In the case of justifications for unusual and compelling urgency needs, the justification shall be posted within 30 days after award.

<sup>12</sup> FAR § 9.104-6 requires the contracting officer to document the contract file, for each contract exceeding the simplified acquisition threshold, indicating how he or she considered information in the Federal Awardee Performance and Integrity Information System, as well as any action taken as a result of the information.



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- Six data elements (5 percent) were not accurately reported in FPDS-NG, including OTFOC authority on three contracts, the signed date on two contracts, and the total contract value for one contract. As of August 30, 2020, DHS officials had corrected the errors.

As highlighted previously, the instances of noncompliance were not systemic. Therefore, we are not making any related recommendations. Overall, the Department supported its decisions to award these sampled contracts without full and open competition, thereby ensuring effective stewardship of taxpayer dollars.

### **DHS Complied with Standards for Sampled Non-Competitive Grants**

Federal and departmental regulations<sup>13</sup> require DHS FAOs to notify the public of grant programs established through legislation. After Congress passes an appropriation providing for financial assistance, DHS officials use NOFOs to inform the public that funding is available for award under a grant program. FAPO review and approval is required for all NOFOs. Other pre-award actions, such as publicly posting the NOFOs on Grants.gov, conducting merit reviews of proposals, and performing risk assessments of applicants, are optional for non-competitive grant awards, unless required by Federal statute.

From a universe of 259 non-competitive grants that DHS awarded in FYs 2018 and 2019, with a total estimated value of about \$303 million, we selected a judgmental sample of 15 grants with a total estimated value of about \$45 million. We tested the sample by obtaining supporting documentation, such as Assistance Listings, NOFOs, sole source justifications, grant awards, and evidence of a review process, as applicable. Based on our review, we determined DHS complied with applicable Federal and departmental regulations for the sampled non-competitive grant awards.

Specifically, DHS FAOs:

- notified the public of grant programs established through legislation in the Federal Assistance Listings<sup>14</sup> by describing the statutory and regulatory basis for the programs, intended outcomes, general applicant eligibility requirements, and projected total amount of funds available;

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<sup>13</sup> 2 C.F.R. § 200.202(a) and DHS *Financial Management Policy Manual*.

<sup>14</sup> The official source for Federal Assistance Listings is <https://beta.sam.gov>. Federal awarding agencies must create, update, and manage Assistance Listings entries based on the authorizing statute for each program.



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- provided the NOFOs to FAPO for review, approval, and coordination with DHS' Office of General Counsel and the Office of Management and Budget. This process ensured the NOFOs included required elements and were consistent with the program's authorizing statute;
- posted NOFOs on Grants.gov, as applicable, with a description of how the award contributed to achievement of program goals and objectives, as well as other relevant information including the Assistance Listings number, total amount of funding, eligibility criteria, submission dates and times, evaluation criteria for selection, required components of an application, and how to submit the application;
- evaluated proposals as required by the applicable NOFO to assess eligibility and select the recipients most likely to be successful in delivering results based on the program objectives; and
- developed written sole source justifications, as applicable, with sufficient facts and rationale regarding the unique capabilities of the proposed recipients and why competition was not practical for the grant awards.

Consistent with 2 C.F.R. § 200.205, we also reviewed the Federal Awardee Performance and Integrity Information System to confirm that the award recipients had a satisfactory record of executing Federal grants and procurement awards, as well as integrity and business ethics. Additionally, for the sampled grants, we tested the quality of key data elements DHS reported to USAspending.gov — award number, recipient, Assistance Listings number, period of performance, and dollars obligated. Based on our review of supporting documentation from the grant file, we concluded DHS complied with the reporting standards and that these data elements were complete and generally accurate.

During our sample review, we noted two minor instances of noncompliance:

- One grant was competitively awarded under a discretionary program. DHS officials confirmed they should not have included the award in the Department's report.<sup>15</sup> The other sampled awards had sufficient support in the files for restricting competition to prior applicants or recipients consistent with each program's authorizing statute.

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<sup>15</sup> Although DHS included the competitive award in error on the Department's report, we evaluated the award, rather than replacing it, to determine the adequacy of support for the competitive selection.



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- One grant had an inaccurate Assistance Listings number reported to USAspending.gov. Although the number was correctly referenced on the NOFO and award documentation, the reporting error associated the award with the wrong grant program on USAspending.gov. DHS officials corrected the error during the audit in May 2020.

As highlighted previously, the instances of noncompliance were not systemic. Therefore, we are not making any related recommendations. Overall, the Department's award decisions for the sampled grants were consistent with the program's authorizing statute, and complied with applicable laws and regulations to ensure effective stewardship of taxpayer dollars.

### **DHS Did Not Accurately Report to OIG All Non-Competitive Grants and OTFOC Contracts Awarded in FYs 2018 and 2019**

The Department's report was inaccurate because DHS OCPO and FAPO did not sufficiently identify, review, and validate the award information. Rather, DHS officials included competitive contract awards and other contract awards not subject to competition requirements in the report. Also, the report included competitive grant awards and was missing non-competitive grants. Although we worked with DHS officials to mitigate this risk, inaccurate information in the report could hinder our ability to assess the Department's compliance with applicable laws and regulations in future reporting submissions.

#### **DHS Report on OTFOC Contracts Was Inaccurate**

According to FAR § 6.001, certain acquisitions are not subject to competition requirements in FAR Part 6. Such acquisitions include simplified acquisitions awarded under FAR Part 13, contract modifications evaluated as part of the original competition, orders awarded under FAR Part 16, and contracts awarded under FAR Part 8. Therefore, the Department should not include these types of contract actions as part of the OTFOC reporting mandate. DHS acquisition guidance requires contracting officials to select the appropriate statutory exceptions when reporting OTFOC awards in FPDS-NG.<sup>16</sup>

Based on FAR Part 6 requirements, we determined that the Department's report on OTFOC contracts awarded in FYs 2018 and 2019 significantly overstated the number of contract actions, total obligation actions, and total value of contracts. We compared DHS contract award data reported to FPDS-NG for FYs 2018 and 2019 to information in the Department's report.

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<sup>16</sup> DHS Acquisition Alert 10-01 (October 1, 2009) requires DHS contracting activities to complete the "Other Than Full and Open Competition" field (formerly called "Reason Not Competed") even though it is not a mandatory field in FPDS-NG.



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Table 1 shows our analysis of information from DHS’ report on OTFOC contracts and data from FPDS-NG.

**Table 1. DHS OIG Analysis of DHS’ Report on OTFOC Contracts and Data from FPDS-NG**

<b>Department’s Report to OIG</b>			
<b>Fiscal Year</b>	<b>Number of OTFOC Contracts</b>	<b>Total Value of Action Obligations</b>	<b>Total Value of Contracts</b>
2018	77,647	\$18,256,511,428	\$75,484,014,613
2019	16,681	\$3,824,111,274	\$5,991,799,323
<b>Total</b>	<b>94,328</b>	<b>\$22,080,622,702</b>	<b>\$81,475,813,936</b>
<b>DHS OIG’s Analysis of FPDS-NG Data</b>			
<b>Fiscal Year</b>	<b>Number of OTFOC Contracts</b>	<b>Total Value of Action Obligations</b>	<b>Total Value of Contracts</b>
2018	406	\$522,287,353	\$2,552,047,751
2019	383	\$314,126,417	\$1,859,122,944
<b>Total</b>	<b>789</b>	<b>\$836,413,770</b>	<b>\$4,411,170,695</b>
<b>Overstatement</b>	<b>93,539</b>	<b>\$21,244,208,932</b>	<b>\$77,064,643,241</b>

Source: DHS OIG analysis of information in DHS’ report and FPDS-NG data

This occurred because, when downloading OTFOC contract award information from FPDS-NG, OCPO officials did not always follow instructions, made errors in consolidating data, and did not have sufficient direction on which contracts to remove. Specifically, although OCPO developed instructions for downloading the OTFOC contract data from FPDS-NG:

- OCPO officials did not follow the instructions in FY 2018 to remove all contract actions with blank OTFOC fields in FPDS-NG. Therefore, DHS included all competitively awarded contracts in FY 2018.
- OCPO officials made errors when downloading the FY 2018 data. Due to a system limitation, FPDS-NG users had to download and consolidate reports for different time periods in FY 2018. OCPO selected the same time period in multiple reports, resulting in about 3,100 duplicate contracts.
- OCPO’s instructions did not include the necessary steps to remove all contract actions not subject to competition requirements, including simplified acquisitions awarded under FAR Part 13, contract modifications



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evaluated as part of the original competition, orders awarded under FAR Part 16, and contracts awarded under FAR Part 8.

Inaccurate information in DHS' report on OTFOC contract awards could hinder our ability to assess the Department's compliance with applicable laws and regulations. We mitigated this risk by working with OCPO officials and conducting data reliability tests to ensure we had an accurate population for our testing purposes. Nonetheless, DHS OCPO should revise its documented procedures to address the errors just discussed so it provides accurate information in future reporting submissions.

### **DHS Report on Non-Competitive Grants Was Inaccurate**

Guidance governing grants is contained in 2 C.F.R. Part 200, the DHS *Financial Management Policy Manual*, and DHS component standard operating procedures. Grant programs are either non-discretionary (mandatory) or discretionary. In non-discretionary programs, agencies award non-competitive grants to specific recipients, often on the basis of statutory formulas. Agencies cannot exercise discretion in selecting grant recipients due to award requirements. In discretionary programs, agencies may award competitive or non-competitive grants.

To generate the Department's report on non-competitive grants awarded in FYs 2018 and 2019, DHS officials stated they took the following steps:

1. FAPO provided FAOs with a list of NOFOs issued in FYs 2018 and 2019. NOFOs inform the public of funding available for grant awards under specific programs.
2. FAOs informed FAPO about any NOFOs associated with non-competitive grant programs.
3. FAPO used the Assistance Listings numbers for the non-competitive grant programs to download the associated award data from USAspending.gov.

Using the Assistance Listings numbers for the non-competitive grant programs, we compared DHS grant award data reported to USAspending.gov for FYs 2018 and 2019 to information in the Department's report. We also interviewed FAPO and FAO officials to assess the accuracy of DHS' report. Based on our analysis and discussions with DHS officials, we determined that the Department's report on non-competitive grants awarded in FYs 2018 and 2019 was



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inaccurate. Table 2 provides our analysis of DHS' report on non-competitive grants and data from USAspending.gov.

**Table 2. DHS OIG Analysis of DHS' Report on Non-Competitive Grants and Data from USAspending.gov<sup>17</sup>**

Department's Report to OIG		
Fiscal Year	Number of Non-Competitive Grants	Total Obligation Amount
2018	95	\$125,432,110
2019	176	\$157,512,845
<b>Total</b>	<b>271</b>	<b>\$282,944,955</b>
DHS OIG's Analysis of USAspending.gov		
Fiscal Year	Number of Non-Competitive Grants	Total Obligation Amount
2018	117	\$151,299,839
2019	142	\$151,567,609
<b>Total</b>	<b>259</b>	<b>\$302,867,448</b>
<b>Misstatement</b>	<b>12</b>	<b>(\$19,922,493)</b>

Source: DHS OIG analysis of DHS' report and USAspending.gov data

As shown, for FYs 2018 and 2019, DHS both understated and overstated the number of non-competitive grants. When added together, these misstatements resulted in DHS overstating the total number of non-competitive grants and understating the associated obligation amount for FYs 2018 and 2019. For example, DHS officials:

- understated the report by not including 31 non-competitive grant awards totaling about \$27 million in FY 2018 for a Countering Weapons of Mass Destruction program;
- overstated the report by including 67 competitive grant awards totaling about \$11 million in FYs 2018 and 2019 related to a Coast Guard program; and
- understated the report by not including 23 non-competitive grant awards totaling about \$4 million in FY 2018 for two FEMA programs.

<sup>17</sup> Table 2 does not include FEMA grants awarded under the authority of the *Robert T. Stafford Disaster Relief and Emergency Assistance Act*. Based on an October 2015 legal opinion, FEMA stated it did not need to include these grants in DHS' report because awards are limited to non-Federal entities and programs to which a Presidential disaster declaration applies.



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The inaccurate reporting occurred because DHS did not sufficiently identify, review, and validate the non-competitive grant award information. Starting in FY 2018, the DHS Office of the Chief Financial Officer transferred responsibility for compiling the report from the Departmental Liaison Office to FAPO. Although the Departmental Liaison Office provided initial guidance to FAPO with examples of report submissions from prior years, FAPO did not have formal, documented procedures and FAPO officials did not always follow the same process for preparing the report. For instance, in FY 2018, FAPO officials could not provide evidence that they contacted FEMA to identify its non-competitive grant programs. FAPO relied on FEMA's response from the prior year, even though DHS' Office of General Counsel advised FAPO to review a few discretionary FEMA programs for inclusion in the report. Additionally, FAPO did not ask the FAOs to verify the non-competitive grant award data pulled from USAspending.gov to ensure the data was accurate before finalizing the report. Officials stated the statutory deadline of October 15 for submitting the report to OIG presents a challenge.

Inaccurate information in DHS' report on non-competitive grant awards could hinder the OIG's ability to assess the Department's compliance with applicable laws and regulations. We mitigated this risk by working with FAPO officials and conducting data reliability tests to ensure we had an accurate population for our testing purposes. Nonetheless, FAPO needs to develop formal, documented procedures to address the areas just discussed so that it provides accurate information in future reporting submissions.

### **Conclusion**

Pursuant to the *Department of Homeland Security Appropriations Act, 2019*, DHS submitted a report to us listing all non-competitive grants and OTFOC contracts awarded in FYs 2018 and 2019. Through our review of 45 judgmentally sampled awards (15 non-competitive grants and 30 OTFOC contracts), we determined DHS complied with applicable laws and regulations. Officials supported award decisions with the required planning, market research, justification, and approval documentation to ensure effective stewardship of taxpayer dollars. However, we determined the Department's report was not accurate. This occurred because DHS did not sufficiently identify, review, and validate the award information, which DHS could address by improving its written procedures.



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### Recommendations

**Recommendation 1:** We recommend the DHS Chief Procurement Officer improve its written procedures to ensure only those contracts awarded through other than full and open competition are included in the required report.

**Recommendation 2:** We recommend the DHS Chief Financial Officer, with advice from the Office of General Counsel, develop written procedures for generating the required report to sufficiently identify, review, and validate non-competitive grant award information.

### Management Response and OIG Analysis

DHS concurred with the two recommendations. Appendix B contains a copy of the Department's management response in its entirety. We also received technical comments and made changes where appropriate. A summary of the Department's responses and our analysis follows.

**DHS Response to Recommendation 1:** Concur. DHS OCPO will update its internal processes to ensure, for future reporting submissions, only those contracts awarded through OTFOC are included in the report required by DHS Appropriations Acts. The estimated completion date is February 26, 2021.

**OIG Analysis:** The Department's corrective action is responsive to the recommendation. The recommendation will remain open and resolved until the Department provides evidence showing that corrective actions are completed. Specifically, DHS OCPO, with advice from the DHS Office of General Counsel as needed, should update its procedures to ensure only those contracts awarded through OTFOC are included in the report required by DHS Appropriations Acts. The procedures should also address those types of contract awards that do not need to be included in the OTFOC report, such as, but not limited to competitive contracts, classified contracts, certain interagency acquisitions awarded by DHS or awarded on behalf of DHS by non-DHS agencies, and contracts not subject to competition requirements. Acquisitions not subject to competition requirements in FAR Part 6 include simplified acquisitions under FAR Part 13, contract modifications evaluated as part of the original competition, task or delivery orders awarded under FAR Part 16, and orders or blanket purchase agreements awarded under FAR Part 8.

**DHS Response to Recommendation 2:** Concur. The DHS Chief Financial Officer, with the advice from the DHS Office of General Counsel, will develop a standard operating procedure to provide a consistent method for generating the



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required report to sufficiently identify, review, and validate non-competitive grant award information. This will include, but will not necessarily be limited to:

- sufficiently identifying, reviewing, and validating all less than full and open grant awards;
- addressing types of grant awards to be included in the report as well as types of grant awards that are not included;
- describing the roles and responsibilities of stakeholders involved in generating the report; and
- including procedures for identifying, reviewing, and validating grant award information.

In addition, the DHS Office of the Chief Financial Officer's Financial Assistance Policy and Oversight Division will seek advice from the DHS Office of General Counsel to identify non-competitive grant awards that should be included in the OTFOC report. The identification of reportable awards will include: 1) review of program statutory authorities; 2) determination of whether to include limited competitions; and 3) consideration of the revised guidance in 2 C.F.R. Part 200.<sup>18</sup> Pursuant to 2 C.F.R. § 200.205, agencies are required to extend the merit review process to all discretionary Federal awards. The estimated completion date is June 30, 2021.

**OIG Analysis:** The Department's corrective action is responsive to the recommendation. The recommendation will remain open and resolved until the Department provides evidence showing that corrective actions are completed.

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<sup>18</sup> The Office of Management and Budget revised sections of the guidance for grants and agreements contained in 2 C.F.R. Part 200. These revisions to the guidance are effective November 12, 2020, except for the amendments to §§ 200.16 and 200.340, which are effective as of August 13, 2020.



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## Appendix A

### 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*.

We conducted this audit pursuant to the requirements in Public Law 116-6, Title I, Division A (*Department of Homeland Security Appropriations Act, 2019*), §§ 102(a) and 102(b). The objective of this audit was to review DHS' report listing all non-competitive grants and OTFOC contracts awarded in FYs 2018 and 2019 to assess departmental compliance with applicable laws and regulations.

To accomplish our audit objective, we:

- researched applicable laws and regulations to obtain an understanding of the statutory authorities permitting the award of grants, and contracts without full and open competition;
- interviewed grant and contract officials from the DHS OCPO, Office of the Chief Financial Officer, component FAOs, Transportation Security Administration, and United States Secret Service to understand the Department's procedures for awarding and reporting non-competitive grants and OTFOC contracts;
- assessed the completeness and accuracy of the Department's report by obtaining and analyzing DHS' grant and contract award data reported to FPDS-NG and USAspending.gov for FYs 2018 and 2019, and comparing our results to the information in the Department's report;
- selected a judgmental sample of 30 OTFOC contracts — based on cost, complexity, component, and award date — with a total estimated value of about \$2.1 billion, from a universe of 789 OTFOC contracts, with a total estimated value of about \$4.4 billion, that DHS awarded in FYs 2018 and 2019;
- selected a judgmental sample of 15 non-competitive grants — based on cost, complexity, component, and award date — with a total estimated value of about \$45 million, from a universe of 259 non-competitive grants, with a total estimated value of about \$303 million, that DHS awarded in FYs 2018 and 2019;



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- reviewed supporting documentation for the sampled contracts, including copies of the contracts, acquisition plans, market research reports, justification and approval forms, and evidence of a review process to assess departmental compliance with laws and regulations;
- reviewed supporting documentation for the sampled non-competitive grants, including Assistance Listings, NOFOs, sole source justifications, grant awards, and evidence of a review process to assess departmental compliance with laws and regulations; and
- tested the reliability of computer-processed data obtained from FPDS-NG and USApending.gov by comparing key data elements to source contract and grant files, and determining the data were sufficiently reliable for the purposes of our audit.

We did not include certain types of non-competitive grants and OTFOC contracts in the scope of this audit, such as classified contracts, interagency acquisitions awarded by non-DHS agencies on behalf of DHS, disaster grants, and grant sub-awards to subrecipients to carry out part of a Federal program.

We conducted this performance audit between February and September 2020 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 that the evidence obtained provides a reasonable basis for our findings and conclusions based upon our audit objectives.



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**Appendix B**  
**DHS Response to the Draft Report**

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



**Homeland  
Security**

December 19, 2020

MEMORANDUM FOR: Joseph V. Cuffari, Ph.D.  
Inspector General

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

JIM H

CRUMPACKER

Digitally signed by  
JIM H CRUMPACKER  
Date: 2020.12.19  
14:08:12 -05'00'

SUBJECT: Management Response to Draft Report: "DHS Grants and  
Contracts Awarded through Other Than Full and Open  
Competition, FYs 2018 and 2019"  
(Project No. 20-012-AUD-DHS)

Thank you for the opportunity to comment on this draft report. The U.S. Department of Homeland Security (DHS or the Department) 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 OIG's finding that DHS complied with applicable laws and regulations and that there were no systemic instances of noncompliance when awarding non-competitive grants and contracts in fiscal years 2018 and 2019. Like previous OIG reports on this subject, this report reinforces that the Department continues to use non-competitive actions appropriately, and is fully committed to full and open competition.

The draft report contained two recommendations with which the Department concurs. Attached find our detailed response to each recommendation. DHS previously submitted technical comments addressing several accuracy and contextual issues under a separate cover for OIG's consideration.

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



**OFFICE OF INSPECTOR GENERAL**  
Department of Homeland Security

**Attachment: Management Response to Recommendations  
Contained in Project No. 20-012-AUD-DHS**

OIG recommended that the DHS Chief Procurement Officer:

**Recommendation 1:** Improve its written procedures to ensure only those contracts awarded through other than full and open competition are included in the required report.

**Response:** Concur. The DHS Office of the Chief Procurement Officer will update internal processes to ensure, for future reporting submissions, only those contracts awarded through other than full and open competition are included in the report required by the DHS Appropriations Act. Estimated Completion Date (ECD): February 26, 2021.

OIG recommended that the DHS Chief Financial Officer (CFO):

**Recommendation 2:** With advice from the Office of General Counsel, develop written procedures for generating the required report to sufficiently identify, review, and validate non-competitive grant award information.

**Response:** Concur. The DHS CFO, with the advice from the DHS Office of General Counsel (OGC), will develop a Standard Operating Procedure to provide a consistent method for generating the required report to sufficiently identify, review, and validate non-competitive grant award information. This will include, but will not necessarily be limited to:

- Sufficiently identifying, reviewing, and validating all less than full and open grant awards;
- Addressing types of grant awards to be included in the report as well as types of grant awards that are not included;
- Describing the roles and responsibilities of stakeholders involved in generating the report; and
- Including procedures for identifying, reviewing, and validating grant award information.

In addition, the DHS Office of the Chief Financial Officer's Financial Assistance Policy & Oversight Division will seek advice from the OGC to identify non-competitive grant awards that should be included in the Other Than Full and Open Competition report. Identification of reportable awards will include: 1) review of program statutory authorities; 2) determination of whether to include limited competitions; and 3) consideration of the 2020 revised Uniform Guidance, pursuant to 2 CFR § 200.205, "Federal awarding agency review of merit of proposals." This revised section requires agencies to extend the merit review process to all discretionary federal awards. ECD: June 30, 2021.



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**Appendix C**  
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