

May 2012

DEPARTMENT OF HOMELAND SECURITY

Further Action Needed to Improve Management of Special Acquisition Authority



Why GAO Did This Study

When DHS was created in 2002, Congress granted it special acquisition authority to use “other transaction” agreements, which are special vehicles used for research and development or prototype projects. Unlike conventional contracts, other transaction agreements offer flexibilities to reach entities that traditionally have not done business with the government. They have risks, however, because they are exempt from the Federal Acquisition Regulation and other requirements.

The Homeland Security Act of 2002 required GAO to report on the use of other transactions by DHS. In 2004 and 2008, GAO reported on challenges DHS faced. This report covers (1) the DHS Science and Technology Directorate’s use of other transactions, (2) DHS’s progress in addressing challenges, and (3) the information collected on the use of the authority and reported to Congress. GAO examined all 27 available other transaction agreement files, reviewed DHS’s other transaction policies and procedures, and interviewed cognizant officials.

What GAO Recommends

GAO recommends that DHS (1) develop an action plan with specific time frames for fully implementing GAO’s prior recommendation on data collection and congressional reporting, (2) ensure full implementation of its guidance regarding documentation, and (3) establish a policy for reviewing the circumstances that permit the use of other transaction authority throughout the life of the agreement. DHS agreed with these recommendations.

View [GAO-12-557](#). For more information, contact William T. Woods at (202) 512-4841 or woodsw@gao.gov.

May 2012

DEPARTMENT OF HOMELAND SECURITY

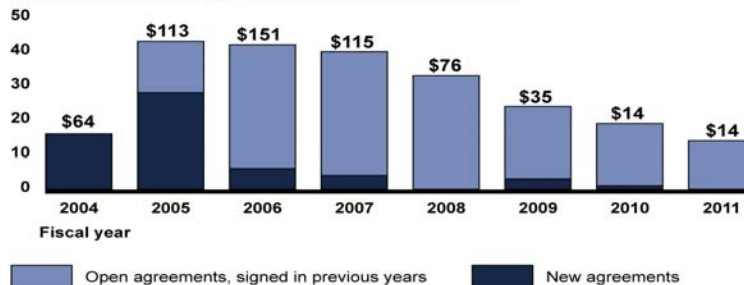
Further Action Needed to Improve Management of Special Acquisition Authority

What GAO Found

In the last 8 years, the Department of Homeland Security’s (DHS) Science and Technology Directorate has used its special acquisition authority to enter into 58 “other transaction” agreements. Use of the authority has declined since 2005. DHS officials said the decline is due to uncertainty about the agency’s continuing authority to enter into these agreements, among other things.

Use of Other Transactions, Fiscal Years 2004-2011

Number of agreements and total dollars obligated (in millions)



Source: GAO analysis of DHS data.

DHS has made progress in addressing challenges and prior GAO recommendations related to its use of other transaction agreements in five areas.

Steps Taken to Address Challenges and Prior GAO Recommendations

	Include audit provisions	Document lessons learned	Identify workforce training	Conduct a workforce assessment	Collect relevant data
Status in 2008	●	○	●	First cited in 2008	First cited in 2008
Status in 2012	●	●	●	○	○

Legend: ● Implemented; ● Steps taken, but not fully implemented; ○ No action.

Source: GAO analysis.

GAO’s analysis of DHS’s files and reports to Congress found gaps in the collection and reporting of information on other transactions. Specifically:

- DHS does not consistently document the rationale for entering into an other transaction agreement in the agreement analysis document, although DHS guidance requires it to do so.
- Recent annual reports to Congress did not contain information on all other transaction agreements.
- DHS does not collect information on the circumstances that permit the use of other transaction authority throughout the life of the agreement.

Without complete information about the universe of other transaction agreements, neither Congress nor DHS can have full visibility into the use of this authority.

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Figure 5: Agreements Included in Annual Reports to Congress,
Fiscal Years 2009-2010

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Abbreviations

DOD	Department of Defense
DHS	Department of Homeland Security
FAR	Federal Acquisition Regulation

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United States Government Accountability Office
Washington, DC 20548

May 8, 2012

Congressional Committees

With the creation of the Department of Homeland Security (DHS) in 2002, Congress granted DHS special acquisition authority, known as “other transaction” authority, to help accomplish its mission of providing state-of-the-art technology to improve homeland security.¹ An other transaction agreement is a special vehicle used for obtaining or advancing research and development or prototypes. This authority provides the DHS Science and Technology Directorate the flexibility to reach nontraditional contractors, that is, those that traditionally have not done business with the government.² However, other transaction agreements carry the risk of reduced accountability and transparency, in part because they are exempt from the Federal Acquisition Regulation (FAR) and the government’s cost accounting standards. Congress recently authorized the use of this authority through September 2012.³ Congress required that we report on DHS’s use of this authority to help determine if its use attracts nontraditional contractors, results in the acquisition of needed technologies, and whether additional safeguards are needed if the authority were to be made permanent.⁴

In 2004, we reported on the Science and Technology Directorate’s use of other transaction authority and made recommendations to improve its

¹ Congress provided other transaction authority to three of DHS’s components: the Transportation Security Administration (TSA), the Domestic Nuclear Detection Office (DNDO), and the Office of Procurement Operations (OPO). This report only addresses OPO’s use of other transaction authority in support of the Science and Technology Directorate. TSA and DNDO have their own other transaction authority and are not covered in this report.

² According to statute, a nontraditional contractor is an entity that is not currently performing and has not performed within a period of at least 1 year prior to the date of soliciting for an other transaction agreement, any contract subject to full coverage under cost accounting standards or any contract in excess of \$500,000 for which the contractor was required to submit certified cost and pricing data. See 6 U.S.C. § 391(d).

³ Consolidated Appropriations Act, 2012, Pub. L. No. 112-74, Div. D, Title V, § 527, 125 Stat. 786, 974 (2011). This section repealed the requirement for future GAO reviews of DHS’s use of other transaction agreements.

⁴ Homeland Security Act of 2002, Pub. L. No. 107-296 § 831(b) (2001).

use.⁵ In 2008, we reported that nontraditional contractor involvement in DHS other transaction agreements provided a variety of technologies and services described by DHS as critical, and that DHS continued to develop policies and procedures for other transaction agreements. We also found that DHS faced challenges in systematically assessing its use of these agreements and maintaining a skilled contracting workforce and made recommendations to address these and other challenges.⁶ For this report, we reviewed (1) the Science and Technology Directorate's use of other transaction authority, (2) the extent to which DHS has addressed challenges we previously identified with its use of the authority, and (3) the information DHS collects and reports on the use of other transaction authority.

To address our objectives, we analyzed other transaction agreement data provided by DHS and interviewed program and acquisition officials regarding any trends in use from fiscal years 2004 through 2011. We drew upon our prior reports on other transactions, annual reports to Congress by DHS, and relevant statutes, directives, and guidance. We also reviewed the files for 27 of the 28 other transaction agreements that were active on or after April 2008 through September 2011 and interviewed DHS representatives as needed. DHS could not locate one agreement file before we drafted this report. Additional information on our scope and methodology can be found in appendix I.

We conducted this performance audit from August 2011 through May 2012 in accordance with 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 on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

⁵ GAO, *Homeland Security: Further Action Needed to Promote Successful Use of Special DHS Acquisition Authority*, [GAO-05-136](#) (Washington, D.C.: Dec. 15, 2004).

⁶ GAO, *Department of Homeland Security: Improvements Could Further Enhance Ability to Acquire Innovative Technologies Using Other Transaction Authority*, [GAO-08-1088](#) (Washington, D.C.: Sept. 23, 2008).

Background

The acquisition function plays a critical role in helping federal agencies fulfill their missions. Other transaction authority provides the ability to acquire cutting-edge science and technology, in part through attracting entities that typically have not pursued government contracts because of the cost and impact of complying with government procurement requirements. This authority, when used selectively, is a tool intended to help the Science and Technology Directorate leverage commercial technology to reduce the cost of homeland security items and systems. Other transaction agreements are distinct from procurement contracts, grants, or cooperative agreements because of the flexibilities that they offer to both awardees and the government. For example, they allow the federal government and awardees flexibility in negotiating intellectual property and data rights, which stipulate each party's rights to technology developed under the agreements. The flexibility of other transaction agreements is an important characteristic to attract nontraditional contractors. We previously reported, however, that because these agreements do not have a standard structure based on regulatory guidelines, they can be challenging to create and administer.⁷

The Homeland Security Act of 2002 originally authorized DHS to carry out a 5-year pilot program to exercise other transaction authority.⁸ Beginning in 2007, other transaction authority has been extended annually through appropriations legislation. The Homeland Security Act of 2002 authorizes DHS to enter into an other transaction agreement that

- supports basic, applied, and advanced research and development;
- advances the development, testing, and evaluation of critical technologies; and
- carries out prototype projects.

Other transaction agreements for prototypes require one of three conditions: (1) there is at least one nontraditional government contractor participating to a significant extent, (2) at least one-third of the total cost of a prototype project is to be paid out of funds provided by parties to the transaction other than the federal government, or (3) the DHS Chief Procurement Officer determines, in writing, that exceptional circumstances justify the use of a transaction that provides for innovative

⁷ [GAO-08-1088](#).

⁸ Pub. L. No. 107-296, § 831(a).

business arrangements or structures that would not be feasible or appropriate under a procurement contract. Other transaction agreements for research do not require the involvement of a nontraditional contractor.

One Science and Technology Directorate program funded other transaction agreements to promote homeland security by advancing the development and testing of rapid biological detectors. This “detect-to-protect” system would monitor a facility and detect the presence of biological agents in time to provide sufficient warning to facility occupants to limit their exposure (see left image in fig. 1). A different Science and Technology Directorate program used an other transaction agreement to develop and test a new high-voltage transformer that helps provide power during the recovery time following blackouts or outages resulting from severe natural disasters or terrorist attacks (see right image in fig. 1).

Figure 1: Prototypes Developed by the Science and Technology Directorate



Source: ICx Technologies.
Rapid biological sensor.

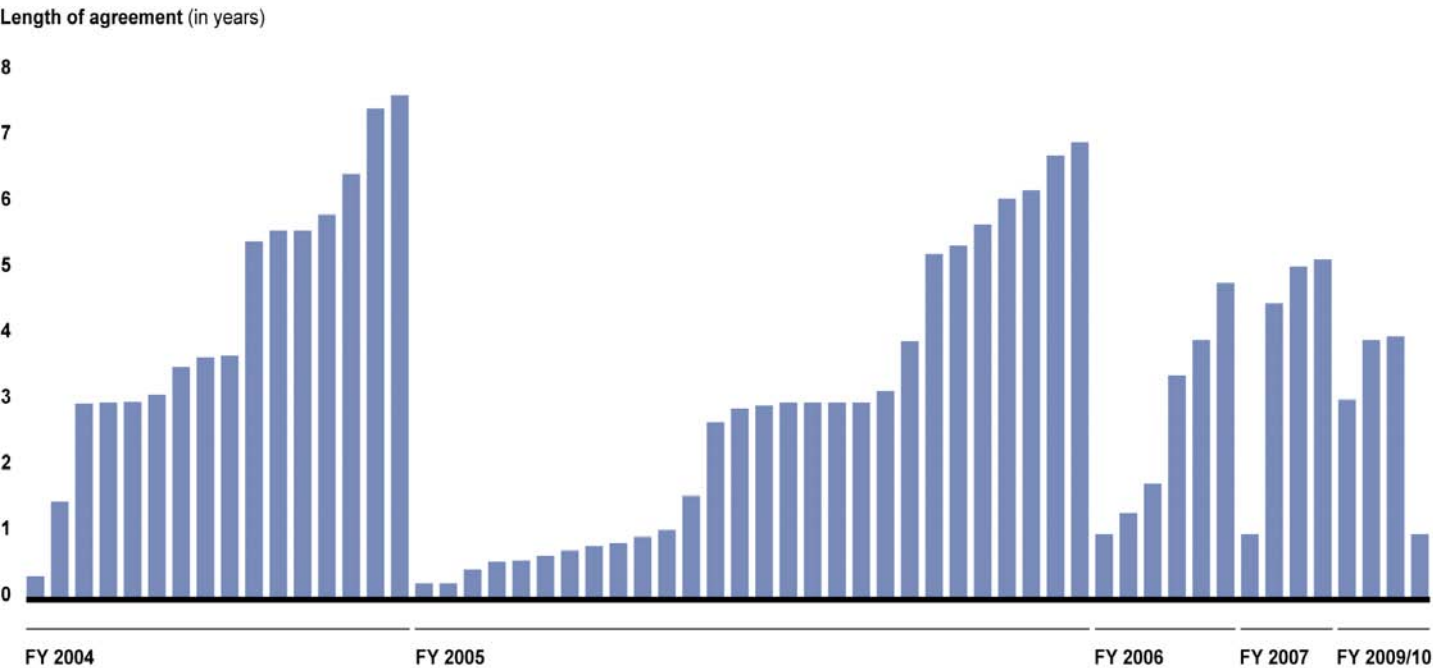


Source: ABB, Inc.
High voltage transformer.

The period of performance for other transaction agreements varies and may last longer than a traditional FAR contract. Other transaction agreements are generally structured in successive phases, so each project may have several phases. At the end of a phase, the awardees submit a statement of work and technical and cost proposals for the next phase. Continuation between phases may be based on an independent technical evaluation and is not guaranteed. Unlike FAR contracts, which are generally limited to a length of 5 years, an other transaction agreement may continue as long as funding is available and work is

required under a phase. As a result, other transaction agreements can vary in length, from 3 months to over 7 years, as shown in figure 2.

Figure 2: Length of All Science and Technology Directorate Other Transaction Agreements by Fiscal Year



Source: GAO analysis of DHS data.

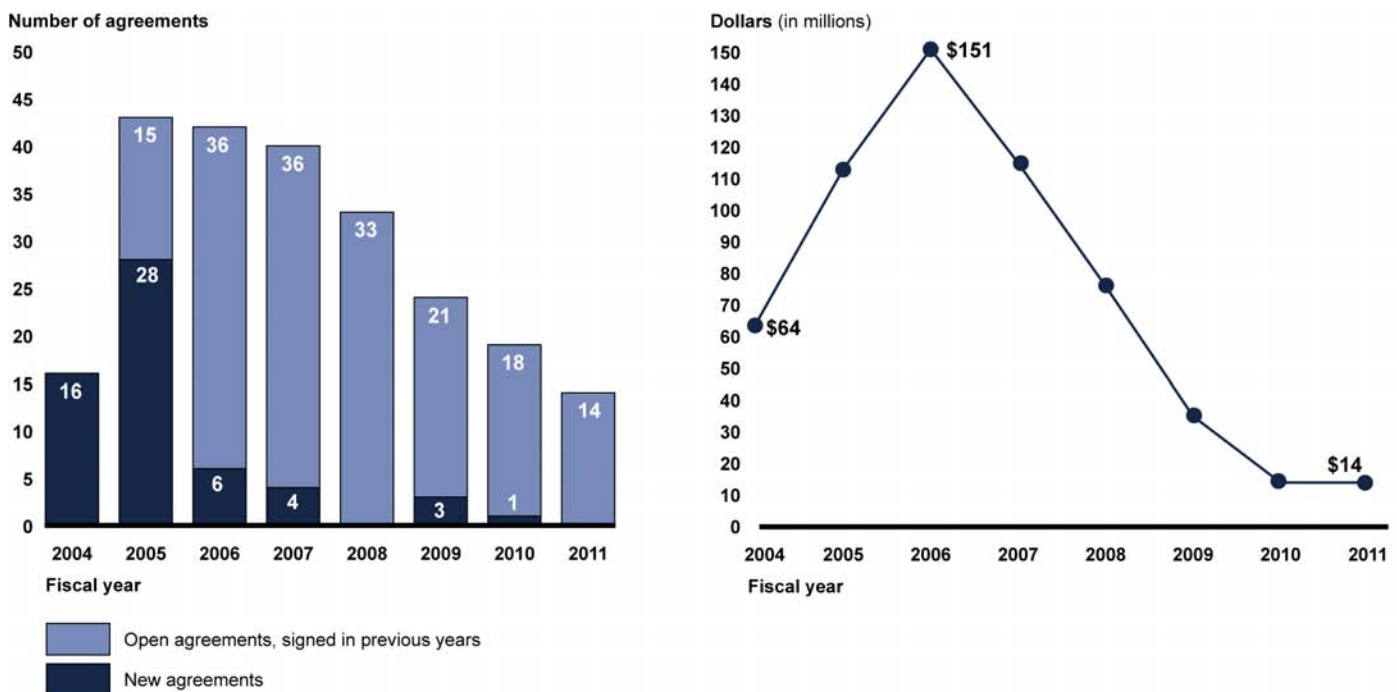
Further, the funding for other transaction agreements may grow over time. For example, in one other transaction agreement, the Science and Technology Directorate obligated \$200,000 in the first phase with an 8-month period of performance. This agreement has been in existence for almost 7 years with at least \$5.3 million obligated on it. Another two agreements were funded for \$2 million at the time of award, but at completion, each other transaction agreement had obligations of approximately \$100 million.

Use of Other Transaction Authority Has Declined

The use of other transaction authority by the Science and Technology Directorate has declined since its peak in fiscal years 2005 and 2006. From fiscal year 2004 through fiscal year 2011, the Science and Technology Directorate entered into 58 other transaction agreements, totaling \$583 million in obligations. Fourteen agreements remained active in fiscal year 2011 and the directorate has not entered into a new other

transaction agreement since fiscal year 2010. The Science and Technology Directorate's use of other transaction authority has declined since 2005 when it entered into 28 new agreements. Total obligations also have declined since peaking at \$151 million in 2006 (see fig. 3).

Figure 3: Science and Technology Directorate's Other Transaction Agreements by Fiscal Year



Source: GAO analysis of DHS data.

DHS officials offered reasons for the decline in use of other transaction authority. DHS acquisition officials told us that recently they have noted a decrease in the number of nontraditional contractors submitting proposals to use other transaction agreements while the use of FAR contracts has increased. Further, one official explained that as DHS's requirements have changed over time, the requirements have targeted different industries. Finally, DHS officials have been uncertain about renewal of other transaction authority. For example, in fiscal year 2011, there was a gap in DHS's other transaction authority because the continuing resolution did not extend the authority until April 2011. DHS officials explained that they were unsure if DHS had the authority to enter into new agreements or modify existing agreements under continuing resolutions. However, while use has declined, DHS officials said the

flexibility provided by other transaction authority to conduct business with nontraditional contractors is still important to the directorate's research needs. For example, one program manager explained that without other transaction authority, DHS would be required to go through a traditional contractor to reach a nontraditional contractor, and this could affect the Science and Technology Directorate's ability to directly obtain the necessary technology.

DHS Has Taken Steps to Address Challenges, but Actions Are Not Fully Implemented

DHS has made some progress in addressing challenges and the related recommendations we previously made regarding its use of other transaction agreements (see fig. 4). DHS has faced challenges overseeing its use of other transaction authority and establishing safeguards in the following five areas:

1. developing guidance for the use of audit provisions,⁹
2. updating policies related to documentation of lessons learned,¹⁰
3. identifying workforce training requirements,¹¹
4. conducting a workforce assessment,¹² and
5. collecting relevant data on other transaction agreements.¹³

⁹ [GAO-05-136](#).

¹⁰ [GAO-05-136](#).

¹¹ [GAO-05-136](#).









¹² [GAO-08-1088](#).




¹³ [GAO-08-1088](#).

Figure 4: Steps DHS Has Taken to Address Prior GAO Recommendations and Related Challenges

Interactive Graphic

Click on a challenge or status to see the prior GAO recommendation or steps taken by DHS. Click on the “⊗” to clear. See appendix II for the non-interactive, printer-friendly version.

Challenge	Status in 2008	Status in 2012	Prior GAO Recommendations or Steps Taken by DHS
Use of audit provisions			
Documentation of lessons learned			
Identifying workforce training			
Conducting a workforce assessment	This issue was first identified in the 2008 GAO review		
Collecting relevant data	This issue was first identified in the 2008 GAO review		

-  DHS has updated its guidance and it is implemented
-  DHS has updated its guidance, but the related actions in the guidance are not being implemented
-  DHS has not taken steps to address this challenge

Source: GAO analysis.

DHS has taken steps to address these challenges, as outlined in figure 4, but has more work ahead. Specifically, in response to our prior recommendation, DHS has updated its guidance on lessons learned. However, we found that DHS is not documenting lessons learned in accordance with its guidance. Therefore, DHS is missing the opportunity to apply knowledge gained from completed other transaction agreements that could be used to plan future awards. Also, DHS has not completed a contracting workforce assessment to determine the number of agreement officers needed to ensure a sufficient workforce to execute other transaction authority. Given the reduced use of other transaction authority, it may not be necessary to conduct a formal workforce assessment at this time. However, should DHS increase its use of this authority we continue to believe a formal workforce assessment is important. DHS has more to do to improve data collection on other transaction agreements, such as collecting more information about the role of the nontraditional contractor, in response to our prior recommendation.

Gaps in the Collection and Reporting of Information on the Use of Other Transactions

Based on our review of all 27 available DHS agreement files, we found three gaps in the collection and reporting of information on its use of other transaction authority: (1) DHS does not consistently document the rationale for entering into an other transaction agreement in an agreement analysis document, despite DHS guidance to do so; (2) discrepancies between DHS's data sources result in an incomplete picture of other transaction agreements activity, including an inaccurate annual report to Congress; and (3) DHS does not track the circumstances that permit the use of other transaction authority, such as the involvement of a nontraditional contractor, through the phases of an other transaction agreement. Involving nontraditional contractors is one of the benefits of having other transaction authority, yet without knowing how many are involved or for how long, DHS is not in a position to measure the benefits of using the special acquisition authority.

While DHS's guidance requires it to document the rationale for using other transaction authority, DHS does not do this consistently. One of the following three conditions must be met to use an other transaction agreement for prototypes: (1) there is at least one nontraditional government contractor participating to a significant extent, (2) at least one-third of the total cost of a prototype project is to be paid out of funds provided by parties to the transaction other than the federal government, or (3) the DHS Chief Procurement Officer determines, in writing, that exceptional circumstances justify the use of a transaction that provides for

innovative business arrangements or structures that would not be feasible or appropriate under a procurement contract. Since 2005, DHS other transaction guidance requires that this rationale be documented in an agreement analysis that should be maintained in the other transaction agreement file.¹⁴ We found that the agreement analysis is not consistently documented in the files. In our review of 11 other transaction for prototype agreement files, we found inconsistent documentation of the agreement analysis—7 other transaction agreement files contained an agreement analysis document for the initial award and 4 did not contain an agreement analysis document.¹⁵ These 4 other transaction agreement files that do not contain any agreement analysis documentation were awarded recently, from 2007 to 2009. DHS other transaction agreement officers said they rely on the agreement analysis to learn the background on agreements they have inherited from previous other transaction agreement officers. Given the high turnover of acquisition staff, the agreement analysis document is an important tool to capture information about the rationale for use of other transaction authority.

Recent annual reports to Congress on other transaction activity have been incomplete. DHS is required to provide an annual report to Congress detailing the projects for which other transaction authority was used, the rationale for its use, the funds spent using the authority, the outcome of each project, and the results of any audits of such projects.¹⁶ We previously reported that DHS's June 30, 2008 report to Congress did not include 14 agreements from the reporting period.¹⁷ Based on our current analysis of DHS's fiscal year 2010 congressional report and other transaction agreement files, we found that DHS did not report three agreements that received funding totaling over \$3.2 million in obligations,

¹⁴ An agreement analysis is required for other transaction agreements for prototypes and is similar to a price negotiation memorandum found in a FAR-based contract file. In addition to documenting the reasonableness of the negotiated price, the agreement analysis must also document the circumstances permitting the use of other transaction authority, such as the significant contribution of a nontraditional contractor.

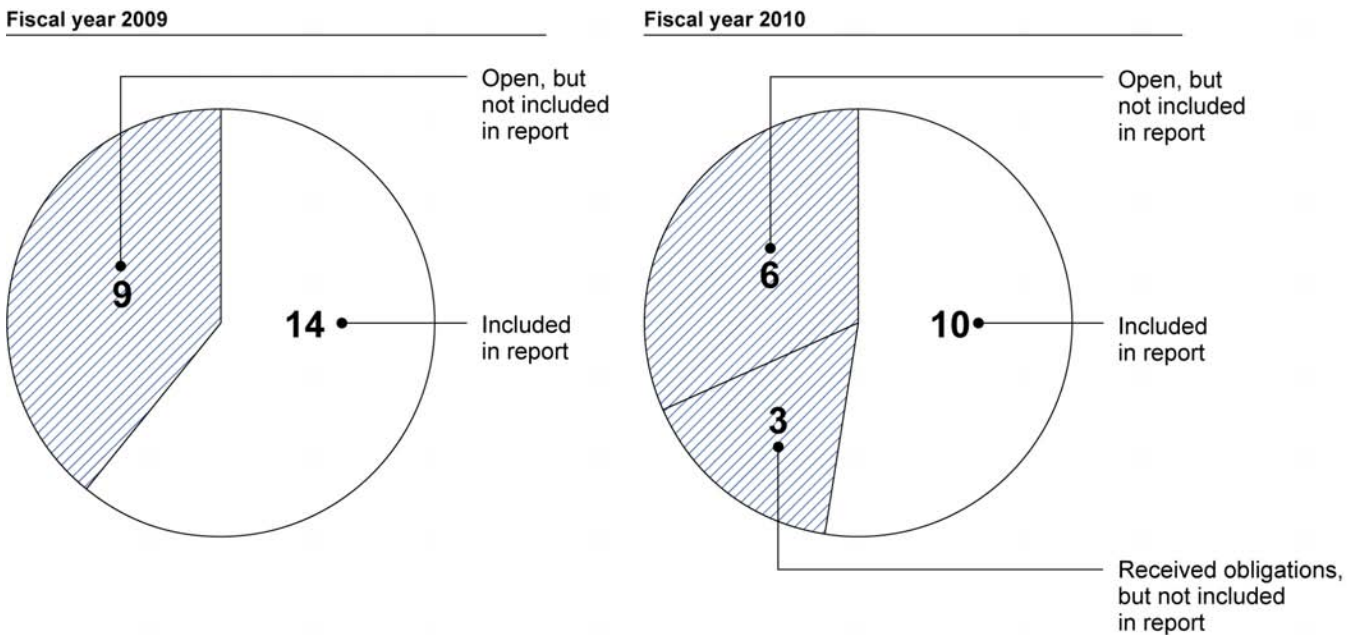
¹⁵ We reviewed a total of 27 other transaction agreement files. We identified 1 additional agreement that was active from April 2008 to September 2011, which DHS could not locate before we drafted this report. Twenty-four of the other transaction agreements were for prototypes. Of these 24, we reviewed all 11 that were awarded by DHS after the 2005 agreement analysis documentation guidance was in place.

¹⁶ 6 U.S.C. § 391(d)(2).

¹⁷ [GAO-08-1088](#).

or 22 percent of other transaction obligations for the year. In addition, DHS does not include information on open agreements that did not involve the exercise of an option or the award of a new phase during the reporting period. While this information is not expressly required by the legislation, without it DHS is not providing a complete picture of the use of its authority. Based on our file review, we found the following other transaction agreements which were not reported in DHS's 2009 and 2010 annual congressional reports (see fig. 5).

Figure 5: Agreements Included in Annual Reports to Congress, Fiscal Years 2009-2010



Source: GAO analysis of DHS data.

For example, one open other transaction agreement, which was not reported in the fiscal year 2009 annual report, included a payment schedule with four dates during fiscal year 2009 totaling about \$10 million. Without accurate information about the universe of other transaction agreements, Congress may be unable to oversee DHS's use of its other transaction authority.

Further, we found that DHS does not track information to measure the benefits of other transaction authority, which include reaching nontraditional contractors. DHS's guidance states that the government

team, which includes acquisition and program officials, should establish and track metrics that measure the value or benefits directly attributable to the use of other transaction authority. But DHS officials told us they have not established metrics.

In addition, DHS does not collect information at each phase of an other transaction agreement to determine if the original circumstances permitting the use of other transaction authority still exist. Specifically, DHS does not track the involvement of a nontraditional contractor throughout the various phases of the other transaction agreement. Based on our file review, we identified 11 other transaction agreements that cited the significant contribution of a subawardee nontraditional contractor as the circumstance permitting the use of other transaction authority. However, we found that six of these agreement files did not include documentation to demonstrate that the subawardee nontraditional contractor was involved during one or more phases of the agreement. For example, one nontraditional contractor was involved as a subawardee for 14 months, but the other transaction agreement lasted 40 months. While circumstances frequently change when conducting research or prototype development, the Science and Technology Directorate does not have visibility into the impact of these changes over time.

In contrast, the Department of Defense (DOD) has determined that tracking information about participants, which includes nontraditional contractors, is important to managing its other transaction authority.¹⁸ In its guidance, DOD requires defense agencies and military departments to report significant changes to key participants involved in the agreement. This information is used to track the number of nontraditional contractors involved in other transaction agreements, which DOD officials use to measure the benefit of its other transaction authority.

Conclusions

Even with the recently reduced use of other transaction authority, the Science and Technology Directorate continues to identify this as an important tool that provides the flexibilities needed to develop critical technologies. However, while other transaction agreements may carry the benefit of reaching nontraditional contractors to develop and test

¹⁸ DOD, Office of the Under Secretary of Defense for Acquisition, Technology and Logistics, *"Other Transactions" (OT) Guide for Prototype Projects* (Dec. 21, 2000).

innovative homeland security technology, they also carry the risk of reduced accountability and transparency because they are exempt from federal procurement regulations. While DHS has responded to our prior recommendations, it still faces challenges addressing our recommendation to develop a mechanism to collect and track relevant data. Without consistent information on the universe of other transaction agreements, DHS continues to report inaccurate or incomplete information on the use of its other transaction authority in its annual report to Congress. This may undermine Congress's ability to obtain a full picture on the use of this special acquisition authority. DHS has taken steps by updating its guidance to require documentation of lessons learned; however, the guidance is not being implemented. In particular, we found that DHS does not document lessons learned from completed other transaction agreements nor has it consistently documented the agreement analysis, as required by guidance. Other transaction agreements may be in place for an extended time period and obligate a significant amount of funds, yet DHS does not have full information on other transaction activity at each phase of the award. Involving nontraditional contractors is one of the circumstances permitting the use of other transaction authority, yet without knowing how many are involved or for how long, DHS is not in a position to determine whether the continued use of the other transaction authority is still the best approach through the life of the agreement. If other transaction authority is made permanent, it is important for DHS to have complete information to understand and track its use of other transaction authority over time.

Recommendations for Executive Action

To promote the efficient and effective use by DHS of its other transaction authority to meet its mission needs, we recommend that the Secretary of Homeland Security direct the Under Secretary for Management to take the following three actions:

- Establish an action plan with specific time frames for fully implementing the prior GAO recommendation to establish a mechanism to collect and track relevant data on other transaction agreements, including the role of the nontraditional contractor, and systematically assess the data and report to Congress.
- Establish an action plan with specific time frames to help ensure full implementation of DHS other transaction guidance, regarding
 - documentation of lessons learned and
 - documentation of the agreement analysis.
- Establish a policy to review and document the circumstances permitting the use of other transaction authority at each new phase,

throughout the life of the agreement, to determine if the continued use of an other transaction agreement is appropriate.

Agency Comments

We provided a draft of this report to DHS for comment. In written comments, DHS agreed with our recommendations and described actions under way or planned to address them. DHS also provided technical comments, which we have incorporated into the report as appropriate. DHS's comments are reprinted in appendix III.

We are sending copies of this report to interested congressional committees and the Secretary of Homeland Security. In addition, the report is available at no charge on the GAO website at <http://www.gao.gov>.

If you or your staff have any questions about this report, please contact me at (202) 512-4841 or woodsw@gao.gov. Contact points for our Offices of Congressional Relations and Public Affairs may be found on the last page of this report. GAO staff who made key contributions to this report are listed in appendix IV.



William T. Woods
Director, Acquisition and Sourcing Management

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Committee on Homeland Security and Governmental Affairs
United States Senate

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The Honorable Peter T. King
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The Honorable Bennie G. Thompson
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Committee on Homeland Security
House of Representatives

Appendix I: Objectives, Scope, and Methodology

The objectives for this report were to review (1) the Department of Homeland Security's (DHS) Science and Technology Directorate's use of other transaction authority, (2) the extent to which DHS has addressed challenges we previously identified with its use of the authority, and (3) the information DHS collects and reports on the use of other transaction authority.

To review the Science and Technology Directorate's use of other transaction authority, we analyzed data provided by DHS's Office of Procurement Operations Science and Technology Acquisitions Division on all other transaction agreements it has entered into since 2004. These data included agreement award date, agreement end date, annual obligations, and information on nontraditional contractors' roles as prime awardees or subawardees. DHS officials compiled these data from DHS's procurement system,¹⁹ annual reports to Congress on other transaction authority, and hard copy agreement files. To understand reasons for its trends in use of other transaction authority, we interviewed Science and Technology Directorate program officials and DHS acquisition officials.

To determine the extent to which DHS has addressed challenges with its use of other transaction authority, we drew upon prior GAO reports on DHS's use of other transaction authority, reviewed DHS other transaction agreement policies and procedures, conducted interviews with DHS officials, and reviewed other transaction agreement files that were active on or after April 1, 2008, through September 2011. To determine the steps taken to encourage the use of audit provisions, we reviewed DHS's May 2008 guidance and its October 2009 updated guidance, *Other Transactions for Research and Prototype Projects Guide*. We identified and reviewed 4 other transaction agreements that were awarded after May 2008 to determine if DHS has included audit provisions as encouraged by the guidance. To determine the steps taken by DHS to document lessons learned, we identified DHS's policy to document lessons learned in the October 2009 guidance, reviewed the files of 10 agreements that ended after October 2009, and interviewed acquisition and program officials to determine if they had participated in lessons learned discussions or documented lessons learned, as described in the guidance. To determine the steps taken by DHS to identify and implement

¹⁹ In order to assess the reliability of DHS's procurement system, we reviewed DHS documentation of the procurement system and interviewed DHS officials familiar with the data. We determined that the data were sufficiently reliable for our purposes.

workforce training requirements, we reviewed DHS's Management Directive 0771.1, Procurement Operating Procedure 311, and the associated June 2011 cancellation; we obtained acquisition official training certifications; and interviewed program staff to determine if they had attended training. We also reviewed training materials to determine if other transaction authority was covered in the contract officer technical representative training attended by program officials. To identify steps taken by DHS to conduct a workforce analysis to determine if it has the appropriate number of agreement officers to execute other transaction authority, we interviewed DHS officials and requested workforce assessments addressing DHS's acquisition workforce. To determine whether DHS collects relevant data on other transaction authority, we analyzed information that DHS collected from its review of the hard copy files, its procurement system, and annual reports to Congress on other transaction authority.

To assess the information DHS collects and reports on its use of other transaction authority, we obtained an initial list of agreements from DHS's Office of Procurement Operations Science and Technology Acquisitions Division; reviewed annual reports to Congress on other transaction authority; and interviewed program, acquisition, and general counsel officials. We also contacted officials at the Department of Defense to understand its policies and procedures to manage its other transaction authority. We identified 28 agreements that were active on or after April 1, 2008, through September 30, 2011. We conducted an in-depth file review for 27 of these 28 agreements; DHS was unable to locate one agreement file prior to the date we drafted this report. To determine the accuracy of DHS's annual report to Congress, we reviewed the requirements for the report and compared the information included in these reports to the requirements and information from the other transaction agreement files. To identify information documenting the circumstances permitting the use of other transaction authority, such as information collected on nontraditional contractors, we looked at several documents in the agreement files. Specifically, we reviewed preaward documentation, such as awardee proposals, determination and findings, and agreement analysis documents, and postaward documentation, such as the signed other transaction agreement, all modifications, and statements of work. We interviewed program, acquisition, and general counsel officials to determine the process for verifying a nontraditional contractor's status and significant contribution. In analyzing DHS's agreements, we did not independently verify a contractor's reported status as a nontraditional contractor.

We conducted this performance audit from August 2011 through May 2012 in accordance with 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 on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

Appendix II: Steps DHS Has Taken to Address Prior GAO Recommendations and Related Challenges

Table 1 presents the information in figure 4 in a noninteractive format.

Table 1: Steps DHS Has Taken to Address Prior GAO Recommendations and Related Challenges

Challenge	Prior GAO recommendation or steps taken by DHS
Use of audit provisions	<p>Prior GAO recommendation</p> <p>In 2004, we recommended that DHS establish guidance on when it is appropriate to include audit provisions in other transaction agreements.</p> <p>Status in 2008: DHS has updated its guidance, but the related actions in the guidance are not being implemented.</p> <p>DHS updated its guidance to encourage the inclusion of audit provisions when an other transaction agreement for prototype uses amounts that are generated from the awardee's financial or cost records as the basis for payment or requires that at least one-third of the total cost be provided by nonfederal parties.</p> <p>Status in 2012: DHS has updated its guidance and it is implemented.</p> <p>DHS has entered into four new agreements since its audit provision guidance was put into place, two of which met the criteria for including audit provisions. Both agreements include audit provisions as specified in the guidance.</p>
Documentation of lessons learned	<p>Prior GAO recommendation</p> <p>In 2004, we recommended that DHS capture knowledge obtained during the acquisition process for use in planning and implementing future other transaction projects.</p> <p>Status in 2008: DHS has not taken steps to address this challenge.</p> <p>DHS had taken steps to share knowledge about benefits derived from completed projects, but did not have a system to document or share this information.</p> <p>Status in 2012: DHS has updated its guidance, but the related actions in the guidance are not being implemented.</p> <p>In October 2009, DHS updated its guidance to require program officials to meet with other transaction agreement officers at the completion of the agreement to develop lessons learned for use in future other transaction projects. The guidance specified that highlights and recommendations from these lessons learned discussions should be documented and maintained in the other transaction file. These discussions may include information about performance by nontraditional contractors, funding allocated to nontraditional contractors, and the ultimate benefit of using other transaction authority to accomplish the particular requirement.</p> <p>Of the 10 agreements completed since October 2009, none of the files contained documentation of lessons learned. A program and an acquisition official cited informal efforts to share lessons learned, but none of the program officials or other transaction agreement officers that we spoke with had participated in a "lessons learned" discussion.</p>

**Appendix II: Steps DHS Has Taken to Address
Prior GAO Recommendations and Related
Challenges**

Identifying workforce training

Prior GAO recommendation

In 2004, we recommended that DHS develop a training program for DHS officials in the use of other transactions to help ensure the appropriate use of this authority.

Status in 2008: DHS has updated its guidance, but the related actions in the guidance are not being implemented.

DHS had developed other transaction authority training courses, including a yearly refresher course for warranted other transaction agreement officers. It also updated its policy to require program officials to attend the recurring DHS other transaction training developed for the contracting workforce.

Status in 2012: DHS has updated its guidance, but the related actions in the guidance are not being implemented.

All four of the other transaction agreement officers we spoke with have attended the mandatory other transaction training. The eight program officials we interviewed had not attended any other transaction-specific training. Prior to June 2011, DHS required program officials to take other transaction-specific training. Some of the program officials stated that they attend contracting officer technical representative training, which they felt may have covered other transaction agreements briefly. However, the curriculum is more broadly focused and does not cover other transaction agreements.

Conducting a workforce assessment

Prior GAO recommendation

In 2008, we recommended that DHS determine the number of contracting officers needed to help ensure a sufficient contracting workforce to execute other transaction authority.

Status in 2008: This issue was first identified in the 2008 GAO review.

This challenge was identified and we made a related recommendation.

Status in 2012: DHS has not taken steps to address this challenge.

DHS has not conducted a workforce analysis to determine the number of agreement officers needed to execute other transaction authority, but DHS acquisition officials believe that its current other transaction workforce of four other transaction agreement officers is sufficient for the current level of workload.

Collecting relevant data

Prior GAO recommendation

In 2008, we recommended that DHS collect relevant data on other transaction agreements, including the roles of and funding to nontraditional contractors and intellectual property rights, and systematically assess and report to Congress on the use of these agreements to ensure that the intended benefits of the authority are achieved.

Status in 2008: This issue was first identified in the 2008 GAO review.

This challenge was identified and we made a related recommendation.

Status in 2012: DHS has not taken steps to address this challenge.

We previously reported in 2008 that DHS had updated its procurement system to collect information about the prime awardees' nontraditional status and their business size. But this update did not provide insight into the nontraditional contractors that are subcontractors or members of a team. More generally, the data available on other transaction agreements are fragmented and inconsistent among DHS's procurement system, the hard copy agreement files, and DHS's annual congressional report.

Source: GAO analysis.

Appendix III: Comments from the Department of Homeland Security

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



**Homeland
Security**

May 3, 2012

William T. Woods
Director, Acquisition and Sourcing Management
U.S. Government Accountability Office
441 G Street, NW
Washington, DC 20548

Re: Draft Report GAO-12-557, "DEPARTMENT OF HOMELAND SECURITY: Further Action Needed to Improve Management of Special Acquisition Authority"

Dear Mr. Woods:

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

The Department is pleased to note GAO's positive recognition that DHS has made progress addressing prior GAO recommendations regarding the use of Other Transaction (OT) agreements. For example, GAO found that DHS has updated its guidance on the use of audit provisions in the agreements and fully implemented it.

The Department concurs with all three recommendations in the draft report. Specifically, GAO recommended that the Secretary of Homeland Security direct the Under Secretary of Management to:

Recommendation 1: Establish an action plan with specific timeframes for fully implementing the prior GAO recommendation to establish a mechanism to collect and track relevant data on OT agreements, including the role of the nontraditional contractor, and systematically assess the data and report to Congress.

Response: Concur. The DHS Chief Procurement Officer agrees that all prior GAO recommendations should be fully implemented. DHS Office of Procurement Operations (OPO) personnel are presently working on a plan to accomplish this and will coordinate the plan with the Science and Technology Directorate (S&T) prior to it being finalized. Estimated Completion Date (ECD): July 1, 2012.

Recommendation 2: Establish an action plan with specific timeframes to help ensure full implementation of DHS OT guidance, regarding:

- documentation of lessons learned, and
- documentation of the agreement analysis

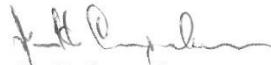
Response: Concur. DHS concurs with the need to ensure that DHS' guidance regarding documentation of (1) lessons learned, and (2) agreement analysis is followed by all individuals involved with the management of OTs. OPO personnel are presently working on a plan to accomplish this and will coordinate the plan with S&T prior to it being finalized. ECD: August 30, 2012.

Recommendation 3: Establish a policy to review and document the circumstances permitting the use of OT authority at each new phase, throughout the life of the agreement, to determine if the continued use of an OT agreement is appropriate.

Response: Concur. DHS Office of the Chief Procurement Officer/Acquisition Policy & Legislation personnel are working to develop internal policy which will include language similar to that contained in the Department of Defense's OT guide and will require the tracking of OT authority throughout the life of the agreement. The policy will also require the reporting of any significant changes to key participants involved in the agreement. ECD: September 30, 2012.

Again, thank you for the opportunity to review and comment on this draft report. Technical comments were provided under separate cover. We look forward to working with you on future Homeland Security issues.

Sincerely,



Jim H. Crumpacker
Director
Departmental GAO-OIG Liaison Office

Appendix IV: GAO Contact and Staff Acknowledgments

GAO Contact

William T. Woods, (202) 512-4841 or woodsw@gao.gov

Staff Acknowledgments

In addition to the contact named above, Penny Berrier, Assistant Director; Kristin Van Wychen; Beth Reed Fritts; Anne McDonough-Hughes; John Krump; Kenneth Patton; Mary Quinlan; Roxanna Sun; Robert Swierczek; Keo Vongvanith; and Rebecca Wilson made key contributions to this report.

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