

**CBP Does Not Have a
Comprehensive Strategy for
Meeting Its LS-NII Needs**





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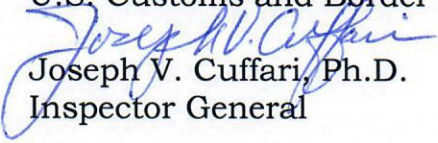
Department of Homeland Security

Washington, DC 20528 / www.oig.dhs.gov

September 28, 2020

MEMORANDUM FOR: Randolph D. Alles
Senior Official Performing the Duties of the
Under Secretary for Management
Department of Homeland Security

Mark A. Morgan
Acting Commissioner
U.S. Customs and Border Protection

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

SUBJECT: *CBP Does Not Have a Comprehensive Strategy for
Meeting Its LS-NII Needs*

For your action is our final report, *CBP Does Not Have a Comprehensive Strategy for Meeting Its LS-NII Needs*. We incorporated the formal comments provided by your office.

The report contains three recommendations aimed at improving the LS-NII program's overall effectiveness. Your office did not concur with recommendation 1. Based on information provided in your response to the draft report, we consider recommendation 1 open and unresolved. As prescribed by the Department of Homeland Security Directive 077-01, *Follow-Up and Resolutions for the Office of Inspector General Report Recommendations*, within 90 days of the date of this memorandum, please provide our office with a written response that includes your (1) agreement or disagreement, (2) corrective action plan, and (3) target completion date for the recommendation. Also, please include responsible parties and any other supporting documentation necessary to inform us about the current status of the recommendation. Until your response is received and evaluated, the recommendation will be considered open and unresolved.

Your office concurred with recommendations 2 and 3, which we consider 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.



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Consistent with our responsibility under the *Inspector General Act*, 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 Sondra McCauley, Assistant Inspector General for Audits, at (202) 981-6000.



DHS OIG HIGHLIGHTS

CBP Does Not Have a Comprehensive Strategy for Meeting Its LS-NII Needs

September 28, 2020

Why We Did This Audit

CBP uses LS-NII imaging systems to examine large conveyances such as cars, trucks, buses, rail cars, and sea containers. These large-scale systems represent a majority of procurement costs associated with the NII program. Our objective was to determine to what extent CBP has a strategy for meeting its LS-NII equipment needs at U.S. locations.

What We Recommend

We made three recommendations to improve CBP's acquisition planning for LS-NII needs and ensure effective investments for its NII program.

For Further Information:

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

What We Found

U.S. Customs and Border Protection (CBP) does not have a comprehensive strategy for meeting its Large-Scale Non-Intrusive Inspection (LS-NII) equipment needs at all CBP locations. Instead, CBP uses multiple plans, such as its Multi-Year Investment and Management Plan, and individual acquisition plans for each type of LS-NII equipment it may purchase. At times, these acquisition plans contained conflicting information and did not align with the program's approved lifecycle cost estimate.

This occurred because DHS and CBP acquisition officials did not provide effective oversight of CBP's fragmented acquisition planning efforts and did not confirm acquisition plans aligned with LS-NII program objectives. Without improvements, CBP cannot ensure that its multi-million dollar investments in LS-NII technology and equipment will help the component fulfill its mission of protecting U.S. borders.

DHS Response

DHS did not concur with recommendation 1 but concurred with recommendations 2 and 3. We consider recommendation 1 unresolved and open, and recommendations 2 and 3 resolved and open. Appendix A contains DHS' management comments in their entirety.



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Background

U.S. Customs and Border Protection's (CBP) mission is to safeguard America's borders from dangerous people and materials while enabling legitimate trade and travel. CBP's Non-Intrusive Inspection (NII) program helps fulfill this mission through a non-destructive means of examining the contents of conveyances and packages coming into the United States for threats, including drugs, weapons, or inadmissible persons. CBP's NII program consists of large-scale, and small-scale equipment. Our audit focused on large-scale non-intrusive inspection imaging (LS-NII) equipment, which represents the majority of the program's procurement costs.

Before the program transitioned to CBP in 2003, U.S. Customs Services used LS-NII equipment to examine large conveyances. CBP's Office of Field Operations (OFO) and the Border Patrol are now the primary users of LS-NII equipment. As of September 2019, CBP reported having more than 300 LS-NII equipment deployed across 143 OFO and 28 U.S. Border Patrol locations. CBP officers and agents use LS-NII equipment to create x-ray images of large conveyances such as trucks, containerized cargo, personally operated vehicles, buses, and rail cars. LS-NII equipment can be mounted on trucks for mobility or installed at fixed locations, as shown in Figure 1. CBP uses a variety of LS-NII equipment categorized as high, medium, or low energy to scan a conveyance.



Figure 1. OIG Photos of Mobile LS-NII (left) and Fixed LS-NII (right)

Source: Office of Inspector General (OIG) site visit to Laredo and Pharr, Texas

CBP uses LS-NII equipment primarily in a secondary screening area to scan high-risk or flagged conveyances. CBP determines which conveyances will be scanned using a targeted inspection process based on targeting scores from a



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cargo tracking system, as well as officer judgment.¹ Once a conveyance is scanned, a CBP officer examines the LS-NII image on a viewing monitor for evidence of possible contraband, without having to perform a full manual examination of the conveyance's contents. Figure 2 shows an LS-NII image of a tractor trailer.

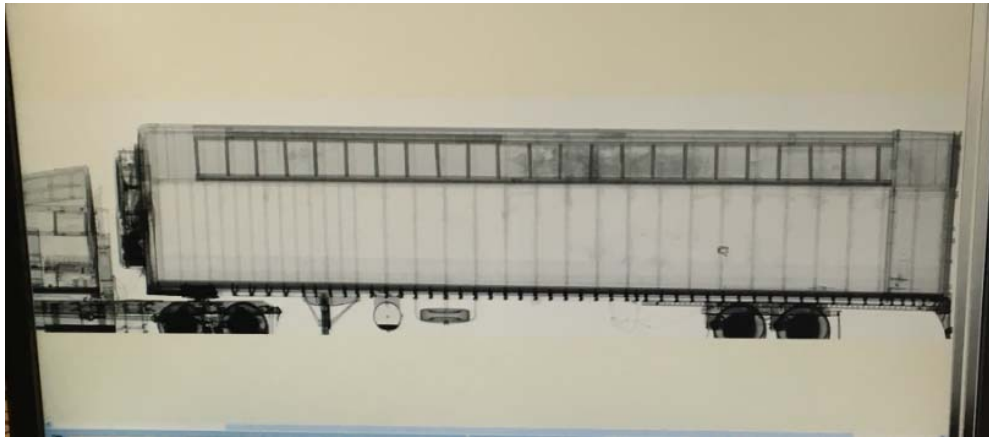


Figure 2. LS-NII Image of a Tractor Trailer

Source: OIG photo of screen image taken during a site visit to Pharr, Texas

CBP's NII program is a Department of Homeland Security Level 1 major acquisition program with an approved Lifecycle Cost Estimate of over \$4 billion. CBP obligated approximately \$350 million and spent \$133 million to acquire and test LS-NII equipment during fiscal years 2016 through 2019. CBP purchased and tested different LS-NII equipment using contracts and interagency agreements. Level 1 major acquisition programs must follow the Federal Acquisition Regulation (FAR) and DHS policy, including the *Homeland Security Acquisition Management Directive*, and the *Homeland Security Acquisition Manual*.

The FAR requires an agency to develop a written acquisition strategy tailored to the major system's acquisition program and in accordance with FAR guidelines. The strategy is the program manager's written plan to satisfy the mission need in the most effective, economical, and timely manner. Sections of the FAR governing acquisition planning allow specific contents of each plan to vary, depending on the nature, circumstances, and stage of the acquisition.

DHS acquisition policy requires that major acquisition programs follow four phases outlined in the DHS Acquisition Lifecycle Framework, as shown in Figure 3. DHS uses the framework to ensure acquisitions receive consistent and efficient acquisition management, support, review, and approval throughout the lifecycle. The framework identifies the major steps in a

¹ CBP Border Patrol agents must have probable cause prior to using LS-NII.

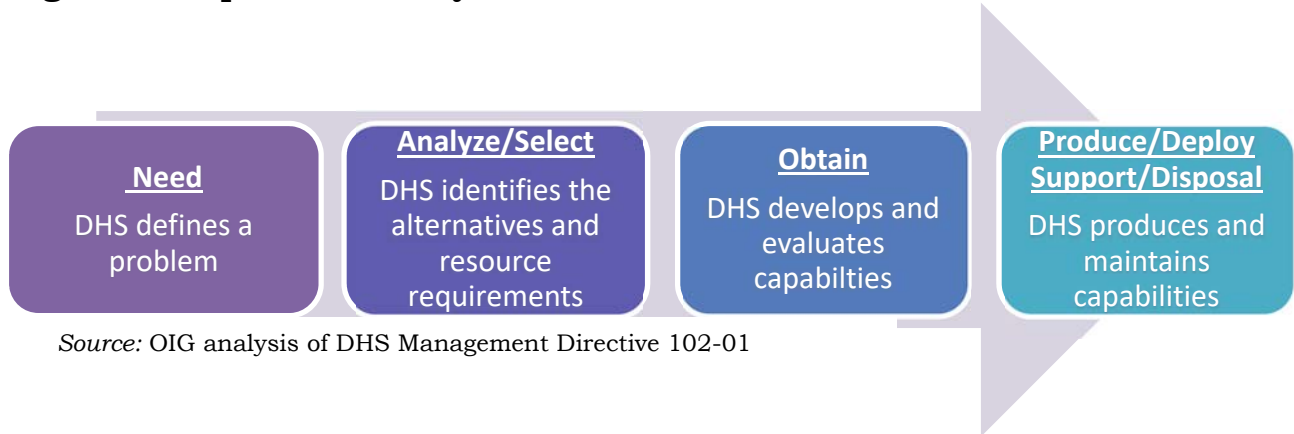


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successful acquisition program and the associated Acquisition Decision Events. The framework provides the basis for planning, governing, and executing acquisition programs. The LS-NII program predates DHS acquisition policy. However, since February 2016, CBP's LS-NII program has been in the "produce/deploy/support/disposal" phase of the DHS Acquisition Lifecycle Framework.

Figure 3. Acquisition Lifecycle Framework

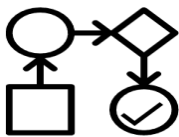


Source: OIG analysis of DHS Management Directive 102-01

In order to progress through the framework phases, a program's Acquisition Decision Authority must determine whether the program meets applicable criteria and approve it entering the next lifecycle phase. The Under Secretary for Management serves as the Acquisition Decision Authority for the NII program, and is also responsible for management and oversight of the Department's acquisition policies and procedures. DHS policy also requires that Department officials review and approve several key acquisition documents, including:



Mission Needs Statement – documents specific functional capabilities required to accomplish the Department's mission and objectives, along with deficiencies and gaps in these capabilities.



Operational Requirements Document – captures operational requirements and Key Performance Parameters and describes needed operational capabilities.



Acquisition Program Baseline – establishes the critical cost, schedule, and performance parameters, expressed in measurable, quantitative terms that must be met to accomplish program goals.



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Lifecycle Cost Estimates – identifies the resources and estimated costs for the entire life of a program, and those costs are reflected in the program’s acquisition program baseline. The Chief Financial Officer approves the initial estimate, and the component completes annual updates.



Acquisition Plan² –at the time of our audit, this document provided a top-level plan for the overall acquisition approach, types of acquisitions, and the strategy for acquiring future sustainment and support. Formal Acquisition Plans are required for Level 1 and 2 programs. Major information technology (IT) programs plans must be approved by the DHS Chief Procurement Officer (CPO) and DHS Chief Information Officer.

In December 2019, the DHS CPO issued a memorandum allowing components to deviate from the FAR. According to the memorandum, much of the program-level content required by the FAR for DHS’ major acquisition programs is contained in separate program documentation required by the *Homeland Security Acquisition Management Directive*. In January 2020, DHS changed its acquisition policy to no longer require a consolidated acquisition strategy. Under the previous requirement, a consolidated strategy would have described acquisitions supporting a major system, as well as significant conditions and constraints affecting the acquisitions.

Effective January 2020, DHS began requiring that each CBP procurement of \$25 million or more have a procurement strategy reviewed by the DHS CPO. The review is an early opportunity for the CPO to be aware of high-risk areas for a proposed procurement, obtain a description of the requirements, and know if the procurement is part of a major program. After the CPO’s review, an acquisition plan is required for firm-fixed price actions greater than or equal to \$50 million, and actions other than firm-fixed price above the simplified acquisition threshold. If the procurement action is greater than or equal to \$100 million, CBP is required to obtain CPO’s approval. This acquisition plan should provide a top-level plan for the overall procurement approach, sustainment, and support, as well as significant conditions and constraints

² The *Homeland Security Acquisition Manual* used ‘strategy’ and ‘plan’ interchangeably. In July 2020, the Under Secretary for Management approved a revised Acquisition policy, which no longer requires a program-level Acquisition Plan. However, the policy indicates that DHS is considering incorporating acquisition program information critical for proper program oversight into existing, required acquisition program documents.



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affecting the procurement. These CPO reviews are for individual procurement actions, not an overall major acquisition program.

CBP designated OFO as the organization responsible for determining its LS-NII requirements for CBP Cargo and Conveyance Security. Although OFO is the primary user, Border Patrol also uses LS-NII equipment, which it obtains through OFO for use at designated checkpoints.

The *CBP Program Lifecycle Process Guide* describes the roles of the Component's Acquisition Executive (CAE) and the Acquisition Program Manager (APM). CBP's CAE directs acquisition program management activities throughout the acquisition phases. The APM reports to the CAE and helps execute LS-NII procurements, making final scope of work decisions, as well as preparing and signing acquisition documents based on OFO requirements.

In a 2015 report,³ the U.S. Senate explained it was aware that a significant portion of the imaging equipment was past its estimated 10-year lifespan. In a 2016 explanatory statement, the House required CBP to develop a Multi-Year Investment and Management Plan (Management Plan) detailing its inventory, costs, forecasts, and Acquisition Program Baseline (APB). It also required that the APB align each technology acquisition to mission requirements.⁴ CBP's focus in its 2016 Management Plan was to replace the oldest equipment and increase the total inventory to reach full operational capability. In 2018, CBP issued another Management Plan,⁵ and provided more details for requirements for a future NII program.

Results of Audit

CBP Does Not Have a Comprehensive Strategy for Meeting LS-NII Needs

CBP does not have a comprehensive strategy for meeting its LS-NII equipment needs at all CBP locations. CBP used multiple plans that contained conflicting information or did not align with the program's approved lifecycle estimate. DHS and CBP acquisition officials did not provide effective oversight to confirm that CBP's acquisition planning aligned with LS-NII program objectives. Without improvements, CBP cannot ensure that its multi-million dollar

³ S. Rep. No. 114-68, at 36 (2015).

⁴ Legislative Text and Explanatory Statement, Committee on Appropriations U.S. House of Representatives on H.R. 2029, at 923 (2016).

⁵ *Inspection and Detection Technology Multi-Year Investment and Management Plan* (FY 2017-FY2020), Fiscal Year 2017 Report to Congress, dated May 18, 2018.



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investments in LS-NII technology and equipment will help the component fulfill its mission of protecting U.S. borders.

Fragmented Plans Included Inconsistent and Unreliable Information

CBP did not have a comprehensive acquisition strategy for meeting all locations’ LS-NII equipment needs. Although CBP provided us a 2017 document titled, “Acquisition Strategy,” this strategy only described background information on the NII program and CBP’s intent to use fixed-price contracts to replace obsolete equipment. The “Acquisition Strategy” did not include all acquisitions supporting the major system or address significant conditions and constraints. Instead, CBP used its Multi-Year Investment and Management Plan, as well as several individual acquisition plans, to plan future LS-NII purchases.

However, we determined these plans contained conflicting information and did not align with the program’s approved lifecycle cost estimate. For example, CBP’s Management Plan called for purchasing 17 multi-energy portals in FY 2016 through FY 2020. However, CBP’s approved 2016 lifecycle cost estimate reflected no needed requirement for the multi-energy portals. Additionally, the same lifecycle cost estimate included a requirement for 25 units of high-energy rail equipment, compared to 19 in its Management Plan. However, CBP did not have an approved high-energy rail acquisition plan for procurements in that period. See Table 1 for a comparison of equipment quantities by plan and approved cost estimate.

Table 1. Comparison of Equipment Quantities for FY 2016 to FY 2020

Type of LS-NII Equipment	Multi-Year Investment and Management Plan	Approved Lifecycle Cost Estimate	Individual Acquisition Plans
Multi-Energy Portal	17	0	0
High-Energy Rail	19	25	0
Medium-Energy Portal	0	26	0
Low-Energy Portal	34	9	34
Low-Energy Mobile	15	39	28
Medium-Energy Mobile	60	82	78

Source: OIG analysis of CBP documents

In addition, CBP reported inconsistent inventory data to Congress. In its Management Plan to Congress, CBP reported its strategy to replace aging



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equipment in the NII program. One of CBP's goals was to ensure deployed LS-NII equipment was under 10 years of age by the end of FY 2021. We compared and analyzed data from CBP's LS-NII inventory database and its Management Plan (see Appendix B). We determined the data was not reliable because it did not align with inventory quantities reported by CBP in management briefings to DHS decision makers.

Inadequate Oversight of CBP's Acquisition Planning Activities

These problems occurred because DHS and CBP acquisition officials did not provide effective oversight of CBP's fragmented acquisition planning efforts. Specifically, we determined the DHS CPO did not review any of the acquisition plans for conflicting information or to ensure they aligned with the intended program objectives. The DHS Chief Information Officer responsible for DHS' Information Technology priorities, policies, and standards also had not reviewed the plans. According to CBP, this was because the individual plans did not reach the spending thresholds that would initiate DHS Headquarters reviews. Although the Acquisition Decision Authority (ADA) may tailor an acquisition program's document requirements as needed, such modifications were not documented in any acquisition decision memorandum, nor was a waiver written to document why a comprehensive program strategy was not needed.

While DHS removed the requirement for a consolidated strategy, using multiple plans to guide purchases for a program increases the need for management oversight. In addition it decreases oversight in the identification of potential deficiencies in areas such as the quantity of equipment needed. Without a comprehensive strategy, consistent plans, and reliable inventory data, DHS and CBP acquisition officials are not able to effectively monitor program performance.

Resulting Equipment Purchases May Not Meet CBP Mission Needs

CBP has no assurance that its investments in LS-NII equipment will help fulfill its mission of protecting U.S. borders. To illustrate, CBP purchased LS-NII equipment that does not have an established APB. CBP's individual acquisition plans included low-energy LS-NII equipment for scanning privately owned vehicles and buses. In order to deploy these additional vehicle scanners, CBP received permission from the ADA to purchase equipment beyond what the program needed to be fully operational. However, the program's APB did not identify the extent to which CBP should scan personal vehicles. Having an approved APB sets formal metrics for measuring actual program performance against program goals and helps alert management to



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potential problems, such as cost growth, requirements creep, and schedule slips.

In addition, a CBP official explained CBP has deployed 11 of 17 Under Vehicle Inspection Systems (UVIS), a technology used to scan under vehicles, even though they were not included in any of the acquisition plans. CBP deployed the UVIS without identifying any performance parameters in the APB. Having all critical LS-NII equipment identified in a plan with performance parameters is key to ensuring CBP can measure how well the equipment accomplishes its goal and confirming that the planned acquisitions are the best selections.

Also, CBP deployed Medium-Energy Mobile LS-NII systems in 2014. However, according to a CBP official, system capability testing was conducted and completed afterwards, and was limited to testing of the technical standards for imaging equipment. CBP could not provide documentation showing simulated threats such as narcotics, explosives, and firearms were included. CBP entered into an interagency agreement with the Naval Surface Warfare Center to conduct tests of CBP's LS-NII equipment effectiveness, as well as CBP officers' probability of detecting hidden threats after the equipment was deployed. CBP will not know whether the LS-NII equipment deployed at locations is adequately identifying weapons and narcotics until the testing is complete.

Further, CBP plans to purchase equipment with increased capabilities without ensuring the equipment is the optimal solution. Specifically, CBP's Management Plan calls for purchasing more than 23 multi-energy LS-NII equipment through FY 2021, but CBP did not prepare a test plan for assessing the equipment's operational effectiveness and suitability. CBP obligated \$45 million through an interagency agreement and for testing equipment prior to having a required testing plan for ensuring the correct testing measures have been identified and tests are likely to generate the data needed to make informed acquisition decisions. In fact, CBP completed construction at one port for multi-energy LS-NII installation without ensuring the technology is suitable and effective. Additionally, the intent of multi-energy LS-NII equipment is to increase the use of LS-NII equipment by screening more than high-risk targets. The new equipment may provide CBP the ability to scan 100 conveyances per hour, compared to the program's current minimum objective of 20 per hour. CBP plans to purchase this equipment, even though it does not have the staff necessary to examine the additional images.



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Conclusion

Past audit reports highlighted the Department's challenges overseeing high-dollar, high-risk major acquisitions. Recognizing the importance of the NII program's role in the nation's border security, Congress appropriated more than \$500 million for the NII program in FY 2019. However, without adequate department-level oversight, CBP may continue to use an ineffective, fragmented planning approach that circumvents key acquisition controls. It is critical that both DHS and CBP work together to ensure CBP has a strategy that identifies and aligns LS-NII capabilities to meet mission goals and objectives.

Recommendations

Recommendation 1: We recommend the DHS Under Secretary for Management require the acquisition program office to develop an approved strategy that aligns its NII key acquisition documents and CBP's evolving LS-NII needs with investments in critical LS-NII equipment.

Recommendation 2: We recommend the Component Acquisition Executive in CBP work with the program to implement procedures to ensure better alignment and tracking of reliable data for LS-NII.

Recommendation 3: We recommend the Component Acquisition Executive in CBP ensure the NII strategy encompasses an approved Acquisition Program Baseline that includes key performance baselines for all critical LS-NII equipment.

Management Comments and OIG Analysis

The Department provided formal written comments in response to the draft report. We also received technical comments and incorporated them in the report where appropriate. We included a copy of the Department's response in its entirety in Appendix A. The Department concurred with recommendations 2 and 3, but did not concur with recommendation 1.

The Department and CBP disagreed with our overall audit conclusion that the Department lacks a comprehensive strategy for its LS-NII system and questioned the conclusions and assertions in our report. During our audit, CBP told us that the Multi-Year Investment Management and Investment Plan to Congress was CBP's overall strategy for meeting its LS-NII needs. After our draft report was issued, CBP stated that it did not use its Multi-Year Investment and Management Plan to plan future LS-NII procurements. We



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believe these inconsistencies highlight the need for a single, cohesive acquisition strategy approved by DHS to guide the program manager in satisfying the mission need and allow for comprehensive program oversight.

DHS and CBP stated the report did not provide clarity as it relates to compliance with acquisition activities. Specifically, DHS and CBP stated we did not acknowledge that the program has an approved Acquisition Program Baseline. We disagree with the Department's assertion. As we acknowledged in the report, DHS has an Acquisition Program Baseline (APB). However, the existing APB does not include performance parameters for critical LS-NII equipment used to scan privately owned vehicles and buses.

DHS stated it was exempt from having a Test and Evaluation Master Plan (TEMP). However, according to DHS policy, if capability developers and acquisition decision authorities want to know if a system works as intended, it must be tested. Exempting the program from having to develop a TEMP will not provide DHS with certainty that the equipment is operationally effective and suitable.

DHS asserted we misstated the approval authority for the NII acquisition plan. We disagree with this assertion. Our report correctly reflects the acquisition plan review requirements in place at the time of our audit. We also noted that DHS changed the requirements in December 2019.

DHS emphasized the audit took 26 months to complete. Although we recognize the length of the audit, it is meant to provide constructive recommendations to ensure that both DHS and CBP work together to ensure CBP has a strategy that identifies and aligns LS-NII capabilities to fulfill CBP mission goals and objectives.

A summary of the Department's responses and our analysis follows. We consider recommendation 1 unresolved and open, and recommendations 2 and 3 resolved and open.

DHS Response to Recommendation 1: Non-concur. As CBP's Non-Intrusive Inspection program office is in the process of updating the legacy NII program's Life-Cycle Cost Estimate and APB to reflect increased funding and its impact on NII quantities to achieve Full Operational Capability, a separate strategy document for the NII program is not warranted. The target completion date for the legacy Life-Cycle Cost Estimate and APB is March 2021, and the program's Life-Cycle Cost Estimate and APB will be updated annually, if necessary. These documents are approved by the DHS Chief Financial Officer and Acquisition Decision Authority. This approach helps accommodate the



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evolution of CBP's NII needs geographically and over time, based upon changes in traffic patterns, traffic volumes, commodities, surges of particular threats, etc.

Within the next 10 – 18 months, CBP plans to enter the “Obtain” phase for a new program, entitled NII-I. This program will include procurement of additional NII systems that will transition to the new NII-I program. CBP presented a strategy at the NII-I Acquisition Decision Event-1 held on November 13, 2019. CBP believes further refinement and formalization of the strategy will occur through the NII-I acquisition process, and that it is the appropriate area to focus future strategic planning.

OIG Analysis of DHS Response: We disagree with DHS' response to recommendation 1. We believe CBP should still develop a strategy for the current NII program because this program is scheduled to sunset in 2035, and Congress has provided a significant amount of funding for the current program. CBP needs a strategy for the LS-NII portion of the program in the event the new program does not progress as planned. Although DHS did not concur with this recommendation, DHS is considering incorporating acquisition program information, critical for proper program oversight, into existing required acquisition program documents. In addition, in its response to our draft report, DHS stated that a strategy incorporating the current and future NII procurements will be formalized. Until DHS takes appropriate action, we consider this recommendation unresolved and open.

DHS Response to Recommendation 2: Concur. CBP Office of Acquisitions will implement either a checklist or additional reviews for the NII program to ensure it reports consistently on the program data. Estimated Completion Date: June 30, 2021.

OIG Analysis of DHS Response: We consider these actions responsive to the recommendation. The recommendation will remain resolved and open until DHS provides documentation of its procedures and we verify it satisfies the intent of our recommendation.

DHS Response to Recommendation 3: Concur. As discussed during our July 29, 2020 audit exit conference, CBP believes the program is already compliant, as part of the current APB/Life-Cycle Cost Estimate (FY 2020) revision. CBP Office of Acquisitions will double check that the Full Operational Capability changes approved to date are captured, and we will determine if any changes to



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the Operational Requirements Document are warranted. Estimated Completion Date: June 30, 2021.

OIG Analysis of DHS Response: We consider these actions responsive to the recommendation. The recommendation will remain resolved and open until DHS provides documentation showing its analysis of critical equipment that should be incorporated in its Acquisition Program Baseline and we verify it satisfies the intent of our recommendation.

Objective, Scope, and Methodology

The Department of Homeland Security Office of Inspector General 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 of U.S. Customs and Border Protection Large-Scale Non-Intrusive Inspection imaging systems to determine to what extent CBP has a strategy for meeting its need for LS-NII equipment at U.S. locations. To achieve our objective, we interviewed DHS officials from the Office of Program Accountability and Risk Management and the Science and Technology Directorate, as well as CBP's Office of Acquisition, Laboratories and Scientific Services Directorate, Office of Field Operations, U.S. Border Patrol, and Container Security Initiative.

We also obtained and reviewed public laws, DHS directives, congressional budget requests, policies, CBP portfolio reviews, CBP's NII acquisition strategy, individual acquisition plans, and acquisition program documentation. We reviewed relevant Government Accountability Office and OIG reports. In addition, we performed site visits and observed NII operations at 13 land border crossings, 4 border patrol checkpoints, and 7 seaports. We reviewed NII equipment inventories, and utilization reports. We obtained inventory data from CBP and assessed its accuracy by comparing it to inventories reported in CBP's management plans, as well as its acquisition reviews. We could not reconcile the inventories and determined the information was not reliable enough to measure CBP's ability to replace its older equipment. We used LS-NII usage data provided by CBP to determine which locations we would visit. We did not test the usage data because we did not draw conclusions. However, we determined it would be sufficient to assist with our survey site visit selections.

Lastly, we reviewed the program's financial data to identify LS-NII acquisition costs. This included a review of LS-NII contract actions between FY 2016 and FY 2019. Since Federal regulation mandates that all Federal agencies report



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contract actions data in the Federal Procurement Data System-Next Generation (FPDS-NG), we queried FPDS-NG as a control to ensure data quality.

We conducted this performance audit between September 2018 and July 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 objective. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based upon our audit objective.

The Office of Audit major contributors to this report are Carolyn Hicks, Director; Shamika Morris, Audit Manager; Matthew Noll, Auditor-In-Charge; Connie Tan, Auditor; Willard Stark, Auditor; Aaron Naas, Program Analyst; Otis Uwagbai, Program Analyst; Stephen Wheeler, Data Analyst; Lindsey Koch, Communications Analyst; Marissa Weinshel, Independent Referencer; and David Kinard, Independent Referencer.



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Appendix A
DHS Comments to the Draft Report

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



**Homeland
Security**

August 25, 2020

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

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

SUBJECT: Management Response to Draft Report: “CBP Does Not Have a
Comprehensive Strategy for Meeting Its LS-NII Needs”
(Project No. 18-091-AUD-CBP)

JIM H
CRUMPACKER

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JIM H CRUMPACKER
Date: 2020.08.25
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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.

A priority mission of CBP is to detect and prevent terrorists and terrorist weapons from entering the United States at, and between, ports of entry, while simultaneously facilitating legitimate trade and travel. To address the terrorist threat, CBP employs a multilayered enforcement strategy to help secure the Nation’s borders. In conjunction with CBP’s many other initiatives, the use of Non-Intrusive Inspection (NII) technology continues to be the cornerstone of the CBP multilayered strategy. CBP deploys Large-Scale (LS) NII systems at and between U.S. ports of entry, as well as in some Container Security Initiative (CSI) foreign seaports of departure.

The CBP LS-NII systems are capable of imaging an entire conveyance, and possess unique performance characteristics that provide CBP with the capability to image both laden cargo conveyances and passenger vehicles for the presence of contraband such as weapons, money, and narcotics. This allows CBP to work smarter and faster in detecting contraband while expediting legitimate trade and traffic, since sea containers, commercial trucks and rail cars, and other cargo conveyances, as well as privately-owned vehicles, can be examined for the presence of contraband without physically opening or unloading them. In addition, LS-NII systems are an integral part of the CBP comprehensive strategy to combat nuclear and radiological terrorism, as they allow CBP to detect the presence of weapons of mass destruction. CBP is the primary Department of Homeland



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Security (DHS) operator of LS-NII. The acquisition of LS-NII systems is vital to the security of the United States and our allies.

DHS and CBP strongly disagree with the OIG's overall conclusion that "CBP does not have a comprehensive strategy for meeting its LS-NII equipment needs." While the OIG apparently had difficulty following the program's acquisition trail and aligning NII program documents, this is not evidence of a lack of effective oversight. CBP is required to submit strategic plans to Congress, which depict a snapshot in time. As the program executes, budget and operational realities can require changes to the plan. These changes are eventually reconciled and reflected in the next version of the strategic plan.

Acquisition plans (AP), however, are not created on the same cycle as strategic plans, and are only updated when: 1) CBP reaches the end of the contract period of performance; 2) the scope of the program changes; or 3) the award vehicle reaches ceiling. As CBP reiterated to the OIG during a February 19, 2020, meeting, APs are created at a specific point in time, based on the budget and system quantities known at that time, and the APs can cover projected needs plus capacity for additional items over a five-to-ten-year period. The life cycle cost estimates (LCCEs) are updated annually, and take into account budget cycles' operational priority changes and program execution efficiencies. CBP expects APs to be consistent with the strategic plan at the time the AP is developed, while follow-on APs adapt as the strategic plan updates and evolves. The APs are current, correct, and compliant at the time they are developed. It is not unusual or unexpected for a program to evolve with time—the evolution is reflected in the updated LCCEs—but this evolution does not invalidate the APs written before the evolution and update.

DHS and CBP also strongly disagree with the OIG's conclusion that DHS and CBP acquisition officials did not provide effective oversight of CBP's acquisition planning efforts and did not confirm APs aligned with LS-NII program objectives. The NII program's acquisition planning is consistent with DHS policy and followed all acquisition directives, including the Department's Management Directive 102-01, "Acquisition Management Directive," dated February 25, 2019, its implementing instructions, and other related guidance. The OIG's draft report does not provide clarity and context from a historical perspective as it relates to DHS acquisition management directives, and the program's demonstrated compliance with required acquisition activities. For example, the draft report does not recognize that the program: 1) has an approved Acquisition Program Baseline (APB); 2) was exempt from having a Test and Evaluation Master Plan; and 3) is actively pursuing acquisition management activities—in compliance with DHS acquisition management policies and acquisition decisions—to address future program requirements. The draft report suggests that the acquisition should be conducted differently, but CBP is acting in accordance with DHS policies.



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DHS and CBP are concerned that OIG's misunderstandings of the DHS acquisition life cycle framework continue with regard to required acquisition reviews and documentation, as well as the levels of approval needed for program documents, despite numerous meetings with CBP leadership, subject matter experts, program officials, and others, who provided substantial supporting and corroborating documentation provided to the audit team. For instance, the draft report misstates the approval authority for the NII acquisition plan, stating that the DHS Chief Procurement Officer should be approving the AP when in fact the AP for procurements valued at less than \$100 million are approved at the component level.

Finally, the OIG announced this audit on April 24, 2018, and released this draft report for technical and management comments on June 23, 2020, – one day short of 26 months (i.e., more than 2 years). During this 26-month period, DHS' acquisition policies were revised. As a result, the OIG's findings discussed in February 2020, during a Notice of Findings and Recommendations meeting and restated in the draft report are largely moot, in part, because the OIG did not fully account for the policy revisions. Senior leadership is troubled that the findings reflected in the draft report are not timely or current, and are not indicative of the efforts that have gone into planning the acquisition of LS-NII systems.

The draft report contained three recommendations, including two with which the Department concurs (Recommendations 2 and 3) and one with which it non-concurs (Recommendation 1). Attached find our detailed response to each recommendation. CBP previously submitted technical comments 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.

Attachment



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Attachment: Management Response to Recommendations Contained in OIG 18-091-AUD-CBP

OIG recommended that the DHS Under Secretary for Management:

Recommendation 1: Require the acquisition program office to develop an approved strategy that aligns its NII key acquisition documents and CBP's evolving LS-NII needs with investments in critical LS-NII equipment.

Response: Non-concur. As CBP's Non-Intrusive Inspection program office is in the process of updating the legacy NII program's LCCE and APB to reflect increased funding and its impact on NII quantities to achieve Final Operational Capability (FOC), a separate strategy document for the NII program is not warranted. The targeted completion date for the legacy LCCE and APB is March 2021, and the program's LCCE and APB will be updated annually, if necessary. These documents are approved by the DHS Chief Financial Officer and Acquisition Decision Authority, respectively. This approach helps accommodate the evolution of CBP's NII needs geographically and over time, based upon changes in traffic patterns, traffic volumes, commodities, surge of particular threats, etc. The approach is also consistent with the decisions documented in the November 29, 2018, Acquisition Decision Memorandum (ADM) and guidance provided in the ADM, dated May 3, 2019, and will allow for effective DIIS oversight, which is led by MGMT's Executive Director for the Office of Program Accountability and Risk Management.

In addition, within the next 10 – 18 months, the NII-I program will enter the "Obtain" phase, and procurement of additional NII systems will transition to the NII-I program. The strategy for this transition was presented at the NII-I ADE-1 held November 13, 2019. The further refinement and formalization of that strategy will occur through the NII-I acquisition process, and is the appropriate area to focus future strategic planning.

Estimated completion date (ECD) for the legacy LCCE and APB update:
March 31, 2021.

OIG recommended that the Component Acquisition Executive in CBP:

Recommendation 2: Work with the program to implement procedures to ensure better alignment and tracking of reliable data for LS-NII.

Response: Concur. CBP Office of Acquisitions (OA) will implement either a checklist or additional reviews for the NII program to ensure it reports consistently on the program data. ECD: June 30, 2021.



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Recommendation 3: Ensure the NII strategy encompasses an approved Acquisition Program Baseline that includes key performance baselines for all critical LS-NII equipment.

Response: Concur. As discussed during the July 29, 2020, Exit Conference, while CBP believes the program is already compliant, as part of the current APB/LCCE (FY 2020) revision, CBP OA will double check that the FOC changes approved to date are captured, and we will determine if any changes to the Operational Requirements Document are warranted. ECD: June 30, 2021.



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Appendix B
Analysis of LS-NII Inventory Age

	Inventory Reported to OIG	Inventory Reported in Multi-Year Investment and Management Plan*	Inventory Reported in Mid-Year Portfolio Review**	Inventory Reported to Acquisition Review Team
FY 16 Total Inventory	315	307	310	305
Over 10 Years Old	115	84	130	133
FY 17 Total Inventory	310	No Data Available	305	302
Over 10 Years Old	126	No Data Available	121	124
FY 18 Total Inventory	305	No Data Available	No Data Available	319
Over 10 Years Old	135	No Data Available	No Data Available	117

Source: OIG review and analysis of CBP documents

* The inventory reported in the 2018 Multi-Year Investment and Management Plan only contains inventory data for FY 16.

** The inventory reported in an April 2018 Mid-Year Portfolio review contains inventory data for FY 14 through March 2018.



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Appendix C
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