



**U.S. Department of
Transportation**

Office of the Secretary
of Transportation

Assistant Secretary
for Administration

1200 New Jersey Avenue, SE
Washington, DC 20590

December 18, 2007

The Honorable Paul A. Denett
Administrator
Office of Federal Procurement Policy
Office of Management and Budget
Washington, DC 20503

Dear Mr. Denett:

In response to your letter dated May 31, 2007, subject Enhancing Competition in Federal Acquisition, I am submitting to you the enclosed U.S. Department of Transportation (DOT), excluding Federal Aviation Administration, agency-wide Fiscal Year 2007 Competition Advocate Report. The enclosed Report addresses both current activities and future initiatives of the DOT to reinforce and sustain the use of competitive practices.

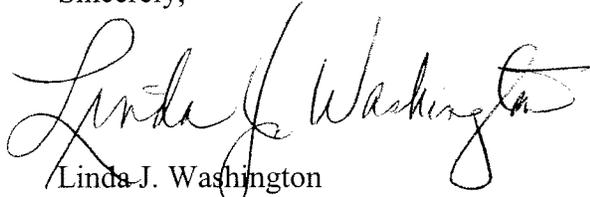
A cornerstone of DOT's business strategy is the promotion and use of competition to the maximum extent practicable. DOT accomplishes the predominance of its mission through the use of competitive practices, either through "full and open competition" or some subset of that, such as "fair opportunity" for task and delivery orders.

This Report provides an ideal opportunity to crosscut the DOT Operating Administrations (OA), e.g., Federal Highway Administration (FHWA), Research and Innovative Technology Administration, Federal Transit Administration, etc., and take a comparative view of the implementation of competitive processes throughout the Department. Thus, the Report has presented a strategic opportunity to benchmark OA successes and tactically integrate them elsewhere within DOT. For example, FHWA has issued Order 4420.3B, Advance Acquisition Planning and Small Business Contracting Programs, which integrates and expands by institutionalizing the fundamental business process of planning around a need, centralizing resources for acquisitions over \$100,000, and establishing a foundation for creating a competitive environment. DOT will continue to support the Office of Federal Procurement Policy and intergovernmental groups in our mutual goal of promoting competition and challenging barriers to competition in agency acquisitions.

Incidentally, the assistance provided by Pat Corrigan of your staff proved to be beneficial in the concise formulation of this report by providing DOT the insight necessary to strategically target a response making for a meaningful Competition Advocate Report.

If you have questions or concerns regarding our submission, please contact David Litman, Senior Procurement Executive on (202) 366-4263 or via email at David.Litman@dot.gov

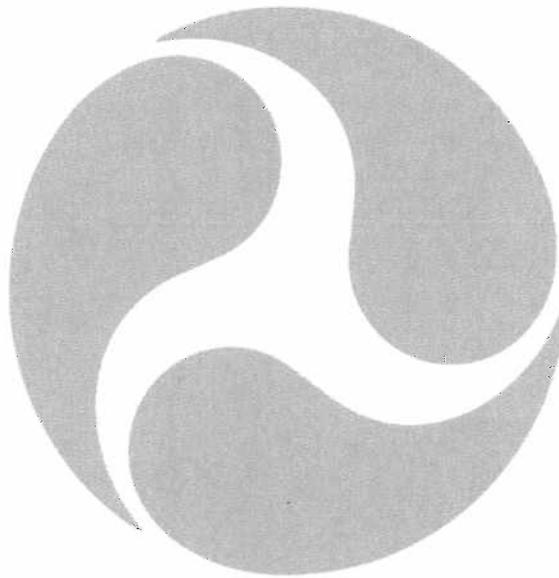
Sincerely,

A handwritten signature in cursive script that reads "Linda J. Washington". The signature is written in black ink and is positioned above the printed name and title.

Linda J. Washington
Competition Advocate

Enclosure

U.S. DEPARTMENT OF TRANSPORTATION



COMPETITION ADVOCATE REPORT FY 2007 DECEMBER 20, 2007

Prepared by:

**U.S. Department of Transportation
Office of the Secretary
Assistant Secretary for Administration
Office of the Senior Procurement Executive**

TABLE OF CONTENTS

	Page
Executive Summary.....	1
Introduction.....	2
Background.....	2
Assessment of Competition Practices.....	3
DOT Trend Data	9
Identified Barriers to Competitions.....	16

Executive Summary

The U.S. Department of Transportation (DOT) recognizes competition as the cornerstone business strategy and that promotion and use of competition to the maximum extent practicable is paramount. The DOT has successfully achieved competition on 75 percent of its contract dollars. Agencies within the DOT consistently use every venue available to accomplish the mission such as the use of the Federal Business Opportunities website for Sources Sought Notice/Requests for Information, Blanket Purchase Agreements, GSA Schedules, E-buy, GSA Advantage to publicize its requirements and evaluate pricing for similar services being offered. For example, during post award for contracts that were competitively awarded, an annual informal analysis of price or an examination of the market is conducted to determine if the option price as stated in the contract is more fair and reasonable than the prices available in the market place and that exercising the option is truly more advantageous to the Government. The Operating Administrations (OA) continuously work with the Office of Small and Disadvantaged Business Utilization (OSDBU) to identify eligible 8(a) contractors for competitive awards and set-asides.

Recognizing the need for proper Competition Advocate alignment within the agency, executive management focus on the use of competition within DOT has designated a senior manager as Competition Advocate in each of the ten OAs and the Office of the Secretary (OST). These Competition Advocates work with the Departmental Competition Advocate to champion competition in order to achieve the best results for DOT programs in support of the agency's mission. One of the more robust activities used to enhance competition within the Department is the continued presence of senior acquisition personnel, e.g., OA Competition Advocates and the SPE, on various integrated Departmental Councils, CIO Council, Financial Management Business Council, etc., influencing the competitive acquisition strategy early in the process. In addition, as part of DOT Strategic Sourcing Program, the Office of the Senior Procurement Executive has continued to work with the Heads of the Contracting Activity to assess competition practices and closely manage FPDS-NG activity to ensure data accuracy and timely reporting in FPDS-NG.

The Competition Advocate Report outlines what the Department is currently doing to

- promote competition,
- challenge barriers to competition in agency acquisitions, and
- plans to increase competition.

Contents of this report represent a summary of the practices carried out in each OA as discussed in their respective reports and include examples where appropriate. Also, the report provides an opportunity to take a comparative view of the competitive processes throughout the Department and establish initiatives that will be undertaken to increase the use of competition, where they are applicable. The Department anticipates that the activities described herein will strengthen competition policies and result in an increase in the number of competitive procurements.

INTRODUCTION

On May 31, 2007, the Office of Management and Budget (OMB) issued a memorandum entitled “Enhancing Competition in Federal Acquisition” to Chief Acquisition Officers (CAO) and Senior Procurement Executives (SPE). The memorandum identified a number of proposed actions to be taken by agencies to promote competition, challenge barriers to competition in agency acquisitions and reinvigorate the role of the competition advocate. This submission satisfies the requirement to submit an annual Competition Advocate Report.

BACKGROUND

The DOT occupies a leadership role in global transportation. The Department is dedicated to improving transportation by making it safer, less congested, better connected, environmentally friendly and fully operational in all conditions. The mission of the DOT is to develop and coordinate policies that will provide an efficient and economical national transportation system, with due regard for need, the environment, and the national defense. It is the primary agency in the Federal Government with the responsibility for shaping and administering policies and programs to protect and enhance the safety, adequacy, and efficiency of the transportation system and services.

The DOT consist of OST and ten (10) Operating Administrations (OAs): The Federal Aviation Administration (FAA)¹, the Federal Highway Administration (FHWA), Federal Motor Carrier Safety Administration (FMCSA), Federal Railroad Administration (FRA), National Highway Traffic Safety Administration (NHTSA), Federal Transit Administration (FTA), Maritime Administration (MARAD), Saint Lawrence Seaway Development Corporation (SLS), Pipeline and Hazardous Material Safety Administration (PHMSA), Research and Innovative Technology Administration (RITA).

The Secretary of Transportation delegates acquisition authority to the Heads of the Operating Administrations (HOAs). Each HOA designates a Head of Contracting Activity (HCA) and delegates authority to award and administer contracts, sales contracts, and financial assistance instruments, to appoint Contracting Officers (CO) and exercise overall responsibility for management of the contracting activity to that individual for further redelegation.

Federal Acquisition Regulation (FAR) 48 C.F.R. 6.502(b) prescribes the minimum functions for the agency Competition Advocate. At DOT, the Deputy Assistant Secretary for Administration has been designated the Agency Competition Advocate and is provided staff support by the Office of the Senior Procurement Executive (OSPE). Additionally, each HOA has been required to appoint Competition Advocates at the executive level for their OA.

¹ Public Law 104-50 exempts FAA from the Federal Acquisition Regulation (FAR) and certain other Acquisition related authorities. For purposes of this Report, FAA competitive transactions are excluded.

ASSESSMENT OF COMPETITION PRACTICES

The DOT recognizes competition as the cornerstone of DOT's business strategy and the fact that promotion and use of competition to the maximum extent practicable is paramount. In FY 2007, DOT successfully competed 75% of its contract dollars (not including FAA).

This Report outlines what the Department is currently doing to promote competition, challenge barriers to competition in agency acquisitions and plans to increase competition. The Agency Competition Advocate requested that each DOT Operating Administration Competition Advocate submit a report. The contents of this report represent a summary of the practices provided in those OA reports and includes examples where appropriate. The report develops plans and goals to maximize initiatives that have been implemented and those that will be undertaken by DOT to increase the use of competition, where they are applicable. The DOT is committed to enhancing competition within the Department.

Based on a review of the OA competition advocate reports and the policies and procedures in place across the Department, the DOT competition advocate generally considers that DOT is using competitive practices appropriately and effectively. DOT should continue to see a positive trend in its competition numbers in future years.

A. Ensuring sufficient attention to the manner in which acquisitions are planned.

1. Are cross-functional teams, including end-users and acquisition officials used to develop project acquisition plans and strategies and requirements documents?

Across DOT, Operating Administrations (OA) tend to use varying practices and procedures to plan around a mission oriented need. In general, certain practices were consistent throughout and in concert with current regulation, policy, and procedure, for example, FAR Part 7, Acquisition Planning, was followed consistently within DOT. While some OAs performed in-depth and rigorous acquisition planning activity, it appears that others may have minimally satisfied the requirement. What is not evident is the rationale as to why the disparity exists, e.g., skill gap, lack of resources, or another constraint. What the findings do reveal is that there is an opportunity to leverage what currently works best within the Department and benchmark those processes and procedures across the organization, where applicable.

The examples below demonstrate what is best as supported by FDPS-NG data within the DOT and how acquisition planning integrates the efforts of all cross-functional teams, including end-users and acquisition officials to develop acquisition plans, strategies and requirements documents. Also, included in this process is the review of previous plans and the role of the small business official.

The Volpe National Transportation Center, which is part of the Research and Innovative Technology Administration, established policy and procedural requirements pertaining to acquisition planning that incorporate federal and departmental acquisition regulations. These requirements are included in the Volpe Center Order H4200.1A titled Acquisition Handbook,

Acquisition Division forms, and the Volpe Center Project Management Handbook. The Volpe Center uses a multidisciplinary team approach to acquisition planning. Volpe reviews previous plans and acquisition history of similar procurements is performed by the contracting officer for large dollar acquisition. Documentation of planning requirements are filed in the contract file and reviewed by an Acquisition Division Manager prior to release of the solicitation and contract award. The RITA/Volpe Hand book is available at: http://volpenet/openowa/orders_display.order_selected?p_prd=285 and <http://volpenet/amd/index.html>. On this site is AD Form RTV6DF.8 titled Solicitation Approval Control Form. This form is approved by an Acquisition Division Manager prior to issuance of solicitations valued over \$500,000, and includes an affirmation by the Contracting Officer that the solicitation was prepared consistent with the approved acquisition strategy. The AD Form RTV6Df.11 titled Contract File Index is completed and included in all contract files for procurements estimated to exceed \$100,000.

Additionally, RITA has a project management handbook that can be located at <http://volpenet/pmrc/handbook/index.html> this handbook is used for project planning requirements contained under Chapter III/Section 10, addresses when contractor support is needed to accomplish a project. Project Managers are directed to solicit an Acquisition Division Manager's support as soon as it becomes apparent during work acceptance discussions with a customer that substantial contracting support is needed.

Likewise, FHWA has established procedures that facilitate the use of advanced acquisition planning. The procedures are outline in FHWA Order 4420.3B- Advance Acquisition Planning and Small Business Contracting Programs. The purpose of this order is to communicate across the organization the importance of early communication between all those individuals involved in the acquisition process. It also documents the specific requirements for acquisition planning documentation. Additionally, FHWA uses information quarterly meeting between Highways Administration Acquisition Management (HAAM) and program management to discuss acquisition strategies for upcoming requirements. To ensure that small business and socio-economic groups are represented in the acquisition planning process FHWA also includes the Small Business Representative for procurements over \$100k.

Other OA's utilize Integrated Project Teams (IPT) for complex, high dollar value requirements. The IPTs are cross-functional and include, but are not limited to the following stakeholders' representatives from general counsel, budget and finance, OSDBU, executive and the management team, as necessary. The magnitude of participation is directly proportionate to both scope and funding complexity of the project. These acquisition officials confer on the acquisition strategy/plan in advance of the requirements definition. On less complex, lower dollar value requirements the OA technical end-user and the Office of Acquisition confer on the requirements definition and the appropriate acquisition strategy/plan.

2. How is competition sought, promoted, and sustained throughout the course of the acquisition?

There are several instances within DOT that demonstrate the support and promotion of competition as stewards of the public trust and as a common business practice. Local policy and

procedure, electronic tools, and institutionalizing cultural changes in business processes compel the continuous improvement and evolution of competitive processes. The examples below show how competitive awards are made and how an organization's change in process has affected the competitive environment for task and delivery orders. The proactive competitive shifts observed within the identified OAs track concurrently with the increase in DOT overall sustained competitive percentages.

The Volpe Center has establish policy and procedural requirements aimed at integrating the various competition regimes in use today to ensure that competition is sought, promoted and sustained throughout the course of each acquisition.

These requirements can be found in the Volpe Center Acquisition Handbook and in Volpe Center Acquisition Division procedural guidance. Key to enhancing competition in the Volpe Center's acquisition program is a reliance on the use of well-defined requirements to effect competitive awards, both at the contract and task order level. Furthermore, the use of requests for information and pre-proposal conferences has been instrumental in structuring solicitations to facilitate competition. Finally, any restriction to competition both at the contract and order levels require specific documentation and approval requirements involving at a minimum the Chief of the Contracting Office for all restrictive orders issued under Volpe Center IDIQ contracts to the Procuring Activity Competition Advocate for contract actions over \$550,000.

Chapters 3, 4, 7 and 8 of the RITA/Volpe Center Handbook, address acquisition planning requirements including market research and requirements analysis guidance. Chapter 4 addresses competition requirements regarding when other than competitive methods are used, including restrictive task or delivery orders. Chapter 7 provides instruction related to processing task orders and delivery orders under indefinite-delivery type contracts. AD Form RTV6DF.8 titled "Solicitation Approval Control Form", is required to be approved by an AD Manager prior to issuance of solicitation valued over \$500,000 and AD Form RFV6DF.11, titled "Contract File Index", is required to be completed and included in all contract files for procurements estimated to exceed \$100,000.

Both forms require affirmation by the Contracting Officer that the solicitation was prepared consistent with the approved acquisition strategy. These forms include numerous documentation requirements including market research, acquisition planning, competition requirements, small business program considerations, approvals and determinations, and source selection.

Volpe uses two strategies to promote competition under IDIQ awards; 1) maximize competition during the award of the initial IDIQ award and 2) to the extent practical, issue multiple award IDIQ contracts. Multiple award IDIQ contracts allow for continued competition throughout the life of the acquisition through the award of individually competed task orders. The second strategy is to properly scope contracts to ensure they provide the necessary flexibility to accomplish the Agency mission, while not being so broad that they facilitate unrelated procurement actions.

Similarly, MARAD has independently developed the Virtual Office of Acquisition (VOA) to provide vendors with all pertinent information regarding the agency's acquisition programs (<https://voa.marad.dot.gov/>). VOA provides easy access to agency business opportunities and award announcements, along with program-specific registration. Additionally, all MARAD awards are posted to VOA – providing visibility to interested vendors regarding possible subcontracting opportunities. For example, vendors may currently submit technical qualifications under Maritime Administrations Standing Quotation for ship Disposal and Sales business opportunities or they may view all 2007 awards for potential subcontracting opportunities under existing Ship Manager, contracts and task orders.

Additionally, the Maritime Administration Ship Manager contracts require that all subcontracts, regardless of dollar value, are competitive (with few exceptions). MARAD Office of Acquisition also uses several e-Government tools to seek and promote competition. MARAD utilizes an automated contract writing system, the VOA links to a website hosted by the Department of Interior's National Business Center (NBC). All MARAD solicitations generated through an NBC automated contract writing system are posted on this website. VOA also links to the Federal Business Opportunities (FedBizOpps) website, as well as to the DOT Annual Procurement Forecast.

Under FTAs Project Management Oversight (PMO) contract it has been a long standing practice not to compete task orders. FTA's acquisition strategy for follow-on PMO contracts includes emphasis on expanding the contract base to make it possible to compete task orders. In preparing to award contracts and work on the process to be used for competition of task orders during the life of the new PMO contracts FTA will include order procedures that discuss competition as well.

3. What are some of the consideration that acquisition plans for large requirements consider as appropriate for comparative benefits of awarding a new contract versus placing an order under an existing contract?

At DOT the OA's employ a multidisciplinary approach when considering the various government requirements that must be addressed during acquisition planning. The Technical Requiring Official, the Contracting Officer, Small Business Specialist and Legal Counsel consider such matters as:

- Scope of the requirement, changes to the statement of work since the initial award;
- Value of the new requirement in relationship to the existing contract;
- potential for reduction in acquisition cycle times, the likelihood for "discounts" in pricing due to large requirements, improved quality through continuity of services or consistency in suppliers, and the ability to use established terms and conditions that are favorable to the Government.
- Mandatory sources, if applicable;
- The availability of appropriate contract ordering vehicle;
- Time constraints;
- Commercial availability;
- Small business goals;

- Current market i.e. the benefits of awarding a new contract vs. placing an order under an existing one.
- 4. Do program officials expressly concur on requirements documents? If so, where can this information be located?**

Generally, Procurement Requests (PR) are processed through an electronic contract writing system which includes uploading the necessary supporting documents, and routing the PR and supporting documents for review and approval. The technical requiring office, electronically sign the procurement request package and the requirements documents. Documentation of internal review and signatures by parties other than the final PR approving official can be found in the contract/purchase order file via a copy of the routing history report generated in contract writing system.

- 5. Are the market research techniques outlined in FAR 10.002(b) (2) being used, such as:**

- a. **Publishing formal requests for information in appropriate technical or scientific journals or business publications;**
- b. **Querying Government and commercial databases that provide information relevant to the acquisition; and**
- c. **What are the techniques currently being used for conducting market research? Explain. Does your agency document the results of market research? Are the results part of the official contract file?**

Yes, the Technical requiring officials conduct market research as part of the acquisition planning process. Generally, Draft solicitations and requests for information are issued, and pre-solicitation conferences conducted, for larger dollar value and more complex procurements. Contracting Officers routinely make use of the internet to assist with requirement definition, develop acquisition strategies and prepare acquisition plans in addition to contacting knowledgeable individuals in Government. The Small Business Specialist reviews available product literature, and query Government-wide databases such as GSA advantage and FedBizOpps to issue sources sought announcement for procurements with few known sources. The Central Contractor Registration (CCR) is also utilized to identify sources as well as the SBA's Pro-net search engine. The result of market research, conducted by the requiring activity as well as, the contracting officer is maintained as part of the official contract file. Although rare, for DOT the FHWA has used industry journals to advertise requirements as well as MARAD. MARAD has published formal request for information of technical requirements such as ship disposal in maritime industry publications.

For construction projects, FedBizOpps is utilized as well as the Thomas Register, the CCR database, builder exchange registries, and previous solicitation mailing lists.

6. What are the plans in place that provide for maximum practicable opportunities for small business for prime contracting and subcontracting? Explain

Small Business program considerations are formally addressed in the acquisition planning requirements. The Small Business Specialist in conjunction with support personnel:

- Review all Procurement Forecast Forms to identify if the procurement involves suitable work to be set-aside under one of the many small business programs;
- Participate in acquisition planning to ensure small business matters are addressed;
- Review all procurement request valued over \$100,000 using DOT Small Business Program Review Form (DOT F 4250.1) to ensure that small business firms receive an equitable opportunity to compete and, as appropriate, initiate recommendations for small business set asides. The Small Business Specialist is also involved in the review of acceptable subcontracting plans prior to contract award.

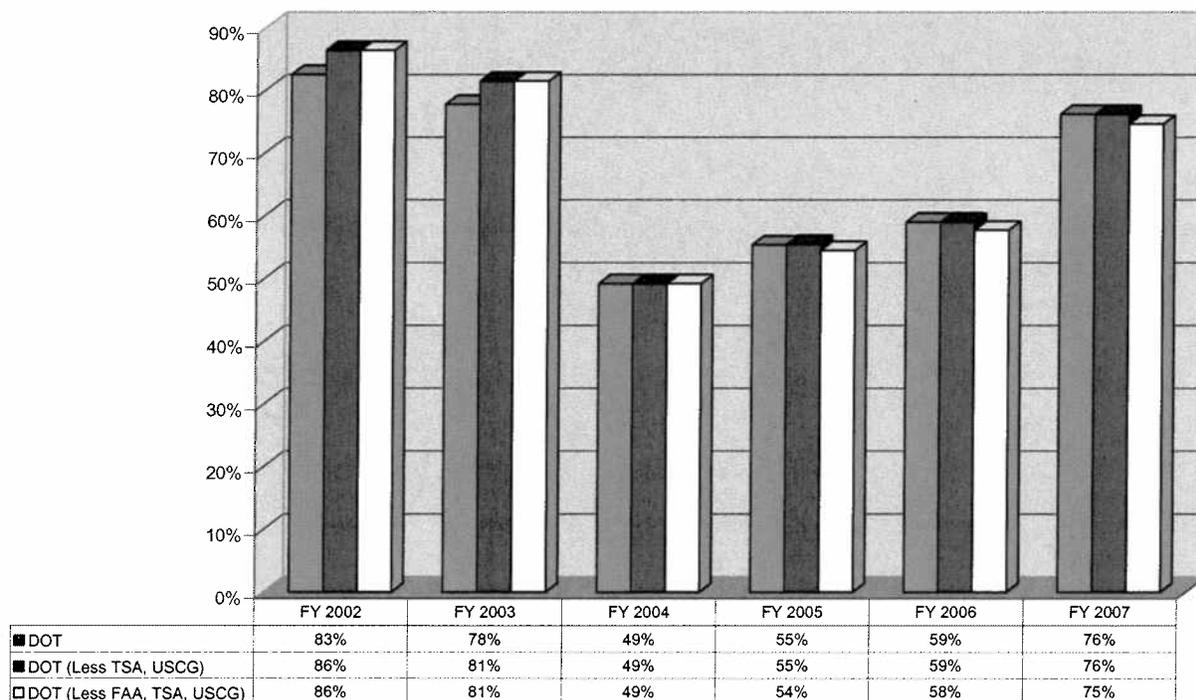
7. Do acquisition plans anticipate and address contract bundling, or consolidation? If so what is the written justification and appropriate analyses that is developed?

Yes, acquisition plans take into consideration contract bundling or consolidation, as appropriate to the specific technical requirement(s). In the event the OA would consider bundling requirements into a single acquisition, the OA would consult with the SBA and an analysis would be required to identify any alternative acquisition strategies that would minimize the need for a bundled contract. Where a bundled contract is used for an acquisition, a written justification for its usage would identify alternative strategies and the rationale for choosing a particular strategy over alternatives that would minimize bundling.

DOT TREND DATA

DOT trend data supports the assertion that Competition is the cornerstone of the agency business strategy as of December 2007. *Chart 1-* shows that historically competition is high and consistent among the OAs driving an overall strong competitive strategy². In FY 2002 and FY 2003 competed obligations were and remain a customary practice, easily identifiable, and consistently above 70 percent. In contrast, the drop in FY 2004 may be attributed to the FPDS transition and the move of TSA and USCG to the DHS with a resulting recovery in FY 2005 and FY 2006. However, it should be noted that FY 2005 competition was hampered by the National Emergencies of Hurricanes' Katrina and Rita, while FY 2006 saw the subsequent operational recovery. Given these catastrophic events, DOT's strategic competitive resolve never wavered. DOT continues to use competitive processes as the means to maintain financial stewardship and public trust.

DOT Competition Summary Comparison Fiscal Years 2002-2007



² P.L. 107-296 established the Department of Homeland Security (DHS) and aligned the Transportation Security Administration (TSA) and the United States Coast Guard (USCG) to DHS from DOT. Periodically, residual USCG data may appear in DOT reports due to on-going contract actions referring to actions initially awarded as a DOT OA. The anomalies are being corrected systematically.

Competition Comparison between select Federal Agencies

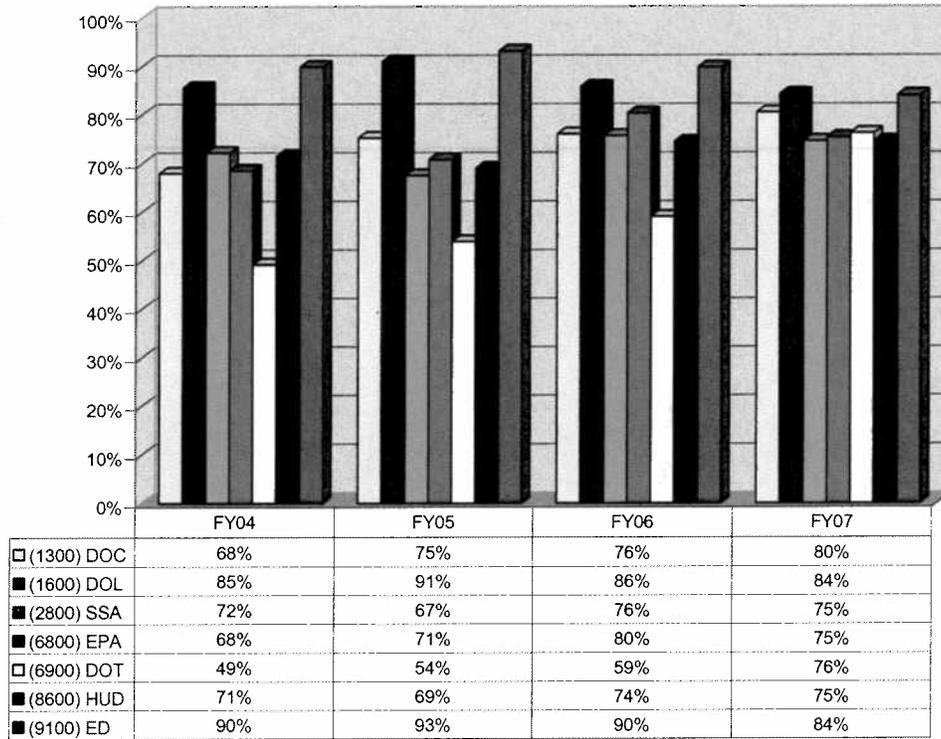


Chart-2 above shows trend data for DOT positioned among our sister agencies with similar obligation levels. Consistent with the previous discussion provided for Chart 1 with the advent of FPDS, the alignment of TSA and USCG to DHS, and National Emergencies DOT competitive levels suffered. However, DOT trends continue to rebound upward and remain well above 70 percent.

Federal Agency Base Comparision

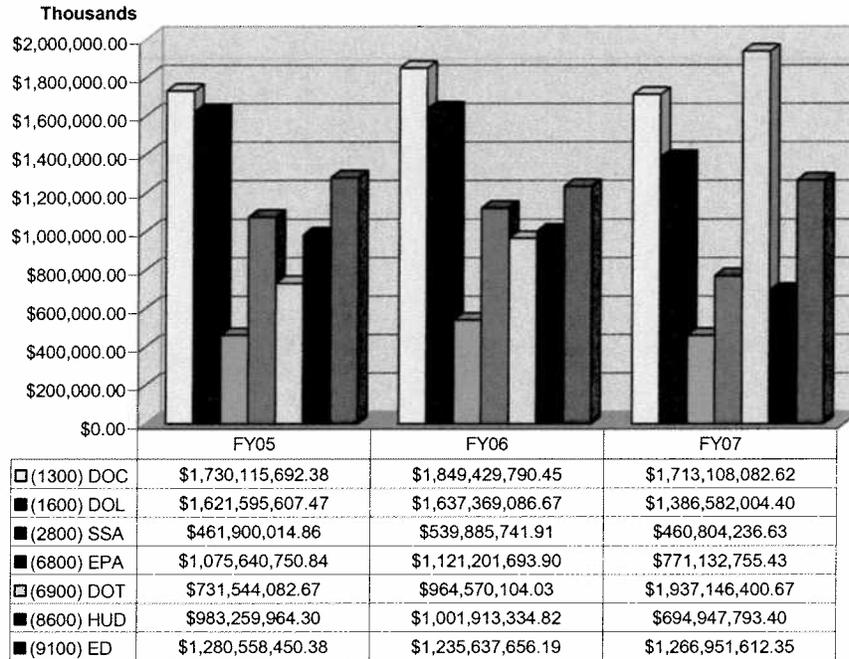


Chart 3- works in conjunction with Chart 2 to show a obligated dollar comparison of sister agencies with similar obligation levels as of December 2007.

B. Using competition in an effective manner

1. Do Statements of Work, including those in task and delivery orders have:

- a. Sufficient information, stated clearly, so that offerors may make informed business decisions on whether to respond and perform the due diligence necessary to propose the best solutions possible? Explain**
- b. clear performance measures and expectations related to quality, responsiveness, timeliness, and cost?**

Requirements are stated in terms of functions to be performed, performance required, or essential physical characteristics. Also, requirements are stated in terms that enable and encourage offerors to supply commercial items, or at least non-developmental items. Furthermore, quality assurance surveillance plans are used in conjunction with the work statement and specify all work requiring surveillance and the method of surveillance. Solicitations contain sufficient information for offerors to make sound business response decisions, as well as provide competitive proposals. For instance, MARAD identifies performance measures and expectations through a performance work statement and a formal quality assurance and surveillance plan. Maritime Administration's Ship Manager contracts include Award Term Options based on clear performance measures and expectations as identified in the formal Quality Assurance Surveillance Plans. The Port of Anchorage expansion project includes a clear schedule for the construction requirements, with the quality specified in the requirements document and a negotiated price schedule for individual orders. The food services contract for the U.S. Merchant Marine Academy is also clear as to the performance measures and expectations.

2. Does the agency consider complexity, commerciality, availability, and urgency in establishing offeror response times? Has sufficient time been built into the acquisition schedule to maximize competition and encourage contractors to provide quality proposals that would allow for a best value award based on initial offers?

Contracting Officer's ensure sufficient time is available to maximize competition. The solicitation response time, both at the contract and order level, is the decision of the contracting officer and is a function of regulatory requirements, availability, complexity, commerciality and program time constraints. Generally, the more complex a procurement, the longer response time is warranted. For those items that are readily available with low complexity, a shorter response time is used. This effort is also expended at the order level. Contracting Officers are working with program offices to improve the discipline of procurement forecasting as well.

For construction projects over \$1,000,000 additional time over the 30-day response time is allotted for offerors to prepare bids to ensure adequate competition. Commercial items are normally given 30 days, unless, there is an urgency. Large procurements allow at least 45 to 60 days from receipt of purchase request to time of award and commercial items are reviewed on a case by case basis for lead times.

3. Is the agency taking recent and relevant past performance into account, including quality, timeliness, and cost control? Is the agency using the Past Performance Information Retrieval System?

Yes. DOT has a robust Past Performance accountability network. These systems provide a repository for cataloging contractor performance. The Class deviation provided to DOT contracting offices for use of the NIH CPS system for Architectural Engineering contracts proves a valuable resource until such time as pending FAR coverage is executed requiring a government wide single automated Past Performance data system.

The DOT procedural guidance for past performance information is considered in the award decision, both at the contract and order level. The OA's use past performance as an evaluation criteria to consider quality, timeliness and cost control. The vast majority of DOT Operating Administrations utilize an automated Past Performance Information Retrieval System (PPIRS) as well as the NIH Contractor Performance System (CPS). In addition to the above MARAD uses the agency's Ship Manager Performance Evaluation Assessment System (SMPEAS) to verify past performance.

It should be noted that while all the OAs do not utilize an automated past performance system to verify Past Performance all OA's routinely obtain customer responses via contractor provided references or Past Performance Questionnaire. DOT policy states that all OAs shall prepare a contractor performance evaluation for all contracts, task orders and/or delivery orders in accordance with FAR Part 42, Contract Administration.

4. Does the documentation for source selection decisions include the rationale for all tradeoffs made or relied on by the source selection authority, including the benefits associated with additional costs?

Yes. Source selection decisions include the rationale for all tradeoffs made by or relied on by the source selection authority, Cost/Technical Tradeoff Analysis with significant detail about how best value was determined using tradeoff analysis. Awards are made based on the proposal that the agency determines presents the best value, as defined in FAR 2.101. All such information is documented in the Technical Evaluation Report and the Pre-Negotiation Memorandum. These documents are part of the official contract file.

The Volpe Center has developed Procedural Guidance. Chapter 7 establishes policy and procedural guidance related to the documentation of source selection decisions. Chapter 7 includes documentation requirements pertaining to cost/technical tradeoff analysis. Specific instructions are available on the Acquisition Division sub site which addresses documentation and approval requirements for source selection decisions, at the contract and order levels.

5. How are orders under indefinite-delivery vehicles reported to FPDS as non-competitive when competition is not used?

Orders under indefinite-delivery vehicles reported to FPDS when competition is not used are reported based on the “Extent of Competition” data for the basic contract award. For example FPDS reports under Indefinite-Delivery Vehicles (IDVs) are based on four of MARADs largest IDVs, the Ship Manager contracts, the basic contract awards were competitive awards. Although not susceptible to further competition, the basic contract awards were competed and, therefore, the orders under the Ship Manager contracts are coded as “competitive orders.” However, when an IDIQ to acquire a service or commodity, is not competed the “Non Competed Order” box is checked in FPDS.

C. Emphasizing sound contract management and oversight

1. Who nominates and designates the Contracting Officer Representative (COR) or Contracting Officer Technical Representative (COTR). Are the COR/COTRs properly trained? Explain. When in the acquisition process are COR/COTRs nominated and designated? Are COR’s/COTR apprised of their responsibilities?

Prior to the advent of the FAC-COTR, DOT has established a well-defined governance structure of policy and procedure concerning the selection and training, certification, appointment, and termination of Contracting Officer’s Technical Representative (COTR) located within the acquisition framework. The Transportation Acquisition Regulation (TAR) at 48 C.F.R 1252.242-73 and the Transportation Acquisition Manual (TAM) 1242.7, Contracting Officer Technical Representative provide the basis for this structure. While, DOT depends heavily upon its program management community to support mission-critical acquisition functions. DOT relies on its Contracting Officer’s Technical Representatives (COTRs) to ensure that these acquisitions yield the highest quality products for the Department. The purpose of our policy is to implement training standards to ensure that COTRs are provided with appropriate basic and refresher training to complete the mission objectives. Current DOT COTR policy can be found by accessing the following links:

<http://www.dot.gov/ost/m60/workforce/index.html>

http://www.dot.gov/ost/m60/workforce/COTR_training_requirements.doc

http://www.dot.gov/ost/m60/workforce/detailed_course_outline.doc

In addition, all new COR/COTRs must receive the basic COTR training course and refresher training each year thereafter. If any changes occur in the status of the appointed COTR, the program office transmits a procurement request to the applicable CO to make the necessary contractual changes. Contracting Officers ensure the COTRs

are qualified and appropriately trained before issuing written COTR appointment letters, which fully apprise COTR's of their responsibilities (See <http://www.dot.gov/ost/m60/earl/ltrapp.htm>). A summary of OA reporting reveals that generally, COTRs are identified during the planning phase of the acquisition process. However, if not identified early in the acquisition process the appointment is done after completion of the prescribed OA and regulatory requirements, e.g., program office nomination, training, etc., but prior to contract award.

In addition, to what is discussed above it should be noted that one DOT OA has local policy and procedure that caveats Task Order COTR appointment. Those individuals receive the same training as other established COTRs. Please see below:

The Volpe Center has established a COTR Program as stipulated in Volpe Center Order 4200.17B titled Volpe Center Contract Management Training and Certification Program, available at http://volpenet/open/owa/orders_display.order_selected?p_ord=116. The policy and procedural requirements of this order apply to both COTRs and Task Order (TO) COTRs and include mandatory training requirements based on Federal and departmental regulations.

Most of the OAs do not maintain a database to track COTRs. However, MARAD maintains a centralized recordkeeping system to track COTR training. The policy team in the MARAD Office of the Acquisition is tasked with monitoring the adequacy of COTR training to ensure it meets the DOT acquisition workforce standards effective November 2006.

2. What processes does the agency have in place to ensure that proposed modifications are within the scope of the contract or order?

Each requisition submitted for contract modification is reviewed to determine if it is within the scope of the original contract. If questions arise, discussions are conducted with the appropriate parties including legal to determine the need/nature of changes requested and an appropriate solution is developed. The Contracting Officer is the final decision as to whether the change is within scope or out of scope.

The Volpe Center has policy and procedural requirements pertaining to the review and approval of modifications in the procedural guidance available on the Acquisition Division subsite. Acquisition Division Internal Procedure (ADIP) 5 requires that within scope modifications valued over \$500,000 are reviewed by legal and are approved by Acquisition Division Management prior to issuance. On the other hand the Maritime Administration requires, at a minimum a peer review at one level above the Contracting Officer for all contracting actions, including modifications that exceed \$100,000. For modifications exceeding \$500,000 (or that increase the contract value by more than 59 percent), the requirements must be submitted for Contract Review Team review and require a review for legal sufficiency. In addition, Maritime Administration annually schedules Acquisition Management Reviews of all contracting actions, including modifications.

3. Are quality assurance surveillance plans included in the contracts?

Yes, those contracts which are performance-based and which have award fee/award term provisions.

IDENTIFIED BARRIERS TO COMPETITION

As a result of the analysis performed there are identified barriers to the competitive process which we intend to challenge.

- Lack of trained personnel
- Recognizing mission specific challenges

Planned Initiatives to Challenge Barriers to Competition

The Office of the Senior Procurement Executive (OSPE) will continue to work with other DOT business units, such as the CFO and CIO communities to provide in-house training on targeted subject areas related to DOT mission specific objectives, such as:

- Earned Value Management;
- Contracting Officer Technical Representative;
- Market Research;
- Competition;
- Acquisition Planning;
- PBSA;
- and Small Business.

In addition, OAs will continue to be encouraged to participate in the Federal Acquisition Institute training. Other initiatives include:

- Conduct departmental audits to assist the OAs in identifying opportunities to excel.
- Encourage agency wide use of Task Order/Delivery Order Competition with the fair opportunity framework.
- Establish agency wide policy consistent with pending regulation to effectively use the Past Performance Information Retrieval System (PPIRS) as the primary Contractor Performance System (CPS).
- Develop an integrated Best Practices Guide utilizing examples established within each OA. The example below provided by one OA demonstrates a proactive approach to moving toward a more competitive environment. While not untested, the refresher training idea should be leveraged and used elsewhere in the organization possibly creating new business synergies.

As a result of this analysis, PHMSA will provide refresher training to PHMSA employees on the "Competition in Contracting Act" and will establish objectives to improve the overall level of competition in acquisition. In order to increase competition in the procurement of task orders/delivery orders under GSA contracts, the Chief of the Contracting Office (COCO) will: Invite GSA Procurement Officials on-site to provide training (to all contract specialists) on the use of GSA's "E-Buy" system. Designate "E-Buy" as the preferred method for soliciting competitive quotations, and awarding task/delivery orders under GSA contracts. All proposed modifications to existing task/delivery orders under GSA contracts, will be reviewed by the COCO. All large dollar value modifications and those deemed to be out-of-scope will be forwarded to the Competition Advocate (CA) for review. The CA will meet with PHMSA Office Directors by July 15 of each year to assure that they prepare, in a timely manner, by August 15, annual Spending Plans that account for all proposed expenditures in the President's Budget.

The CA will identify to the Administrator any proposed expenditure that unduly limits competition. The CA will evaluate all forecasted procurements to assure that competition is obtained to the maximum practicable extent. The CA will also work closely with the PHMSA Small and Disadvantage Business Utilization Specialist to assure that the maximum practicable opportunity is provided to: small business, small disadvantaged business, HUB Zone small business, and veteran-owned small business.

The COCO will assign a contract specialist to each proposed acquisition identified in the Spending Plan or Procurement Forecast. This will improve acquisition planning and will result in increased competition.