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**DEPARTMENT OF
HOMELAND SECURITY**

**Risk Assessment and
Enhanced Oversight
Needed to Manage Reliance
on Contractors**

Statement of John P. Hutton, Director
Acquisition and Sourcing Management





Highlights of [GAO-08-142T](#), a testimony before the Committee on Homeland Security and Governmental Affairs, United States Senate

Why GAO Did This Study

In fiscal year 2005, the Department of Homeland Security (DHS) obligated \$1.2 billion to procure four types of professional and management support services. While contracting for such services can help DHS meet its needs, using contractors to provide services that closely support inherently governmental functions increases the risk of government decisions being influenced by, rather than independent from, contractor judgments.

This testimony summarizes our September 2007 report to this Committee and others and focuses on (1) the types of professional and management support services DHS has contracted for and the circumstances that drove its contracting decisions, and (2) DHS's consideration and management of risk when contracting for such services.

GAO analyzed 117 statements of work and 9 case studies in detail for selected contracts awarded in fiscal year 2005 by the Coast Guard, the Office of Procurement Operations, and the Transportation Security Administration.

What GAO Recommends

Our September 2007 report recommended that DHS take actions to improve its ability to manage risk and ensure government control over and accountability for decisions resulting from services that closely support inherently governmental functions. DHS generally agreed with these recommendations.

To view the full product, including the scope and methodology, click on [GAO-08-142T](#). For more information, contact John Hutton at (202) 512-4841 or huttonj@gao.gov.

DEPARTMENT OF HOMELAND SECURITY

Risk Assessment and Enhanced Oversight Needed to Manage Reliance on Contractors

What GAO Found

A broad range of program-related and administrative activities was performed under the four types of professional and management support services contracts we reviewed—program management and support, engineering and technical, other professional, and other management support. DHS decisions to contract for these types of services were largely driven by the need for staff and expertise to get programs and operations up and running. While DHS has identified core mission critical occupations and plans to reduce skill gaps in core and key competencies, it is unclear whether this will inform the department's use of contractors for services that closely support the performance of inherently governmental functions.

Program officials generally acknowledged that their professional and management support services contracts closely supported the performance of inherently governmental functions, but they did not assess the risk that government decisions may be influenced by, rather than independent from, contractor judgments—as required by federal procurement guidance. In addition, none of the program officials and contracting officers we spoke with was aware of these requirements, and few believed that their professional and management support service contracts required enhanced oversight. Federal guidance also states that agency officials must retain control over and remain accountable for policy and program decisions. For the nine cases we reviewed, the level of oversight DHS provided did not always help ensure accountability for decisions or the ability to judge whether contractors were performing as required. DHS's Chief Procurement Officer is implementing an acquisition oversight program—designed to allow flexibility to address specific procurement issues—with potential to address this issue.

Range of Contracted Services and Related Risk Level

Basic services	Professional and management support services that do not closely support inherently governmental functions	Professional and management support services that closely support inherently governmental functions
<ul style="list-style-type: none"> • Custodial • Food • Landscaping • Snow removal • Storage • Trash collection 	<ul style="list-style-type: none"> • Advertising • Banking • Parking • Records maintenance 	<ul style="list-style-type: none"> • Acquisition support • Budget preparation • Developing or interpreting regulations • Engineering and technical services • Intelligence services • Policy development • Reorganization and planning
Low	← Risk level →	High

Source: GAO analysis.

Mr. Chairman and Members of the Committee:

Thank you for inviting me here today to discuss the Department of Homeland Security's (DHS) continued and increasing use of contractors for professional and management support services. When DHS was established over 4 years ago, it faced an enormous challenge to quickly set up numerous offices and programs that would provide wide-ranging and complex services critical to ensuring the nation's security. To help address this challenge, the department relied on contractors to perform many mission-related services. For example, in fiscal year 2005 DHS obligated \$1.2 billion on four types of professional and management support services that may closely support the performance of inherently governmental functions: program management and support, engineering and technical, other professional, and other management support. The use of these types of services can increase the risk of contractors unduly influencing the government's control over programs and accountability for actions, making them vulnerable to fraud, waste, and abuse. For this reason, long-standing federal policy requires attention to this risk.

At your request, we reviewed DHS's use of contracts for four selected services that closely support inherently governmental functions to identify the types of activities DHS requested through these contracts and the associated risks. Our findings are discussed in detail in a report that we are releasing today.¹ My statement will focus on (1) the types of professional and management support services for which DHS has contracted and the circumstances that drove its contracting decisions, and (2) DHS's consideration and management of risk when contracting for such services. Our findings are based on a review of 117 judgmentally selected statements of work for professional and management support services for the Coast Guard, the Office of Procurement Operations (OPO), and the Transportation Security Administration (TSA) from fiscal year 2005.² We selected nine of the 117 statements as case studies and examined them in detail. These nine were spread among the three

¹GAO, *Department of Homeland Security: Improved Assessment and Oversight Needed to Manage Risk of Contracting for Selected Services*, GAO-07-990 (Washington, D.C.: Sept. 17, 2007).

²Fiscal year 2005 was the most recent year for which complete data were available at the time we began our review.

components and represented a variety of services and dollar values among the three components. We conducted our work in accordance with generally accepted government auditing standards.

Summary

More than half of the 117 statements of work we reviewed included reorganization and planning activities, policy development, and acquisition support—services that closely support the performance of inherently governmental functions according to federal acquisition guidance. For the nine case studies we conducted, decisions to contract for these services were largely driven by the need for staff and expertise to get DHS programs and operations up and running quickly. However, DHS program officials did not assess the risk that contractor judgments could influence government decisions and did not provide enhanced oversight, despite federal procurement guidance requiring such attention. Most contracting and program officials we spoke to were not only unaware of federal requirements for enhanced oversight, but did not see a need for it based on the services provided. While DHS’s human capital strategic plan notes the department has identified core mission critical occupations and plans to reduce skill gaps in core and key competencies, it is unclear whether it will inform the department’s use of contractors for services that closely support the performance of inherently governmental functions.

Background

Inherently governmental functions require discretion in applying government authority or value judgments in making decisions for the government; as such, they should be performed by government employees—not private contractors.³ The Federal Acquisition Regulation (FAR) provides 20 examples of functions considered to be, or to be treated as inherently governmental (see Appendix I), including

- determining agency policy and priorities for budget requests,
- directing and controlling intelligence operations,
- approving contractual requirements, and
- selecting individuals for government employment.

³Federal acquisition policy states that contracts shall not be used for the performance of inherently governmental functions.

The closer contractor services come to supporting inherently governmental functions, the greater the risk of their influencing the government’s control over and accountability for decisions that may be based, in part, on contractor work. Table 1 provides examples of the range of services contractors provide to the federal government—from basic activities, such as custodial and landscaping, to more complex professional and management support services—and their relative risk of influencing government decision making.

Table 1: Range of Contracted Services and Related Risk Level

Basic services	Professional and management support services ^a that do not closely support inherently governmental functions	Professional and management support services ^a that closely support inherently governmental functions
<ul style="list-style-type: none"> • Custodial • Food • Landscaping • Snow removal • Storage • Trash collection 	<ul style="list-style-type: none"> • Advertising • Banking • Parking • Records maintenance 	<ul style="list-style-type: none"> • Acquisition support • Budget preparation • Developing or interpreting regulations • Engineering and technical services • Intelligence services • Policy development • Reorganization and planning
Low	← Risk level →	High

Source: GAO analysis of selected FPDS-NG and FAR subpart 7.5 categories of services, and OFPP Policy Letter 93-1.

^aProfessional and management support services consists of 42 codes in the Federal Procurement Data System – Next Generation (FPDS-NG).

The potential for the loss of government management control and accountability for decisions is a long-standing governmentwide concern. For example, in 1981, we found that the level of contractor involvement in management functions at the Departments of Energy and Defense was so extensive that the agencies’ ability to develop options other than those proposed by the contractors was limited.⁴ More recently, in 2006, government, industry, and academic participants in GAO’s forum on federal acquisition challenges and opportunities⁵ and the congressionally

⁴GAO, *Civil Servants and Contract Employees: Who Should Do What for the Federal Government?*, FPCD-81-43 (Washington, D.C.: June 19, 1981).

⁵GAO, *Highlights of a GAO Forum: Federal Acquisitions Challenges and Opportunities in the 21st Century*, GAO-07-45SP (Washington, D.C.: Oct. 6, 2006).

mandated Acquisition Advisory Panel⁶ noted how an increasing reliance on contractors to perform services for core government activities challenges the capacity of federal officials to supervise and evaluate the performance of these activities.

FAR and Office of Federal Procurement Policy (OFPP) guidance state that services that tend to affect government decision-making, support or influence policy development, or affect program management are susceptible to abuse and require a greater level of scrutiny and an enhanced degree of management oversight. This would include assigning a sufficient number of qualified government employees to provide oversight and to ensure that agency officials retain control over and remain accountable for policy decisions that may be based in part on a contractor's performance and work products.⁷

DHS Contracting Decisions For A Broad Range Of Activities Were Largely Driven By A Lack Of Staff And Expertise And Immediacy Of Need

A broad range of program-related and administrative activities was performed under the professional and management support services contracts we reviewed. DHS decisions to contract for these services were largely driven by the need for staff and expertise to get programs and operations up and running. While DHS has identified core mission-critical occupations and plans to reduce skill gaps in core and key competencies, it has not directly addressed the department's use of contractors for services that closely support the performance of inherently governmental functions.

⁶*Report of the Acquisition Advisory Panel to the Office of Federal Procurement Policy and the United States Congress*, January 2007; see Services Acquisition Reform Act of 2003, Pub. L. No. 108-136, Title XIV, §1423.

⁷FAR section 37.114, Special Acquisition Requirements; OFPP Policy Letter 93-1: *Management Oversight of Service Contracting*, Office of Federal Procurement Policy, May 18, 1994.

DHS Contracts for
Selected Services Covered
a Broad Range of Activities
Closely Supporting
Inherently Governmental
Functions

A broad range of activities related to specific programs and administrative operations was performed under the professional and management support services contracts we reviewed. The categories of policy development, reorganization and planning, and acquisition support were among the most often requested in the 117 statements of work, as well as in the nine case studies.

- For example, TSA obligated \$1.2 million to acquire contractor support for its Acquisition and Program Management Support Division, which included assisting with the development of acquisition plans and hands-on assistance to program offices to prepare acquisition documents.
- A \$7.9 million OPO human capital services order provided a full range of personnel and staffing services to support DHS's headquarters offices, including writing position descriptions, signing official offer letters, and meeting new employees at DHS headquarters for their first day of work.

Contractor involvement in the nine case studies ranged from providing two to three supplemental personnel to staffing an entire office. Figure 1 shows the type and range of services provided in the nine cases and the location of contractor performance.

Figure 1: Professional and Management Support Services Closely Supporting Inherently Governmental Functions in Nine Cases Reviewed

DHS program or office supported, by component	Total ^a (dollars in millions)	Service provided										Service type	Location
		Budget preparation	Policy development	Acquisition support	Developing or interpreting regulations	Reorganization and planning	Contractor representing components	Contractor responding to Freedom of Information Act request	Program support	Administrative operations	Performed on-site at DHS	Performed at contractor facility	
Coast Guard													
Integrated Deepwater System, Modeling and Simulation Services	\$ 2.1					●				●			●
Competitive Sourcing Program	1.7	●	●	●		●				●		●	
Office of Standards, Evaluation, and Development	1.3		●		●					●		●	
Office of Procurement Operations													
Information Analysis and Infrastructure Protection Directorate	42.4	●	●	●	●	●	●	●	●	●	●	●	
U.S. Visitor and Immigration Status Indicator Technology	11.8			●		●				●			●
DHS Headquarters Human Capital Services	7.9					●	●			●	●	●	
Transportation Security Administration													
Transportation Worker Identification Credential Program	7.9	●	●	●	●	●	●			●		●	
Employee Relations Support Services	5.4		●				●			●	●		
Secure Flight	1.6	●		●	●	●	●			●	●	●	

Source: GAO analysis.

Note: Categories are based on services that approach being inherently governmental in FAR subpart 7.5 and, therefore, may not include all the services provided by contractors in each of the nine cases.

^aObligations based on information provided by DHS at the time of our review.

^bSituations in which contractors might be assumed to be agency employees or representatives. FAR section 7.503(d)(13).

DHS Contracting Decisions Were Largely Driven by a Lack of Staff and Expertise and Immediacy of Need

Many of the program officials we spoke with said that contracting for services was necessary because they were under pressure to get program and administrative offices up and running quickly, and they did not have enough time to hire staff with the right expertise through the federal hiring process. For example:

- According to officials at TSA, federal staff limitations was a reason for procuring employee relations support services. Specifically, the agency needed to immediately establish an employee relations office capable of serving 60,000 newly hired airport screeners—an undertaking TSA Office of Human Resources officials said would have taken several years to accomplish if they hired qualified federal employees.
- DHS human capital officials said there were only two staff to manage human resources for approximately 800 employees, and it would have taken 3 to 5 years to hire and train federal employees to provide the necessary services.

In prior work, GAO has noted that agencies facing workforce challenges, such as a lack of critical expertise, have used strategic human capital planning to develop long-term strategies for acquiring, developing, motivating, and retaining staff to achieve programmatic goals.⁸ While DHS's human capital strategic plan notes that the department has identified core mission-critical occupations and seeks to reduce skill gaps in core and key competencies, DHS has not determined the right mix of government performed and contractor performed services or assessed total workforce deployment across the Department to guide decisions on contracting for selected services. We have noted the importance of focusing greater attention on which types of functions and activities should be contracted out and which ones should not, while considering other reasons for using contractors, such as a limited number of federal employees.⁹ DHS's human capital plan is unclear as to how this could be achieved and whether it will inform the Department's use of contractors for services that closely support the performance of inherently governmental functions.

⁸GAO, *Federal Acquisitions and Contracting: Systemic Challenges Need Attention*, GAO-07-1098T (Washington, D.C.: July 17, 2007).

⁹GAO-07-1098T.

DHS Did Not Consider Risk Or Provide Enhanced Oversight When Contracting For Selected Services

While program officials generally acknowledged that their professional and management support services contracts closely supported the performance of inherently governmental functions, they did not assess the risk that government decisions may be influenced by, rather than independent from, contractor judgments—as required by federal procurement policy. In addition, none of the program officials and contracting officers we spoke with was aware of these requirements, and few believed that their professional and management support service contracts required enhanced oversight. Federal guidance also states that agency officials must retain control over and remain accountable for policy and program decisions. For the nine cases we reviewed, the level of oversight DHS provided did not always help ensure accountability for decisions or the ability to judge whether contractors were performing as required; however, DHS’s Chief Procurement Officer is implementing an acquisition oversight program with potential to address this issue.

Selected Cases May Have Been at Risk of Contractors Influencing Decisions

To help ensure the government does not lose control over and accountability for mission-related decisions, long-standing federal procurement policy requires attention to the risk that government decisions may be influenced by, rather than independent from, contractor judgments when contracting for services that closely support inherently governmental functions. The nine cases we reviewed in detail provided examples of conditions that we have found need to be carefully monitored to help ensure the government does not lose control over and accountability for mission-related decisions.

- *Contractors providing services integral to an agency’s mission and comparable to those provided by government employees:* In seven of the nine cases, contractors provided such services. For example, one contractor directly supported DHS efforts to hire federal employees, including signing offer letters. In another case, a contractor provided acquisition advice and support while working alongside federal employees and performing the same tasks.
- *Contractors providing ongoing support:* In each of the nine case studies, the contractor provided services for more than 1 year. In some of these cases, the original justification for contracting had changed, but the components extended or recompeted services without examining whether it would be more appropriate for federal employees to perform the service. For example, OPO established a temporary

“bridge” arrangement without competition that was later modified 20 times, and extended for almost 18 months, to avoid disruption of critical support including budget, policy, and intelligence services. Subsequently, these services were competed and awarded to the original contractor under six separate contracts.

- *Broadly defined requirements:* In four of the case studies, the statements of work lacked specific details about activities that closely support inherently governmental functions. In addition, several program officials noted that the statements of work did not accurately reflect the program’s needs or the work the contractors actually performed. For example, a Coast Guard statement of work for a \$1.3 million order initially included services for policy development, cost-benefit analyses, and regulatory assessments, though program officials told us the contractors provided only technical regulatory writing and editing support. The statement of work was revised in a later contract to better define requirements.

Officials Did Not Assess Risk or Provide Enhanced Oversight of Contracts for Selected Services as Required

Federal acquisition guidance highlights the risk inherent in services contracting—particularly those for professional and management support services—and federal internal control standards require assessment of risks.¹⁰ OFPP staff we met with also emphasized the importance of assessing the risk associated with contracting for services that closely support the performance of inherently governmental functions. While contracting officers and program officials for the nine case studies generally acknowledged that their professional and management support services contracts closely supported the performance of inherently governmental functions, none assessed whether these contracts could result in the loss of control over and accountability for mission-related decisions. Furthermore, none were aware of federal requirements for enhanced oversight of such contracts. Contracting officers and program officials, as well as DHS acquisition planning guidance, did not cite services that closely support the performance of inherently governmental functions as a contracting risk and most did not believe enhanced oversight of their contracts was warranted.

¹⁰GAO, *Standards for Internal Control in the Federal Government*, GAO/AIMD-00-21.3.1 (Washington, D.C.: November 1999).

Current DHS initiatives may have the potential to address oversight when contracting for services that closely support inherently governmental functions. DHS's Chief Procurement Officer is in the process of implementing an acquisition oversight program that is intended to assess contract administration, business judgment, and compliance with federal acquisition guidance.¹¹ This program was designed to allow flexibility to address specific procurement issues and is based on a series of reviews at the component level that could address selected services.

Control and Accountability Were Limited

Both the FAR and OFPP policy state that when contracting for services—particularly for professional and management support services that closely support the performance of inherently governmental functions—a sufficient number of qualified government employees assigned to plan and oversee contractor activities is needed to maintain control and accountability. While most contracting officers and program officials that we spoke with held the opinion that the services they contracted for did not require enhanced oversight, we found cases in which the components lacked the capacity to oversee contractor performance due to limited expertise and workload demands. For example:

- One Contracting Officer's Technical Representative (COTR) was assigned to oversee 58 tasks, ranging from acquisition support to intelligence analysis to budget formulation and planning, across multiple offices and locations. Program and contracting officials noted the resulting oversight was likely insufficient. To provide better oversight for one of the follow-on contracts, the program official assigned a new COTR to oversee just the intelligence work and established monthly meetings between the COTR and the program office. According to program officials, this change was made to ensure that the contract deliverables and payments were in order, not to address the inherent risk of the services performed.
- Similarly, a DHS Human Capital Services COTR assigned to oversee an extensive range of personnel and staffing services provided by the contractor lacked technical expertise, which the program manager believed affected the quality of oversight provided. To improve

¹¹GAO, *Department of Homeland Security: Progress and Challenges in Implementing the Department's Acquisition Oversight Plan*, [GAO-07-900](#) (Washington, D.C.: June 12, 2007).

oversight for the follow-on contract, the program manager assigned a COTR with more human resources experience along with an employee with human resources expertise to assist the COTR.

DHS components were also limited in their ability to assess contractor performance, which is necessary to ensure control and accountability, in a way that addressed the risk of contracting for professional and management support services that closely support the performance of inherently governmental functions. Assessing contractor performance requires a plan that outlines how services will be delivered and establishes measurable outcomes. However, none of the related oversight plans and contract documents we reviewed contained specific measures for assessing contractors' performance of the selected services.

Conclusion and Recommendations

Until the department provides greater scrutiny and enhanced management oversight of contracts for selected services—as required by federal guidance—it will continue to risk transferring government responsibility to contractors. To improve the department's ability to manage the risk associated with contracting for services that closely support the performance of inherently governmental functions and help ensure government control and accountability, the report we are releasing today recommends that the Secretary of Homeland Security take several actions. These actions include establishing strategic-level guidance for determining the appropriate mix of government and contractor employees, assessing the risk of using contractors for selected services, more clearly defining contract requirements, assessing the ability of the government workforce to provide sufficient oversight when using selected services, and reviewing contracts for selected services as part of the acquisition oversight program.

DHS generally concurred with our recommendations and provided information on what actions would be taken to address them. However, DHS partially concurred with our recommendation to assess the risk of selected services as part of the acquisition planning process and modify existing guidance and training, noting that its acquisition planning guidance already provides for the assessment of risk. Our review found that this guidance does not address the specific risk of services that closely support the performance of inherently governmental functions. DHS also partially concurred with our recommendation to review selected services contracts as part of the acquisition oversight program. DHS stated that rather than reviewing selected services as part of the routine

acquisition oversight program, the Chief Procurement Officer will direct a special investigation on selected issues as needed. We did not intend for the formal oversight plan to be modified, rather we recognize that the program was designed with flexibility to address specific procurement issues as necessary. We leave it to the discretion of the Chief Procurement Officer to determine how to implement the recommendation.

Mr. Chairman, this concludes my prepared statement. I would be happy to respond to any questions you or other members of the committee may have at this time.

Contacts And Acknowledgments

For further information regarding this testimony, please contact me at (202) 512-4841 or (huttonj@gao.gov). Contact points for our Offices of Congressional Relations and Public Affairs may be found on the last page of this product. Staff making key contributions to this statement were Amelia Shachoy, Assistant Director; Katherine Trimble; Jennifer Dougherty; Karen Sloan; Julia Kennon; and Noah Bleicher.

Appendix I: Examples of Inherently Governmental and Approaching Inherently Governmental Functions

Federal Acquisition Regulation (FAR) section 7.503 provides examples of inherently governmental functions and services or actions that are not inherently governmental, but may approach being inherently governmental functions based on the nature of the function, the manner in which the contractor performs the contract, or the manner in which the government administers contractor performance. These examples are listed in tables 1 and 2.

Table 1: Examples of Inherently Governmental Functions

1	Directly conduct criminal investigations.
2	Control prosecutions and perform adjudicatory functions other than arbitration.
3	Command military forces.
4	Conduct foreign relations and determine foreign policy.
5	Determine agency policy, including regulations.
6	Determine federal program priorities for budget requests.
7	Direct and control of federal employees.
8	Direct and control intelligence and counter-intelligence operations.
9	Select individuals for federal government employment.
10	Approve position descriptions and performance standards for federal employees.
11	Determine the disposal of government property.
12	In federal procurement activities with respect to prime contracts: Determine the supplies or services acquired by the government; participate as a voting member on any source selection boards; approve contractual documents, including documents defining requirements, incentive plans, and evaluation criteria; award contracts; administer contracts; terminate contracts; determine whether contract costs are reasonable, allocable, and allowable; and participate as a voting member on performance evaluation boards.
13	Approve agency responses to Freedom of Information Act requests.
14	Conduct administrative hearings to determine eligibility for security clearances, or that affect personal reputation or eligibility to participate in government programs.
15	Approve federal licensing actions and inspections.
16	Determine budget policy, guidance, and strategy.
17	Collect, control, and disburse public funds, unless authorized by statute. Does not include: The collection of public charges to mess halls, national parks, and similar entities; and routine voucher and invoice examination.
18	Control treasury accounts.
19	Administer public trusts.
20	Draft congressional testimony, responses to congressional correspondence, or agency responses to audit reports.

Source: GAO analysis of FAR section 7.503(c).

Table 2: Examples of Services That May Approach Being Inherently Governmental Functions

1	Involve or relate to budget preparation.
2	Involve or relate to reorganization and planning activities.
3	Involve or relate to analyses, feasibility studies, and strategy options to be used in developing policy.
4	Involve or relate to developing regulations.
5	Involve or relate to evaluating another contractor's performance.
6	Support acquisition planning.
7	Assist in contract management.
8	Provide technical evaluation of contract proposals.
9	Assist in developing statements of work.
10	Support the preparation of responses to Freedom of Information Act requests.
11	Work in situations that may permit access to confidential business information.
12	Provide information regarding agency policies or regulations.
13	Participate in situations where contractors may be assumed to be agency employees or representatives.
14	Participate as technical advisors to source selection boards or as members of a source evaluation board.
15	Serve as arbitrators or provide alternative methods of dispute resolution.
16	Construct buildings intended to be secure.
17	Provide inspection services.
18	Provide legal advice and interpret regulations and statutes for government officials.
19	Provide non-law enforcement security activities that do not directly involve criminal investigations.

Source: GAO analysis of FAR section 7.503(d).

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