**OIG Report No ZA-2016-065 Recommendation # 3**

**PROCESS FOR IMPROVING AND MAINTAINING A COMPETITIVE ENVIRONMENT FOR FEDERAL AVIATION ADMINISTRATION PROCUREMENTS**

1. **INTRODUCTION**

The goal of the Federal Aviation Administration (FAA) procurement system is to obtain high quality products, services, and real property in a timely, cost-effective manner, at prices that are fair and reasonable.[[1]](#footnote-1) The procurement system enables the FAA to be innovative and creative so that the right vendor is selected to implement a solution. The FAA procurement system is an integral part of the lifecycle management process as it focuses primarily on identifying sources, awarding, and administering contracts.[[2]](#footnote-2)

In accordance with the FAA Acquisition Management System (AMS) Procurement Policy, the FAA’s procurement system emphasizes competition. AMS Policy 3.2.1.3.6 (Maintaining Competition) states that consideration should be given to methods of maintaining competition throughout the lifecycle of any product or service[[3]](#footnote-3). Methods to be considered for maintaining competition may include dual sourcing, obtaining re-procurement data and data rights, open system designs, and any other appropriate methods.

To improve competition across the agency, the Acquisition Policy Group has developed this process for acquisition teams (to include but not limited to Contracts, Requirements Team, Legal) across the agency with approaches or techniques to improve FAA’s ability to identify and assess requirements that can be competitively competed in the future.

1. **BACKGROUND**

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.[[4]](#footnote-4) 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. [[5]](#footnote-5) According to the U.S. Department of Transportation’s (DOT) annual reports to Congress on sole-source contracts, the 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. Of note, the FAA Acquisition Management System (AMS) uses the term “single-source” versus the Federal Acquisition Regulation (FAR) term “sole-source.” Under the FAA’s AMS Policy for single source procurements, there is no requirement that an awardee be the only source available, but require instead that business, technical and/or mission must support the determination that it is in the best interest of the FAA to award a requirement noncompetitively.[[6]](#footnote-6) Unlike sole sources under the FAR, there is no formulaic, predetermined or prescribed use of single source under the AMS.[[7]](#footnote-7)

To assess whether the FAA is adhering to OMB’s 2009 directive to reduce the use of single source contracts, including follow-on contracts to single source awardees, the Office of Inspector General (OIG) conducted an audit in 2016 and issued a report entitled “FAA Lacks Adequate Controls to Adequately Track and Award its Sole Source Contracts.[[8]](#footnote-8)” In the report, the OIG identified areas of improvements to reduce the use of single source awards across the agency. Specifically, the OIG recommended that the FAA establish and implement a standardized process for identifying follow on procurements, to improve FAA’s ability to identify requirements that can be competed in the future.

To address the OIG’s recommendation, the FAA has developed this process to document the various approaches the FAA can take to maximize competition across the agency on all future and follow on procurements.

1. **GENERAL TECHNIQUES AND/OR APPROACHES FOR CREATING AND MAINTAINING A COMPETITIVE ENVIRONMENT FOR FUTURE AND FOLLOW ON REQUIREMENTS**
2. **TIME OUT REPORT**

To monitor the overall competition rate across the agency, the FAA generates a Time Out Report in PRISM that displays all currently awarded procurements that will be expiring within the next 18 months. The purpose of the Time Out Report is to provide the FAA with the ability to identify potential follow on procurements earlier in the acquisition-planning phase in order to reduce the use of single source contracts and avoid “bridge contracts” and contract extensions to existing single source awardees. To help facilitate this goal, the Time Out Report is distributed to Division Managers within AAQ for evaluating which single source contracts are expiring in the near term and are suitable for early procurement planning. AAQ Division Managers then contact the applicable program offices to initiate procurement planning, including investigating opportunities to improve the competitive nature of the requirement.

1. **MARKET RESEARCH**

To assist with determining which follow on procurements/requirements are viable for potential competition, the acquisition team, to include the program office, conducts market research in accordance with AMS Policy 3.2.1.2.1 to determine the suitability of industry’s capabilities in satisfying the FAA’s requirements. Market research can be useful to the FAA as it initiates industry involvement, develops and refines the procurement strategy, determines whether commercial items exist, determines the level of competition, identifies market practices, and obtains comments on customer/program office requirements.[[9]](#footnote-9)

The magnitude and degree of formality of the market research the acquisition team performs is usually proportionate to the contemplated procurement. When considering the extent and depth of market research and analysis, the acquisition team would factor in past experience, the individual requirement, estimated dollar value, complexity, and urgency of the requirement.[[10]](#footnote-10) Below are a few examples of market research techniques/approaches that the acquisition team can utilize based on the complexity of their procurement to assess the competitive environment for any future or existing requirements.

* **Market Surveys.** One way of initiating market research is by utilizing market surveys. The AMS utilizes the term “market survey” in two different contexts to illustrate that market research is a continuous process throughout the acquisition lifecycle.[[11]](#footnote-11) In the procurement process, it refers to any method used to survey industry to obtain information and comments, and to determine competition, capabilities, and estimate costs. In the context of the lifecycle management process, market surveys are part of Concept and Requirements Definition and Investment Analysis. During these lifecycle phases, market surveys provide information about the range of alternatives and market capabilities, risk, and cost of potential solutions to mission needs. [[12]](#footnote-12)
* **One on One Meetings.** Conducting one-on-one meetings with industry is another market research method to increase the competitive environment of future procurements. The program office should consider holding one-on-one meetings with the goal of enabling industry to submit better input on requirements and proposals. One-on-meetings provide program offices a better understanding of industry’s capabilities in meeting current and future requirements. They also help level the playing field for potential offerors that have not previously had an opportunity to work with the program/project owner. Not only do one-on-one meetings increase the likelihood of competition, but they also improves the quality of Screening Information Requests (SIR) packages and offeror responses as both parties have a greater understanding of project requirements and risks based on the exchanges of information between the parties.[[13]](#footnote-13)
* **Industry Days.** To foster better communications with industry on current and future FAA requirements, the acquisition team should also consider hosting Industry Days. Industry Days are beneficial as they allow industry to get a better understanding of FAA’s acquisition strategies for the current and upcoming fiscal years. They are also useful in promoting competition as they allow the government to express their goals and procurement schedules and solicit feedback from industry.[[14]](#footnote-14) Industry days further encourage competition as they create transparency and openness to industry by providing information to all interested offerors that allow them to make informed bid decisions and provide targeted proposals that address the government’s requirements.[[15]](#footnote-15)

1. **INTELLECTUAL PROPERTY/DATA RIGHTS**

To further assess the feasibility of competition for new requirements and potential follow on procurements, the acquisition team will review and consider Intellectual Property (IP) related issues or concerns early on in the acquisition planning process in accordance with AMS Guidance T.3.5.A.4 Rights in Data and Copy Rights. Considering IP related issues during the acquisition planning process is necessary to maximize all possible competitive alternatives for all phases of the acquisition life cycle to include re-procurement of additional systems or spares, operation and training, maintenance and repair, modifications to interface with other systems, and capability for future upgrades and technology assertions.[[16]](#footnote-16) To assist with IP related issues, the acquisition team will engage Legal early on in the procurement process to interpret and provide counsel on IP laws/policies, assist with tailoring IP strategies to specific procurements, and provide guidance on solicitation and contract language related to data rights.

When addressing IP issues or concerns for the program, the acquisition team should consider the following questions when making a determination on data rights for any given procurement.

* What information (nature, type, and level of technical detail) is the government requiring from data deliverables that would support the government’s future need, whether for sustainment activities, component or subsystem breakout, or system reprocurement?
* In considering sustainment activities, are the activities performed in-house or through a competitively outsourced procurement?
* What technology or data is FAA funded data/technology or privately funded (proprietary/commercial) data/technology? If FAA funded, the FAA should ensure the contract provides for the government to obtain ownership of the data and the vendor delivers the technical data or computer software package upon completion. If privately funded, the FAA would have to perform a cost benefit analysis to determine if acquiring the technical data or computer software for future acquisition is the best value for the government.

1. **STRATEGIC SOURCING**

During the acquisition planning stage, the acquisition team can consider innovative sourcing methods to increase the likelihood of competition for future and follow on FAA requirements. A couple of methods to consider are as follows:

* **Dual Sourcing.** Dual sourcing is a competitive sourcing technique that the acquisition team can utilize in order to maintain competition for various products or goods serving the agency’s needs. Dual sourcing is a method of awarding contracts to two or more vendors, with the larger share typically going to the lower priced vendor. Dual sourcing is advantageous to the FAA as it increases competition (and maintains competition throughout contract administration), produces cost savings, and improves quality assurance.[[17]](#footnote-17) Dual sourcing not only creates competition among two or more vendors, it also allows the FAA to mitigate potential supply risks associated with single source awardees.[[18]](#footnote-18)
* **Open System Design Architecture.** Open System Design Architecture (OSDA) is another sourcing method the program offices can consider using when determining if future requirements are able to be competitively competed. OSDA is a development approach that utilizes standards to develop a system that is independent of a particular vendor or designer.[[19]](#footnote-19) OSDAs are advantageous to the FAA as they enhance competition, facilitate technology refresh, incorporate innovation, enable cost savings, and improve system interoperability.[[20]](#footnote-20)

1. **CONCLUSION**

The methods outlined in this document are intended to provide the acquisition team with various techniques and approaches for improving and maintaining competition throughout the acquisition lifecycle. The acquisition team should consider developing their acquisition strategies using the techniques cited herein as a means to reduce the use of single source awards and incentivize industry to deliver innovative, cost effective, and quality products or services to support the FAA’s mission. By fostering an environment in which continuous competition is valued, the FAA ensures effective stewardship of taxpayer dollars.

1. AMS Policy 3.1.1 Introduction [↑](#footnote-ref-1)
2. AMS Policy 3.1.1 Introduction [↑](#footnote-ref-2)
3. AMS Policy 3.2.1.3.6 (Maintaining Competition) [↑](#footnote-ref-3)
4. FAA Lacks Adequate Controls Accurately Track and Award its Sole Source Contracts, (OIG Report Office ZA-2016-065), May 9, 2016. [↑](#footnote-ref-4)
5. Omnibus Appropriations Act, 2009, Public Law 111-8, Division I, Title IV, Sec. 407 123 Stat. 986 (2009). [↑](#footnote-ref-5)
6. AMS Policy 3.2.2.4 Single Source Selection [↑](#footnote-ref-6)
7. Foushee, H. Clayton, Federal Aviation Administration’s (FAA) Response to Office of Inspector General (OIG) Draft Report: FAA’s Sole Source Contracts, April 13, 2016. [↑](#footnote-ref-7)
8. OIG Report, FAA Lacks Adequate Controls to Accurately Track and Award its Sole Source Contracts, Report Number ZA-2016—065, May 9, 2016 [↑](#footnote-ref-8)
9. AMS Policy 3.2.1.2.1 Market Analysis (4/2013) [↑](#footnote-ref-9)
10. AMS Policy 3.2.1.2.1 Market Analysis [↑](#footnote-ref-10)
11. AMS Guidance T.3.2.1.2A.1(b) Market Research and Analysis [↑](#footnote-ref-11)
12. AMS Guidance T.3.2.1.2A.1(b) Market Research and Analysis [↑](#footnote-ref-12)
13. Smith, Nancy, Procurement Issues: One-on-one Meeting Procedures, July 17, 2015, https://www.infrainsightblog.com/2015/07/articles/p3s/procurement-issues-one-on-one-meeting-procedures/ [↑](#footnote-ref-13)
14. Gordon, Daniel, “Myth-Busting”: Addressing Misconceptions to Improve Communication

    with Industry during the Acquisition Process, February 2, 2011. [↑](#footnote-ref-14)
15. ACT-IAC, Industry Day Best Practices, December 24, 2014, https://www.actiac.org/act-iac-white-paper-industry-day-best-practices [↑](#footnote-ref-15)
16. Office of the Under Secretary of Defense for Acquisition, Technology, and Logistics, Guidelines for Creating and Maintaining a Competitive Environment for Supplies and Services in the Department of Defense, December 2014 [↑](#footnote-ref-16)
17. Dorothy E. Klotz & Kalyan Chatterjee, 1995. "[Dual Sourcing in Repeated Procurement Competitions](https://ideas.repec.org/a/inm/ormnsc/v41y1995i8p1317-1327.html),"[Management Science](https://ideas.repec.org/s/inm/ormnsc.html), INFORMS, vol. 41(8), pages 1317-1327, August.. [↑](#footnote-ref-17)
18. Yixin Zhang and Xifu Wang, “Procurement Strategy with Backup Sourcing under Stochastic Supply Risk,” Complexity, vol. 2019, Article ID 3541352, 15 pages, 2019. <https://doi.org/10.1155/2019/3541352>. [↑](#footnote-ref-18)
19. Glossary of Defense Acquisition Acronyms & Terms, 13th Edition, Nov. 2009 [↑](#footnote-ref-19)
20. https://www.acq.osd.mil/se/initiatives/init\_mosa.html [↑](#footnote-ref-20)