

**FEDERAL MOTOR CARRIER SAFETY  
ADMINISTRATION LACKS CORE  
ELEMENTS FOR A SUCCESSFUL  
ACQUISITION FUNCTION**

*Federal Motor Carrier Safety Administration*

*Report Number: ZA-2010-093*

*Date Issued: August 24, 2010*



# Memorandum

U.S. Department of  
Transportation

Office of the Secretary of Transportation  
Office of Inspector General

Subject: ACTION: The Federal Motor Carrier Safety  
Administration Lacks Core Elements For A  
Successful Acquisition Function  
Report No ZA-2010-093

Date: August 24, 2010

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and Procurement Audits

Reply to  
Attn. of: JA-60

To: Administrator  
Federal Motor Carrier Safety Administration

The Federal Motor Carrier Safety Administration (FMCSA) relies on the procurement of goods and services to achieve its primary mission of reducing crashes, injuries, and fatalities involving large trucks and buses. In fiscal year 2009, FMCSA received a \$234 million budget for its operations and programs to support its mission—\$80 million or 34 percent of which was for the procurement of goods and services.<sup>1</sup> FMCSA also relies heavily on contract arrangements that place a high risk on the Agency because they tie the contractor's profit to the number of hours worked, thus imposing the risk of cost overruns on the Government.<sup>2</sup> FMCSA spends about 40 percent of its dollars on such contracts compared to about 5 percent Governmentwide. Given the magnitude of FMCSA's contracted goods and services to its mission success and its significant use of high-risk contracts, it is critical that its contract practices are effective to protect the Government's interest.

We performed this audit at the request of FMCSA's former Administrator.<sup>3</sup> Our audit objectives were to determine whether FMCSA's contract award and

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<sup>1</sup> These budgetary amounts exclude grants. FMCSA's total budget for fiscal year 2009 was \$541 million.

<sup>2</sup> These include Time and Materials and Labor Hour contracts, as defined in FAR Part 16.

<sup>3</sup> In 2008, the former Administrator contracted with Grant Thornton, LLP to perform a review of FMCSA's acquisition process; the contractor's findings prompted the former Administrator's request to the Department of Transportation's Office of Inspector General to perform a follow-up audit.

administration practices comply with applicable laws and regulations. As a result, we reviewed FMCSA's (1) acquisition planning and competition of contracts, (2) contract administration and oversight, and (3) acquisition infrastructure. Our audit work included a review of 27<sup>4</sup> FMCSA contracts valued at \$192 million from a universe of contract actions reported between fiscal year 2005 and January 12, 2009.<sup>5</sup> We conducted this audit in accordance with generally accepted government auditing standards and believe the evidence we obtained provides a reasonable basis for our findings and conclusions based on our audit objectives. Exhibit A contains the details of our scope and methodology.

## RESULTS IN BRIEF

FMCSA does not have adequate contract pre-award processes in place, leaving it vulnerable to using ineffective business arrangements and ultimately hindering its ability to maximize competition. First, FMCSA's Office of Acquisition Management (OAM) does not have internal controls to ensure that required acquisition plans be used for all procurements over \$2 million.<sup>6</sup> Second, FMCSA is not properly completing determination and findings (D&F) to justify using contract types that subject the Government to a greater degree of risk, such as Time and Materials (T&M) and Labor Hour (LH) contracts. Third, FMCSA is not documenting required independent government cost estimates (IGCE)<sup>7</sup> for its use when negotiating prices with contractors.<sup>8</sup> Fourth, 10 contract files we reviewed that required legal sufficiency reviews of both the solicitations and contract awards lacked proof that such reviews were completed. Fifth, OAM is not allowed adequate time to award a contract because FMCSA does not follow its recommended procurement lead times for planning and awarding contracts, which could greatly limit competition. Finally, FMCSA's acquisition staff and program offices are not performing adequate market research to identify qualified vendors, limiting the possibility of achieving more favorable costs for FMCSA.

FMCSA lacks effective administration and oversight of its contracts to ensure it meets the Agency's needs in the most efficient and economical manner. Specifically, Contracting Officers (CO) maintained incomplete contract files and documents with numerous administrative errors, and for four contracts, COs provided their signature after the awards' effective date. In addition, FMCSA's

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<sup>4</sup> We selected 28 contracts for review; however, FMCSA was unable to locate 1 of these 28 contracts. Therefore, we were able to review a total of only 27 contracts, which we refer to throughout the report.

<sup>5</sup> We selected the contracts from the Federal Procurement Database System-Next Generation (FPDS-NG)—the Federal tracking system for contracts with an estimated value of \$3,000 or more. There was a universe of 410 contracts valued at \$334 million, which included contracts awarded from fiscal years 1999 through 2009. However, the selected contracts had contract award dates from fiscal years 2002 through 2008.

<sup>6</sup> Transportation Acquisition Manual (TAM) Subchapter 1207.1 *Acquisition Plans*.

<sup>7</sup> A documented and supported estimate of the cost of the proposed project based on factors such as prior buying history, rates in similar contracts, and inflation indicators.

<sup>8</sup> TAM 1215.404-70 *Independent Government Estimates*.

Contracting Officer's Technical Representatives (COTRs) have incomplete contract files and do not follow a systematic approach for monitoring contracts, such as using structured monitoring plans. Such systematic oversight is especially important given FMCSA's high use of T&M/LH contracts. Finally, contract oversight is further compromised by COTRs' lack of regular communication with OAM, which has led to contrasting viewpoints regarding basic, yet key, contract information required to help ensure desired contract outcomes.

FMCSA lacks the critical components needed for an effective acquisition function, namely organizational alignment and leadership, policies and processes, acquisition data, and human capital. Weaknesses in these areas contribute to FMCSA's poor contracting practices. The Office of Management and Budget (OMB) Guidelines and Federal internal control standards cite these components as cornerstones for an effective acquisition function.<sup>9</sup> FMCSA's lack of emphasis on improving these cornerstones is the primary cause of OAM's and the program offices' continued use of high risk business arrangements, such as T&M/LH contracts, not maximizing competition when awarding contracts, and inadequate contract oversight.

Our report makes a number of recommendations for improving FMCSA's acquisition workforce deficiencies, policies and processes, and contract oversight and therefore, better positioning its acquisition function to fulfill the Agency's mission.

## **BACKGROUND**

The Federal Acquisition Regulation (FAR) establishes uniform policies and procedures for executive agencies to ensure their acquisition of supplies and services are conducted with fairness and integrity, minimize administrative operating costs, fulfill public policy objectives, and result in quality products and services. The FAR also promotes the use of competition and fixed-price contracts.<sup>10</sup> The Department of Transportation's (DOT) Transportation Acquisition Regulation (TAR) and the Transportation Acquisition Manual (TAM) implement and supplement FAR policies.

Recent Federal emphasis has been placed on the importance of sound acquisitions. The President's March 4, 2009, memorandum on government contracting underscores agency use of competition and fixed-price contracts since they are the

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<sup>9</sup> OMB Memorandum *Conducting Acquisition Assessments under OMB Circular A-123*, May 21, 2008, provides four cornerstones: (1) organization alignment and leadership, (2) policies and processes, (3) human capital, and (4) information management and stewardship.

<sup>10</sup> FAR 6.1 *Full and Open Competition* promotes competition, and FAR 16.1 *Selecting Contract Types* promotes fixed-price contracts.

least risky contract type to the Government.<sup>11</sup> Also, on July 29, 2009, OMB issued a memorandum to the heads of executive departments and agencies to heighten acquisition reform to improve the effectiveness of acquisition practices and the results achieved from their contracts.

FMCSA's OAM—one of three divisions in its Office of Administration—is responsible for the Agency's contract award and administration. In June 2008, FMCSA hired a new Acting OAM Director (made permanent in November 2009) to oversee and manage its acquisition function. OAM consists of Contracting Officers, authorized to award, administer, and terminate contracts, and Contract Specialists, who perform day-to-day contract activities. In addition, program offices throughout FMCSA define contract requirements and prepare purchase requests to send to OAM to acquire goods and services, which help to meet their offices' strategic goals. Once the contract is awarded, a Contracting Officer's Technical Representative is appointed as a representative of the program office and is responsible for monitoring contractor performance. OAM and the program offices are laterally aligned in FMCSA's organizational structure.

The total dollar value of FMCSA's contract actions between fiscal year 2005 and January 12, 2009, was \$334 million, which was distributed as follows:

- 45 percent were competitive awards, 35 percent were non-competitive awards, and the remaining 20 percent of the awards' extent of competition was not reported.
- 44 percent were T&M/LH-type contracts, 33 percent were fixed-price contracts, and the remaining 23 percent used another contract type.

### **INADEQUATE PLANNING PROCESSES LEAVE FMCSA VULNERABLE TO USING INEFFECTIVE BUSINESS ARRANGEMENTS AND ACHIEVING LIMITED COMPETITION**

FMCSA awards contracts without adequately performing key pre-award processes (see table 1 for FMCSA's specific acquisition pre-award weaknesses). For instance, FMCSA does not prepare acquisition plans before awarding a contract. Further, OAM does not adequately prepare D&Fs to justify using high risk contract types, such as T&M/LH contracts. Contract files do not provide documentation that IGCEs are prepared for negotiating fair and reasonable contract costs. Also, contract files do not include required legal reviews, and there is no process in place to ensure legal review comments are resolved before awarding a contract. Additionally, FMCSA does not follow its specified procurement lead times for planning and awarding contracts. Finally, FMCSA is

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<sup>11</sup> Presidential Memorandum *Government Contracting*, dated March 4, 2009.

not performing adequate market research to identify qualified vendors and appropriate products and services. The lack of these planning processes has resulted in FMCSA's inability to promote and provide for full and open competition in soliciting offers and awarding contracts.

**Table 1. Summary of Acquisition Pre-award Requirements for Contracts Reviewed**

Measure	Pre-Award Requirements					
	Acquisition Plan	D&F	IGCE	Legal Review	Procurement Lead Time	Market Research
Number of contracts required to comply*	19	21	27	10	27	12
Number and percent of noncompliant contracts	16 (84%)	12 (57%)	11 (41%)	10 (100%)	26 (96%)	5 (42%)
Value of noncompliant contracts (in millions)	\$150	\$55	\$71	\$75	\$182	\$69
Percentage of noncompliant contracts to contract universe valued at \$334 million	45%	17%	21%	22%	55%	21%

\* Out of 27 contracts reviewed, based upon applicable regulation or guidance.

Source: OIG analysis of sampled OAM contract files, based upon the contract value reported in FPDS as of January 12, 2009.

## Contracts are Awarded Without Adequate Acquisition Plans

FMCSA's acquisition planning is insufficient at both an agency-wide and individual contract level, resulting in contracts being awarded without acquisition planning being performed or documented. The FAR requires agencies to perform procurement planning in order to promote competition and ensure that agency needs are met in the most effective, economical, and timely manner.<sup>12</sup> Also, FMCSA does not have internal controls nor is it held accountable to ensure acquisition plans are developed for all procurements over \$2 million, as required by TAM.<sup>13</sup> In fact, 16 of 19 contracts we reviewed over \$2 million, with a total value of \$150 million, did not contain an acquisition plan. FMCSA's lack of

<sup>12</sup> FAR 7.102 Acquisition Plans.

<sup>13</sup> Transportation Acquisition Manual (TAM) Subchapter 1207.1 *Acquisition Plans*.

planning has contributed to the use of high risk business arrangements and limited competition.

Additionally, FMCSA's lack of planning is partly responsible for the significant amount of contract dollars it obligates in the last month of the fiscal year—44 percent of fiscal year 2008 obligated contract dollars were awarded in September. Such delay creates a risk that planning will be rushed or not performed at all, which could result in OAM awarding contracts to vendors that do not represent best value to FMCSA. For example, in fiscal year 2008, OAM awarded a \$7 million contract for professional services to support the Motor Carrier Safety Assistance Program—a major safety program to reduce the incidence and severity of commercial motor vehicle crashes. According to OAM officials, to ensure the contract was awarded by year-end, they solicited it for only 5 days, resulting in only one bid from the incumbent. While such short solicitation times are not prohibited, had OAM planned more effectively and allowed more time, it may have realized increased competition.

### **OAM Does Not Adequately Prepare Determinations and Findings To Justify Using High Risk Contract Types**

OAM is not consistently completing D&Fs to support its selection of contract type. When D&Fs are completed, they do not contain all the elements required by the FAR, such as details of the particular circumstances, facts, or reasoning essential to support the determination (see table 2). The FAR requires agencies to prepare a D&F to justify using contract types that subject the Government to a greater degree of risk, such as T&M/LH contracts, any contract that is not firm-fixed-price, or any contract for research and development.<sup>14</sup>

**Table 2. Summary of Non-Compliant Contract Type D&Fs for Contracts Reviewed**

Category	Contracts Reviewed Requiring Contract Type D&F	Contracts with no D&F	Value of Contracts with no D&F (in millions)	Percentage of Value of Contracts with no D&F to Total Universe Valued at \$334M
For All Contracts in our Sample	21	12	\$55.5	17%
Breakout by Contract Type and Follow-On Status:				
• T&M/LH Contracts	15	8	\$32.2	10%
• Follow-on Contracts	13	7	\$32.0	10%

<sup>14</sup> FAR 16.103(d) *Negotiating Contract Type*.

Furthermore, OMB's 2009 memorandum on government contracting underscores the FAR's requirement that an agency's decision to use a T&M/LH contract must be supported by sufficient analysis, including an explanation of why a firm-fixed-price contract is unsuitable.<sup>15</sup> Such analyses are critical in FMCSA, which in fiscal year 2008 obligated 37 percent<sup>16</sup> of its contract dollars on T&M/LH-type awards, compared to 5 percent Governmentwide.<sup>17</sup> Specifically, only 7 of 15 T&M/LH contracts we reviewed contained the required D&F, and 2 of these simply repeated verbatim the FAR requirement for using these contract types without further explanation.<sup>18</sup> The remaining D&Fs for all other contracts we reviewed contained vague contract detail and did not adequately support the use of such a high risk contract type. The FAR also requires agencies to periodically assess their T&M/LH contracts to determine whether changing circumstances or experience gained throughout the period of performance provide a basis for firmer pricing. However, we found no evidence in the 15 T&M/LH contracts we reviewed that OAM analyzed the feasibility of changing to a low risk contract type, such as a fixed-price contract.

Also, 39 percent of FMCSA's follow-on contracts we reviewed, valued at \$78 million, were T&M/LH-type contracts, which required a D&F. To illustrate, in September 2008, FMCSA awarded a 5-year follow-on T&M contract for approximately \$10 million to prepare regulatory plans and provide policy development support services. OAM's D&F to justify the use of this contract only repeated verbatim the FAR requirement without providing further explanation. However, FMCSA did not assess the current contract to determine if firmer pricing could be used as it had done in the prior contract. Additionally, OAM awarded the two prior contracts to the same vendor to acquire the same support services for the Regulatory Division. The first was awarded in fiscal year 2004, illustrating at least a 4-year purchase history with this vendor. If OAM exercises all option periods for the current contract, FMCSA will have contracted for the same service—under a high risk-type contract—for a prolonged period of 9 years.

### **Contract Files Lack Independent Government Cost Estimates Needed To Negotiate Fair and Reasonable Prices**

OAM is not adequately documenting or completing IGCEs to ensure fair and reasonable prices for proposed projects.<sup>19</sup> For example, contract files for 11 of the

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<sup>15</sup> OMB Memorandum *Increasing Competition and Structuring Contracts for Best Result*, October 27, 2009.

<sup>16</sup> According to data that FMCSA entered in FPDS-NG for fiscal year 2008.

<sup>17</sup> Reported in a March 18, 2009, OMB Letter to the Chairman on the Committee on Homeland Security and Governmental Affairs complying with Public Law 110-417.

<sup>18</sup> FAR 16.601(c) *Time and Materials Contract: Application*. A time-and-materials contract may be used only when it is not possible at the time of placing the contract to estimate accurately the extent or duration of the work or to anticipate costs with any reasonable degree of confidence.

<sup>19</sup> A documented and supported estimate of the cost of the proposed project based on factors such as prior buying history, rates in similar contracts, and inflation indicators.

27 contracts reviewed, valued at \$71 million, did not contain required IGCEs. When DOT negotiates prices with contractors, the TAM requires the requesting program office to provide an IGCE for all proposed acquisitions.<sup>20</sup> While the remaining 16 contracts had IGCEs, 9 of those contracts lacked methodology for how they were calculated. Although providing methodology is not a requirement, guidance from other Federal agencies states IGCEs should include any assumptions, methodology, and reference material used in developing the cost estimate.<sup>21</sup> FMCSA's lack of controls to ensure IGCEs are adequately developed, coupled with OAM staff not inquiring or assessing how program offices prepare their IGCEs, heightens FMCSA's risk of relying on poor cost estimates when negotiating contract prices.

### **Legal Reviews Are Not Performed and Legal Concerns Are Not Addressed**

Prior to awarding contracts, FMCSA does not perform required legal reviews or address the legal office's review comments. The TAM requires all solicitations and contracts not awarded from Federal Supply Schedules<sup>22</sup> and expected to exceed \$500,000 be reviewed for legal sufficiency.<sup>23</sup> However, all 10 contract files we reviewed that required both a solicitation and an award review were missing one of these two reviews (see table 3).

**Table 3. Summary of Non-Compliant Legal Reviews for 10 Contracts Reviewed**

<b>Type of Legal Review Required</b>	<b>Contracts Without Reviews*</b>	<b>Value of Contracts Without Reviews (in millions)</b>	<b>Percentage of Value of Contracts Without Reviews to Total Universe Valued at \$334M</b>
Solicitation Review	9	\$66	20%
Award Review	6	\$47	14%
Solicitation or Award Review	10	\$75	22%

\*These files are for only those 10 contracts in our sample that required legal review.

<sup>20</sup> TAM 1215.404-70 *Independent Government Estimates*.

<sup>21</sup> Federal Aviation Administration Pricing Handbook 2: IGCE October 2007.

<sup>22</sup> The Federal Supply Schedules Program establishes a streamlined approach to procuring long-term Government-wide contracts for commercial supplies and services. Eleven of the 12 competed contracts we reviewed were awarded off the General Services Administration and National Institute of Health supply schedules. FAR 8.405-1(c)(1) *Ordering procedures for Federal Supply Schedules: Ordering procedures for supplies and services not requiring a statement of work* requires that the solicitation be sent to three vendors capable of performing the requested services; FAR 8.405-2(c)(3) *Ordering Procedures for Federal Supply Schedules: Ordering procedures for services requiring a statement of work* requires additional vendors be selected when the contract value is expected to exceed the maximum order threshold.

<sup>23</sup> TAM 1204.7003(b) *Legal Reviews*. Legal reviews are also not required for contracts awarded under Simplified Acquisition Procedures and Interagency Acquisitions under the Economy Act.

When the legal office's reviews were completed, however, neither OAM nor the program office consistently addressed the review comments. This is a result of FMCSA not assigning clear roles and responsibilities to OAM and its program offices regarding the legal review process. As a result, OAM staff believe it is the program offices' responsibility to address the comments and vice-versa. To illustrate, on September 30, 2008, OAM awarded a \$3 million contract for professional support services to close out undelivered orders from FMCSA's Delphi accounting system. The legal office's review of this proposed contract expressed concern about inconsistencies between what was stated in the contract and the program office's procurement request. The contract stated the period of performance was 1 base year plus 2 option years, but the procurement request stated the period of performance was 1 base year plus 4 option years. The legal office advised OAM to rectify the inconsistency before awarding the contract. However, the contract file did not contain documentation to support that this issue was resolved.

Furthermore, for the files we reviewed, COs did not sign documentation asserting the resolution of all legal comments prior to awarding a contract, as required by TAM.<sup>24</sup> This is partly because the legal office does not have a process in place requiring its staff to follow up with OAM about resolving their review comments before awarding a contract, and OAM is not held accountable to ensure these comments are addressed. The lack of clear roles and responsibilities, as well as a process for addressing legal office comments and concerns before awarding a contract, increases FMCSA's risk of awarding contracts that do not comply with applicable statutes and regulations.

### **Program Offices Limit Competition by Not Informing OAM of the Need for Contracts in a Timely Manner**

FMCSA's program offices do not inform OAM of their need for contracts in a timely manner—only 1 of 27 contracts we reviewed met FMCSA's procurement lead time guidelines (see table 4). In 2002, FMCSA's Associate Administrator for Administration issued a memorandum that recommended using standard procurement lead times for planning and awarding a contract to ensure efficient and economical procurement practices.<sup>25</sup> The standard procurement lead time is measured as the period from which the program office requests the procurement to the day OAM awards a contract. Despite these recommended procurement lead times, however, OAM solicited 8 of 12 competitive contracts we reviewed for

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<sup>24</sup> TAM 1204.7004(a) requires all approval decisions and the resolution of all comments to be written, signed, dated, and placed in the contract file; 1204.7004(b) requires the contracting officer to include a signed and dated written determination indicating that all of the conditions were satisfied prior to award.

<sup>25</sup> FMCSA's memorandum *Procurement Lead Times*, November 22, 2002.

10 days or less, which may not have allowed qualified vendors time to become aware of the competition and prepare a proposal.

**Table 4. Summary of Non-Compliant Lead Times**

FMCSA Recommended Lead Times per Fiscal Year 2002 Memo		Contracts We Reviewed		Contracts That Met Recommended Lead Time
Contract Categories	Lead Time (in days)	Number	Range of Lead Times (in days)	
<b>SOLE SOURCE</b>				
Non 8(a) <sup>26</sup> less than \$500,000	180	2	17–28	0
Non 8(a) greater than \$500,000	210	5	33–213	1
8(a) set aside less than \$3,000,000	90	4	13–49	0
8(a) set aside greater than \$3,000,000	120	2	14–95	0
<b>COMPETITIVE</b>				
Non 8(a) less than \$500,000	210	1	40	0
Non 8(a) \$500,000-\$5 million	270	3	54–112	0
Non 8(a) greater than \$5 million	420	6	61–188	0
8(a) less than \$3,000,000	90	1	43	0
8(a) greater than \$3,000,000	120	1	17	0
<b>UNDETERMINED</b>				
Guidance does not specify	90 <sup>a</sup>	2	47–49	0
<b>Total</b>		<b>27</b>		<b>1</b>

<sup>a</sup> 90 days was the minimum lead time for any acquisition; therefore since the extent competed was unable to be determined for 2 contracts, the minimum lead time was used as the baseline to show that regardless of the extent competed, they would not have met the recommended lead time established by FMCSA.

In addition, documentation in contract files revealed FMCSA's legal staff have concerns that FMCSA's short lead times for soliciting potential vendors give the appearance of favoring the incumbent. For example, OAM solicited a contract for about \$10 million for regulatory and policy support services to only three vendors—one the incumbent—for just 3 days. Ultimately, OAM awarded this contract to the incumbent because the other two bidders did not meet all of the solicitation's requirements and did not demonstrate the same level of experience and knowledge. However, FMCSA's legal review expressed concern that the short solicitation time gave the appearance of favoring the incumbent, making FMCSA vulnerable to bid protest. Insufficient lead times could greatly limit

<sup>26</sup> A classification of small business as determined by the Small Business Administration, which must be unconditionally owned and controlled by one or more socially and economically disadvantaged individuals.

competition and put FMCSA at risk of not achieving the best value for its acquisition dollars.

### **Market Research is Not Performed or is Inadequate To Identify Qualified Vendors**

FMCSA does not sufficiently perform market research or adequately document its results. To illustrate, for the 12 competitively awarded contracts we reviewed that required market research:

- 5 contracts—valued at over \$69 million, or about 21 percent of FMCSA’s entire contract universe—had no documented market research, and
- 7 contracts had limited documented market research, consisting only of a list of vendors from the Federal Supply Schedule.

Six of these 12 contracts received only one bid, essentially not ensuring that FMCSA benefitted from competition to obtain goods and services at the best value. The FAR<sup>27</sup> requires agencies to conduct market research before soliciting offers for acquisitions with an estimated value in excess of \$100,000<sup>28</sup> in order to identify qualified vendors and the extent of possible competition in the market, as well as the appropriate products and services to be acquired. The FAR also requires market research results be documented in a manner appropriate to the size and complexity of the acquisition.

OAM's award of a \$7 million contract to perform regulatory, financial, and safety reviews illustrates its insufficient use of market research to maximize competition. In this case, OAM identified eight potential vendors and sent the solicitation to three of them—only two vendors responded, one of which stated it did not perform the services requested and therefore did not submit a proposal. The other vendor was the incumbent and was ultimately awarded the contract. The CO stated OAM did not issue the solicitation to the other five vendors because it is not required to issue solicitations to more than three vendors. However, in this case, OAM did not comply with FAR solicitation procedures requiring contracts over the maximum order threshold be solicited to more than three vendors.<sup>29</sup>

Further, OAM does not always use market research results provided by the program office, a best practice in other Federal agencies given the program office's

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<sup>27</sup> FAR Part 10: *Market Research*.

<sup>28</sup> The simplified acquisition threshold includes contracts with an anticipated value exceeding \$3,000.

<sup>29</sup> Dollar value that identifies when a price reduction should be sought and additional vendors solicited. This dollar threshold varies by supply schedule. For this contract, the maximum order threshold was set at \$1 million.

familiarity with the services being requested.<sup>30</sup> For example, the Strategic Planning and Program Evaluation Division conducted detailed market research to prepare an IGCE for a contract over \$9 million to provide technical support for Strategic Planning, Performance Management, and Program Evaluations. The program office identified four vendors it determined had high quality past performance on similar services for FMCSA or other Federal agencies. OAM issued the solicitation for this contract to six vendors—only one of which was identified by the program office. Ultimately, only one bid was received. OAM stated it did not use the program office's market research results because it is not required to and instead performed its own market research.<sup>31</sup>

## **FMCSA'S CONTRACT ADMINISTRATION PRACTICES DO NOT ENSURE FMCSA MEETS ITS NEEDS EFFECTIVELY AND ECONOMICALLY**

FMCSA's contract administration and oversight do not provide assurance that its contracts meet agency needs in the most efficient and economical manner. For all 27 contracts reviewed, we found contract documents with errors, contract files missing required documents, and contracts signed by the CO after the contract's effective date. Additionally, COTRs do not follow a systematic approach for monitoring contracts, such as using structured monitoring plans and documenting surveillance results when performing contract oversight. Also, COTRs and OAM do not regularly communicate with one another, resulting in contrasting information regarding basic, key contract information needed to ensure desired contract outcomes.

### **COs Do Not Ensure Contract Files are Accurate and Complete**

FMCSA's contract files contained numerous problems, ranging from document errors to missing documents. The CO is the sole person with the authority to enter into a contract on behalf of FMCSA and is required by the FAR to "ensure performance of all necessary actions for effective contracting, ensuring compliance with contract terms, and for safeguarding the interest of the United States in its contractual relationships."<sup>32</sup> However, we found errors the CO did not correct, which made FMCSA vulnerable to potential legal issues. For example, one contract we reviewed contained a personal service clause stating, "The on-site project manager (PM) will serve as liaison...*under the direct supervision* of the

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<sup>30</sup> Defense Procurement and Acquisition Policy Contract Pricing Reference Guide, *Conduct Market Research for Price Analysis*.

<sup>31</sup> FMCSA 2009 Succession Plan identified market research as a competency gap for the COs and COTRs. Additionally, it states that market research is not a critical aspect of the CO function, and therefore, FMCSA has no plans to improve its COs' skills in performing market research. OAM officials later advised us that it is the program office's responsibility to perform market research, not the COs.

<sup>32</sup> FAR 1.602 *Contracting Officers*.

Chief of the Physical Qualifications Division and the COTR(s) for this program."<sup>33</sup> Such personal service clauses—whereby contractor personnel are supervised by government employees—are prohibited by law, and neither OAM nor the COTR were aware the contract contained the clause.

In addition, we found contract files lacked required documents, such as a complete set of contract modifications, acquisition plans, justifications and D&Fs, and COTR designation letters. For example, the current OAM staff were unable to determine the extent of competition in two contracts we reviewed because the contract files lacked documentation to support whether they were competitive or sole-source awards. The FAR states that such documentation in contract files shall be sufficient to constitute a complete history of the transaction for making informed decisions at each step of the acquisition process and to support any actions taken.<sup>34</sup> In addition, the Government Accountability Office's *Standards for Internal Control in the Federal Government* states agencies should have internal control activities, such as the creation and maintenance of records, that provide evidence of execution of approvals and authorizations. The need for well-maintained and complete contract files is not only important for OAM's day-to-day contract administration, but is also important given OAM staff's high turnover rate, and complete contract files help ensure proper transfer of responsibilities among staff and continuity of operations.

A contract only becomes a legal document after it is signed by the CO. However, we found four contracts, valued at \$13.2 million, where COs provided their signature after the awards' effective date. Contractors began performing work on these four contracts before legally authorized. For example, we found a 4-month bridge contract valued at almost \$1 million for operation and maintenance of commercial driver licenses databases with an effective date of June 1, 2008. However, the CO did not sign this contract until September 15, 2008—107 days after the effective date and only 9 days before the contract's performance period ended.<sup>35</sup> Also, other contract documents, such as task orders and modifications, were not signed by the CO. In addition, while the current OAM Director required COs to sign-off on a quality review form to ensure accuracy of contract actions, we found several unsigned forms, mitigating the effectiveness of this internal control. The errors and inconsistencies we found in FMCSA's contract documents

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<sup>33</sup> FAR 37.104(a) & (b) *Personal Service Contracts*: Agencies shall not award personal services contracts unless specifically authorized by statute to do so. Obtaining personal services by contract, rather than by direct hire, circumvents civil service laws unless specifically authorized by Congress. A personal services contract is characterized by the employer-employee relationship where, as a result of the contract's terms or the manner of its administration during performance, the contractor personnel are subject to the relatively continuous supervision and control of a Government officer or employee.

<sup>34</sup> FAR 4.8, *Government Contract Files*.

<sup>35</sup> OAM provided the contractor a notice of authorization to begin work prior to the contract being signed.

could result in legal disputes and ultimately put FMCSA at risk of not receiving what it paid for.

### **COTRs' Lack of a Systematic Approach To Monitoring Contracts and Communicating with OAM Hinders Adequate Contract Oversight**

FMCSA does not adequately monitor its contracts. FMCSA does not use a systematic approach for contract monitoring, and COTR files we reviewed were often incomplete or missing. For example, of 21 COTR files we reviewed that corresponded to contracts valued at \$162 million:

- 18 files—86 percent—valued at \$142 million lacked a surveillance plan or oversight methodology; and
- 17 files—81 percent—valued at \$129 million lacked documentation of completed contractor performance reviews or quality assurance evaluations.

We reviewed only 21 COTR files because FMCSA was unable to locate the COTR files for 7 contracts we audited, further demonstrating weaknesses in FMCSA's effort to monitor contractor performance. FMCSA does not ensure COTR files contain key documents that are recommended by FMCSA<sup>36</sup> and DOT<sup>37</sup> policy and are essential for successful contract monitoring and oversight. In addition, best practices state that documenting contract monitoring and surveillance are key practices to the contract administration process.<sup>38</sup> Complete and orderly contract files are vital to ensuring both the contractor and FMCSA meet their contract obligations, particularly when disagreements or questions of interpretation arise, and to hold contractors accountable for delivering intended results.<sup>39</sup>

Also, COTRs do not regularly document or provide the CO with evidence of their efforts to evaluate contractor performance, work progress, and payments made, as required by FMCSA's COTR Order.<sup>40</sup> Over half of the COTRs we interviewed do not document their surveillance results, and some stated they store such information “in their heads.” When COTRs did maintain some sort of documentation, it was not formally or consistently prepared to allow the results to be easily accessed or utilized. For example, one COTR informally annotated evaluation results on meeting agendas. Adequately documenting contract

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<sup>36</sup> FMCSA Order 4200.2.

<sup>37</sup> DOT COTR Program, September 2008.

<sup>38</sup> Office of Federal Procurement Policy. *A Guide to Best Practices for Contract Administration*, October 1994.

<sup>39</sup> FMCSA Order 4200.2 and FMCSA COTR Handbook Draft, March 2007.

<sup>40</sup> FMCSA Order 4200.2 *FMCSA COTR Requirements*, January 16, 2004.

monitoring is especially important given FMCSA's high use of T&M/LH contracts, which place cost and performance risks on FMCSA.

Further, COTRs are not regularly communicating with OAM during the pre- or post-award phases of the contract, resulting in contrasting viewpoints regarding basic, yet key, contract information.<sup>41</sup> For example, four of six COTRs gave differing information from OAM on the type of contract they were administering and overseeing—OAM responded the contract type was T&M, while the COTR stated it was fixed-price. OMB Guidelines state the COTR needs to continuously communicate with the CO, beginning in the pre-award phase and continuing throughout the contract's performance period. Since knowing the contract type is a critical factor in developing the correct oversight methodology, it is particularly important for OAM and COTRs to be involved in the pre-award phase to ensure both parties clearly understand the post-award contract surveillance tasks needed to achieve the desired contract outcomes.

## **FMCSA'S INADEQUATE INFRASTRUCTURE INHIBITS THE EFFECTIVENESS OF ITS ACQUISITION FUNCTION**

FMCSA lacks the critical components needed for an effective acquisition function. Specifically, weaknesses exist in FMCSA's organizational alignment and leadership, policies and processes, acquisition data, and human capital, which contributed to the poor contracting practices presented in this report.

In May 2008, OMB issued *Guidelines for Assessing the Acquisition Function*<sup>42</sup> to all Chief Acquisition Officers to provide guidance on performing entity-level acquisition function internal control reviews required by OMB Circular A-123.<sup>43</sup> These guidelines consist of four interrelated cornerstones essential to an efficient, effective, and accountable acquisition process: (1) organization alignment and leadership, (2) policies and processes, (3) human capital, and (4) information management and stewardship. FMCSA's lack of emphasis on improving these cornerstones is the primary cause of OAM's and the program offices' continued use of high risk business arrangements, such as T&M/LH contracts; not obtaining maximum competition when awarding contracts; and not ensuring that FMCSA is meeting its requirements efficiently and economically.

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<sup>41</sup> We interviewed only the COTRs for the 6 most recent contracts reviewed so we would be able to interview both the COTR and the contract specialist for each contract.

<sup>42</sup> OMB Memorandum *Conducting Acquisition Assessments under OMB Circular A-123*, May 21, 2008. The template in OMB's *Guidelines for Assessing the Acquisition Function* is adopted from the U.S. Government Accountability Office's (GAO) *Framework for Assessing the Acquisition Function at Federal Agencies*, GAO-05-218G (2005), which provided guidance aimed at enabling high-level, qualitative assessments of the strengths and weaknesses of agencies' acquisition functions.

<sup>43</sup> OMB Circular A-123 *Management Accountability and Controls*, June 21, 1995, defines management's responsibility for internal controls in Federal agencies.

**OAM is neither used nor acts as a strategic partner to implement FMCSA's mission objectives.** OAM plays a critical role in executing the award of multi-million dollar contracts to assist FMCSA in accomplishing its mission. For example, FMCSA relies on OAM to award contracts, such as OAM's recent award for compliance reviews of states' Commercial Driver License compliance operational practices,<sup>44</sup> However, FMCSA's program offices do not use OAM as a strategic partner—that is, they do not use OAM's expertise during the acquisition process for help in planning acquisitions to achieve common goals, such as receiving goods at fair prices. Rather, OAM is viewed more as an administrative support function, and FMCSA's program offices generally direct and dictate acquisitions.

Furthermore, FMCSA's management has not clearly defined the roles and responsibilities of its acquisition team to serve as such a strategic partner. OAM's 2009 acquisition improvement plan identifies FMCSA's culture as not recognizing program managers, supervisors, and other Agency leaders as part of the acquisition workforce. As a result, cross-functional teams are not used and acquisition plans are not always developed when making strategic acquisition decisions, such as determining the extent of competition and appropriate contract type, which ultimately can lead to not receiving mission critical goods and services at the best value.

**Acquisition policies and processes are not fully established.** FMCSA has not promptly implemented or clearly communicated acquisition policies and processes to promote an efficient, cost-effective, and accountable acquisition function.<sup>45</sup> OAM identified 15 standard operating procedures (SOP) it needs to develop in order to effectively achieve its mission. However, as of January 2010, only 4 of these 15 SOPs were completed.<sup>46</sup> OAM officials acknowledged it has not met its goal of issuing the remaining 11 SOPs, some of which are mission critical, because they are short staffed and have other competing responsibilities, such as reconciling databases and contract closeouts.

Also, FMCSA's management has not implemented internal controls for awarding, administering, and overseeing contracts to ensure its staff are held accountable for complying with Federal and departmental regulations and guidance. Consequently, OAM and program office staff do not always observe these regulations, such as preparing justifications for high risk contracts, preparing

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<sup>44</sup> FMCSA's current Strategic Plan for 2006–2011 does not mention OAM or the acquisition function among its mission-based goals, objectives, and strategies.

<sup>45</sup> While TAR and TAM establish requirements and guidelines, FMCSA lacks standard operating procedures and controls to ensure that these requirements and guidelines are implemented consistently throughout the Agency.

<sup>46</sup> OAM created a policy team in April 2009 to develop and issue SOPs. The policy team consists of one team lead and two supporting contractors. The list has been evolving since August 2008 and is based on OMB A-123 audit reviews and the new Director's observations of OAM's processes.

acquisition plans, obtaining legal reviews, and performing market research. Communication and awareness of internal controls is also critical. Yet, FMCSA's acquisition policies and processes are not clearly communicated to all involved in the acquisition function. For example, most of the COTRs we interviewed were not aware of FMCSA Order 4200.2—*FMCSA COTR Requirements*, dated January 16, 2004. FMCSA's lack of acquisition policies and internal controls prevents Agency managers from establishing basic expectations for how staff should award, administer, and oversee contracts, therefore imposing a barrier to establishing an efficient and results-oriented acquisition process.

**FMCSA's acquisition data is unreliable and incomplete.** OAM is unable to identify FMCSA's contract universe, which it is responsible for managing, and also lacks controls to reasonably ensure available procurement data is reliable. Procurement officials require a range of information and data to effectively manage their acquisitions and corresponding internal controls to ensure data accuracy, as provided under OMB Guidelines and internal control standards. However, discrepancies exist in the three electronic systems FMCSA uses to fund, write, and report its procurements. The three systems are: *Delphi*, the Office of the Secretary of Transportation's (OST) financial management system; *PRISM*, OST's contract writing system; and *FPDS-NG*, the Federal Procurement Data System-Next Generation. The proper documentation and authorization of payments in these systems are essential to mitigate the risk of improper or fraudulent payments to vendors. However, since these systems do not interface, FMCSA staff must manually transfer data among them, increasing the risk of errors.<sup>47</sup> For example, we identified 25 contracts with obligations over \$13.7 million for which FMCSA issued a payment through Delphi but did not make a corresponding data entry in either PRISM or FPDS-NG. OAM was unable to locate the contract file for 10 of these 25 contracts.<sup>48</sup>

**FMCSA has not determined the appropriate size and skills for its acquisition workforce to be successful.** FMCSA's April 2009 acquisition workforce succession plan—intended to be used as a tool to help FMCSA prepare its workforce for the future—has several weaknesses that limit its ability to position FMCSA's acquisition workforce, both in numbers and required skills. First, even though FMCSA did not assess its current and future acquisition workload to provide a basis for staffing decisions contained in the succession plan, it still found it lacked an adequate number of employees to carry out its duties and responsibilities. Given the absence of a workload assessment, OAM's staffing

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<sup>47</sup> DOT is implementing a phased integrated approach— called ONE DOT PRISM—to improve PRISM interoperability with Delphi, which DOT expects to provide, among other things, efficiency, accuracy and quality in procurement reporting.

<sup>48</sup> The Office of the Chief Financial Officer was able to provide invoices to support FMCSA's payments for 9 of these 10 contracts but not for the remaining contract.

conclusions may not be accurate. Second, the plan's assessment of OAM's current workforce included only government staff. However, OAM relies heavily on contracted staff to conduct its procurement functions—55 percent of its contract specialists are contractors.

A successful acquisition function also requires a talented and trained workforce to develop, manage, and oversee acquisitions. However, FMCSA's succession plan identified competency gaps for its CO and COTRs, several of which OMB Guidelines identify as critical for a successful acquisition function (see exhibit B for the list of competency gap results). For example:

- The CO had competency gaps in 11 of 17 contracting function areas included in the questionnaire, such as managing competition, market research, and awarding contracts.
- COTRs had competency gaps in all 8 contracting function areas, such as acquisition planning, effective contract management, and market research.

FMCSA has not provided any evidence that it is taking actions to follow through and resolve these competency gaps.

## **CONCLUSION**

FMCSA utilizes contracts to fulfill its primary safety-related mission goal of reducing crashes, injuries, and fatalities involving large trucks and buses. Therefore, sound procurement practices and an effective acquisition structure must be in place to ensure Federal funds are appropriately spent and that FMCSA maintains integrity in its day-to-day procurement operations while leveraging its acquisition function to help further its mission. FMCSA has the opportunity to build a model acquisition function by assessing and improving its existing strategic partnerships, policies and processes, human capital approaches, and contract information systems. Furthermore, FMCSA's inadequate acquisition function has contributed to its limited use of competition, leaving it vulnerable to awarding contracts that are not at the best value to the Agency. Until FMCSA takes action to improve the core elements of its acquisition function, it will continue to risk wasting millions of taxpayers' dollars using poor contracting practices.

## RECOMMENDATIONS

We recommend that the Administrator, Federal Motor Carrier Safety Administration take the following actions to improve its acquisition function:

Maximize competition and strengthen FMCSA's acquisition infrastructure to:

1. Require program offices to coordinate with the Office of Acquisition Management, FMCSA's legal counsel, and the Office of the Chief Financial Officer throughout the strategic planning process to develop efficient, effective, and economical acquisition strategies.
2. Develop policies that clearly identify roles and responsibilities and documentation requirements for (1) market research, (2) independent government cost estimates, (3) legal reviews, and (4) contract-type selection and justification.
3. Develop and implement internal controls and performance measures to ensure that policies and processes for efficient and effective award, administration, and oversight practices are adhered to.
4. Develop and implement verification procedures to ensure data in FPDS-NG and PRISM are current, accurate, and complete.
5. Complete a contract workload analysis and use it as a basis to perform a workforce analysis.
6. Implement strategies identified in FMCSA's April 2009 strategic acquisition workforce succession plan to resolve identified competency gaps, including plans to attract, retain, and train the workforce.
7. Implement an internal acquisition quality assurance review program to ensure Federal and departmental regulations are met throughout the contract cycle.

Improve FMCSA's contract administration and oversight by revising FMCSA Order 4200.2, COTR Requirements to:

8. Require the use of a systematic monitoring/contract administration plan.
9. Require the use of a risk-based approach for monitoring contracts to assist in identifying high risk contracts warranting additional oversight.

## **AGENCY COMMENTS AND OFFICE OF INSPECTOR GENERAL RESPONSE**

A draft of this report was provided to FMCSA for comment on June 17, 2010. We received FMCSA's response on August 4, 2010, which can be found in its entirety in the appendix of this report. FMCSA fully concurred with all of our recommendations and provided reasonable timeframes for completing the planned actions. In addition to addressing our audit recommendations, FMCSA's response also cited implemented and ongoing procurement process improvements. We appreciate the greater attention that FMCSA is paying to improving its acquisition function and its recognition of its positive interactions with OIG staff.

### **ACTIONS REQUIRED**

FMCSA's planned actions and target dates are responsive to our recommendations. We consider these recommendations addressed pending completion of planned actions. We appreciate the courtesies and cooperation of FMCSA representatives during this audit. If you have any questions concerning this report, please call me at (202) 366-5225 or Anthony Wysocki, Program Director, at (202) 493-0223.

cc: Martin Gertel, M-1  
Karen Lynch, MC-PRS

## **EXHIBIT A. SCOPE AND METHODOLOGY**

We conducted this audit in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

We conducted this audit between June 2008 and January 2010. To address our audit objective, we assessed FMCSA's procurement practices and organization against criteria contained in the Federal Acquisition Regulation (FAR), Transportation Acquisition Regulation (TAR), Transportation Acquisition Manual (TAM), Office of Management and Budget Guidelines for Assessing the Acquisition Function (OMB Guidelines), and other applicable departmental and Federal regulations and guidance. We interviewed contracting staff and management and program office representatives, analyzed contract file documents, and reviewed employee performance standards and training records.

We judgmentally selected a total of 28 contracts from 2 separate universes we developed from contract actions reported in FPDS-NG data between fiscal year 2005 and January 12, 2009, displayed in table 5. We used this two-staged process to select our 28 contracts for review to reflect the high turnover in Office of Acquisition Management (OAM) staff and because FMCSA hired a new Contracting Officer (CO) and Acting OAM Director in May and June 2008, respectively. To select our first sample of contracts, we used two sets of criteria: (1) the contract's dollar value was over \$1 million, or (2) the contractor was providing support services to FMCSA's acquisition function. These selected contracts are typical of FMCSA's acquisitions during the period of fiscal year 2005 through January 12, 2009, in terms of contract type and extent competed. Further, we placed an emphasis on selecting high risk contract types, such as Time and Materials and Labor Hour-type contracts and cost reimbursable contracts. We selected our second sample of contracts from a universe of contract actions with an effective date recorded in FPDS-NG after September 15, 2008, using the same criteria.

**Table 5: FMCSA's Contract Universe and Contracts Selected for Review**

Number of Contracts in Universe	Value of Contracts in Universe	Range of Fiscal Years of Contracts in Universe	Number of Contracts Judgmentally Selected	Value of Contracts Selected	Range of Contract Award Years of Contracts Selected	Number of Contracts Reviewed	Value of Contracts Reviewed	Range of Contract Award Years of Contracts Reviewed
<b>First Sample Selection:</b> (Universe included contract actions during fiscal year 2005 to June 16, 2008*)								
360	\$281 Million	1999–2008	22	\$173 Million	2002–2008	21**	\$160 Million	2003–2008
<b>Second Sample Selection:</b> (Universe included contract actions during June 16, 2008 to January 12, 2009)								
115	\$53 Million	2003–2009	6	\$32 Million	2008	6	\$32 Million	2008
<b>Combined Sample Selection:</b> (Combines sample selections 1 and 2)								
410***	\$334 Million	1999–2009	28	\$205 Million	2002–2008	27	\$192 Million	2003–2008

\*Although the data was extracted starting in fiscal year 2005, every contract action performed on a contract must be recorded in FPDS-NG; therefore, when we judgmentally selected contracts, actions performed on contracts awarded prior to 2005 were in our universe and selected for review.

\*\* OAM was unable to provide one contract.

\*\*\* Totals from first and second contract selection do not sum to combined selection because contracts in first selection were still ongoing during second selection.

We reviewed a sample of contract files and the associated Contracting Officer's Technical Representatives' (COTR) files to assess whether the contract award and administrative practices were in compliance with Federal and departmental laws and regulations, including contract competition, acquisition planning and market research, the use of justifications for high risk contract actions, and whether contract award lead times met departmental regulations. In addition, we reviewed COTR files for evidence of required contract monitoring and contractor performance evaluations.

We interviewed a range of FMCSA staff, including COs, COTRs, contract specialists, legal staff, and other FMCSA management officials to obtain information on their contracting process and practices. In addition, to assess the adequacy of FMCSA's acquisition workforce, we reviewed FMCSA's acquisition succession plan, staff performance standards, resumes, and training records. To determine the reliability of FMCSA's contract-related databases, we compared contracts reported and dollars obligated in the following three systems: FPDS-NG (contract reporting system), PRISM (contract writing system), and Delphi (the accounting system).

## Exhibit A. Scope and Methodology

## EXHIBIT B. FMCSA'S IDENTIFIED CONTRACTING FUNCTION COMPETENCY GAPS

(Source: FMCSA Strategic Acquisition Workforce Succession Plan Draft April 2009)

<b>Contracting Officer</b>
<b>Technical</b>
Bid Evaluation
Contract Award
Defining Contractual Relationships
Defining Requirements
Financial Management
Managing Competition
Market Research
Project Management
Proposal Analysis and Evaluation
Small Business and Preference Program Participation
Solicitation of Orders

<b>Contract Specialist</b>
<b>Technical</b>
Dispute Resolution and Termination

<b>COTR Function</b>
<b>Technical</b>
Acquisition Planning
Defining Government Requirements in Commercial/Non-Commercial Terms
Effective Contract Management
Effective Pre Award Communication
Market Research (Understanding the Marketplace)
Negotiation
Performance Management
Technical Analysis of Proposals

**EXHIBIT C. MAJOR CONTRIBUTORS TO THIS REPORT**

<u>Name</u>	<u>Title</u>
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Rachel Alderman	Senior Auditor
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Amy Berks	Associate Counsel
Petra Swartzlander	Statistician

## APPENDIX. AGENCY COMMENTS



U.S. Department  
Of Transportation

**Federal Motor Carrier  
Safety Administration**

# Memorandum

**Subject:** **INFORMATION:** Response to the OIG Draft Report "Federal Motor Carrier Safety Administration Lacks Core Elements For A Successful Acquisition Function" Project No. 08Z3002Z000

**Date:** August 4, 2010

**From:** Anne S. Ferro  
Administrator

**Reply to Attn of:** MC-P

**To:** Terry Letko  
Acting Assistant Inspector General for Acquisition and Procurement Audits

ANNE S. FERRO  
ADMINISTRATOR

The Federal Motor Carrier Safety Administration (FMCSA), working with the Department's Office of Inspector General (OIG), has achieved great strides over the past year improving management, systems and processes in its procurement office. FMCSA identified many of these issues during a 2008 internal controls review, prompting the previous FMCSA Administrator to request that OIG conduct a study to validate our findings and ensure that they were comprehensive. FMCSA has benefitted from its interactions with the OIG staff over the last two years as the Agency completed numerous actions identified below that have enabled us to achieve significant improvement from the perspective conveyed in the OIG draft report. The Agency has additional actions underway with the intent of providing the organization with up-to-date policies, practices and procedures in full compliance with all applicable procurement requirements. Achieving this goal will take time, but progress is well underway.

### **FMCSA IMPLEMENTED IMPROVED PROCUREMENT PROCESSES**

FMCSA has implemented numerous changes that significantly improved its procurement operations. Specifically, FMCSA has revised requirements, improved procurement planning, enhanced coordination, standardized procedures, and improved procurement monitoring over the past year. For example, with regard to improved planning and revised requirements, FMCSA's initial actions included improving the organizational structure and the information flow.

### **Appendix. Agency Comments**

Contract Specialists were assigned to specific contracts (vice contract actions) enabling individuals to develop a knowledge of the contract and scope of work and in turn provide better management and oversight. During the course of the OIG's audit, FMCSA hired an additional, senior-level Contracting Officer (CO) and developed a new organizational structure capable of better addressing the contracting work load and separation of duties. The CO also strictly enforces the file documentation requirements to ensure adherence to the Federal Acquisition Regulation. As part of the planning process, cross-functional teams meet to discuss the requirements, scope, and the preliminary acquisition plans. During these planning meetings, representatives from the FMCSA Office of Acquisitions Management (OAM) advise the program offices on acquisition planning, market research, development of the Independent Government Cost Estimate and possible contract strategies and types.

To increase coordination and communication and address issues expeditiously, FMCSA implemented cross-functional meetings with key personnel that include the OAM, Office of Chief Counsel and the respective program offices. On a weekly basis the OAM and the Office of Chief Counsel meet to review contract-related issues, upcoming actions, and develop coordinated responses. There are also regular meetings between OAM and the Associate Administrators (AA) to review contract status and contract requirements and begin planning future activities. The Agency also established an Acquisition Review Panel (ARP) for major acquisitions to provide better visibility of the procurement process and ensure applicable procedures are appropriately followed. Collectively, these meetings have resulted in increasing the visibility of the acquisition function, at all levels, within FMCSA; greater understanding of acquisition requirements by the program office; higher quality and better developed contracts.

During 2010, FMCSA implemented standard operating procedures (SOPs) for Contract Closeout, Distribution of Awards Process, and Procurement Request procedures. These SOPs will provide comprehensive guidance and clarify expectations throughout the organization. FMCSA widely distributed these SOPs within the Agency and they are available on the Agency's SharePoint site.

In addition, the Agency also improved procurement tracking and staff training. FMCSA initiated funding of the electronic requisitioning feature in PRISM, which improves requisition tracking and facilitates automated approval of the procurement requests. The Agency also formalized invoice tracking and funds monitoring by implementing a modification summary sheet as part of the contract file. Finally, FMCSA also implemented internal training on the use of General Services Administration Schedule, acquisitions policy, and competition requirements to better ensure acquisition staff is fully and appropriately trained.

#### **ADDITIONAL ACTIONS UNDERWAY TO FURTHER IMPROVE PROCUREMENT**

Ongoing change process initiatives will offer additional improvements. The timeframe of these initiatives varies from near term efforts that will produce additional benefits in the short term, to longer term actions that will take some time to achieve full realization. The initiatives include:

#### **Appendix. Agency Comments**

### ***Maximizing Competitive Procurement and Achieving Cost Savings***

FMCSA continues to promote a fully competitive procurement environment and is making progress eliminating existing sole source contracts. As a prime example, in 2009 FMCSA solicited bids for a new regulatory information system used nationwide by more than 10,000 Federal and State safety investigators. The solicitation garnered several proposals, which enabled FMCSA to enter into a Firm-Fixed Price (FFP) contract, saving the Agency more than \$400K over the life of the contract. In addition to the cost savings, FMCSA successfully resolved two protests following the award. The resolution of those protests can be directly attributed to FMCSA efforts to ensure that the technical evaluation panel was objective, and that the evaluation and award were thoroughly deliberated and documented in the acquisition file. Similarly, FMCSA replaced a Time and Materials (T&M) contract that had been used to support FMCSA's Information Technology networks with a FFP contract. FMCSA provided the solicitation for this contract to more than 20 small businesses, which resulted in the receipt of five proposals. The successful offeror's proposal was technically superior to the incumbent's and reduced the Agency's cost by \$1 million.

### ***Improving Acquisition Planning***

Many of the improvements made by FMCSA were demonstrated in the competition and subsequent award for FMCSA's national training program support contract. Using the collaborative planning process the OAM, program office, and Office of Chief Counsel developed a comprehensive, well coordinated acquisition plan resulting in an Indefinite Delivery/Indefinite Quantity (IDIQ) contract that eliminated three existing Labor Hour (LH) contracts. The solicitation resulted in 16 proposals. This acquisition planning model for developing a standard acquisition plan and collaborative product and planning development continues to be used effectively. For example, as FMCSA prepares for the competition of a major mission critical system, regular meetings between OAM, the Office of Chief Counsel and the program office have addressed issues and contract strategies early during the planning phase, allowing sufficient time to make adjustment and still meet requirement need dates cost effectively.

### ***In-sourcing Support Functions***

FMCSA is reviewing its contract portfolio and eliminating administrative and other support contracts. For example, FMCSA decided to in-source its acquisition support and allowed the contract to expire in June 2010. Further, there are at least two other administrative and other support contracts that will not be renewed in fiscal year (FY) 2011 as FMCSA seeks to build capability by developing its in-house talent.

### ***Improving the Visibility of Acquisitions across FMCSA***

To provide senior level management with more visibility and insight into the acquisition processes, the OAM participates in key meetings that impact the Agency's contracting strategy. The OAM is included in expenditure planning and regular budget execution meetings with the Administrator and senior staff. Participation by the OAM highlights the need to complete proper planning for upcoming procurement activities, provides an opportunity to address potential

## **Appendix. Agency Comments**

issues early in the procurement process, and heightens senior management awareness of issues. The AAs and other senior leaders frequently participate in the acquisition planning process, signaling their commitment to following proper policy and procedures. Additionally, FMCSA's AAs meet regularly to discuss status of acquisitions and identify future activities. This information exchange has facilitated better understanding of the acquisition process and improved support by the OAM. For major contract awards, the OAM, in conjunction with the program offices and Office of Chief Counsel, have presented to the senior management team, the technical review panel results prior to contract award to provide insight in major program initiatives in the Agency and the award process. FMCSA's senior management team continues to embrace these initiatives resulting in better planning, improved product quality, better adherence to policy and procedures and ultimately an enhanced ability for the Agency to meet its safety mission by having the needed resources.

## **RECOMMENDATIONS AND RESPONSES**

**RECOMMENDATION 1. Require program offices to coordinate with the Office of Acquisition Management, FMCSA's legal counsel, and the Office of the Chief Financial Officer throughout the strategic planning process to develop efficient, effective, and economical acquisition strategies.**

Response: CONCUR. In 2009, FMCSA implemented cross-functional meetings with key personnel from OAM, the Office of Chief Counsel and the respective program offices. There are now regular standing meetings with the OAM and the Office of Chief Counsel to review contract related issues and upcoming actions. There are also regular meetings at the AA level to review contract status and contract requirements. The draft SOP for Acquisition Planning is in the final stage of preparation and the Agency anticipates issuing the SOP in December 2010. This process is reinforced by FMCSA's ARP for major acquisitions. FMCSA is in the process of further strengthening coordination and review by instituting an Investment Review Board (IRB) that would review all major procurement actions by March 2011.

**RECOMMENDATION 2. Develop policies that clearly identify roles and responsibilities and documentation requirements for (1) market research, (2) independent government cost estimates, (3) legal reviews, and (4) contract-type selection and justification.**

Response: CONCUR. FMCSA will complete SOPs and policies for market research, independent government cost estimates, legal review, and contract-type selection and justification. The SOPs will define processes, roles and responsibilities, and expected documentation for the key components of planning, development, award, and administration of a contract. These SOPs will ensure appropriate implementation of the Federal Acquisition Regulation requirements and all applicable acquisition regulations, policies, and procedures. FMCSA anticipates completing these SOPs by December 2010.

**RECOMMENDATION 3. Develop and implement internal controls and performance measures to ensure that policies and processes for efficient and effective award, administration, and oversight practices are adhered to.**

## **Appendix. Agency Comments**

Response: CONCUR. As described above, FMCSA has actions both completed and underway that will contribute to better ensuring Federal, departmental, and FMCSA requirements are fulfilled with regard to procurement. FMCSA has already improved its monitoring of contracting activities with additional supervisory resources in OAM. The upcoming SOPs will facilitate these efforts by layering clear expectations and consistency on these processes. Further controls and oversight of the process will be implemented once FMCSA's new organization structure is put in place that will increase separation of duties, and enhance the Agency's ability to implement some degree of independent verification. In addition, new layers of management review, both implemented and to be added through mechanisms such as the FMCSA ARP and IRB, will further enable the organization to ensure that requirements, policies, and processes are fully and appropriately implemented. These actions will be on-going and tested regularly under A-123 and FMFIA to ensure effectiveness of new processes. FMCSA anticipates performing final testing within 1-year of implementation of the final policies and procedures by March 2012.

**RECOMMENDATION 4. Develop and implement verification procedures to ensure data in FPDS-NG and PRISM are current, accurate, and complete.**

Response: CONCUR. FMCSA is developing an automated process of reconciling common data fields within the financial management system, PRISM and FPDS-NG to ensure accurate reporting and recording of financial obligations. The Agency will begin implementing this initiative in December 2010 and will reconcile exception errors on a quarterly basis.

**RECOMMENDATION 5. Complete a contract workload analysis and use it as a basis to perform a workforce analysis.**

Response: CONCUR. The Agency has included funds for the implementation of a contract workload analysis in the FY 2012 budget and anticipates completing the analysis by October 2012.

**RECOMMENDATION 6. Implement strategies identified in FMCSA's April 2009 strategic acquisition workforce succession plan to resolve identified competency gaps, including plans to attract, retain, and train the workforce.**

Response: CONCUR. The FMCSA Human Capital Strategic Plan identifies acquisition positions as mission critical. As part of this plan, FMCSA has identified strategies to recruit and retain acquisition professionals allowing the Agency to narrow skill gaps and establish a robust organization. To implement this plan, FMCSA has taken the initial steps to address OAM workforce issues. Some of the gaps in skills within the OAM were the result of FMCSA's reliance on contract support. Contractors provided extensive knowledge of the Federal Acquisition process and represented over 50 percent of the workforce. To build both capacity and capability within the OAM, FMCSA decided to in-source its acquisition support function consistent with the draft FY 2010 Human Capital Development Plan.

FMCSA's Human Resource Office continues to work closely with the OAM Director in advisement of hiring authorities available to attract well qualified candidates to include

**Appendix. Agency Comments**

authorities that provide direct hire and rehired-annuitants and establishing entry level positions. FMCSA's Human Capital Development Plan and budgets are focused on resourcing strategies related to the recruitment and retention of mission critical skills. These initiatives include maximum use of hiring authorities, loan repayment programs, increased funding for tuition assistance, managerial/leadership programs and developmental assignments. The Agency's FY 2011 budget request includes additional resources for the OAM. The OAM works with FMCSA's National Training Center to provide acquisition training for the full spectrum of the acquisition community (e.g., program managers, Contracting Officer's Technical Representatives (COTRs), etc.) to improve all aspects of the acquisition process. The training center developed a training guide that implements the training component of the DOT COTR Program Policy to meet the COTR certification and recertification training requirements. This plan includes a combination of in class-room and web-based courses that complement the full range of the acquisition processes. By December 2010, FMCSA will ensure that the training program meets the career development training requirements identified by the Office of the Secretary of Transportation.

Overall, FMCSA will be making full use of available tools to fill any skill gaps that remain in the organization, as we move forward. However, it is important to recognize the competitive nature of the marketplace for skilled acquisition professions throughout the Federal government and therefore these efforts will require time and persistence. FMCSA intends to conduct actions on a continuous basis to address this area.

**RECOMMENDATION 7. Implement an internal acquisition quality assurance review program to ensure Federal and departmental regulations are met throughout the contract cycle.**

Response: CONCUR. The OAM will issue SOPs on Acquisition Quality Assurance by December 2010. FMCSA will also utilize the OAM Policy Team, beginning in FY 2011, to perform random quality assurance reviews on contract files to ensure that they are in accordance with Federal regulations. The OAM has already begun utilizing the Policy Team to review procurement actions over the \$500K threshold as part of its acquisitions review process.

**RECOMMENDATION 8. Improve FMCSA's contract administration and oversight by revising FMCSA Order 4200.2, COTR Requirements to require the use of a systematic monitoring/contract administration plan.**

Response: CONCUR. FMCSA will update FMCSA Order 4200.2 by October 2011. The Order will be widely distributed throughout the Agency and will be available on FMCSA's SharePoint site.

**RECOMMENDATION 9. Improve FMCSA's contract administration and oversight by revising FMCSA Order 4200.2, COTR Requirements to require the use of a risk-based approach for monitoring contracts to assist in identifying high risk contracts warranting additional oversight.**

Response: CONCUR. FMCSA will update FMCSA Order 4200.2 by October 2011. The Order will be widely distributed throughout the Agency and will be available on FMCSA's SharePoint site.

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FMCSA appreciates the opportunity to review the OIG's draft report and the extensive and detailed efforts of the OIG over the past two years. FMCSA has already put these efforts to good use and will continue to rely upon the OIG findings as we continue our efforts. Please contact Pamela Pelcovits, Director, Office of Policy, Rules and Regulations, at 202-366-4024 or by email at Pamela.Pelcovits@dot.gov, if there are any questions or if we may be of further assistance.