

**Review of the Railroad Retirement Board's Acquisition Process –
Contracts for Services
Report No. 04-01, October 16, 2003**

INTRODUCTION

This report presents the results of the Office of Inspector General's (OIG) review of the Railroad Retirement Board's (RRB) acquisition process of contracts for services.

Background

The RRB's mission is to administer retirement/survivor and unemployment/sickness insurance benefit programs for railroad workers and their families. During fiscal year (FY) 2002, the RRB paid approximately \$8.7 billion in railroad retirement and survivor benefits to about 684,000 beneficiaries. The RRB also paid unemployment and sickness insurance benefits of \$105.8 million to some 41,000 claimants.

The RRB utilizes contracts for numerous goods and services that it cannot perform in-house or that the outside vendors can perform more effectively and efficiently. During FY 2001 and 2002, the RRB made procurements totaling approximately \$12.3 million and \$9.4 million, respectively. Some agency contracts involve the direct engagement of the time and effort of a contractor whose primary purpose is to perform an identifiable task rather than to furnish a product or good. Some of the areas in which contracts for services are currently used by the RRB or have been used in the past are:

- Maintenance, overhaul, repair, servicing, rehabilitation, salvage, modernization, or modification of supplies, systems, or equipment;
- Routine maintenance of real property;
- Housekeeping services;
- Advisory and assistance services;
- Operation of Government-owned equipment facilities and systems;
- Communications services; and
- Information systems services.

The Federal Acquisition Regulations (FAR) codify uniform policies for acquisition of supplies and services by executive agencies. RRB officials used the Federal Supply Schedule (FSS) program to increase the efficiency of agency procurements. This program provides Federal agencies with a simplified process for obtaining commonly used products and services at prices associated with volume buying. The General Services Administration (GSA) manages this program and awards contracts to multiple companies supplying comparable products and services. Any Federal agency can then place orders with these FSS contractors.

Part 8 of the FAR governs the use of the FSS program. FAR 8.402 allows GSA to establish special ordering procedures for individual Federal Supply Schedules. In

March 1998, GSA developed special instructions for ordering services priced at hourly rates. These instructions were updated in March 2000 to become "Ordering Procedures for Services." Federal agencies are directed to use the procedures when ordering services from a FSS contractor.

The RRB's Basic Board Order #5 states that the execution and administration of contracts shall be centralized in the Bureau of Supply and Service (BSS). As the agency's contracting officer, the Director of Supply and Service oversees the development, approval, monitoring and administration of all agency contracts. RRB user organizations should alert the contracting officer of the need for procurement action as soon as the need is recognized. Early communication facilitates better contract planning and enables more timely, efficient and economical procurements.

The RRB's 2000-2005 strategic plan's second goal of safeguarding customer trust funds through prudent stewardship is relevant to this review. One goal objective is to use outside sources and partnerships, when appropriate, to accomplish the agency's mission. A second objective is to ensure the RRB consistently pays the lowest price for products and services commensurate with quality, service, delivery and value.

Objective, Scope and Methodology

The objective of this review was to assess the agency's compliance with applicable Federal regulations as well as internal agency policies and procedures for procurement. The scope of this review included contracts during FY 2001 through 2003.

To accomplish our objective, we:

- reviewed applicable Federal regulations,
- examined agency policies and procedures,
- performed a preliminary review of a judgmental sample of five contracts for services,
- after this preliminary review, focused a detailed review on three information technology contractors with multiple orders, and reviewed all procurement documents for these vendors in files supplied by BSS, and
- interviewed responsible management and staff.

This audit was conducted in accordance with generally accepted government auditing standards as applicable to the objective. Fieldwork was conducted at the RRB headquarters in Chicago, Illinois from November 2002 through April 2003, and July through September 2003.

RESULTS OF REVIEW

Our review determined that the RRB did not always comply with Federal regulations and/or agency policies and procedures for FSS procurements. For the information technology services that we reviewed, RRB officials did not always seek competitive quotes, provide statements of work (SOW) to vendors, and/or adequately review price and proposal details prior to making a contract decision.

Detailed findings and recommendations are discussed below.

Federal Regulations and Agency Policies Not Followed for FSS Procurements

RRB contracting officials did not follow several of the GSA's established regulations and procedures when purchasing information technology services using the FSS program. Our review identified five specific deficiencies. More information concerning specific orders cited in this report appear in Appendix I.

1. Placement of orders without seeking competitive quotes from multiple contractors

In five orders (\$416,000) for services that required a SOW, agency officials did not seek competitive quotes by providing a request for quotation (RFQ) to at least three FSS contractors. In several orders, there was no evidence that the agency prepared and submitted the required request and statement to vendors. In other orders, there was insufficient documentation in the contract file to show that the agency complied with Federal policies to obtain competitive quotes.

For orders exceeding the \$2,500 micro-purchase threshold and requiring a SOW, the GSA special ordering procedures for services require a purchasing office to prepare a RFQ and transmit it to at least three FSS contractors. The purchaser must then evaluate responses against the factors identified and place the order with the contractor that represents the best value.

2. Improperly entering into Blanket Purchase Agreements (BPA) without soliciting adequate competition

Contract officials could not demonstrate that they either solicited competitive quotes, reviewed contractor price lists/catalogs, or used the GSA on-line shopping service before entering into two BPAs with FSS contractors.

A BPA is a simplified method of filling anticipated repetitive needs for services and supplies. A purchasing office must first follow the GSA special ordering procedures or FAR 8.404. The office should either solicit quotes from at least three vendors, compare prices based on catalogs/price lists or use GSA's online shopping service prior to establishing the agreement for purchases exceeding \$2,500. Once the BPA has been established, the office can place orders with the chosen contractor without further best value selections.

3. Failure to provide adequate SOW

Nine of the 17 information technology orders reviewed by the OIG required a SOW. RRB personnel did not prepare an adequate SOW in seven orders. In five of the seven orders, staff in the agency's Bureau of Information Services (BIS) performed the initial contact to contractors to discuss potential information technology projects. BIS did not document the initial contact with the vendor or the requirements addressed by the proposal in the agency contract files.

GSA special ordering procedures require that the RFQ include a SOW that outlines the work to be performed, location of work, period of work, deliverable schedule, applicable standards, acceptance criteria, and any special requirements. The RFQ also may request contractors to submit a project plan for performing the task and information on the contractor's experience performing similar tasks. It should also notify contractors what basis will be used for awarding the contract.

4. Inadequate review of contractor price lists and catalogs, and/or use of the GSA online shopping service

The OIG reviewed one order where contract officials should have reviewed price lists/catalogs for three contractors or used the GSA online shopping service prior to making a best value determination. Contract officials could not demonstrate that they had performed this review.

The GSA special ordering procedures require contracting officials to use the online shopping service or review price lists from at least three FSS contractors for orders that do not need a SOW and exceed \$2,500.

5. Inadequate review of labor hours, mixes, and rates

In one order, contract officials compared labor rates contained on the FSS for two contractors. However, they did not consider labor hours or the mix of labor categories needed.

GSA determines that the rates for services contained in the FSS contractor's price list are fair and reasonable. However, purchasers are still responsible for (1) considering the level of effort and mix of labor proposed to perform a specific task being ordered, and (2) making a determination that the total firm-fixed price or ceiling price is fair and reasonable.

The five deficiencies listed above occurred because RRB contract officials incorrectly believed that GSA had made all required competition and price reasonableness determinations when they approved contractors for inclusion on the FSS. Therefore, they improperly decided that no additional price reasonableness or best value determinations were required when issuing FSS orders. Officials relied on FAR

8.404(a) for guidelines without realizing that this part of the FAR is supplemented by the GSA special ordering procedures.

The agency did not have sufficient documented procedures that summarized the processes and requirements for requesting and completing the procurement of goods and services. The agency's Administrative Circular BSS-14, Procurement of Goods and Services, did not adequately address FAR regulations governing the procurement of goods and services from FSS and did not provide any information on the GSA special ordering procedures.

In addition, BIS personnel were overly involved in initial procurement actions for information technology services. This bureau plays a key role in directing and leading the strategic management of the RRB's information technology resources. However, instead of working through the BSS procurement division, BIS personnel frequently solicited initial proposals from potential contractors, and discussed pricing and other procurement issues directly with potential contractors prior to involving the BSS procurement division. In a few instances, BIS did not involve the procurement division early enough in the process to allow procurement staff to adequately administer and control these activities. Therefore, BSS was unable to exercise sufficient oversight over some orders.

These weaknesses were partially caused by ambiguous guidance for issuing FSS orders in FAR Part 8. The GSA special ordering procedures are not mentioned in FAR Part 8 even though they take precedence over procedures in this section. The GSA special ordering procedures themselves do not specify the types of services for which a SOW is required.

The U.S. General Accounting Office and Inspectors General of other Federal agencies have identified similar issues with the GSA special ordering procedures and the use of FSS throughout the government. As a result of a General Accounting Office Report¹, the FAR Council and other procurement groups are pursuing amendments to FAR 8.4. During the course of our review, proposed amendments to the FAR were published for Federal agency comment.

Agency managers informed the OIG that they have taken some actions during this review to address identified issues. The agency's Senior Executive Officer issued a memorandum in May 2003 relating to procurement activities. In June 2003, the agency also issued a revised Administrative Circular BSS-14.

While both agency actions are a positive step to ensure compliance, we do not believe that they are adequate. The May 2003 memorandum indicated that all procurement actions must be handled or cleared through the Director of Supply and Service or his/her designee including contacts with contractors. The memorandum stated that bureau and office heads "advise your employees that they must contact the

¹ Report No. GAO-01-125, "Contract Management: Not Following Procedures Undermines Best Pricing Under GSA's Schedules," November 28, 2000

Procurement Section in the Bureau of Supply and Service before they embark upon any action that might culminate in a procurement action.” However, the OIG noted at least one instance subsequent to this memorandum where BIS personnel did not comply.

The revised Administrative Circular BSS-14 is inadequate because it still does not address FAR regulations governing the procurement of goods and services from FSS. The Circular also does not provide any information on the GSA special ordering procedures.

Inconsistent compliance with applicable regulations and policies has resulted in the lack of adequate competition for orders covered under the FSS. Without multiple quotes from vendors, the RRB contract officials do not have a good basis for deciding which contractor is the most competitive. Because the RRB has not always determined whether the total firm-fixed price or ceiling price for FSS orders were reasonable, the agency has no assurance that it paid fair and reasonable prices or obtained best value for services.

In addition, the RRB has exposed itself to potential legal liability and appeals of contract awards. Other FSS contractors may appeal contract awards and attempt to obtain legal relief, which could result in substantial costs to the RRB.

Recommendations:

The OIG recommends that the Bureau of Supply and Service:

1. Revise Administrative Circular BSS-14 to address FAR sections relating to the procurement of goods and services from FSS contractors. The revisions should include information on the GSA “Ordering Procedures for Services” contained in GSA’s Multiple Award Schedules Program Owner’s Manual. BSS should also explain what information needs to be included in a statement of work.
2. Provide training for and directives to procurement personnel on the use of Federal Supply Schedules and the GSA special ordering procedures.
3. Provide a directive to the Bureau of Information Services that emphasizes the need to contact the Procurement Section of the BSS before initiating any action that might result in a procurement.

Management’s Response

Management concurs with the first two recommendations to the Bureau of Supply and Service. Management will revise Administrative Circular BSS-14 by December 31, 2003 and also provide training to procurement staff by that date. Management disagrees with the third recommendation, advising that they believe that the agency’s Senior Executive Officer’s memorandum in May 2003 relating to procurement activities sufficiently addressed the identified weakness.

Management agreed that the agency did not solicit three vendors for competitive quotes in every case where a statement of work was required. However, they indicated that GSA guidance clearly states that ordering offices should not overburden contractors with requests for quotes, and that such requests should be tailored to the minimum level necessary.

A complete copy of the response is included in Appendix II.

OIG Comments

The OIG disagrees with management concerning the recommendation to provide a directive to BIS because the identified instance occurred a few weeks after the May 2003 memorandum was issued. Therefore, we believe that a reminder memorandum issued directly to BIS from the Bureau of Supply and Service would more effectively address the non-compliance of BIS staff.

The OIG agrees with management's comment that the agency should strive to minimize contractors' costs associated with responding to requests for quotes for specific orders and that quotes should be tailored to the minimum level necessary for adequate evaluation and selection for order placement. The OIG sees no conflict between this guidance and requirements to seek competitive quotes, and believes that the agency can easily comply with both the guidance and requirement.

INFORMATION ON SELECTED ORDERS REVIEWED BY THE OIG

<u>Order Description</u>	<u>OIG Notes/Comments</u>
<p>Consulting Services in Support of RRB's Enterprise Architecture Platform - \$94,442</p>	<p>Report deficiencies 1, 3 and 5 – Award made based on the agency's Executive Committee's overall selection of a contractor. The agency's Chief Enterprise Architect provided a recommendation to the Executive Committee. Several FSS contractors made informational presentations to the Committee. These presentations included overviews of enterprise architecture planning as well as brief overviews of the presenting contractors' approach to the enterprise architecture process. However these presentations were not proposals, were not sufficiently documented, and were not made in response to any RFQ. Also, the contractors were not provided with a SOW which explained the RRB's requirements and expected deliverables. Several months after these presentations, the selected vendor submitted a formal proposal. Although the RRB compared labor rates with another vendor, no comparison of labor hours or the mix of labor categories needed was performed.</p>
<p>Blanket Purchase Agreement for Consulting Services Focused on the Agency's Enterprise Architecture – Orders totaled approximately \$230,000</p>	<p>Report deficiency 2 – The RRB did not solicit competition prior to entering into this BPA because of the Executive Committee's overall decision to use a particular vendor for enterprise architecture consulting work. The committee's decision was based in large part on the previously described informational presentations. There is no evidence that the agency made a best value determination prior to entering into this agreement.</p>
<p>Help Desk Benchmarking Study - \$43,980</p>	<p>Report deficiencies 1 and 3 – A single vendor submitted a proposal. There is no evidence that the RRB provided a SOW or RFQ to any contractor.</p>
<p>Architecture Development Service, Enterprise Architecture Strategies - \$29,469</p>	<p>Report deficiency 1 – There is no evidence that agency officials provided a SOW to any vendor other than the contractor awarded the order. Also, there is no evidence that the RRB prepared an RFQ or provided an RFQ to any FSS contractors.</p>

<p>Internet-Based Employer Reporting Pilot Project - \$193,770</p>	<p>Report deficiencies 1 and 3 – Several contractors submitted proposals; however, there is no record of any RFQ or SOW in the contract file. In addition, the contractors were not all afforded the opportunity to submit proposals based on the same requirements. The selected vendor’s final proposal was based on substantially different requirements than the proposals submitted by the competing contractors. Only the selected contractor received these requirements. Therefore, the quotes were not competitive.</p>
<p>Additional Tasks Needed to Move Internet-Based Employer Reporting Pilot to Employer Testing and Implementation - \$54,000</p>	<p>Report deficiencies 1 and 3 – The RFQ was provided to a single contractor. It was considered to be a supplement to a prior order and the agency deemed the contractor as the only one capable of meeting the order requirements. The RFQ contains a requirements document but it is not an adequate SOW as it contains no information on the deliverable schedule, applicable standards or acceptance criteria.</p>
<p>Help Desk Improvements - \$19,400</p>	<p>Report deficiency 3 – RRB officials did not prepare an adequate SOW for this order. The vendor’s final proposal deliverables were incorporated as the order requirements.</p>
<p>Data Center Benchmark (Evaluation of the Mainframe Operating Environment) - \$38,343</p>	<p>Report deficiency 3 – The RRB did not prepare an adequate SOW for this order. Instead, the vendor submitted an initial proposal to the RRB, and then submitted a final proposal to address issues raised by RRB officials. The final proposal deliverables were incorporated as the order requirements.</p>
<p>Consulting on Help Desk Implementation - \$11,928</p>	<p>Report deficiency 3 – The RRB did not prepare an adequate SOW for this order. The contractor submitted an initial proposal and then sent an additional proposal to address RRB concerns. The deliverables in the final proposal were incorporated as the order requirements.</p>

<p>Blanket Purchase Agreement For Information Technology Support Service Personnel – Orders totaled approximately \$234,000</p>	<p>Report deficiency 2 – RRB officials advised that they solicited only one FSS contractor because the vendor was a certified 8(a)² and woman-owned small business that was locally located. However, this fact does not negate the need to comply with the competition provisions of FAR and GSA’s Ordering Procedures for Services. The RRB should give preference to certified 8(a) small businesses when two or more contractors can meet requirements at the same price. In this case, the RRB did not obtain price information for any other vendors.</p>
<p>Executive Directions Service (Advisory Services for Chief Information Officer) - \$21,464</p>	<p>Report deficiency 4 – RRB officials placed the order directly with the vendor without making any comparisons to other contractors’ FSS catalogs or price lists. RRB officials also could not demonstrate that they used the GSA online shopping service.</p>

² A certified 8(a) firm is owned and operated by socially and economically disadvantaged individuals and eligible to receive federal contracts under the Small Business Administration’s 8(a) Business Development Program.



UNITED STATES GOVERNMENT

MEMORANDUM

Appendix II

FORM G-1151 (1-92)

RAILROAD RETIREMENT BOARD

October 14, 2003

TO : Henrietta B. Shaw
Assistant Inspector General, Audit

FROM : Henry M. Valulis
Director of Administration/Senior Executive Officer

SUBJECT: Draft Report – Review of Acquisition Process

This is in response to your September 26 draft report on your audit of the agency's process for acquiring certain service contracts.

I have reviewed the draft report and concur that the weaknesses cited may be due to ambiguous guidance for issuing Federal Supply Schedule (FSS) orders in Part 8 of the Federal Acquisition Regulation (FAR). Nevertheless, virtually all agency agreements – including single orders for information technology services since the audit period – were issued using either full and open competitive procedures via FedBizOpps or the FSS procedures as referenced in the FAR and supplemented by guidance from the General Services Administration (GSA). Since prices under the FSS are considered fair and reasonable, I believe all orders provided the best value to the agency.

I agree that the agency did not solicit three vendors in every case. However, GSA guidance clearly states that ordering offices should not overburden contractors with requests for quotes, and that such requests should be tailored to the minimum level necessary. With respect to the order to META Consulting, this stemmed from the Executive Committee's selection of META's approach to enterprise architecture as the most suitable one for the RRB. After that decision, the procurement staff negotiated the best possible rates in a blanket purchase agreement with the contractor.

Immediately prior to the report recommendation, the draft states that "the RRB has exposed itself to potential legal liability and appeals of contract awards." An agency exposes itself to potential liability every time it takes a procurement action. However, it should be noted that the actions you reviewed did not result in any contract appeals or legal actions against the RRB.

My comments on the specific recommendations contained in the report are as follows:

1. Revise Administrative Circular BSS-14 to address certain FAR sections and explain what information needs to be included in a statement of work.

I agree with the recommendation. While the circular already cites the FAR as a source for guidance, we can develop revisions that contain more specific references and explanations. The revisions should be ready for incorporation by the end of the current calendar year.

2. Providing training and directives on FSS use and GSA special ordering procedures.

I agree with the recommendation. The supervisory contract specialist will provide training to the procurement staff on FAR 8.404 guidance and the FSS ordering procedures. The training will occur by the end of the calendar year.

3. Provide a directive to the Bureau of Information Services emphasizing the need for coordination with procurement staff.

I disagree with the recommendation, as the May 2003 memorandum from the Senior Executive Officer (copy attached), which was issued after the audit began, adequately addressed the cited concern by providing guidance to all managers on contacts with vendors.

Thank you for the opportunity to comment on this draft report. I look forward to continuing to work constructively with your staff and other interested parties to identify potential problems and solutions in this area.


Attachment

**MEMORANDUM**

RAILROAD RETIREMENT BOARD

May 13, 2003

TO : Bureau and Office Heads

FROM : Steven A. Bartholow 
General Counsel/Senior Executive Officer

SUBJECT : Procurement Activity

I am seeking your assistance in advising agency employees concerning the procedures that must be followed when the agency is involved in a procurement action or where we may become involved in such an action. Procurement and contracting is highly regulated by statute and government-wide regulation. The goals of the statutes and regulations are to ensure competition and fairness in the procurement process. We want to purchase the best product or service at the best overall price.

All procurement actions, with the exception of certain small purchases authorized under the RRB's Government Purchase Card program, must be handled by or cleared through the Director of Supply and Service or his or her designee. This includes not only the release of procurement solicitations, such as Requests for Proposals or Requests for Bids, but also contacts with potential contractors or bidders. Inappropriate contact with potential contractors or bidders can result in flawed competition with potential costs to the agency in terms of higher contract costs and/or damages in procurement protests.

Please advise your employees that they must contact the Procurement Section of the Bureau of Supply and Service before they embark upon any action that might culminate in a procurement action.

One other area that needs to be addressed here is disclosure of confidential or proprietary information. Procurement actions involve the submission by contractors of confidential and proprietary information. Release of such information is often restricted by contract as well as by law. Board employees must be cautioned not to disclose business-type information without contacting the Bureau of Supply and Service.