
Office of Inspector General

Audit Report

FAA LACKS ADEQUATE CONTROLS TO ACCURATELY TRACK AND AWARD ITS SOLE-SOURCE CONTRACTS

Federal Aviation Administration

Report Number: ZA-2016-065

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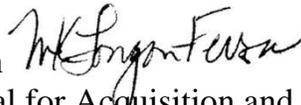


Memorandum

U.S. Department of
Transportation
Office of the Secretary
of Transportation
Office of Inspector General

Subject: **ACTION:** FAA Lacks Adequate Controls To
Accurately Track and Award Its Sole-Source
Contracts
Federal Aviation Administration
Report Number: ZA-2016-065

Date: May 9, 2016

From: Mary Kay Langan-Feirson 
Assistant Inspector General for Acquisition and
Procurement Audits

Reply to
Attn. of: JA-60

To: Federal Aviation Administrator

In March 2009, the President issued a memorandum directing the Office of Management and Budget (OMB) to develop and issue Government-wide guidance governing the use and oversight of sole-source contracts. Accordingly, in July 2009 OMB directed all Federal agencies to reduce the amount of dollars obligated on noncompetitive contracts, including sole-source contracts. Sole-source contracts can be used when only one contractor is capable of delivering the goods or services needed and, therefore, it is not feasible to obtain competitive bids. However, these types of contracts are considered high-risk and can result in wasted taxpayer resources, poor contractor results, and inadequate accountability.

Since 2009, Congress has required Federal agencies to report annually to the Senate and House Appropriations Committees on their sole-source contracting actions.¹ According to the U.S. Department of Transportation's (DOT) annual reports to Congress on sole-source contracts, the Federal Aviation Administration (FAA)—which awards more contract dollars annually than any other Operating Administration in the Department—accounted for approximately 65 percent of DOT's sole-source awards between fiscal years 2008 and 2013.

Our audit objectives were to (1) assess FAA's actions since OMB's 2009 directive to reduce the use of sole-source contracts, including follow-on contracts to sole-source awards, and (2) determine whether FAA's practices prior to award of sole-

¹ Omnibus Appropriations Act, 2009, Public Law 111-8, Division I, Title IV, Sec. 407 123 Stat. 986 (2009).

source contracts comply with FAA's Acquisition Management System (AMS) requirements.²

We self-initiated this audit and conducted our audit work in accordance with generally accepted Government auditing standards. To conduct our work, we reviewed a statistical sample of 34 sole-source contracts³ from a universe of 377 contracts awarded between fiscal year 2012 and April 2015 to determine whether FAA complied with AMS policy and guidance. The results of our review allowed us to project the total estimated value of sole-source contracts in the universe that did not fully comply with key pre-award procurement practices required by AMS. Exhibit A details our scope and methodology.

RESULTS IN BRIEF

FAA took limited actions to reduce its use of sole-source contracts and did not achieve a sustained reduction in its use of these contracts between fiscal years 2008 and 2014. The number of FAA's new sole-source contracts fluctuated from year to year, and the Agency awarded a total of 624 sole-source contracts, with a total value of about \$2.2 billion, during this period. We also found that FAA's use of sole-source contracts is greater than what DOT reported to Congress due to data transfer errors. Specifically, FAA did not report 81 sole-source contracts valued at \$166 million during fiscal years 2012 through 2014. In 2009, FAA developed a plan to respond to OMB's directive to reduce sole-source contracts. However, because FAA did not establish performance measures to assess specific actions in the plan, it cannot demonstrate whether the plan had an impact on the use of sole-source contracts. The key factors that contribute to FAA's use of sole-source contracts are FAA's acquisition of proprietary technologies and weak tracking processes. FAA's inadequate procurement planning for contracts involving proprietary technologies can limit competition and commit the Agency to lengthy, follow-on contracts with a single vendor. For example, the written justification for a \$452,000 sole-source contract for proprietary radio equipment and support indicates the contract could have been competed if FAA had conducted advanced procurement planning. Despite these risks, FAA lacks a standardized process for assessing potential follow-on procurements and does not track its use of follow-ons. Without accurate data on sole-source contracts, FAA cannot develop an effective strategy to reduce its use of these high-risk contracts.

² In 1995, Congress passed legislation that granted FAA unique acquisition flexibilities and directed FAA to develop a new acquisition management policy. In 1996, FAA issued AMS, its new acquisition management policy, and began using it instead of the Federal Acquisition Regulation. AMS establishes Agency-wide policy and guidance for all stages of FAA's lifecycle acquisition management.

³ We initially selected a statistical sample of 50 contracts; however, we could not evaluate 16 of these because of errors in FAA's records. For these 16 contracts, FAA incorrectly categorized the contracts as sole-source, could not locate the contract files, and/or provided the incorrect awarding office's location.

FAA's pre-award practices for sole-source contracts did not fully comply with AMS policy and guidance.⁴ AMS requires contracting staff to take a number of actions before awarding sole-source contracts—such as conducting market analysis and developing independent Government cost estimates (IGCE)—to help ensure that acquisitions are properly planned, sole-source awards are properly justified, and prices can be demonstrated to be fair and reasonable. However, we found that 29 of 34 FAA sole-source contract files in our sample did not fully comply with key AMS pre-award requirements. Based on our review, we project that the total estimated value of sole-source contracts that did not fully comply with key AMS pre-award requirements⁵ is \$962 million, or 51 percent of the total estimated value of contracts in our universe.⁶ For example, 25 of 34 sole-source contracts in our sample required a written procurement plan⁷; yet, 18 of those contracts, valued at \$61.6 million, lacked the required plan. FAA's noncompliance with pre-award requirements is due to a lack of clarity in some sections of AMS policy and guidance, contracting officers' (CO) broad discretion for determining when to use sole-source contracts, and FAA's oversight and enforcement weaknesses. Without documented evidence of completed pre-award steps, FAA may miss opportunities to promote competition, obtain lower prices, and support its sole-source decisions in the event of award protests.

We are making recommendations to help FAA reduce its use of sole-source contracts and increase its compliance with AMS pre-award policies and guidance.

BACKGROUND

In 2009, OMB required all Federal agencies to reduce the amount of dollars obligated on high-risk contracts, including sole-source awards, by at least 10 percent.⁸ OMB also required agencies to develop and submit plans to outline how the reduction in high-risk contracts would be achieved. In October 2009, FAA submitted its plan to OMB for decreasing its use of high-risk contracts, including sole-source contracts.

In addition, since 2009, Congress has required DOT to report annually to the Senate and House Appropriations Committees on its sole-source contracting

⁴ AMS, 3.2 and T.3.2.

⁵ Contracting staff must comply with AMS requirements unless waivers are obtained from the FAA Acquisition Executive, and they are expected to comply with guidance unless "a rational basis exists for alternative action." According to FAA, waivers and deviation rationale should be documented. We did not observe waivers for the instances of noncompliance we identified.

⁶ Our projection has a precision of +/- \$102 million at the 90-percent confidence level.

⁷ Before April 2013, AMS did not require a procurement plan for simplified purchase methods. Therefore, procurement plans were not required for the seven contracts in our sample that used simplified purchase methods and that were awarded before April 2013.

⁸ Specifically, Federal agencies were required to reduce the share of dollars obligated in fiscal year 2010 under new contract actions that are awarded with high-risk contracting authorities, using their fiscal year 2008 obligations as a baseline.

actions, including information on the contractor, contract amount, and rationale for using a sole-source contract. DOT's Office of Secretary of Transportation (OST) prepares these reports by retrieving the Department's sole-source contract data from the Federal Procurement Data System-Next Generation (FPDS-NG),⁹ sending these data to DOT's Operating Administrations for verification, and submitting the finalized data (including any revisions from the Operating Administrations) in the annual report to Congress.

Between fiscal years 2008 and 2014, FAA's sole-source contract awards were approximately \$2.4 billion,¹⁰ which is about 8 percent of FAA's \$31 billion¹¹ total estimated contract awards over this period. While FAA's AMS permits the use of sole-source contracts,¹² such contracts are only allowed if Agency personnel can provide well-documented rationale that the decision is in the best interest of the Agency. Contractors may file bid protests or disputes with FAA's Office of Dispute and Resolution (ODRA) if their direct economic interest has been or would be affected by a sole-source award.¹³

We have previously reported on risks associated with FAA's use of noncompetitive contracts and task orders, as well as the Agency's weaknesses in contract management and oversight.¹⁴

FAA TOOK LIMITED ACTIONS TO REDUCE ITS USE OF SOLE-SOURCE CONTRACTS

FAA took limited actions to reduce its use of sole-source contracts and did not achieve a sustained reduction in its use of these contracts between fiscal years 2008 and 2014. In 2009, FAA developed a plan to decrease its use of high-risk contracts, including reducing its use of sole-source contracts. However, the Agency did not establish performance measures to assess the effectiveness of the plan, so it cannot demonstrate whether it had an impact on FAA's use of sole-source contracts. FAA's acquisition of proprietary technologies and weak

⁹ FPDS-NG is the U.S. Government's database for Federal agencies' contracting data. Through FPDS-NG, agencies report contract information electronically to OMB by directly uploading data from their contract writing systems.

¹⁰ This amount includes new FAA's sole-source awards that OST extracted from FPDS for congressional reports and additional sole-source awards we identified that were not included in the congressional reports (see table 2).

¹¹ This amount was provided by FAA.

¹² FAA's AMS refers to "single-source" rather than "sole-source" procurements to refer to noncompetitive awards. Under Federal Acquisition Regulation, sole-source awards are permissible only under specific statutory and regulatory authorities. Under AMS, a single-source award can be made when in FAA's best interest, and the rational basis is documented. Despite this distinction, FAA reports its single-source awards for required annual reporting to Congress.

¹³ ODRA has exclusive jurisdiction over the adjudication of bid protests and contract disputes under the AMS.

¹⁴ *Audit of the Federal Aviation Administration's RESULTS National Contracting Service* (OIG Report FI-2006-072), Sept. 21, 2006; *FAA Must Strengthen Its Cost and Price Analysis Processes to Prevent Overpaying for Noncompetitive Contracts* (OIG Report ZA-2011-089), May 19, 2011; *FAA's Contracting Practices Are Insufficient To Effectively Manage Its Systems Engineering 2020 Contracts* (OIG Report ZA-2012-082), Mar. 28, 2012. OIG reports are available on our Web site at <http://oig.dot.gov>.

processes for tracking sole-source contracts contribute to its use of these high-risk contracts.

FAA Did Not Achieve a Sustained Reduction in Its Use of Sole-Source Contracts Between Fiscal Years 2008 and 2014

According to data that OST reported to Congress, FAA did not achieve a sustained reduction in its use of sole-source contracts between fiscal years 2008 and 2014. The number of FAA's new sole-source contracts fluctuated from year to year (see table 1). Between fiscal years 2008 and 2014, FAA awarded a total of 624 sole-source contracts, with a total value of about \$2.2 billion.

Table 1. Number and Dollar Value of FAA's New Sole-Source Contracts Reported to Congress, Fiscal Years 2008–2014

Fiscal year	Number of new sole-source contracts	Percent change of new contracts from previous year	Dollar value of new sole-source contracts	Percent change in dollar value from previous year
2008	91	N/A	\$389,000,000	N/A
2009	92	1%	\$194,000,000	-50%
2010	90	-2%	\$64,000,000	-67%
2011	58	-55%	\$288,000,000	348%
2012	101	43%	\$834,000,000	189%
2013	82	-23%	\$185,000,000	-78%
2014	110	25%	\$235,000,000	27%
Total	624		\$2,200,000,000	

Source: OIG analysis of FAA data from OST

However, our review determined that FAA's use of sole-source contracts is greater than what has been reported to Congress. When we attempted to verify reported FAA data,¹⁵ we found that FAA had underreported its use of sole-source contracts during fiscal years 2012 through 2014—omitting a total of 81 contracts valued at approximately \$166 million (see table 2).¹⁶

¹⁵ To verify these data, we compared the FAA sole-source contract information OST reported to Congress to data in PRISM, FAA's purchasing system.

¹⁶ Because the scope of our audit was 2012 through April 2015, we did not evaluate data from fiscal years 2008 through 2011. The data for fiscal year 2015 were not available at the time of our review.

Table 2. Sole-Source Contracts FAA Omitted From OST's Reports to Congress, Fiscal Years 2012–2014

Fiscal year	Number of new sole-source contracts	Dollar value of new sole-source contracts
2012	36	\$49,000,000
2013	23	\$94,000,000
2014	22	\$23,000,000
Total	81*	\$166,000,000

* In addition to these 81 omissions, we also identified 1 competitively awarded contract (with an estimated value of \$9.4 million) that was incorrectly reported to Congress as sole-source in fiscal year 2014.

Source: OIG analysis of FAA data from FAA and OST

This underreporting occurred because information in PRISM, FAA's procurement system, was not correctly transferred to the Federal Procurement Data System (FPDS).¹⁷ Specifically, FAA contracts with a total value of \$150,000 or greater,¹⁸ which were initially funded for less, were omitted from the records that OST used to report to Congress. As a result of these underreported data, Congress did not receive accurate sole-source contracting data as requested, which could limit its decision-making ability.

In response to our finding, FAA corrected these data errors in FPDS and informed OST that the sole-source data submitted for fiscal years 2012 through 2014 were incomplete. A senior FAA acquisition official stated that the Agency intends to upgrade PRISM to resolve the data transfer issues; in the meantime, FAA intends to manually reconcile PRISM and FPDS data quarterly. This senior FAA official also told us that it would be a good idea for FAA to develop standard operating procedures to help ensure the accuracy of its sole-source contract data to be included in OST's annual report to Congress.

FAA Developed a Plan to Reduce Its Use of Sole-Source Contracts but Did Not Establish Measures To Track Its Effectiveness

In 2009, FAA developed a plan to decrease its use of high-risk contracts, including reducing its use of sole-source contracts in response to OMB's directive. According to FAA officials, the Agency implemented the 2009 plan and took actions cited in the plan to reduce sole-source contracts. In addition, FAA

¹⁷ FAA uses FPDS, which unlike FPDS-NG, does not enable immediate verification and direct upload of contracting data from PRISM. FAA manually inputs data into PRISM and subsequently enters the data into FPDS, which are then transferred into FPDS-NG for OST to obtain information on sole-source contracts for annual reporting to Congress.

¹⁸ OST broadly interpreted the requirement for sole-source contract reporting to include all contract actions above the simplified acquisition threshold. Before fiscal year 2010, the threshold was \$100,000, after which it was increased to \$150,000. Although FAA's AMS does not establish a simplified acquisition threshold, the Department's practice is to report to Congress all sole-source contract actions over \$150,000 (including FAA's) for uniformity.

provided training in 2009 to inform Agency contracting staff of this plan and to support the initiative to reduce sole-source contracting.

Although FAA monitors the Agency's overall competition rate by tracking the percentage of contract dollars awarded competitively, it has not assessed whether its 2009 plan was effective in reducing the use of sole-source contracts. Specifically, the 2009 plan called for increasing the use of certain acquisition processes and practices listed below, but FAA lacks performance measures to assess whether these processes led to a reduction in sole-source contracting. For example:

- **Strategic Sourcing.** Strategic sourcing is a process that moves an organization away from numerous individual procurements toward a broader aggregate approach. FAA monitors its use of strategic sourcing but is unable to demonstrate whether strategic sourcing had any effect on the Agency's sole-source contracting.
- **Internal Reviews of Contracts.** FAA's National Acquisition and Evaluation Program (NAEP) conducts internal reviews of the Agency's contract files. FAA officials stated that these NAEP reviews have demonstrated improved compliance with sole-source justification requirements since 2008. However, our analysis of fiscal year 2008 through 2015 NAEP reports did not identify improved compliance or any other trends related to sole-source justification requirements. Additionally, FAA has not tracked whether these internal reviews have helped to reduce the use of sole-source contracts.
- **Management Review Boards.** FAA management review boards are intended to ensure greater control and fiscal oversight when conducting major acquisitions, and they are generally required only for procurements over \$5 million.¹⁹ An FAA official stated that FAA has increased its use of management review boards since 2009, but the Agency could not provide documentation of this increase. In addition, FAA has not tracked whether management review boards have had any impact on the Agency's use of sole-source awards.

FAA officials stated that reducing the use of sole-source contracts is an ongoing goal for FAA. Beginning in fiscal year 2015, FAA called for its acquisition division managers to periodically assess contracts that will soon expire and to contact applicable program offices to initiate early procurement planning. FAA anticipates that this practice may help to reduce sole-source contracting by

¹⁹ FAA's plan to reduce sole-source awards specifically states FAA will continue Chief Financial Officer reviews of procurements at or above \$10 million. An FAA official also told us management review boards include reviews by the FAA's Acquisition Strategy Review Board, which are required for support service contracts with total estimated values of \$5 million or more.

allowing more time for competition and reducing extensions to existing sole-source contracts. An FAA contracting official also told us that in 2015 they emphasized training for contracting staff on the AMS policies and procedures associated with the award of sole-source contracts. Since FAA only recently implemented these actions, we did not assess the impact of these actions on sole-source contracting during this audit.

FAA's Acquisition of Proprietary Technologies and Weak Tracking Processes Contribute to Its Use of Sole-Source Contracts

According to FAA officials, FAA's practice of not acquiring data or technology rights²⁰ when it issues contracts for proprietary technologies can potentially commit the Agency to lengthy, follow-on, sole-source contracts. In our sample of 34 sole-source contracts, 20 involved proprietary technologies. Acquisition best practices²¹ call for agencies to identify and plan for license rights and sustainment activities (such as maintenance and repair) throughout a system's lifecycle. Part of the planning includes determining if data rights can be acquired, or if commercial products are available in order to enhance competition and avoid being locked into long-term, sole-source relationships with incumbent contractors. However, FAA's 2009 plan did not mention the impact of proprietary technologies on sole-source contracting or suggest approaches to reduce FAA's dependence on proprietary technologies, such as determining whether rights to proprietary technologies can be acquired.

FAA's inadequate procurement planning for contracts involving proprietary technologies can limit competition. In our sample, one contract (for proprietary ultra-high frequency radio equipment and manufacturer support) could have potentially been competed if FAA had conducted advanced procurement planning. The sole-source justification for this contract stated that a sole-source award was necessary because the awardee was the only vendor with the proprietary rights and who could provide the equipment and support within FAA's required timeframe. However, FAA's sole-source justification stated that the contract's 5-year period of performance was of "limited duration," which would not allow a new vendor enough time to learn the program, train its workforce, and achieve program results. The fact that FAA mentioned that a new vendor could have provided these services indicates the Agency could have obtained competition for this contract had it engaged in appropriate advance planning.

²⁰ Data rights define who is permitted to disclose, reproduce, and distribute information relating to technical data and computer software.

²¹ Department of Defense (DOD), Better Buying Power, Understanding and Leveraging Data Rights in DOD Acquisitions, Jan. 2013; Data and Analysis Center for Software Gold Practice Document Series, Software Acquisition Gold Practice Commercial Specifications and Standards/Open Systems, Nov. 15, 2004.

FAA also lacks a standardized process for assessing potential follow-on procurements, which can be noncompetitive procurements placed with the same incumbent contractor. To encourage competitive alternatives to follow-on procurements, AMS guidance provides that the contract file should include a statement describing future actions that may be taken to identify alternate or additional vendors for the same or similar requirements. However, this requirement is not effectively enforced—28 of the 34 contracts in our sample, with an estimated total value of \$79 million, did not include statements of future actions.

While FAA’s legal counsel informed us that it is their practice to question long-term, sole-source procurements, they only questioned one contract in our sample—a contract with a potential value of \$152,000 to procure hardware. Although FAA awarded this contract in 2014, the contractor has been providing FAA with these types of supplies since 1997. Contract file documents indicate that FAA’s legal counsel questioned whether FAA should continue this sole-source relationship. According to FAA’s legal counsel, the program office has begun taking actions to eliminate dependence on the contractor that owned the proprietary technology and to develop requirements that can be competed in the future.

Furthermore, FAA does not track its follow-on procurements and lacks methods to clearly identify such procurements. We found that 12 of 34 contracts in our sample were follow-on procurements. According to FAA contracting officials, developing a universe of follow-on FAA contracts would require manually reviewing each contract file awarded by FAA, as this data is not captured in FAA’s automated procurement systems. FAA contracting staff said that they can annotate in PRISM whether or not the award is a follow-on procurement, but there is no requirement for them to use this feature—even though follow-on contracts can be of significant value and can continue with the same vendor for a lengthy duration. For example, one contract in our sample, which provided support for FAA’s tower simulation system, was initially awarded in fiscal year 2008 for \$55 million, awarded again in 2013 for a total value of \$9.3 million, and then subsequently awarded in 2015 for an estimated value of \$46 million. Without accurate data on its sole-source follow-on contracts, FAA is unable to develop an effective strategy to manage and reduce its use of such contracts.

FAA'S PRE-AWARD PRACTICES FOR SOLE-SOURCE CONTRACTS DID NOT FULLY COMPLY WITH AMS POLICY AND GUIDANCE

FAA's AMS requires contracting staff to take a number of actions before awarding sole-source contracts. These pre-award actions—such as market analysis and IGCEs—are intended to ensure that FAA's acquisitions are properly planned, sole-source awards are properly justified, and prices can be demonstrated to be fair and reasonable.

However, our review found that 29 of the 34 FAA sole-source contract files in our sample did not fully comply with key pre-award procurement practices required by AMS policy and guidance (see table 3). Based on the results of our review, we project that the total estimated value of FAA sole-source contracts that did not comply with these pre-award procurement practices²² is \$962 million, or 51 percent of the total estimated value of the contracts in our universe. Had FAA awarded these contracts competitively—especially the contracts we identified that did not comply with AMS—the Agency may have been able to achieve benefits including innovation, reduced costs, and increased quality.

Table 3. Number and Dollar Value of FAA Sole-Source Contracts in OIG Sample That Did Not Fully Comply With AMS Pre-Award Policy and Guidance

Key pre-award actions required by AMS	No evidence pre-award action was conducted		Pre-award action conducted inadequately	
	Number of contracts	Dollar value of contracts (in millions)	Number of contracts	Dollar value of contracts (in millions)
Procurement plan	18	\$61.6	--	--
Conflict of interest agreement	24	\$18.2	10	\$66.9
Pre-Award public announcement	9	\$7.4	17	\$59.6
Market analysis	11	\$10.8	19	\$15.9
Sole-Source justification	2	\$1.8	--	--
Legal review	3	\$2.7	--	--
Independent Government cost estimate	6	\$2.1	12	\$13.3

Source: OIG analysis of a sample of 34 FAA sole-source contract files

²² Contracting staff must comply with AMS requirements unless waivers are obtained from the FAA Acquisition Executive, and they are expected to comply with guidance unless "a rational basis exists for alternative action." According to FAA, waivers and deviation rationale should be documented. We did not observe waivers for the instances of noncompliance we identified.

For example, the following pre-award activities were either not conducted at all or were conducted inadequately for the contracts in our sample. Although AMS policy and guidance require these pre-award activities, some sections lack clarity on the specific steps and documentation that should be included in the contract files—which may have contributed to noncompliance with these requirements.

Procurement plan: Procurement plans provide an opportunity to review and evaluate the procurement process to help ensure the process is thoroughly planned. Of the 34 sole-source contracts in our sample, 25 contracts required a written procurement plan, according to AMS.²³ However, 18 of those 25 contracts lacked a required plan. Unclear AMS policy language may have misled some FAA contracting staff to believe that procurement plans can be omitted for sole-source contracts; however, FAA’s Manager of Acquisition Policy confirmed that procurement plans are required.

Conflict of interest agreement: To prevent conflicts of interest during source selection (the process for evaluating and selecting a contractor to provide goods or services), AMS guidance requires each person involved in the process with access to confidential or proprietary information to sign a conflict of interest agreement.²⁴ This requirement also applies to sole-source contracts. However, for 24 of 34 sole-source contracts in our sample, none of the FAA employees involved in the process—including the COs, program officials, and legal counsel—submitted a required agreement. For the remaining 10 contracts in our sample, only some of the employees involved in source selection submitted a conflict of interest agreement.

Lack of compliance may be due in part to inconsistent interpretations of AMS guidance. For example, some COs told us the requirement did not apply to COs or to sole-source contracts while other COs were simply not aware of this requirement. However, FAA’s Manager of Acquisition Policy confirmed that the requirement does apply to sole-source contracts and to the entire procurement team, including COs.

Pre-Award public announcements: AMS requires COs to issue pre-award public announcements, which are notifications on FAA’s Web site that the Agency intends to award a sole-source contract to a particular vendor. This pre-award public announcement is intended to help ensure that vendors have the opportunity to inform FAA that they can provide the goods or services needed, so that FAA

²³ Before April 2013, AMS did not require a procurement plan for simplified purchase methods. Therefore, procurement plans were not required for the seven contracts in our sample that used simplified purchase methods and were awarded before April 2013.

²⁴ AMS T3.1.5 states that each person involved in the source selection process must sign and submit an agreement regarding conflict of interest for all procurements with an estimated value of \$150,000 or greater. The requirement also applies to sole-source and noncompetitive acquisitions.

can consider competing the contract rather than awarding it to a sole source. However, we found that 9 of the 34 contract files in our sample were missing a pre-award public announcement.

Additionally, FAA officials told us that posting these announcements a minimum of 10 days is an Agency best practice. However, of the 25 contracts for which FAA issued public announcements, 17 had been posted for fewer than 10 days. For 1 contract valued at \$46 million—representing over half the total estimated value of our 34-contract sample—the pre-award public announcement was posted 41 days after FAA requested an offer from a single vendor and was posted for only 3 days. Requesting an offer from a single vendor—before giving other vendors the opportunity to inform FAA that they can provide the goods or services—may give an edge to the sole-source vendor and unfairly limit competition.

Market analysis: Adequate market analysis is important to demonstrate that awarding a sole-source contract is in the best interest of FAA. AMS requires FAA contracting staff to conduct market analysis that is proportionate to the complexity of the procurement and to document it appropriately. However, AMS does not specify how to carry out these requirements, so it is at the CO's discretion to determine proportion, complexity, and appropriateness. Of the 34 sole-source contracts in our sample, 11 lacked any evidence of market analysis. For example, the contract file documentation for a support services contract valued at \$814,000 did not describe any market analysis completed, and the sole-source justification merely endorsed the performance of the incumbent vendor. Without adequate market analysis and supporting documentation, it is unclear whether these sole-source contracts were in FAA's best interest.²⁵ In addition, FAA conducted inadequate market analysis for 19 contracts in our sample:

- For nine contracts, the market analysis consisted of issuing pre-award public announcements—a method that the General Services Administration Board of Contract Appeals (GSBCA)²⁶ has ruled cannot be reasonably used as market analysis. Specifically, GSBCA ruled that this method does not adequately obtain information and comments from the industry; determine competition, capabilities, and cost estimates; or identify all solutions to mission needs. For one contract in our sample, the CO posted a pre-award public announcement for only 4 days before concluding that only one vendor was available to perform the work.

²⁵ AMS 3.2.2.4 states that FAA may contract with a sole source when in the Agency's best interest.

²⁶ The protest was initially filed with FAA's ODRA, but after alternative dispute resolution techniques failed, ODRA referred the case to GSBCA.

- Additionally, nine contracts lacked adequate documentation to support conclusions.²⁷ For example, the CO posted a pre-award public announcement for one contract, which resulted in a response from another interested vendor. The procurement team concluded that this interested vendor was not a viable option but did not document the evidence for this conclusion.
- Finally, for one contract, FAA limited its market analysis to pricing the labor rates provided by the chosen vendor, and it did not determine whether other vendors were available.

Sole-Source justifications: AMS requires that decisions to award sole-source contracts be supported by factual and reasoned rationale that is well-documented in sole-source justifications or other planning documents. However, we identified 2 contracts in our sample of 34 that did not include required sole-source justifications. For example, FAA awarded a sole-source contract for the construction of an executive office and conference room that lacked a required sole-source justification; yet, emails that FAA contracting staff sent prior to award indicated that the contract could have been competed. Specifically, the contracting manager told the requesting office to provide necessary sole-source justification documents by a certain date—in order to use current fiscal year funding—or the contracting office would compete the award. Without documenting the justification, it is unclear whether a sole-source contract is in FAA’s best interest. Additionally, awarding a sole-source contract to expeditiously spend current fiscal year funding instead of awarding the contract competitively puts the Agency at risk of overpaying for its supplies and services.

Independent Government cost estimates: IGCEs are important for acquisition planning because they provide an estimate of how much FAA could reasonably expect to pay for needed supplies or services. All of the 34 contracts in our sample required an IGCE, however, 6 lacked an IGCE. In addition, a total of 12 contracts had inadequate IGCEs. For example, 2 of the 12 contracts had IGCEs that relied on the vendors’ proposals, and thus were not independently developed. AMS guidance states that the estimate and supporting data must not be based on information furnished by a potential vendor. The remaining 10 of 12 IGCEs lacked documentation of the methodology used to develop the IGCEs, documented sources for supporting information, or both.

A major factor that contributes to noncompliance with pre-award requirements is that some sections in AMS policy and guidance lack clarity on the specific steps and documentation that should be included in the contract files. Other contributing factors for non-compliance with AMS pre-award activities include:

²⁷ According to AMS 3.2.2.4, conclusions without adequate objective supporting documentation are insufficient.

Unclear simplified acquisition procedure requirements. All 18 sole-source contracts in our sample that were awarded using simplified acquisition procedures²⁸ lacked evidence that key pre-award steps were completed. COs explained that they did not think these pre-award steps were required for contracts using simplified acquisition procedures, even though FAA’s Manager of Acquisition Policy confirmed that they are required. FAA requirements for awarding contracts under simplified acquisition procedures are not clear, and COs must refer to other policy sections to understand how to fully comply. For example, FAA’s procurement planning template for simplified acquisitions stated that “simplified acquisitions must be awarded through competitive procedures”—which may have misled COs to assume the template was not applicable to sole-source contracts awarded using simplified acquisition procedures. FAA informed us this statement is an error and said that it will remove this statement to eliminate confusion.

CO’s broad discretion for determining the use of sole-source contracts. AMS provides FAA’s program officials and COs with broad discretion for determining when to use sole-source contracts. The Federal Acquisition Regulation (FAR) provides seven specific circumstances when sole-source contracts are permitted and requires that COs include the applicable circumstance in the justification. In contrast, AMS does not define specific circumstances when sole-source contracts are permitted; instead, it allows the use of sole-source contracts if FAA personnel can provide well-documented rationale that the decision is in the best interest of the Agency. FAA’s COs and legal advisors told us that while they may question the Agency’s sole-source relationships, program officials become dependent on particular contractors and fear the disruption to performance that competition may bring. As a result, program officials typically try to justify awarding contracts to vendors they are familiar with, which may have contributed to the noncompliance we found.

FAA oversight and enforcement weaknesses. FAA does not provide adequate oversight of COs’ compliance with pre-award requirements. According to FAA officials, they regard COs as trained, higher-grade employees with warrants certifying the dollar value of contracts they are authorized to award and administer; therefore, COs generally receive less management review. However, OMB’s guidelines for acquisition internal controls emphasize the importance of oversight and caution against agencies failing to systematically monitor performance or properly establish controls for accountability.

Without documented evidence of completed pre-award steps, FAA may be unable to support its sole-source decisions in the event of award protests, and it risks

²⁸ Simplified purchases are those products or services of any nature that are smaller in dollar value, less complex, shorter term, routine, or are commercially available and are generally purchased on a fixed price basis.

missing opportunities to promote competition and obtain better value for its contracts. When competition is restricted, the Government loses opportunities not only to obtain lower prices but also to acquire technologies or business solutions that could increase the productivity and effectiveness of its programs.

CONCLUSION

While sole-source contracts may be necessary in certain cases when only one contractor is capable of delivering needed goods or services, competition is a critical tool for achieving the best return on investment for taxpayers. Although FAA developed a plan to reduce its use of sole-source contracts in response to OMB's 2009 directive, the Agency did not achieve a sustained reduction in its use of sole-source contracts, and the majority of FAA sole-source contracts we reviewed did not fully comply with AMS pre-award procurement requirements. If FAA does not develop an effective strategy to reduce its use of sole-source contracts and fully comply with AMS requirements before awarding these high-risk contracts, the Agency may miss opportunities to promote competition and ensure effective stewardship of taxpayer dollars.

RECOMMENDATIONS

We recommend that the Federal Aviation Administrator take the following actions:

1. Establish and implement a standard operating procedure to verify the accuracy of FAA's sole-source contract data submitted to OST for annual reporting to Congress.
2. Establish and implement additional actions to reduce the use of sole-source contracting, including the use of performance measures that are tracked periodically. At a minimum, these actions should include steps to address FAA's acquisition of proprietary technologies.
3. Establish and implement a standardized process for identifying and assessing potential follow-on procurements, to improve FAA's ability to identify requirements that can be competed in the future.
4. Establish and implement an oversight process to adequately review sole-source procurements prior to award to ensure that they comply with AMS pre-award requirements.
5. Update AMS policy and guidance to clarify pre-award requirements for sole-source awards. At a minimum, FAA should clarify policy and guidance related to procurement plans, conflict of interest agreements, pre-award public

announcements, market analysis, sole-source justifications, IGCEs, and simplified acquisition procedures.

AGENCY COMMENTS AND OFFICE OF INSPECTOR GENERAL RESPONSE

We provided FAA with our draft report on March 17, 2016. FAA's response, dated April 13, 2016, is included as an appendix to this report. FAA concurred with all five of our recommendations and agreed to implement recommendations 1, 2, 3 and 4 by July 31, 2016, and recommendation 5 by October 31, 2016. Accordingly, we consider all recommendations resolved but open pending completion of the planned actions.

In its response, FAA described differences in how it defines "single-source" contracts compared to how the FAR defines the use of "sole-source" contracts. Our report acknowledges these differences, but we see no substantive difference between single-source and sole-source contracts for the purpose of our review, and in the FAA's internal classification and external reporting of these awards. As we noted, FAA reports its single-source awards as sole-source awards for its required annual reporting to Congress. In addition, FAA's AMS policy definition of single-source contracting "is to award a contract, without competition, to a single supplier of products or services." Our review used AMS's pre-award requirements as criteria for assessing FAA's noncompetitive awards, not FAR requirements, and we are pleased that the FAA concurred with our five recommendations to strengthen its compliance with AMS and its overall management of these contracts.

We appreciate the courtesies and cooperation of FAA representatives during this audit. If you have any questions concerning this report, please call me at (202) 366-5225 or Tony Wysocki, Program Director, at (202) 493-0223.

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cc: FAA Acquisition Executive/Chief Acquisition Officer
FAA Audit Liaison, AAE-100
DOT Audit Liaison, M-1

EXHIBIT A. SCOPE AND METHODOLOGY

We conducted this performance audit between March 2015 and March 2016 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. The objectives of our audit were to (1) assess FAA's actions since OMB's 2009 directive to reduce the use of sole-source contracts, including follow-on contracts to sole-source awards, and (2) determine whether FAA's practices prior to award of sole-source contracts comply with AMS requirements.

To assess FAA's actions since OMB's 2009 directive to reduce the use of sole-source contracts, we reviewed FAA's November 2009 plan to reduce its use of high-risk contracts, including sole-source contracts, as well as reviewed FAA's acquisition process improvement documents to determine whether the Agency took intended actions and whether these actions had an impact on the use of sole-source contracts. We obtained and verified FAA sole-source contracting data that OST reported to Congress by comparing these data to FAA's universe of sole-source contracts awarded between fiscal years 2012 and 2014.²⁹ In addition, we assessed FAA's use of sole-source awards to acquire proprietary technologies and its use of follow-on, sole-source contracts. Further, we interviewed OST and FAA's acquisition officials, managers, and COs.

To determine whether FAA's practices prior to award of sole-source contracts comply with AMS requirements, we drew a sample from FAA's universe of sole-source contracts awarded between fiscal years 2012 through 2015. We assessed each contract using six risk indicators: (1) contract dollar value, (2) number of contracts to the same vendor in a fiscal year, (3) contract type, (4) timing of contract award, (5) the Agency's rationale for sole-source award, and (6) whether the vendor was awarded contracts in multiple fiscal years. Based on this assessment, OIG's statistician selected a 2-stage stratified sample of 50 sole-source contracts (valued at about \$128.9 million) out of 377 contracts (valued at about \$1.9 billion) with probability proportional to a contract's risk with replacement. For stage 1, we statistically selected 5 out of 10 FAA locations (see table 4); for stage 2, we selected a sample of 50 out 326 contracts awarded at the 5 locations selected in stage 1. However, we did not review 16 of the 50 files, as 6 of these sole-source awards were authorized by statute, 2 were competed,

²⁹ Despite our finding that FAA's sole-source contracting information in PRISM was not correctly transferred to FPDS, we deemed the contracting information provided to us from FAA sufficient for the purposes of the audit.

1 contract file was destroyed, 1 contract was cancelled, and 6 had incorrectly identified locations.³⁰

Table 4. Number of Sole-Source Contracts Files Reviewed at FAA Locations

Location	Number of Files OIG Reviewed
FAA Headquarters, Washington, DC	11
William J. Hughes Technical Center, Atlantic City, NJ	8
Mike Monroney Aeronautical Center, Oklahoma City, OK	11
FAA Central Acquisitions, Des Plaines, IL	2
FAA Western Division	2
Total number of contact files	34

Source: OIG

We reviewed this sample of 34 sole-source contracts to assess FAA’s compliance with AMS pre-award requirements. We developed and used a standard file review checklist to determine if key pre-award documents—such as, sole-source justifications, IGCEs, procurements plans, and market analysis—were completed and included in the contract files. Based on the findings in our sample, we projected the total estimated value of contracts that did not fully comply with pre-AMS pre-award requirements, with a precision of +/- \$102 million at a 90-percent confidence level.

³⁰ Since we counted these 16 as meeting key pre-award actions, our estimates are very conservative.

EXHIBIT B. CONTRACT FILES REVIEWED

No.	Contract number	Total estimated value	Goods or services purchased
1	DTFAAC-14-P-03180	\$206,700	Avionics test equipment for the Aircraft Maintenance and Engineering Group
2	DTFAAC-13-P-03281	\$171,321	Beacon antenna
3	DTFAAC-14-D-00021	\$2,555,187	Chroma meters
4	DTFAAC-12-P-06595	\$274,948	Spare parts for the U.S. Army Air Surveillance Radar model 11
5	DTFAAC-13-D-00038	\$379,706	Repair of optical rotary encoders
6	DTFAAC-13-D-00032	\$431,527	Pilot Induced oscillation training
7	DTFAAC-13-D-00052	\$178,870	Aircraft Icing training
8	DTFAAC-12-P-07612	\$1,475,922	Components parts for Bombardier flight inspection aircraft
9	DTFAAC-12-D-00037	\$3,011,328	Repair/upgrade actions and other services to include engineering studies, analysis, and technical support for Block I Surveillance System
10	DTFAAC-12-P-06552	\$259,000	Helicopter initial pilot qualification training
11	DTFAAC-12-P-04708	\$814,115	Mission analysis of the Aircraft Inventory, Logistics and Maintenance Software Replacement Program
12	DTFAWA-13-P-00370	\$859,396	Construction of office and conference room
13	DTFAWA-13-P-00224	\$496,000	Technical consultant hours to support the Card Management System
14	DTFAWA-13-P-00170	\$980,000	Parking spaces
15	DTFAWA-14-C-00020	\$3,300,000	Maintenance of the Pulsed Doppler Light Detection and Ranging system
16	DTFAWA-13-C-00043	\$454,343	IT and telecom-system support
17	DTFAWA-14-P-00178	\$812,354.00	Wide Area Augmentation System Geostationary receivers and signal generators.
18	DTFAWA-15-D-00012	\$46,007,131	Tower Simulation System training and support
19	DTFAWA-12-P-00041	\$630,837	Development and implementation of Aeronautical Distance Learning Training for sub-Saharan African meteorological forecasters
20	DTFAWA-14-D-00027	\$451,927	Data to test and perform limited repair of Ultra High Frequency radio equipment
21	DTFAWA-12-D-00017	\$12,000,000	Frangible fuse bolts to mount lighting and navigational aids in the runway safety area

Exhibit B. Contract Files Reviewed

No.	Contract number	Total estimated value	Goods or services purchased
22	DTFAWA-13-D-00013	\$650,000	Tower simulation system training and support
23	DTFAWN-14-C-00243	\$186,000	Repair of air traffic control towers
24	DTFAWN-12-P-00475	\$222,329	Air traffic control tower monitor and remote maintenance equipment
25	DTFACN-12-P-00283	\$266,443	Hardware and software maintenance service renewal
26	DTFACN-14-D-00013	\$2,645,555	Software development, validation, maintenance, support, and integration
27	DTFACN-14-P-00050	\$151,960	Hardware for the interfacility radar simulator platforms
28	DTFACN-14-P-00191	\$362,982	Hardware and software licenses and maintenance renewals
29	DTFACN-14-C-00021	\$3,088,461	Research and program management support
30	DTFACN-14-P-00240	\$240,000	Aviation fuel samples analysis
31	DTFACN-13-P-00136	\$178,750	Licenses for the Simulation Driver and Radar Recorder
32	DTFACN-14-C-00003	\$873,083	High ice water content ice crystal atmospheric research
33	DTFACN-13-C-00297	\$285,000	Fire alarm system replacement
34	DTFACN-14-P-00159	\$174,844	Air traffic control tower antenna expansion kit
Total estimated value:		\$85,076,020	

Source: OIG analysis of FAA data

Exhibit B. Contract Files Reviewed

EXHIBIT C. MAJOR CONTRIBUTORS TO THIS REPORT

Name	Title
Tony Wysocki	Program Director
Rachel Alderman	Project Manager
Heidi Broekemeier	Senior Analyst
Angela Hailes	Senior Analyst
Meredith Howell	Senior Analyst
Patti Lehman	Senior Auditor
Stacie Seaborne	Senior Analyst
Bret Stolle	Analyst
Sawdiatou Ba	Analyst
Seth Kaufman	Senior Counsel
Christina Lee	Writer-Editor
William Savage	IT Specialist
Petra Swartzlander	Senior Statistician

APPENDIX. AGENCY COMMENTS

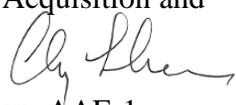


Federal Aviation Administration

Memorandum

Date: April 13, 2016

To: Mary Kay Langan-Feirson, Assistant Inspector General for Acquisition and Procurement Audits

From: H. Clayton Foushee, Director, Office of Audit and Evaluation, AAE-1 

Subject: Federal Aviation Administration's (FAA) Response to Office of Inspector General (OIG) Draft Report: FAA's Sole-Source Contracts

Consistent with the Acquisition Management System (AMS), the FAA continues to promote a competitive contracting environment through all levels of acquisition programs while surpassing Government averages for key performance acquisition metrics. As FAA's overall contract spending increased by 11 percent, it has achieved greater competition, single source contracting reductions, and cost avoidance. Since fiscal year (FY) 2008, we have maintained an average competition rate of 84 percent. To date in FY 2016, FAA is averaging a competition rate of 88 percent and a one-bid rate of 0.34 percent. As reflected in the draft audit report, from FY 2008 to FY 2014, the agency reduced the award of new single source contracts by 40 percent. Further since FY 2007, we have also expanded our strategic sourcing program by 448 percent achieving an estimated cost avoidance of \$253 million.

The FAA has reviewed the draft report and offers the following comments in response to the OIG's findings and recommendations:

- AMS purposefully uses the term single source versus sole source. There is a meaningful difference between the two terms, with "single source" focusing on a factual, reasoned and well-documented rationale versus prescribed conditions. Under a single source procurement there is no requirement that an awardee be the only source, but rather that business, technical and/or mission must support the determination that it is in the best interest of FAA to award a requirement noncompetitively. Unlike sole sources under the Federal Acquisition Regulation (FAR), there is no formulaic, predetermined or prescribed use of single source under AMS.
- FAA is committed to ensuring all data associated with its contract awards are accurate, traceable and dependable. We established monthly processes to verify that award data in

FAA's PRISM¹ and the Federal Procurement Data System (FPDS) are consistent and launched a quality control process that will verify data prior to any external reporting.

- We continue to enhance our oversight efforts at both the contract management and enterprise level by promoting compliance, process effectiveness, and program control.

The FAA concurs with all five of the OIG's recommendations, as written, and plans to complete action(s) on Recommendations 1, 2, 3 and 4 by July 31, 2016 and Recommendation 5 by October 31, 2016.

We appreciate this opportunity to comment on the draft report. Please contact H. Clayton Foushee at (202) 267-9000 if you have any questions or require additional information about these comments.

¹ PRISM is a comprehensive procurement management system that is FAA's replacement for the ACQUIRE Purchasing System.