

# Background

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## Better, Faster, and Cheaper Border Security

*James Jay Carafano, Ph.D., Brian W. Walsh, David B. Muhlhausen, Ph.D.,  
Laura P. Keith, and David D. Gentilli*

Congress and the Administration should pursue a strategy that quickly enhances resources at the border within two years. The Senate and House plans to add border guards and build fences are inadequate.

Instead, a comprehensive strategy should examine other options such as a mix of federal, state, and local assets; volunteers operating under State Defense Forces; the National Guard; and private contractors. In particular, private contractors could play an important role in recruiting and training Border Patrol agents and providing personnel to secure the border. To contract out certain border security functions successfully, the Department of Homeland Security (DHS) should apply the lessons learned from other large-scale contracting projects. All in all, a strategy that examines and uses these multiple means would strengthen the integrity and security of America's borders.

### The Need to Revise Border Strategy

A strategy to gain operational control of the U.S. southern border should focus on building up the means to limit illegal crossings between the land points of entry, interdict smuggling by air and sea, discourage unlawful presence inside the country, and provide adequate legal alternatives to support south-north migration flows. To be effective, the strategy should be implemented within two years and remain in place for at least five years.

**The Strategy Problem.** Strategy consists of the ways, means, and ends employed to achieve national objectives. Strategies are dynamic, competitive processes of

### Talking Points

- The House and Senate border security plans to add border guards and build fences are inadequate. They reflect a “graduated response” strategy that is likely to fail because it allows those who seek to enter the United States illegally the time to adapt their methods as new security measures are added over months and years.
- The United States needs to adopt a strategy that quickly and dramatically disrupts patterns of illegal migration and encourages legal migration as an alternative.
- An effective border security strategy must address land, air, and sea borders and must be paired with aggressive interior enforcement to deter further illegal border crossings.
- For both the short term and the long term, using private contractors to perform a wide variety of border security missions, including law enforcement functions, would keep costs down while maximizing flexibility.

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(202) 546-4400 • [heritage.org](http://heritage.org)

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action and counteraction between thinking adversaries. The current strategy and the proposed approaches to border security in the House and Senate measures are static and deeply flawed.

U.S. border strategy represents a “graduated response,” which involves gradually adding resources until the problem is solved. This approach is usually adopted when it is unclear how much effort is required to achieve success. Such strategies fail against a determined competitor because the threat is allowed the time and resourcefulness to adapt. For example, as illegal border crossings increased over the past decade, manpower was doubled and spending tripled, yet the number of people unlawfully present in the United States skyrocketed.

Additionally, many historical examples demonstrate that such strategies usually fail against a determined, resourceful competitor that possesses adequate resources. In Vietnam, the United States employed a flawed strategy referred to as “graduated pressure.” The guiding idea was that incrementally increasing levels of military force would ultimately push the North Vietnamese to some abstract breaking point, achieving victory for the United States and South Vietnam. This strategy relied on faulty assumptions about the enemy’s psychology and, most of all, offered no real solutions about how to defeat the Communists other than essentially throwing more troops at the problem.

U.S. border operations are likely to fail regardless of what security (e.g., manpower and fences) is added because in the months and years required to implement new means of security, the hundreds of thousands seeking to enter the United States will find ways to circumvent these measures. Indeed, the Senate and House bills, both of which mandate specific levels of hiring for border agents and mandatory construction of miles of border fences, may actually exacerbate the problem. Agents and fences may well consume the lion’s share of the federal budget for border security, leaving inadequate resources for other critical tasks such as interior enforcement, detention, and removal.

**The Right Strategy.** Rather than seeking to determine how much has to be done to secure the

border, an alternative and more effective strategy would focus on what can be done to change the predominance of illegal south–north migration from illegal to legal. It would seek to disrupt the current illegal migration patterns quickly and dramatically and to encourage legal migration as an alternative. This strategy should have three components: dominant and persistent enforcement, rapid and robust deployment, and legal alternatives for south–north migration.

*Dominant and Persistent Enforcement.* This can be achieved only by obtaining the right mix of land, air, sea, and interior enforcement assets and policies.

- *Land.* Gaining operational control of U.S. land borders will require more than security between the points of entry. Rather than focusing on specific assets (e.g., guards and fences), attention should be paid to building integrated Web capabilities that provide intelligence, reconnaissance, surveillance, and interdiction. This is often called a “system of systems.”
- *Sea and air.* More attention should be paid to the maritime and air approaches to U.S. territory. As land borders become more secure, drug smugglers and human traffickers will quickly look to air and sea options. Thus, air and maritime security must be enhanced in conjunction with land security. Coast Guard and Customs and Border Protection (CBP) air asset modernization should be synchronized with the Secure Border Initiative.
- *Interior enforcement.* Interior enforcement is an essential component of border security because it can effectively deter further illegal border crossings. In addition, about half of the unlawfully present population in the United States entered the country through legitimate ports of entry, either by using fraudulent documents or with legitimate visas that they then overstayed. Thus, border security alone will not address the undocumented population already in the country. Interior enforcement should include ending “catch and release” for immigration violations, workplace enforcement, and no amnesty for individuals unlawfully present in the United States. Those illegally present must return to

places of origin to apply for legal entry into the United States.

*Rapid and Robust Deployment.* Speed is an essential element of an effective border strategy. A much larger capacity to implement border and interior enforcement must be established quickly. Implementing security over 18 months to two years and maintaining that level of security for five years will significantly disrupt illegal migration patterns because it will span multiple growing seasons, tourist periods, and business cycles, undercutting the ability of companies to conduct business by relying on an illegal workforce.

Relying on a buildup of DHS assets will take too long. Heavy reliance on military assets is costly and inefficient and detracts from the military's ability to perform its other essential missions. An alternative to rapidly building up border assets is to employ a combination of resources.

- *Contractors.* Contracted workers should be able to perform virtually any border security mission, including law enforcement functions. This makes particular sense if workforce increases will be temporary.
- *State and local law enforcement.* State and local law enforcement could cooperate under Section 287(g) of the Immigration and Nationality Act, which provides a mechanism for employing trained and experienced state and local law enforcement personnel to support enforcement of federal immigration law.
- *Volunteers and state defense forces.* Volunteer groups could perform functions to augment law enforcement. One cost-effective option might be to encourage border security volunteer groups as part of state defense forces. These groups might also have utility in other homeland security tasks including disaster response.
- *National Guard.* A cursory study of the costs of mobilizing and deploying National Guard troops in either a Title 10 or a Title 32 status suggests that military manpower is not a cost-effective solution to fulfilling long-term (three or more years) manpower needs for border security. Military manpower does have utility as a stopgap or supplementary measure. Since law

enforcement manpower is the most expensive and difficult component of border security manpower to deploy, it makes sense to use the National Guard in this role where appropriate.

- *Human capital improvements in Border Patrol recruiting.* A significant portion of the time and cost of recruiting Border Patrol officers is consumed by the high percentage of candidates who fail background investigations, drug tests, language training, and training courses. One means to expand the Border Patrol more efficiently is to improve the screening and selection process.

In the long term, this solution should prove both effective and cost-efficient. Once migration patterns shifted from illegal to legal means, less robust security would be required on the border. Since the federal government would have avoided investing in security measures with high fixed costs (i.e., an excessively large federal workforce for border security), it could quickly lower costs by reducing contractor support.

*Legal Alternatives for Migration.* Enhancing border security makes no sense without establishing alternative legal patterns of migration that bolster the U.S. economy, respect the rule of law, and strengthen American civil society. A strategy of "border first" should not be "border only." "Border only" strategies increase the incentive for smugglers to find alternative ways to circumvent security.

Legal alternatives that do not encourage illegal entry and unlawful presence are essential to border security. Such measures should include appropriate security, criminal, and health screening measures before individuals enter the United States and should meet the legitimate needs of U.S. employers in a timely manner.

### **Adding More Border Patrol Agents**

Recommendations to increase the number of Border Patrol agents as a major component of border security raise several issues:

1. Hiring thousands of new Border Patrol agents may not reduce illegal immigration.
2. Increasing the number of Border Patrol agents will pose significant operational challenges.

3. Privatization would likely reduce the cost of hiring these new Border Patrol agents.

**Effectiveness.** In spite of vast policy differences in their approaches to immigration reform, the House and Senate immigration reform bills share a common strategy of increasing border security by hiring thousands of Border Patrol agents in the coming years.

Regrettably, this proposed dramatic expansion of the Border Patrol may not have the desired effect. A review of the social science literature on the effect of border enforcement on illegal immigration shows mixed results.<sup>1</sup> Some studies find no effect, while others indicate a positive or negative relationship between border enforcement and illegal immigration.

Additionally, the literature indicates that increased border enforcement appears to slow the flow of illegal immigrants *leaving* the United States. Thus, immigration law enforcement that is overly reliant on border enforcement may actually increase the number of illegal aliens in the United States.

Three factors significantly undermine the effectiveness of the Border Patrol:

1. *Income disparity.* The income disparity between the United States and Mexico and other Latin American countries means that illegal aliens seeking a better life have a strong incentive to cross the border.
2. *Lack of sanctions.* While increasing the number of Border Patrol agents will likely increase the number of apprehensions, these efforts probably do little to deter illegal immigration if those who are caught are not sanctioned for illegally entering the United States. Virtually no sanctions, such as fines and detention, are imposed on apprehended illegal immigrants by the federal government. Once apprehended, nearly all

detained illegal immigrants sign a voluntary departure form and are returned to Mexico. Of the 1.6 million people who were apprehended in 1998, just over 1 percent were prosecuted.<sup>2</sup> Because illegal immigrants incur little or no cost for being apprehended by the Border Patrol, research suggests that illegal immigrants will make as many trips as necessary to cross the border successfully.<sup>3</sup>

3. *Competing objectives.* The competing objectives of enforcing immigration law and meeting labor demands by allowing illegal border crossings impair the Border Patrol's potential effectiveness. While the agency's public mission is to guard the border, research indicates that the agency appears to relax enforcement when the demand for illegal immigrant workers is high.<sup>4</sup>

Deterring crime is likely to depend more on deploying officers when and where serious crime is concentrated and most likely to occur. Thus, providing actual sanctions for illegally crossing the border and giving the Border Patrol a clear and consistent mission may be more important to securing the border than dramatically expanding the number of agents on the border would be.

**Operational Challenges.** The difficulties with quickly increasing the number of Border Patrol agents by 50 percent are numerous. Aside from its questionable effectiveness, such a policy will need to overcome many operational hurdles to meet its goal.

*Attrition.* With an attrition rate of about 20 percent at the training academy, the CBP will need nearly 8,000 trainees to graduate the required 6,000 new agents. Even before arriving at the academy, applicants go through a long, circuitous process that includes a medical exam, a drug test, a thorough background investigation, and a physical

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1. David B. Muhlhausen, Ph.D., "Building a Better Border: What the Experts Say," Heritage Foundation *Backgrounder* No. 1952, July 17, 2006, at [www.heritage.org/Research/Immigration/bg1952.cfm](http://www.heritage.org/Research/Immigration/bg1952.cfm).
  2. Christina Gathmann, "The Effects of Enforcement on Illegal Markets: Evidence from Migrant Smuggling Along the Southwestern Border," Institute for the Study of Labor IZA *Discussion Paper* No. 1004, January 2004, p. 33.
  3. Muhlhausen, "Building a Better Border."
  4. Gordon H. Hanson and Antonio Spilimbergo, "Political Economy, Sectoral Shocks, and Border Enforcement," *The Canadian Journal of Economics*, Vol. 34, No. 3 (August 2001), pp. 612–638.

fitness test with standards comparable to those of the military. For every 30 applications received, one applicant makes it through the entire screening process and completes training.<sup>5</sup> This suggests that meeting the President's goal would require about 180,000 applications in the next two years.

*Finding Qualified Applicants.* Working as a Border Patrol agent is difficult and dangerous. Agents work outdoors in rough terrain and in extraordinarily unpleasant weather, mostly along the southwestern border. For many of them, this will mean moving to small border towns far away from their families.

Furthermore, CBP recruits are asked to endure hardships unique to the agency for lower pay than most other federal law enforcement organizations offer. While the Drug Enforcement Administration (DEA) starts new agents at either the GS-7 or GS-9 pay grade and the Federal Bureau of Investigation starts new agents at the GS-10 pay grade,<sup>6</sup> CBP agents start at either the GS-5 or GS-7 pay grade, depending on their qualifications.<sup>7</sup> Yet CBP requirements are just as demanding as those for other agencies and in some cases even more so since all new Border Patrol agents must pass Spanish classes at the academy. Attracting a surfeit of qualified candidates will require increasing the pay and benefits.

*Recruiting Efforts.* Recruiting and screening 180,000 new applicants will require a massive effort by the CBP's recruiting apparatus, especially since the agency is competing with other federal law enforcement organizations that offer better pay and are perceived by the public to offer greater prestige and excitement.

Therefore, CBP recruiting efforts will need to focus not only on getting the numbers, but also on improving the agency's public image and prestige. One way to do this would be to launch an advertising campaign emphasizing that the CBP is a front-line, down-in-the-trenches agency that is fighting on perhaps the most important front in this new

type of war. To improve public perception, the CBP will need to increase its current team of 50 dedicated recruiters nationwide.

*Avoiding a Bottleneck.* Once the CBP puts practices in place to accomplish the recruiting goal and screen enough qualified candidates, it will need to avoid a bottleneck at the academy. The academy will need not only additional classrooms and living space, but also more firing ranges, physical fitness facilities, and training areas for simulations and exercises, along with additional staff and instructors. The Administration's proposal would increase the training rate from 411 new agents per year to 3,000 per year over the next two years. The training academy in Artesia, New Mexico, does not have the capacity to handle this increase.

*Cost.* If Congress continues to insist on adding thousands of new Border Patrol agents, it should consider policies that will make the hiring, training, and deploying of new agents more cost-effective. In general, policymakers should consider using private contractors to recruit Border Patrol agents and to deploy security personnel on the border.

*Border Patrol Recruiting.* The hiring of thousands of new Border Patrol agents means that the agency will have to expand and improve its recruiting process. The Border Patrol should model its recruiting efforts on the U.S. armed services, which must attract tens of thousands of new recruits each year. Contracting with private recruiting firms also might help the Border Patrol to reach its hiring goals. Specifically, the Border Patrol should:

- *Target the right audience.* CBP recruiting efforts should advertise in official service publications like the *Army Times* and should participate in career fairs aimed at recruiting military personnel who are leaving the service. Soldiers who are leaving active duty but still crave challenging work would be a perfect fit. Implementing these solutions will require increasing the

5. Claire Cummings, "Recruits Train to Bolster the Border at N.M. Facility, Just One Candidate in 30 Lands a Job with an Agency That's Growing, Facing a New Mission," *The Dallas Morning News*, June 27, 2006, p. A1.

6. Federal Bureau of Investigation, "Special Agent Frequently Asked Questions," at [www.fbijobs.gov/114.asp](http://www.fbijobs.gov/114.asp) (July 10, 2006).

7. U.S. Customs and Border Protection, "Border Patrol Agent—Fact Sheet," revised August 1, 2006, at [www.cbp.gov/linkhandler/cgov/careers/customs\\_careers/border\\_careers/border\\_patrol\\_factsheet.ctt/careers\\_bpa\\_fact.doc](http://www.cbp.gov/linkhandler/cgov/careers/customs_careers/border_careers/border_patrol_factsheet.ctt/careers_bpa_fact.doc) (July 10, 2006).

advertising budget. The armed forces have been very successful at using ads to recruit. The FBI also does an outstanding job of creating an image for itself. To reach its recruiting goals, the CBP will need more money for advertising so that it can conduct a more successful outreach campaign.

- *Increase pay and benefits.* The CBP has difficulty competing with other federal law enforcement agencies because they pay better. Pay should be raised to comparable levels both to foster competitive recruiting and to help the CBP meet its goals.
- *Engage the private sector in recruiting.* The CBP's 50 full-time recruiters will be overwhelmed. Rather than augmenting the number of full-time recruiters by removing more agents from the border, the CBP should hire private contractors to strengthen recruiting efforts. Increasing its recruitment team will allow the CBP to target and recruit highly qualified candidates more effectively.

*Private Security Firms.* The Border Patrol should consider hiring private security firms to provide well-trained security personnel to help guard the nation's borders. For fiscal year 2006, the Department of Homeland Security estimates that the cost to hire, train, and equip one Border Patrol Agent is about \$180,000, with an additional \$9,000 in tuition charged by the Federal Law Enforcement Training Center.<sup>8</sup> Thus, the total cost of a new Border Patrol agent is around \$189,000. Privatizing this process should lower costs.

Private firms may offer short-term and long-term solutions that are more cost-effective. In general,

the social science literature on the privatization of government services from waste management to corrections indicates that the private sector can deliver quality services more cheaply than the public sector can.<sup>9</sup> Some may say that the private sector cannot be trusted with securing the border. Yet the private sector is trusted to provide criminal justice services. For example, private contractors have a long history of managing adult and juvenile correctional facilities. A review of the literature on prison privatization by the Reason Public Policy Institute suggests that private prisons cost 11 percent to 14 percent less than state-run prisons.<sup>10</sup>

In the short term, private security firms can fill in the gaps on the border while the Border Patrol works to meet the hiring thresholds mandated by Congress. If private security firms can deploy border agents in a more cost-effective manner, then Congress should consider using private border agents as a long-term solution to enhancing border security.

*Training Capacity.* Congress should consider providing the Border Patrol with additional means to train new agents. Adding thousands of new agents in a few years as mandated by both the House and Senate bills may not be feasible without expanding the training capacity of the Border Patrol Academy and the Federal Law Enforcement Training Center. Allowing the Border Patrol to develop partnerships with law enforcement academies operated by private firms could lower training costs significantly. The CBP could also meet the Border Patrol increase by:

- *Building capacity.* Once recruiting efforts accelerate toward their goal of bringing in 6,000 new agents in the next two years, there must be a

8. Pamela Turner, Assistant Secretary for Legislative Affairs, U.S. Department of Homeland Security, letter to the Honorable Mike Rogers, Chairman of the Subcommittee on Management, Integration and Oversight, Committee on Homeland Security, U.S. House of Representatives, June 17, 2005.
9. William L. Megginson and Jeffrey M. Netter, "From State to Market: A Survey of Empirical Studies on Privatization," *Journal of Economic Literature*, Vol. 39, No. 2 (June 2001), pp. 321–389, and Robert W. Poole, Jr., and Philip E. Fixler, Jr., "Privatization of Public-Sector Services in Practice: Experience and Potential," *Journal of Policy Analysis and Management*, Vol. 6, No. 4 (Summer 1987), pp. 612–625.
10. The 11 percent to 14 percent cost reductions are based on the average of the reported cost percentage changes in Geoffrey F. Segal and Adrian T. Moore, "Weighing the Watchmen: Evaluating the Costs and Benefits of Outsourcing Correctional Services, Part II: Reviewing the Literature on Cost and Quality Comparisons," Reason Public Policy Institute *Policy Study* No. 290, January 2002, pp. 4–5, Tables 1A–1C, at [www.reason.org/ps290.pdf](http://www.reason.org/ps290.pdf) (August 8, 2006).

plan to ensure that the flood of new agents does not overwhelm the training facility in New Mexico. The obvious answer to increasing capacity at the academy is to spend money to expand the facilities, which the agency is already doing. To save money and time, the agency should use excess capacity at nearby colleges and universities to increase capacity in the short term.

The academy could also set up temporary facilities. For example, when the Army has needed to quickly expand its ability to train new recruits, it has used “expandables” or trailer parks that can be quickly established to house several hundred recruits. The CBP will need to consider building temporary range facilities and innovative solutions like training in shifts so that limited resources like firing ranges can be used around the clock.

- *Rethinking the academy standards.* The academy’s 20 percent attrition rate is intolerably high, especially when compared to U.S. Army basic training. New Army recruits wash out of basic at a rate of 10 percent to 12 percent. Lowering the attrition rate at the academy would help to meet the proposed increase. Easing the Spanish language requirement is one way to do this. Implementing the language requirement in a way that allows applicants who pass all other aspects of training a second chance to pass the language proficiency tests might lower the attrition rate while preserving the important requirement that Border Patrol agents speak Spanish. Additionally, including preparatory training courses in military recruitment has been shown to reduce the rate of attrition. Border Patrol training could implement such a model.

### **State and Local Participation Under Section 287(g)**

Section 287(g) of the Immigration and Nationality Act (INA) could serve as basis for state and local law enforcement to cooperate effectively with federal authorities in rapidly building up capacity to gain operational control of U.S. borders. This section gives local and state governments the authority

to investigate, detain, arrest, and deport illegal immigrants on civil and criminal grounds under federal immigration law.

**State and Local Engagement.** Section 287(g) was added to the INA in 1996 to enhance Immigration and Customs Enforcement. In many cases, local authorities along the border are often the first to witness immigration violations and in the best position to stop illegal immigrants who are trying to enter the United States. Under Section 287(g), states could secure adequate training for state and local law enforcement officers, who would then be authorized to deal with immigration offenders and enforce the INA. The month-long training focuses on immigration law, civil rights, racial profiling issues, and identifying immigration violators.

Using Section 287(g) would strengthen cooperation among federal, state, and local law enforcement agencies while still adhering to constitutional principles of federalism, protecting the rights of U.S. citizens, and combating threats to the nation. Currently, only Alabama, Florida, Arizona, North Carolina, and California have established Section 287(g) programs, but none of them are used for border control.

**Integrating with Federal Operations.** The best way to integrate Section 287(g) programs into border control is to expand the DHS Border Enforcement Security Task Forces (BEST), which act as fusion centers for federal, state, tribal, local law enforcement, and intelligence entities in identifying and combating emerging and existing threats. Other effective models of this approach include Project Seahawk at the port of Charleston, the Joint Interagency Task Force in Key West, the FBI’s Joint Terrorism Task Forces, and Canada’s Integrated Border Enforcement teams. The DHS should rapidly expand the task force concept to organize operations and use Section 287(g) as the basis for integrating state and local law enforcement.

Congress should authorize states and cities to use homeland security grants for participation in Section 287(g) programs. It should also require the DHS to:

1. Appoint a national spokesperson (a respected and prominent former state or local govern-

ment or law enforcement official) to promote the program;

2. Draft a strategy for implementing Section 287(g) nationwide; and
3. Create a national center to share lessons learned and to teach best practices.

## Volunteer Groups and State Defense Forces

The willingness of Americans to volunteer reflects a healthy civil society. Volunteer groups could perform many tasks that would enhance the nation's capacity to control its borders. As with all volunteer associations that interface with government agencies, there are three minimum requirements to making operations safe and effective: accreditation, standards, and practical employment concepts that are consistent with volunteer service.

The Minuteman Project demonstrated both the propensity for volunteers to serve and a range of useful activities that they could perform, from conducting surveillance to undertaking search and rescue operations. However, the project also demonstrated the limitations of volunteers. The Minutemen deployed an average of almost two dozen volunteers per mile, 24 hours a day to monitor border activity. Manpower requirements for sustained operations would require tens of thousands of personnel every day, which is unrealistic. In addition, Minuteman activities raised a number of safety and liability issues. An alternative would be to integrate volunteers into an established organization and develop employment concepts that are safe, sustainable, and organized to complement government border control activities.

Congress should consider promoting state defense forces (SDFs), which are authorized under federal law,<sup>11</sup> as the principal volunteer organizations for assisting in border control. An SDF is under the command of the governor and reports to the state's adjutant general. The state's constitution and laws prescribe the SDF's duties and responsibilities. These forces are state troops and are not funded by the federal government. To use armor-

ies, train on military installations, and receive in-kind support, states must comply with federal standards for the National Guard in matters of accession, training, uniforms, and discipline. SDF personnel receive no pay for training but may be paid for active duty under state control.

Congress should require the DHS and Department of Defense to encourage border states to organize in support of the border control mission. Within the DHS, programs should be managed cooperatively by the CBP and Coast Guard with oversight from the DHS Undersecretary for Preparedness. Regional DHS offices should help states to coordinate SDF programs. Funds should be authorized for establishing a system of accreditation and standards for volunteer border operations and developing employment concepts, plans, and exercises.

## A Private Contracting Model for Border Security

Using private contractors to meet the goal of increasing manpower and for other mission needs is a viable option. Private contractors could enable the DHS to meet the mission at the border with speed and flexibility while avoiding unnecessary extra costs if the DHS applies lessons learned from other large-scale federal contracts.

The DHS is well on its way to integrating contracting efforts to feed into the overall strategy of the Secure Border Initiative through its SBINet program. The program is designed to procure technology and infrastructure support for the SBI through competition among private contractors. This is a model that could be expanded and applied to procuring manpower.

Since 9/11, the government has taken on two of the largest private contracting efforts in history: rebuilding Iraq after the 2003 invasion and rebuilding the U.S. Gulf Coast after Hurricanes Katrina and Rita. Hurricane Katrina affected an area of at least 90,000 square miles—over half the size of Iraq. The U.S. government quickly employed and continues to employ private contractors to rebuild infrastructure, homes, schools, and hospi-

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11. 32 U.S.C. § 309.



tals in both areas, showing that private contracting can be done quickly and effectively.

Both the Office of the Special Inspector General for Iraq Reconstruction and the U.S. Government Accountability Office (GAO) have produced studies on challenges posed by these rebuilding efforts.<sup>12</sup> These studies presented recommendations and lessons learned for how to manage private contracting on a large scale and in a short time frame, including:

- Choosing the right business model,
- Defining specific and accurate requirements,
- Knowing the situation on the ground,
- Training personnel, and
- Setting up effective mechanisms for oversight and liability mitigation.

Applying these lessons to increasing manpower over the next five years would lay a solid foundation for securing the border.

**Requirements.** The first lesson learned in large-scale private contracting is knowing the requirements. When starting large-scale private contracting, it is important to prioritize projects and identify the requirements for completing them. While projects should be completed at a high level of quality, they may not require high-scale materials, designs, or personnel. Developing the requirements for large-scale contracting calls for qualified people to ask the right questions and understand the goals of the project, the needs of the customer, the technical aspects, and the process itself. Developing the requirements may be a process that includes constant review and updates.

In the case of border manpower, it is important to define which roles and responsibilities may be

contracted out. The distinction should be made between allocating and administering justice. The power of law enforcement lies with the state and not with private companies, but private companies may carry out the administrative functions of enforcement to ensure that the allocation of justice follows the law and due process.<sup>13</sup> In the past, private investigation and security company employees have secured law enforcement powers of arrest and the right to use deadly force through state and local legislation.<sup>14</sup> Agencies should clearly define the roles that contractors will play and the legislative consequences that those roles might entail.

In addition to the projects, the agency contracting out the function must have a clear idea of the potential risks on the ground. Before securing contracts, authorities should know what to expect at the contract site. Will the contractors need to provide a base for operations? If so, how will that fit into project costs? Being prepared for security risks and having appropriate contingency plans in place are also necessary. Operations must be ready to start running immediately upon staff arrival.

**Management and Oversight.** The second lesson learned in private contracting is that orchestrating the right contracts for the right projects lays the foundation for successful contracting. Even before contracting begins, agencies should identify which types of contracts they will be awarding and what resources are necessary to complete the contracts. Contract types include cost-plus, in which a contractor names the cost of the operations of the contract plus a markup, and fixed-fee, in which the contractor is guaranteed the contract for a relatively short period (typically around one year) at a fixed price, but either side can opt out in the following years. Cost-plus is often used when time is of the

12. For investigative, audit, and quarterly reports to Congress, see Office of the Special Inspector General for Iraq Reconstruction, Web site, at [www.sigir.mil/reports/Default.aspx](http://www.sigir.mil/reports/Default.aspx) (August 24, 2006). See also William T. Woods, Director, Acquisition and Sourcing Management, U.S. Government Accountability Office, "Katrina: Improving Federal Contracting Practices in Disaster Recovery Operations," testimony before the Committee on Government Reform, U.S. House of Representatives, May 4, 2006, at [www.gao.gov/new.items/d06714t.pdf](http://www.gao.gov/new.items/d06714t.pdf) (August 24, 2006).

13. Richard Harding, "Private Prisons," in Michael Tonry, ed., *Crime and Justice: A Review of Research* (Chicago: University of Chicago Press, 2001), p. 275.

14. Albert J. Reiss, Jr., "Police Organization in the Twentieth Century," in Michael Tonry and Norval Morris, eds., *Modern Policing* (Chicago: University of Chicago Press, 1992), p. 65.

essence or when technology must be fielded as quickly possible as part of a design-build contract in which technology is deployed and tested in real-world operations, eliminating the time needed for field testing.

One tactic to avoid skyrocketing costs in a cost-plus contract while still reaping the benefits of design-build is to set up a contract with one year of fixed-fee followed by a set number of years during which either party may opt out. If needed, the agency could start with a short-term contract for months or weeks until requirements are defined more clearly. In the process, agencies should consider the business arrangement, including whether the contract should be sole-source or competitive and what the mix of public-private resources should be. Throughout this process, private and public bidders for a contracted service should be able to bid against one another rather than being forced to choose one track or another.<sup>15</sup>

Whatever mix of public and private resources is formulated, the most important part of privatization is ensuring proper structure and accountability in the process.<sup>16</sup> An auditing system should be in place to oversee contract management from the beginning. In the case of the CBP, the responsibility may be placed under the DHS Inspector General (IG). Such oversight should enable real-time auditing in which management authorities can act immediately to make any changes in the contract management process that are suggested by the auditors. The IG's main responsibility would be to investigate possible fraud and abuse and to review the contract performance to ensure that it meets the government's requirements and is executed efficiently.<sup>17</sup>

However, to ensure that the IG oversight does not become too cumbersome for either the IG or

the contractors in large-scale contracting, the DHS could consider the option of creating a special position or board for such tasks, such as it did for all of FEMA's contracts after Katrina. FEMA was then able to respond to recommendations and implement appropriate changes.<sup>18</sup>

Some analysts suggest that an auditor should be present in meetings throughout the entire contracting process to help agencies avoid personal interest conflicts, as well as unequal treatment of bidders, and to assure both agency and contractor that the integrity of the contract is unquestionable. Such an addition might actually hinder the contract processing and should not be necessary when working with reputable companies. Finally, public access to contract information is crucial to ensure accountability of both contractor and government agency to Congress and the taxpayers.<sup>19</sup>

**Human Capital.** The third lesson learned is that contract management success or failure, as defined by the final product delivery and level of wasteful spending, hinges on the skill of the personnel managing the awards. From the start, managers must have a clear launch plan for the office in order to be ready to receive, train, and deploy staff. The personnel who will manage the contracts must clearly understand their jobs so that they can execute them adequately. Staff rotation must create some overlap for new staff to be fully trained and ready before current staff depart, and there must be enough staff to execute the job from the beginning of the project.

Finally, contractors who subcontract should be avoided because subcontracting can lead to overhead that consumes more than 50 percent of the contract cost. Subcontracting abuses are also difficult to track down and eradicate.

15. Harding, "Private Prisons," p. 310.

16. *Ibid.*, p. 271.

17. Stuart W. Bowen, Jr., Special Inspector General for Iraq Reconstruction, Statement for *Hearing on Contracting Issues in Iraq*, Subcommittee on Readiness and Management Support, Committee on Armed Services, U.S. Senate, February 7, 2006, p. 2, at <http://armed-services.senate.gov/statemnt/2006/February/Bowen%2002-07-06.pdf> (August 21, 2006).

18. Gregory D. Rothwell, "Statement Before House Select Bipartisan Committee," testimony before the Select Bipartisan Committee to Investigate the Preparation for and Response to Hurricane Katrina, U.S. House of Representatives, November 2, 2005, p. 8.

19. Harding, "Private Prisons," pp. 297 and 307.

**Liability and Procedure.** The fourth lesson learned is that knowing the available rules, procedures, and programs should be a priority for any agency managing contracts. The DHS should seriously consider prequalifying private contractors for liability protection under the SAFETY Act. The guarantee of powerful protections under the SAFETY Act will likely increase the pool of potential vendors, allowing the DHS to be more selective in its contracting decisions. The DHS needs to establish a statutory and regulatory framework before contracting, both to protect the contractor (and give it an incentive to bid) and to protect the government agency.

Cooperation and collaboration among different government agencies at the local, state, and federal levels is necessary, and private contracting efforts depend on leveraging needs, skills, and strengths in that process.<sup>20</sup> A GAO report on Katrina contracting noted that excessive time was spent coordinating with other agencies—time that could have been saved if a framework for collaboration had already been in place. Such a framework should include plans for communications, common definitions of contract terms, and assignment of responsibilities among key officials.<sup>21</sup>

**Finding the Right Business Model.** Different missions may require different business models. It is particularly important to select the right business model when contracting out functions (e.g., detention) that the agency has not contracted out previously. Market testing is an integral part of finding the right business model. A market test enables contractors and agencies to see pricing and performance for the services that they wish to provide or purchase.<sup>22</sup> Agencies should look beyond contracting in Iraq and the Gulf Coast to gain a broader perspective.

For example, airport security policymakers have explored more efficient ways to implement airport security by allowing some airports to contract out certain aspects of security to private screeners as long as security standards are met. A few airports are currently contracting out perimeter security and cargo and passenger screening.<sup>23</sup> This enables airport security officials to focus on risk assessment, regulation, and oversight at their respective airports rather than on building and managing a mini-fiefdom of screeners, perimeter security enforcers, and other personnel. In this way, resources are allocated appropriately to meet threats, and taxpayers receive more for their tax dollars. Similarly, an appropriate business model for private contracting at the border would allocate resources effectively for CBP and DHS mission needs.

A growing number of prisons across America are run by private companies on behalf of the federal, state, and local governments. Out of a prison population of 1.5 million in 2005, 100,000 state and local prisoners were held in privately run prisons. These prisons are not their own entities with special authority; instead, they operate under appropriate jurisdictions.

Various government agencies have recognized the flexibility that private contractors offer, and the CBP should consider a similar model for private contractors at the border. As crackdowns on illegal immigration continue, more beds will be needed in detention facilities. Private companies claim that the private sector could easily provide 4,000 beds for detention operations<sup>24</sup> and could provide more flexibility in the changing environment of detention needs.

As discussed, private contracting at the border could be used for more than the administrative

20. Bowen, Statement for *Hearing on Contracting Issues in Iraq*, p. 10.

21. William T. Woods, "Hurricane Katrina: Planning for and Management of Federal Disaster Recovery Contracts," testimony before the Subcommittee on Federal Financial Management, Government Information, and International Security, Committee on Homeland Security and Government Affairs, U.S. Senate, April 10, 2006, p. 8.

22. Harding, "Private Prisons," p. 299.

23. Robert W. Poole, "Airport Security: Time for a New Model," Reason Foundation *Policy Study* No. 340, January 2006, at [www.reason.org/ps340.pdf](http://www.reason.org/ps340.pdf) (July 19, 2006).

24. Meredith Kolodner, "Immigration Enforcement Benefits Prison Firms," *The New York Times*, July 19, 2006.

duties of building up manpower. The National Guard, deployed to the border by President George W. Bush, is providing services such as surveillance and reconnaissance, engineering support, transportation support, logistics, vehicle dismantling, medical support, barrier and infrastructure construction, road building, and language support. The Department of Defense has already acknowledged that it plans to use private civilian contractors where appropriate.<sup>25</sup>

**Planning and Execution.** The government has done large-scale private contracting before, and it can do it again even more cleanly and efficiently for border security. Applying the lessons learned from large-scale private contracting in the Iraq and Gulf Coast reconstruction efforts has the potential to enhance other large-scale private contracting, both abroad and at home.

The key lesson is the need to plan. Planning is an essential task that requires significant attention before engaging in a contract. The ability to execute any large-scale private contract effectively lies with choosing the right business model, defining specific and accurate requirements, knowing the situation on the ground, training personnel, and setting up effective mechanisms for oversight, response to oversight, and liability mitigation. The SBINet model may be a good start. Taking cues from other contracting endeavors, private contractors could enable the DHS to meet the mission at the border with speed and flexibility and at low cost.

## What Should Be Done

To ensure that America's borders are secure within two years, Congress should direct the Department of Homeland Security to:

- **Form** a strategy for securing the border that will change the predominance of illegal south-north migration from illegal to legal, disrupt the current migration patterns quickly, and encourage legal migration. This includes measures for land, sea, air, and interior enforcement; rapid response deployment; the assistance of private

contractors; enhancing the roles of state and local law enforcement; deployment of National Guard and other volunteer and State Defense Forces; and human capital improvements in Border Patrol recruiting efforts.

- **Increase** funding for recruitment of Border Patrol agents, increase pay and benefits for Border Patrol agents to competitive levels, engage the private sector to meet its recruiting goals and lower the cost of recruitment per agent, increase the capacity of the Federal Law Enforcement Training Center, and offer preparatory courses for the Spanish language requirement.
- **Use** a model for large-scale private contracting that draws on lessons learned from previous federal contracting experience. This includes choosing a sound business model, defining specific and accurate requirements, understanding the situation on the ground, training personnel appropriately, and setting up an effective mechanism for oversight and liability mitigation.

Congress and the DHS should also encourage states to establish immigration enforcement programs under Section 287(g) of the 1996 Immigration and Nationality Act. This would enable state and local law enforcement officers to deal with immigration offenders and enforce INA in ways that integrate them with current federal operations, such as the DHS Border Enforcement Security Task Force.

## Conclusion

U.S. border security strategy should be implemented within two years and should be maintained at the same levels for at least five years. The strategy should employ a mix of resources in addition to Border Patrol agents, including state and local authorities, the National Guard, and private contractors. The DHS should heed the lessons learned from other large-scale contracting activities. Additionally, the DHS should view border security as encompassing not only land borders, but air and

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25. Paul McHale, statement before the Committee on Armed Services, U.S. House of Representatives, May 24, 2006, at <http://armedservices.house.gov/5-24-06McHaleTestimony.pdf> (August 21, 2006).

sea borders as well. With all of these components in place, the strategy will succeed in securing U.S. borders.

—James Jay Carafano, Ph.D., is Senior Research Fellow for National Security and Homeland Security in the Douglas and Sarah Allison Center for Foreign Policy Studies, a division of the Kathryn and Shelby Cullom Davis Institute for International Studies; Brian

W. Walsh is Senior Legal Research Fellow in the Center for Legal and Judicial Studies; David B. Muhlhausen, Ph.D., is Senior Policy Analyst in the Center for Data Analysis; and Laura P. Keith and David D. Gentilli are Research Assistants in the Douglas and Sarah Allison Center for Foreign Policy Studies at The Heritage Foundation.