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# *Office of Inspector General*

# *Audit Report*

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**MARAD HAS TAKEN STEPS TO DEVELOP A  
PORT INFRASTRUCTURE DEVELOPMENT  
PROGRAM BUT IS CHALLENGED IN  
MANAGING ITS CURRENT PORT PROJECTS**

*Maritime Administration*

*Report Number: CR-2013-117*

*Date Issued: August 2, 2013*





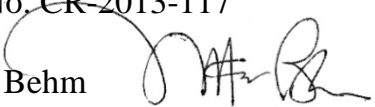
# Memorandum

U.S. Department of  
Transportation

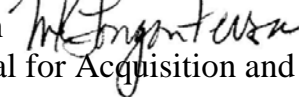
Office of the Secretary  
of Transportation  
Office of Inspector General

Subject: **ACTION:** MARAD Has Taken Steps To Develop  
a Port Infrastructure Development Program but Is  
Challenged in Managing Its Current Port Projects  
Report No. CR-2013-117

Date: August 2, 2013

From: Mitchell Behm   
Assistant Inspector General for Rail, Maritime,  
Hazmat Transport, and Economic Analysis

Reply to JA-50/JA-60  
Attn. of:

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

To: Maritime Administrator

In 2003, the Maritime Administration (MARAD) was authorized to administer funds for developing and modernizing the Port of Anchorage, the main seaport in Anchorage, AK.<sup>1</sup> The Port of Anchorage Intermodal Expansion Project—a partnership with the Port and the Municipality of Anchorage—is ongoing, and there have been significant setbacks, including construction problems and schedule delays.

MARAD has since been authorized to administer two other port projects: the multi-port Hawaii Harbors Infrastructure Expansion Program in 2005<sup>2</sup> and the Port of Guam Improvement Enterprise Program in 2008.<sup>3</sup> The Port of Guam project, which is estimated to receive up to \$117 million in Federal funding, is part of a critical construction program that will support the relocation of U.S. Marine Corps forces from Japan to Guam. In 2009, MARAD was mandated to establish a

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<sup>1</sup> Consolidated Appropriations Resolution 2003, Pub. L. No. 108-7 § 626 (Feb. 20, 2003).

<sup>2</sup> Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users of “SAFETEA-LU,” Pub. L. 109-59 § 9008 (Aug. 10, 2005).

<sup>3</sup> Duncan Hunter National Defense Authorization Act for Fiscal Year 2009, Pub. L. No. 110-417 § 3512 (Oct. 14, 2008).

Port Infrastructure Development Program (PIDP) for the improvement of port facilities.<sup>4</sup>

The setbacks with the Port of Anchorage project have raised concerns about MARAD's ability to manage its port projects. Given MARAD's central role, we evaluated the Agency's execution of its port infrastructure development responsibilities. Specifically, we evaluated MARAD's (1) oversight and risk management of port infrastructure development projects, and (2) oversight of port infrastructure projects' contract planning and administration.

We conducted this audit in accordance with generally accepted Government auditing standards. To conduct our work, we evaluated MARAD's project oversight, risk management, document management, and contract management practices for its Port of Anchorage, Hawaii Harbors, and Port of Guam projects. We used the Port of Anchorage project as a primary case study because it is MARAD's first port project, which it started managing 10 years ago. In addition, we interviewed MARAD and port officials and reviewed contract files for all three ports. Exhibit A contains the full details of our scope and methodology.

## **RESULTS IN BRIEF**

MARAD did not establish effective oversight mechanisms when it initiated its port infrastructure development responsibilities. MARAD narrowly interpreted statutory requirements, which state that appropriated amounts for the Port of Anchorage and Hawaii Harbors projects shall be "transferred to and administered by" the Maritime Administrator. According to MARAD officials, in the absence of clear statutory guidance, MARAD delegated authority for project construction and management through Memorandums of Agreement (MOAs) with the local authorities in Anchorage, Hawaii, and Guam. In doing so, MARAD did not (1) adequately define its port project oversight responsibilities or provide guidance to contractors for developing Program Management Plans (PMPs); (2) establish a sound risk management process consistent with industry best practices; or (3) have a process to systematically store, maintain, and track project progress and funds. For example, MARAD did not develop a risk management process for the Port of Anchorage project until almost 7 years after the project began, and the Hawaii Harbors project still does not have one. MARAD has recently taken steps to more clearly define its role in developing and overseeing the Port of Guam project including establishing a risk management process that includes all elements recommended by industry standards. MARAD has also taken steps to develop a

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<sup>4</sup> National Defense Authorization Act for Fiscal Year 2010, Pub. L. No. 111-84 § 3512 (Oct. 28, 2009); 46 United States Code Annotated (U.S.C.A.) § 50302.

PIDP, which could provide a framework for ongoing and future port infrastructure projects, but has not yet completed it.

MARAD did not effectively manage its port project contracts. Between 2003 and 2011, the Port of Anchorage project's cost estimate grew over four and a half times from \$211 million to \$1 billion, with scheduled completion slipping 8 years. According to MARAD officials, prior to 2011 the Agency's leadership made a policy decision that abdicated programmatic and technical control to local port officials which contributed to problems with the project.<sup>5</sup> We found that the Port of Anchorage project also had significant contracting problems stemming from MARAD's inadequate planning, lack of reliable cost estimates, and noncompliance with Federal contracting requirements when awarding and administering the port contracts. Notably, we found that MARAD acted contrary to the intent of the Small Business Administration's (SBA) 8(a) program<sup>6</sup> by steering the first Port of Anchorage contract to the Port's preferred firm. We did not identify contract award issues at the Port of Guam and Hawaii Harbors projects, which were awarded several years after the first Port of Anchorage contract; however, we found weaknesses regarding MARAD's contract management. For example, MARAD did not establish contract administration plans for any of its port projects to ensure proper monitoring of the contracts.

We are making a series of recommendations to improve MARAD's management of its port infrastructure development projects.

## **BACKGROUND**

Congress directed MARAD to administer funding for the Port of Anchorage, Hawaii Harbors, and Port of Guam projects. In 2009, Congress also directed MARAD to develop a PIDP. According to the legislation, the PIDP is to (1) receive funds provided for the project; (2) coordinate with other Federal agencies to expedite the improvement of port facilities, to increase port security, or to provide greater access to port facilities; (3) coordinate all reviews or requirements with appropriate local, State, and Federal agencies; and (4) provide technical assistance to port authorities as needed for project planning, design, and construction. The law also allows for the creation of a fund, which is to be used to carry out projects under the PIDP.

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<sup>5</sup> According to MARAD officials, the Agency took programmatic and technical control of the project in January 2011 and implemented a series of oversight, management, planning, and risk mitigation measures. However, the MOA MARAD used to implement these measures expired May 2012. Currently, there is no MOA for the Port of Anchorage project.

<sup>6</sup> The SBA 8(a) program was established to assist eligible small businesses that are owned and controlled by socially and economically disadvantaged individuals to compete in the American economy through business development.

To date, MARAD has received over \$263 million in Federal funding for port infrastructure development projects from Agencies such as the Department of Defense (DOD), the Federal Transit Administration (FTA), and the Federal Highway Administration (FHWA). The FTA funds and some FHWA funds required matching funds from the Port of Anchorage.

Key port project stakeholders include MARAD, State and local authorities, and contractors. For each port project, MARAD and port stakeholders developed Memorandums of Agreement (MOA), which are intended to outline stakeholders' roles, detail management procedures, and help ensure accountability. MARAD also called for the development of PMPs, planning agreements that should capture project stakeholder responsibilities. Table 1 provides a summary of the port infrastructure development projects.

**Table 1. Summary of Port Infrastructure Development Projects**

Port project	State or local stakeholders	Federal funding
Port of Anchorage	Municipality of Anchorage and Port of Anchorage	\$139 million
Hawaii Harbors	State of Hawaii Department of Transportation	\$8 million
Port of Guam	Government of Guam and Port Authority of Guam	<sup>a</sup> up to \$117 million

<sup>a</sup> The \$117 million includes \$64 million in requested U.S. Department of Agriculture loans.

Source: MARAD

Between May 2003 and April 2010, MARAD awarded four contracts for its three port projects—including two for the Port of Anchorage project (see exhibit B for a detailed summary of the port project contracts). Because MARAD awarded contracts for these projects, MARAD is responsible for contract oversight and compliance with relevant contracting laws and regulations, such as the Competition in Contracting Act of 1984 and the Federal Acquisition Regulation (FAR), as well as best practices for Government procurement.

## **MARAD LACKED EFFECTIVE OVERSIGHT MECHANISMS WHEN IT EXECUTED ITS PORT INFRASTRUCTURE DEVELOPMENT RESPONSIBILITIES**

MARAD adopted a narrow interpretation of its statutory requirements for port infrastructure development, one of a number of initial missteps the Agency made when executing its responsibilities. In addition, MARAD did not until recently (1) adequately define its port project oversight responsibilities or provide guidance to contractors for developing PMPs; (2) establish a sound risk management process; or (3) have a process to systematically store, maintain, and track project progress

and funds. Finally, MARAD has taken steps to develop a PIDP, which could provide a framework for ongoing and future port projects, but has not yet completed it.

### **MARAD Narrowly Interpreted Its Statutory Requirements for Port Infrastructure Development at the First Two Port Projects**

MARAD narrowly interpreted its statutory responsibilities at the Port of Anchorage and Hawaii Harbors projects by limiting its role to obligating and distributing funds for project tasks. The statute required that appropriated funds for the Port of Anchorage project shall be “transferred to and administered by the Administrator of the Maritime Administration.” These provisions do not provide additional details on how MARAD should execute its responsibilities. In the absence of additional details, MARAD adopted a narrow interpretation of its responsibility to “administer the project.” Rather than take on a comprehensive role in developing and overseeing the port infrastructure projects, MARAD’s main role has, until recently, been limited to obligating and distributing funds to contractors for project tasks, such as project oversight, program management, engineering, design, and construction. In contrast, FTA, a major Department of Transportation (DOT) agency responsible for overseeing mass transportation funding, outlines a more defined Federal role in project development and management, specifically regarding oversight. According to FTA guidance, project management oversight is a continuous review and evaluation to ensure that a project complies with statutory, administrative, and regulatory requirements and is completed on time and within budget. MARAD’s flawed execution of its port infrastructure development responsibilities, due in part to its narrow interpretation of the law, has led to significant setbacks at the Port of Anchorage project and has contributed to construction problems and schedule delays.

The statutory authority for the Hawaii Harbors project also does not specify how MARAD should execute its port infrastructure development responsibilities. It states that the appropriated amounts shall be transferred and administered by the Maritime Administrator and that appropriated funds for the project are “subject only to such conditions and requirements as may be required by the Maritime Administration.”<sup>7</sup> As with the Port of Anchorage project, MARAD narrowly interpreted its responsibilities for the Hawaii Harbors project and has relied on the contractor to perform much of the project implementation, including oversight.

Compared to the statutory authorities for the Port of Anchorage and Hawaii Harbors projects, the authorizing legislation for the Port of Guam project provides more detail regarding MARAD’s responsibilities. Specifically, it authorizes the

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<sup>7</sup> SAFETEA-LU.

Secretary of Transportation, acting through the Maritime Administrator, to establish a Port of Guam Improvement Enterprise Program to provide for the planning, design, and construction of projects. It also grants the Maritime Administrator certain authorities in carrying out the program, such as the authority to provide for coordination among governmental agencies to expedite review processes and to provide technical assistance to the Port of Guam as needed.<sup>8</sup> As discussed in this report, MARAD has taken a more proactive role in executing its responsibilities for the Port of Guam project.

### **MARAD Has Recently Defined Port Project Oversight Responsibilities To Ensure Agency and Stakeholder Accountability**

MARAD's earlier port project MOAs did not include major oversight measures that clearly defined the Agency's and other stakeholders' project oversight responsibilities. However, port project responsibilities are better defined in MARAD's most recent port project MOA, dated November 2011. According to FTA and FHWA—other DOT Operating Administrations that oversee large infrastructure projects—establishing well-defined project oversight responsibilities and documented procedures at the outset of a project is critical to ensuring accountability for monitoring scope changes and preventing cost overruns.<sup>9</sup> MARAD also did not establish guidance on developing PMPs and does not have evidence that it approved them. As a result, the PMPs for the port projects did not, until recently, include well-defined project roles and responsibilities.

#### *Port Projects' Memorandums of Agreement Did Not Initially Include Major Oversight Measures*

The MOAs for the Hawaii Harbors and Port of Guam projects and the original MOA for the Port of Anchorage project did not include sufficient oversight measures that would determine how MARAD and other stakeholders would oversee the projects. Our review of the MOAs for the three port projects determined that, although all of the MOAs (1) required stakeholders to meet periodically, (2) gave MARAD the ability to execute documents to transfer funding to the projects, and (3) granted MARAD the authority to provide technical and subject matter expertise, they still lacked oversight measures that would clearly define how MARAD and other stakeholders would oversee the projects (see table 2). The 2011 MOA for the Port of Anchorage project includes more major oversight measures than the earlier MOAs.

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<sup>8</sup> Duncan Hunter National Defense Authorization Act for Fiscal Year 2009, Pub. L. No. 110-417 § 3512 (Oct. 14, 2008).

<sup>9</sup> FTA's Project Management Oversight Mission Statement; and FHWA's Stewardship/Oversight Task Force Report, Policy on Stewardship and Oversight, March 2001.

The original MOA for the Port of Anchorage project and the Hawaii Harbors project MOA lacked key oversight measures, such as providing an on-site representative or establishing project oversight teams. These oversight teams are decision-making bodies that include all major stakeholders and provide overall executive leadership, vision, policy, strategic objectives, and priorities for the project. The teams also have responsibility for such things as managing project scope, schedule, and budget.

MARAD revised its MOA for the Port of Anchorage project in November 2011 after major problems with the project were revealed to Agency officials and the public. The revised Port of Anchorage MOA clarified and increased MARAD's oversight responsibilities and included additional measures essential to oversight. The revised MOA fully empowers MARAD to provide overall executive leadership, primarily by establishing a project oversight team called the Port Oversight and Management Organization in which MARAD plays an active decision-making role. These additional oversight mechanisms could have helped MARAD to improve its management of the Port of Anchorage project had they been implemented much earlier in the project. For example, MARAD and port officials told us that an on-site representative with the appropriate authority could have provided program direction and approved or disapproved of spending and construction decisions in a timely manner.

**Table 2. Summary of Major Oversight Measures Included in the Port Project MOAs**

<b>Major oversight measures included in the port project MOAs</b>	<b>Port of Anchorage MOA (2003)</b>	<b>Hawaii Harbors MOA (2006)</b>	<b>Port of Guam MOA (2008)</b>	<b>Port of Anchorage MOA (2011)</b>
1 Port Authority provides overall program requirements and direction for the project	Yes	Yes	Yes	No
2 The State/locality/port has the authority to designate points of contact for direction and management	Yes	Yes	Yes	No
3 State/locality/port is responsible for developing port master plan	No	No	No	Yes
4 All stakeholders have the shared responsibility to meet periodically to discuss project progress and development	Yes	Yes	Yes	Yes
5 MARAD has the responsibility to execute documents to transfer monies from other Federal sources to a project	Yes	Yes	Yes	Yes



<b>Major oversight measures included in the port project MOAs</b>	<b>Port of Anchorage MOA (2003)</b>	<b>Hawaii Harbors MOA (2006)</b>	<b>Port of Guam MOA (2008)</b>	<b>Port of Anchorage MOA (2011)</b>
6 MARAD is specified as the designated lead Federal Agency for the program to ensure adherence to applicable Federal and local laws and regulations on appropriations, acquisitions, and grants	No	No	Yes	No
7 A project oversight team is established to provide vision, policy, and priorities and outline the various stakeholders' responsibilities	No	No	No	Yes
8 MARAD has the authority to provide technical and/or subject matter expertise	Yes	Yes	Yes	Yes
9 MARAD provides an on-site representative	No	No	No	Yes
10 MARAD provides project records to the State/locality/port	No	No	No	Yes
11 All stakeholders share the responsibility to meet and develop a project financial plan of costs to complete work in PMP	No	No	No	Yes

Source: OIG analysis of port project MOAs

### *MARAD Did Not Establish Guidance on Developing Project Management Plans, Including How To Define Roles and Responsibilities*

MARAD did not provide guidance to contractors on developing PMPs, project planning documents that, among other things, define project stakeholder roles and responsibilities. According to FHWA guidance—which MARAD officials stated they use as project management criteria—PMPs should define the overall roles, responsibilities, and relationships between public and private stakeholders and define the management procedures and processes that will result in the major project being completed on-time, within budget, and with the highest degree of quality. MARAD tasked contractors with developing PMPs for the port projects but did not provide them with guidance on this task. For example, MARAD did not provide guidance on how to develop the project organizational chart, including roles and responsibilities. Further, MARAD could not provide evidence that it reviewed and approved the PMPs for the Port of Anchorage and Hawaii Harbors projects. As of December 2012, MARAD has yet to establish guidance for contractors on developing PMPs.

As a result, the PMPs did not adequately define project roles and responsibilities. The PMP for the Port of Anchorage project only identified the contractor's roles and responsibilities and not those of MARAD or other project stakeholders. The

Hawaii Harbors project did not have a PMP at all. Although we found an organization chart for the Hawaii Harbors project, it did not detail Agency and stakeholder roles and responsibilities.

The Port Authority of Guam prepared an Implementation Plan for the Port of Guam project, which stated that MARAD's project role would be defined in a subsequent Program Management, Oversight, and Procedures Manual. However, when we reviewed the manual it was still in draft and did not document MARAD's and project stakeholders' roles. In June 2012, after we raised these issues, MARAD finalized a Program Management Manual for the Port of Guam project, which clearly outlines the roles and responsibilities of MARAD and key project stakeholders. The manual was reviewed and approved by all project stakeholders and includes organizational charts that show the Agency's involvement at various project phases, which FHWA recommends to help ensure accountability. Additionally, the manual establishes the Project Management Oversight Organization, an oversight team that gives the Agency flexibility to oversee all work performed.

### **MARAD Did Not Establish a Sound Risk Management Process Until Projects Were Well Under Way**

The Port of Anchorage and Port of Guam projects currently have risk management processes that are consistent with industry best practices. However, MARAD did not implement a risk management process at the Port of Anchorage project until 7 years after the project began, which was well after the start of construction. In addition, the Hawaii Harbors project still lacks a risk management process. Industry best practices call for establishing formal risk management policies and procedures to provide an organized, systematic risk management process that identifies, analyzes, and effectively mitigates risks to achieve program objectives. The Project Management Body of Knowledge (PMBOK), a recognized guide for the project management profession, outlines six elements of an effective risk management process. Table 3 shows that all of the risk elements are currently in place at the Port of Anchorage and Port of Guam projects, but none are in place at the Hawaii Harbors project.

**Table 3. Risk Management Elements Currently Incorporated Into Port Projects' Risk Management Processes**

	<b>Risk management elements<sup>a</sup></b>	<b>Port of Anchorage</b>	<b>Port of Guam</b>	<b>Hawaii Harbors</b>
1	<b>Risk Management Plan.</b> Defines how to conduct risk management activities	Yes	Yes	No
2	<b>Risk Identification.</b> Determines which risks may affect the project, and documents their characteristics	Yes	Yes	No
3	<b>Qualitative Risk Analysis.</b> Prioritizes risks by assessing their probability of occurrence and impact	Yes	Yes	No
4	<b>Quantitative Risk Analysis.</b> Numerically analyzes the effect of risks on project objectives	Yes	Yes	No
5	<b>Risk Response Planning.</b> Develops actions to enhance opportunities and to reduce threats to project objectives	Yes	Yes	No
6	<b>Risk Monitoring &amp; Control.</b> Implements risk response plans, tracks identified risks, monitors residual risks, identifies new risks, and evaluates risk process effectiveness	Yes	Yes	No

<sup>a</sup> Risk management processes recommended in PMBOK.

Source: OIG analysis of port project risk management plans

Although the risk management process for the Port of Anchorage project now includes all risk elements, MARAD did not implement the process until January 2010. In addition, until February 2011, the initial process lacked a risk management plan, which defines how risk management activities would be conducted and includes elements such as defined project team roles and responsibilities, project milestones, budget information, and timing. MARAD's risk management process for the Port of Guam project also includes all six risk elements, but the Agency and all stakeholders did not formally approve the process until June 2012—4 years after the MOA was signed. MARAD did not develop a risk management process for the Hawaii Harbors project. According to the PMBOK, risk exists the moment a project is conceived; therefore, moving forward on a project without a proactive focus on risk management increases the impact that risks can have on the project—and can potentially lead to project failure.

## **MARAD Did Not Have a Process To Systematically Store, Maintain, and Track Project Progress and Funds at its First Two Port Projects**

The Port of Anchorage and Hawaii Harbors projects did not have effective systems or processes in place for documenting and reporting significant transactions, events, and decisions. A document management system is a method used to capture and organize these important project data. In addition, project management best practices recommend implementing report performance processes, which collect and distribute performance information, status reports, progress measurements, and forecasts.<sup>10</sup> MARAD has implemented a system at the Port of Guam project that is consistent with industry standards.

Although MARAD intended for the contractor to implement a comprehensive management information system at the Port of Anchorage project, the effort was never completed. According to the original statement of work for the project, the contractor was tasked with developing and maintaining a secure web-based management information system that would be accessible by MARAD, the Port, and other agreed-to parties. The system would collect, manage, analyze, and distribute key performance information, allowing management and technical staff to plan and monitor work progress, identify issues early, and implement solutions quickly. For example, the system was to provide schedules of meetings, project status reports, information on needed recommendations, technical documents for review, and budget information. However, this task only received partial funding and was never completed.

In lieu of a comprehensive management information system, MARAD funded a less robust system for the Port of Anchorage and Hawaii Harbors projects: a contract management system to be used by all project stakeholders to document and view contract task orders. However, MARAD deactivated the system mid-contract due to security concerns and did not replace it. According to MARAD, the contract and project documentation for these projects is currently archived because MARAD's role in the design and construction for the projects has ended.

Without a comprehensive management information system, MARAD had difficulty providing some basic project management reports. For example, when we asked for data on appropriated funds disbursed for the Port of Anchorage project, the reports that MARAD supplied contained data discrepancies that we were not able to reconcile. Given that the Port of Anchorage project had not been appropriated funds since fiscal year 2010, we expected the reports to contain consistent information. When we brought these discrepancies to the attention of MARAD officials, they were also unable to reconcile the inconsistencies with any

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<sup>10</sup> PMBOK.

reliable, system-generated reports. In addition, we requested project status reports for the Port of Anchorage and Hawaii Harbors projects, but MARAD was only able to provide a report for the Port of Anchorage project. Because MARAD lacked an automated system with which to generate project status reports, MARAD had to manually create the report, which took the Agency over 6 months to complete.

In September 2012, MARAD and its port project contractors completed the development of a comprehensive management information system for the Port of Guam project. The tool, referred to as the Primavera Construction Management System (PCMS), serves as MARAD's document management and reporting system. PCMS, a web-based system, will track project information by each job task and will capture information such as communications (i.e. correspondence and telephone records between project stakeholders); contract information (i.e. cost worksheets and purchase orders); cost, budget, and schedule data; and quality control information. It will also allow MARAD and port officials to produce daily, weekly, and monthly reports based on the data entered into the system. Based on MARAD's demonstration of the system and our review of the procedure manual and system description, the PCMS is consistent with industry standards. MARAD officials told us that future port projects will also use PCMS for project document management and reporting needs.

### **MARAD Has Taken Steps To Develop a Congressionally Mandated Port Infrastructure Development Program But Has Not Completed It**

According to MARAD officials, the Agency has begun to develop a PIDP; however, they have not provided a date by which it would be completed. MARAD officials provided us with the Agency's proposed framework for the PIDP, which was presented at a port association conference in January 2012. The framework, which is outlined in table 4, includes three categories of MARAD's involvement in port infrastructure projects. However, as of December 2012, MARAD officials have not provided us with any additional documentation indicating the status of the proposed framework nor any policies or procedures for implementation.

**Table 4. MARAD’s Proposed Port Infrastructure Development Program Framework**

<b>Role</b>	<b>Applicable to</b>	<b>Level of MARAD involvement</b>
ENGAGEMENT	All ports	Low Federal oversight. MARAD would serve as an advocate by providing guidelines and data and would provide direct support to individual ports upon request.
FINANCING	Limited number of ports	Moderate Federal oversight. MARAD would provide direct funding support via existing and future programs.
PROJECT MANAGEMENT	Very few ports	High Federal oversight and project assistance where unique Federal interest exists. MARAD would co-manage the project with the port.

Source: MARAD

MARAD officials told us that the authorizing legislation did not require the Agency to have a program in place for the Port of Anchorage, Hawaii Harbors, or Port of Guam projects, so they are being used as pilot projects to determine MARAD’s future role in port infrastructure development. MARAD officials stated that, because Congress has not yet appropriated funding for the PIDP, it is difficult to predict a date by which the Agency would be able to complete the structure for a program mandated 4 years ago.<sup>11</sup>

In addition, we reviewed MARAD’s PIDP funding requests, and it appears to us that the requests were inconsistent, unclear, and insufficient to determine the PIDP’s needs. The PIDP funding requests were minor components of larger funding requests for “Intermodal System Development” or “Headquarters Operations,” and most did not include language related to port expansion or development. In addition, between 2009 and 2013 the Agency’s funding requests for the PIDP ranged widely from approximately \$3.7 million to \$63 million. It is unclear how the Agency arrived at these figures, as the requests did not specify how MARAD would use the funding to develop a PIDP. For example, MARAD did not detail its staffing or resource needs or describe the PIDP’s intended goals.

Without a PIDP, MARAD lacks institutionalized policies and procedures to effectively oversee ongoing and future port infrastructure projects. While the legislation does not specifically require MARAD to have a program in place for the Port of Anchorage, Port of Guam, or Hawaii Harbors projects, lessons learned from these projects could provide the framework for putting in place key program elements for MARAD’s PIDP—and mitigate cost, schedule, and performance problems similar to the ones MARAD has faced on the Port of Anchorage project.

<sup>11</sup> MARAD did receive some funding related to the port projects in the form of administrative fees. These administrative fees are not to exceed 3 percent of the amounts appropriated to the fund for a fiscal year and may be used for the Maritime Administrator’s administrative expenses.

## **MARAD DID NOT EFFECTIVELY MANAGE ITS PORT PROJECT CONTRACTS**

Effective acquisition management helps ensure that the Government gets what it pays for. However, our review determined that MARAD did not effectively manage its port project contracts. MARAD did not conduct adequate planning and entered into port project contracts without reliable cost estimates. In addition, MARAD did not comply with Federal contract requirements when awarding and administering the Port of Anchorage contracts. At all three port projects, MARAD did not provide effective contract administration.

### **MARAD Did Not Conduct Adequate Planning for Its Port Projects**

Sound planning is important to establish a strong foundation for successful acquisition outcomes. However, MARAD's planning efforts for its port project contracts were inadequate. MARAD used contracts instead of grants or cooperative agreements (known collectively as assistance agreements) to administer the port projects—without documenting its rationale. MARAD also did not require written agreements from port project stakeholders regarding matching funds. Finally, MARAD did not prepare required acquisition plans for the Port of Anchorage contracts, and the acquisition plans for the Hawaii Harbors and Port of Guam projects were missing critical documentation and contained errors that call into question the accuracy of the plans.

#### *MARAD Used Contracts Instead of Assistance Agreements To Administer the Port Projects Without Documenting Rationale*

MARAD chose to use contracts to administer Federal funds for all three port projects rather than assistance agreements. According to MARAD and the documentation it provided, the Agency did not consider using assistance agreements when planning the Port of Anchorage project. In addition, MARAD did not provide us with any contemporaneous explanation as to its reasons for awarding contracts for the Hawaii Harbors and Port of Guam projects.

The Federal Grant and Cooperative Agreement Act<sup>12</sup> provides criteria for agencies in selecting the most appropriate legal instruments but also allows an agency to decide when the use of a contract is appropriate. The Act specifies that contracts should be reserved for acquiring goods or services that directly benefit the Government, while assistance agreements should be used to accomplish public

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<sup>12</sup> The Federal Grant and Cooperative Agreement Act provides criteria for choosing an appropriate legal instrument (contract, grant, or cooperative agreement). Pub. L. No. 95-224 (Feb. 3, 1978) [codified at 31 U.S.C.A § 6301-6308].

objectives.<sup>13</sup> Even though the Port of Anchorage project primarily benefits the public, MARAD opted to award contracts for the project.

An agency's choice of legal instrument is significant because contracts can expose the Government to certain risks—such as contractor claims. For example, MARAD recently settled two claims with the contractor for the Port of Anchorage project for \$11.3 million. These claims cited problems such as changing contract requirements, delayed work, and an alleged defective design.<sup>14</sup> In contrast, under a Federal assistance agreement, an agency is not subject to these risks for contractor claims because there is no privity—or direct contractual relationship—between the Government and the recipient's contractor.<sup>15</sup> If MARAD had awarded an assistance agreement for the Port of Anchorage project, it would not be subject to contractor claims.

In addition, contracts require direct Federal oversight, as well as compliance with Federal contracting laws, regulations, and best practices.<sup>16</sup> However, MARAD has not provided the level of oversight required to administer its Federal port project contracts—most notably for the Port of Anchorage project. MARAD believed that the Port of Anchorage<sup>17</sup> had full programmatic and technical control of the project and stated that it made decisions based on Port officials' requests regarding project design, scope, and contractor selection. MARAD also pointed to the 2003 MOA, which states that the Municipality was responsible for providing overall program requirements and direction to MARAD. Nevertheless, once the Agency decided to award a Federal contract for the Port of Anchorage project, it became responsible for ensuring that Federal acquisition rules were followed and for providing adequate planning, estimating, and oversight of the contract.

### *MARAD Did Not Require Written Agreements for Matching Funds*

For the Port of Anchorage project, MARAD used funds from FTA and FHWA grant programs with matching fund requirements but did not require local funders, such as the Port of Anchorage and the State of Alaska, to agree in writing to provide the required matching funds. MARAD stated that funders have since far exceeded the matching fund requirements. However, without a written agreement upfront, MARAD risked not receiving adequate matching funds. While MARAD

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<sup>13</sup> 31 U.S.C.A. § 6305.

<sup>14</sup> On March 8, 2013, the Municipality filed a separate suit against Integrated Concepts and Research Corporation (ICRC), PND Engineers, and CH2M Hill Alaska (formerly known as VECO), alleging breach of contract (by ICRC), professional negligence (by ICRC, PND and VECO), and negligence (by ICRC and PND).

<sup>15</sup>“Privity of contract” is the relationship between parties to a contract allowing them to sue each other but preventing a third party from doing so. *Black's Law Dictionary*.

<sup>16</sup> Several Federal contracting regulations, including the FAR, set forth criteria for planning, awarding, and administering Government contracts.

<sup>17</sup> The Port of Anchorage is an enterprise department of the Municipality of Anchorage. As an enterprise department, the Port creates enough revenue to support its operations and pay fees to the Municipality annually.



has already spent all Federal funding for the Port of Anchorage project, weaknesses in the Agency's practices for matching fund requirements could impair receipt of matching funds on future port projects.

### *Weaknesses Exist in MARAD's Acquisition Planning*

Acquisition plans are important to help ensure the Government meets its need in the most effective, economical, and timely manner. Accordingly, the FAR and the Transportation Acquisition Manual (TAM) require agencies to prepare acquisition plans and document the basis for how the plans were developed. However, MARAD did not prepare acquisition plans for the Port of Anchorage contracts, even though the TAM requires written acquisition plans consistent with the FAR for acquisitions greater than \$20 million.<sup>18</sup> MARAD stated that it conducted acquisition planning on a task order basis and provided a task order approval request prepared by its contractor as an example. However, the document does not address FAR-required elements for acquisition plans.

The acquisition plans for the Hawaii Harbors and Port of Guam contracts met some FAR requirements, such as documenting security concerns and acquisition cycle milestones (e.g., issuing the solicitation, negotiation, and approving the contract). However, the plans contained identical statements regarding the projects' budget and market research without adequate supporting documentation. We question these identical statements because the projects are unique—having different sizes, locations, and requirements. For example, the Port of Guam project involves 1 port, while the Hawaii Harbors project, located 3,800 miles away, may include work at up to 10 ports. In addition, the Hawaii Harbors project includes added work requirements, such as new geographic information systems and an expansion of terminal yard space. Yet the acquisition plans for these two projects contained the following:

- Both plans contain the identical budgeting statement: “it is anticipated that the annual costs for environmental, design/engineering, and construction efforts will vary between \$10M and \$30M.” MARAD did not provide FAR-required support for how it derived these estimates, so it was unclear why the estimates would be the same for both ports.
- Identical market research statements in the plans indicate that MARAD performed the same market research for both port projects. Both plans state that “at least six firms” were identified as potential bidders and stated that “each has provided evidence of prior experience with management of major infrastructure development projects at marine facilities.” However, the plans contained no other identifying information, such as names or evidence of

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<sup>18</sup> With certain exceptions. See TAM 1207.103, “Agency Head Responsibilities”.

experience. Although MARAD provided documentation intended to support these statements when we requested them for our review, the documents were dated 2 months after the acquisition plans were approved, suggesting that they were not used during the planning process.<sup>19</sup> According to the FAR, acquisition plans must document market research results in a manner appropriate to the size and complexity of the acquisition.

Moreover, we found errors in the projects' acquisition plans that suggest MARAD prepared the plans in a haphazard manner and raise questions about the accuracy of the plans. For example, the acquisition plan for the Hawaii Harbors project mistakenly references the Port of Guam. In addition, MARAD approved the acquisition plans for both projects on the same day, but some additional supporting documents for both projects are dated 2 months later—indicating that MARAD approved the plans before the supporting documents were finalized.

### **MARAD Entered Into Contracts Without IGCEs or Reliable Cost Estimates**

MARAD did not develop Independent Government Cost Estimates (IGCEs) for the port contracts or ensure that all three port projects' cost estimates were reliable. IGCEs, which are required by both Federal and DOT acquisition regulations,<sup>20</sup> are detailed estimates of what a reasonable person should pay to obtain the best value for a product or service. A well-supported IGCE is a valuable tool for price negotiations and can lead to more accurate projections of budget requirements. In the absence of reliable cost estimates for the port projects, MARAD could have used IGCEs to establish dependable estimates.

MARAD awarded both Port of Anchorage contracts without IGCEs. MARAD officials acknowledged that an IGCE was not prepared for the first Port of Anchorage contract. For the second contract, MARAD provided a document that it described as an IGCE, but the document did not meet TAM IGCE requirements because it did not include the specific cost elements or methodology used. In addition, MARAD initially told us that its staff prepared this document but later said that the contractor ICRC prepared it. Moreover, MARAD did not provide evidence that the Agency validated ICRC's document.

MARAD stated that it also relied on Defense Contract Audit Agency (DCAA) audits and the contractor's task order determinations to determine price reasonableness for the second Port of Anchorage contract. However, MARAD was unable to demonstrate how it used these alternative means to establish a fair and reasonable price for the contract. Further, the DCAA audits MARAD provided

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<sup>19</sup> The documentation named 8 firms for the Hawaii Harbors project and 13 firms for the Port of Guam project.

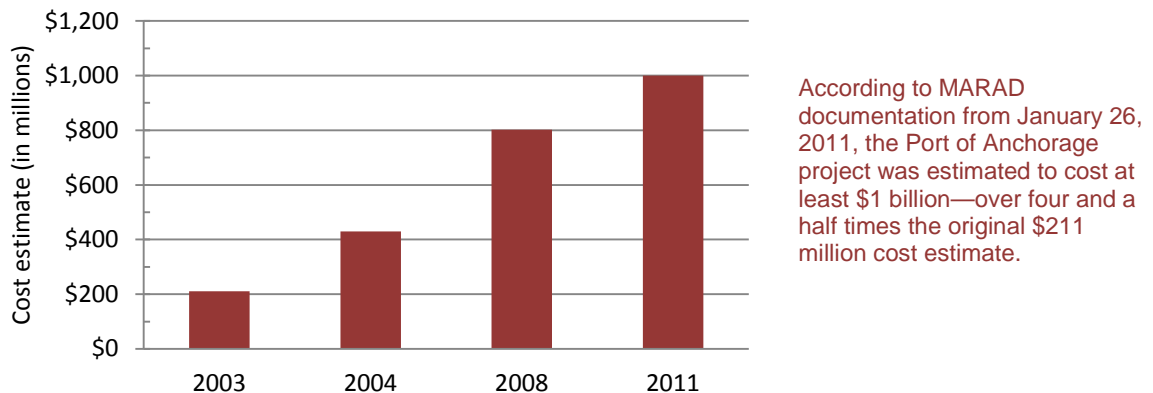
<sup>20</sup> FAR 36.203 and TAM 1215.404-70.

either predated the second Port of Anchorage contract by 3 to 4 years or were limited in scope. For example, for one audit, MARAD requested that DCAA review only certain elements of ICRC’s proposal, which represent just 6 percent of the contract’s \$704-million maximum award value. In addition, ICRC submitted direct labor and indirect rate data that covered just 7 months of the proposed 7-year contract period and omitted all subcontractor costs, which further limited DCAA’s review. According to DCAA’s report, data for the entire performance period is required to establish reliable cost estimates.

For the Port of Guam and Hawaii Harbors contracts, MARAD officials initially said that IGCEs were prepared for both contracts but later said that IGCEs were not prepared.

In addition, the port projects’ cost estimates are unreliable. For the Port of Anchorage project, MARAD’s records show that the cost estimates for the project grew significantly between 2003 and 2011 (see figure 1).

**Figure 1. The Port of Anchorage Project’s Cost Estimates Increased Significantly Between 2003 and 2011**



Source: 2003 Port of Anchorage contract, 2005 Port of Anchorage contract modification, 2008 Port of Anchorage contract, and MARAD document (“Explanation of PIEP Project Cost Increases”)

We could not determine how these estimates for the Port of Anchorage contracts were derived because MARAD could not provide documentation showing who developed the estimates or what factors were considered. MARAD contends that it was the Port’s responsibility to plan and estimate the funding necessary to conduct the project and that it relied on information from the Municipality to award the contracts. According to MARAD officials, the Port estimated the project costs and deliberately underreported them to ensure that funding for the project would be approved. MARAD awarded the contracts without validating the Port’s estimates.

Further, a new cost estimate must be developed for the Port of Anchorage project. MARAD officials stated that alternatives need to be developed to replace the current design based on a recent study conducted by the United States Army Corps of Engineers in partnership with MARAD, the Port, and the Municipality. In addition, MARAD representatives recently informed us that the Municipality is considering scaling down the project to just over a third of the 2011 cost estimate.

MARAD also lacks adequate documentation to support the cost estimates for the Hawaii Harbors and Port of Guam projects. With the exception of the port estimate for the Port of Guam project,<sup>21</sup> MARAD could not provide documentation showing who developed the various port project estimates or explain why they doubled over time, as shown in table 5.

**Table 5. Varying Cost Estimates for the Port of Guam and Hawaii Harbors Projects**

Source	Port of Guam		Hawaii Harbors	
	Cost Estimate	Year	Cost Estimate	Year
Port <sup>a</sup>	\$195 million	2007	\$200 million	unknown
Acquisition Plan	\$400 million	2008	\$200 million	2008
Maximum Contract Award Value	\$400 million	2010	\$400 million	2009

<sup>a</sup> According to MARAD, the Ports of Guam and Hawaii provided these figures.

Source: MARAD file documentation

Without supporting documentation, it is unclear why the cost estimates in the acquisition plans and the maximum contract award values varied from the Port estimates. Further, MARAD officials acknowledged that they did not independently validate the cost estimates provided by the port stakeholders, as they believed “there was no need to second-guess the estimates.”

### **MARAD Did Not Adhere to Federal Contracting Requirements When Awarding and Administering the Port of Anchorage Contracts**

MARAD acted contrary to the intent of SBA’s 8(a) Business Development Program when it awarded the first contract for the Port of Anchorage project. MARAD also did not comply with Federal regulations to terminate the first Port of Anchorage contract when the contractor no longer met eligibility requirements. In addition, under the project’s second contract, MARAD did not implement the award fee plan or conduct award fee evaluations in accordance with Federal

<sup>21</sup> For the Port of Guam project, MARAD provided documentation showing that a contractor developed the \$195-million port estimate as part of the 2007 update to the Master Plan.

regulations and contract terms. Further, MARAD limited competition on a design subcontract by allowing the use of brand name technology without required justification.

***MARAD Acted Contrary to the Intent of SBA’s 8(a) Program When It Awarded the First Port of Anchorage Contract***

MARAD acted contrary to the intent of SBA’s 8(a) Business Development Program by steering the first Port of Anchorage contract to the Port’s preferred firm Integrated Concepts and Research Corporation (ICRC). ICRC, who did not meet certain 8(a) eligibility requirements for sole source awards, wrote to MARAD and port officials to suggest awarding the sole source contract to Koniag Services, Inc. (KSI), a newly formed Alaska Native Corporation (ANC) with few restrictions on the contracts it was able to receive.<sup>22</sup> In May 2003, MARAD awarded the first \$211 million Port of Anchorage contract to KSI—a firm that the Port of Anchorage referred to as a “shell corporation.” Less than 9 months later, MARAD transferred the contract to ICRC. Table 6 shows the sequence of events surrounding MARAD’s award of the first Port of Anchorage contract.

***Table 6. Events Surrounding the Award of the First Port of Anchorage Contract***

<b>Date</b>	<b>Action</b>
Sept. 2002	The Port of Anchorage indicated its preference for contractor ICRC as far back as September 2002—8 months before the Port of Anchorage contract was awarded.
Feb. 2003	The Port and ICRC met with MARAD to discuss awarding the contract to ICRC. In addition, ICRC’s vice president wrote a letter to MARAD and port officials, suggesting that MARAD could expedite the SBA approval process by awarding a sole source contract to its sister company KSI and then transfer the contract to a joint venture between KSI and ICRC. ICRC’s vice president wrote another letter to MARAD’s director of acquisitions that provided step-by-step instructions on obtaining SBA approval for the KSI contract, which according to ICRC would allow MARAD to bypass a 2-3 month SBA review process for the proposed joint venture. <sup>a</sup>

<sup>22</sup> While procurements expected to exceed \$3 million must normally be competed among eligible 8(a) firms, an ANC was eligible to receive a sole source 8(a) contract award regardless of amount. As of 2011, the FAR requires contracting officers to prepare a justification for each 8(a) ANC sole source contract over \$20 million.

Date	Action
May 2003	To begin work on the Port of Anchorage project while the contract was still under negotiations, MARAD issued a letter contract for geotechnical sampling and testing. MARAD accidentally awarded the letter contract to ICRC instead of KSI. The next day, MARAD issued a modification to change the name to KSI. On May 30, 2003, MARAD officially awarded an 8(a) sole source contract to KSI. Although ICRC was not a party to the sole source contract, ICRC's chief executive officer represented KSI during contract negotiations, and ICRC's vice president was listed as the principal-in-charge for the contract.
Aug. 2003	The Port of Anchorage wrote MARAD to express its dissatisfaction with KSI and question KSI's leadership. The Port of Anchorage described KSI as a "shell corporation" and urged MARAD to novate (or transfer) the contract to ICRC.
Oct. 2003	MARAD notified KSI that it must produce invoices from an established accounting system within 10 days or MARAD would terminate the contract for default. KSI initially objected, stating that it used a reputable accounting software package—in fact, the same package used by ICRC. The next day, KSI informed MARAD that it would request permission to novate the contract to ICRC.
Feb. 2004	MARAD agreed to the transfer of the first Port of Anchorage contract to ICRC—less than 9 months after awarding the contract to KSI.

<sup>a</sup> According to an October 2003 MARAD memorandum, SBA notified KSI that it would not approve a joint venture agreement between KSI and ICRC because the contract had already been awarded to KSI.

Source: Contract files from the first Port of Anchorage contract

MARAD officials stated that they do not have enough information to comment on the decisions surrounding the first Port of Anchorage contract because the event occurred nearly a decade ago.

### *MARAD Did Not Comply With Federal Regulations To Terminate the First Port of Anchorage Contract When ICRC Was Bought by a Large Business*

MARAD did not comply with Federal regulations to terminate the first Port of Anchorage contract when ICRC was acquired by a large company in June 2007. Federal regulations require an agency to terminate an 8(a) contract if the small business contractor is no longer owned or controlled by disadvantaged individuals. The FAR also permits SBA to waive the termination requirement if the head of the agency certifies that contract termination would severely impair the agency's program objectives. On September 4, 2007, MARAD asked for a waiver, but SBA denied the request on September 19, 2007. SBA stated that allowing the 8(a) contract to be transferred to a large business could jeopardize the integrity of the 8(a) program and establish a precedent.

According to MARAD officials, the contract was not terminated based on an undocumented agreement with SBA to allow the contract to run its course. As evidence of this agreement, MARAD officials cited a January 22, 2008, order in which SBA dismissed ICRC's appeal of its denial of a termination waiver. However, the order did not expressly waive MARAD's requirement to terminate

or allow MARAD to continue the contract. Moreover, MARAD's contract documentation clearly shows that SBA had rejected MARAD's request for a termination waiver. Specifically, in the sole source justification for the second Port of Anchorage contract, which was initiated the same day as SBA's dismissal order, MARAD stated that "in January 2008, the SBA declined to issue such a waiver." The justification also said that the purpose of the sole source contract was "to take over the terminated previous contract." MARAD's own sole source documentation for the second Port of Anchorage contract shows that the MARAD officials executing the justification believed that the agency was in fact required to terminate the first Port of Anchorage contract.

However, MARAD did not terminate the first Port of Anchorage contract and allowed it to continue for more than 2 years after the award of the second Port of Anchorage contract. MARAD also ordered additional work under the first contract, despite Agency officials' statements that no new work was ordered under it. Specifically, MARAD issued two task orders under the first contract, with a total initial value of almost \$28 million.<sup>23</sup> Simultaneously managing two ICRC contracts with similar statements of work could have led to problems with oversight and management of the work.

### *MARAD Did Not Effectively Administer the Award Fee Provision for the Second Port of Anchorage Contract*

Award fees are financial incentives intended to motivate the contractor to achieve the Government's desired goals for a project. However, MARAD mismanaged its administration of the contract's award fee provision for the second Port of Anchorage contract by not complying with contract terms and Federal award fee regulations.<sup>24</sup>

Award fee plans are important to establish the procedures for evaluating the contractor's performance for an award fee, including the award fee evaluation periods and performance measures. However, MARAD did not complete an award fee plan until nearly 2 years after the contract began. Because it took so long for MARAD to implement an award fee plan, nearly half of the award fee evaluation periods had ended without having in place any evaluation procedures or criteria to assess the contractor's performance. In addition, MARAD did not conduct its award fee evaluations according to the award fee plan that it ultimately adopted. MARAD also approved a \$345,000 award fee payment to the contractor 372 days late and without conducting a required evaluation to determine whether the contractor's performance warranted the fee (see table 7).

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<sup>23</sup> MARAD added funding to those task orders 2 months after the second contract was awarded to increase the maximum value to \$105 million.

<sup>24</sup> FAR 16.404, FAR 16.405, and FAR 16.401; TAR 1252.216-72; TAR 1252.216-71.

**Table 7. Award Fee Evaluations Conducted Under the Second Port of Anchorage Contract**

	Evaluation Periods	Evaluations Completed	Award Fee Approved	No. of Days Fee Decisions Were Late <sup>a</sup>
1	7/16/2008 - 6/30/2009	No	Yes (\$345,000)	372
2	7/1/2009 - 12/31/2009	Yes	No	191
3	1/1/2010 - 6/30/2010	Yes	No	368
4	7/1/2010 - 12/31/2010	No	N/A	N/A
5	1/1/2011 - 6/30/2011	No	N/A	N/A
6	7/1/2011 - 12/31/2011	No	N/A	N/A

← During the first period, MARAD awarded a \$345,000 fee without evaluating the contractor's performance.

<sup>a</sup> The award fee plan requires an award fee evaluation to be completed within 15 business days after the end of the evaluation period.

Source: OIG analysis

According to MARAD's award fee decision document for the first evaluation period, evaluating the contractor's performance so late after the fact would have been difficult and time consuming, so the contracting officer and the Contracting Officer's Technical Representative (COTR) approved the award fee "in an effort to get current in the process." However, paying the contractor an award fee without a required evaluation goes against FAR regulations governing award fees.

MARAD was also aware of serious performance problems during the first evaluation period that should have been considered when determining the award fee. For example, ICRC informed MARAD of construction problems encountered by one of its subcontractors regarding significant setbacks related to damage to the project's open cell sheet piling and a related subcontractor claim. Nevertheless, MARAD approved full payment of the award fee to the contractor, effectively negating the purpose of an award fee to incentivize good performance.

While MARAD did conduct evaluations for evaluation periods 2 and 3, it did not fully complete them in accordance with the award fee plan or with Federal requirements. For example, MARAD's award fee determination letters—which are used to convey evaluation results—included only brief descriptions of the contractor's strengths and weaknesses and did not provide details on how the contractor's performance warranted the overall scores shown for each of the three performance areas (program management, cost control, and technical schedule).



### *MARAD Allowed the Use of a Proprietary Technology Without Justification or Independent Review of the Design*

According to Federal law, a government agency generally may not award a contract using other than full and open competition unless a written justification is provided.<sup>25</sup> The FAR recognizes that specifying a supply or service available from only one source, such as patented supplies and services, limits competition and requires proper justification in advance. However, MARAD—without justification—approved a \$6.1-million task order for a subcontract that called for open cell sheet pile design,<sup>26</sup> a proprietary technology. As such, MARAD effectively limited competition for the task order. Although proposals were solicited from at least six contractors, only the contractor that owned the technology submitted a bid and was subsequently awarded the work in June 2006. One contractor who declined to bid specifically cited concerns about patent infringement and the uncertain reliability of the open cell sheet pile technology.

In addition, the Municipality of Anchorage’s Geotechnical Advisory Commission (GAC) voiced objections to the design in September 2006. The GAC pointed out that an earlier study of the design was not independent because it had been conducted by parties directly involved in the project. However, MARAD did not request an independent review until 2011—3 years after critical problems with the design were discovered in 2008. According to the study released in February 2013, three of the Port of Anchorage project’s four constructed facilities do not meet project design requirements for normal working conditions or seismic activity from earthquakes. The study also states that these three facilities will need to be replaced using a suitable method. MARAD has recently indicated that alternatives will need to be developed to replace the project’s open cell sheet pile-based design.

### **MARAD Has Not Provided Effective Contract Administration for Its Port Projects**

Effective contract administration is important to protect the Government’s interests. However, MARAD has not provided effective contract administration of the port infrastructure projects. Specifically, MARAD did not (1) develop written contract administration plans; (2) follow procedures to designate COTRs; (3) properly maintain contract file documentation, including required COTR files; or (4) conduct required evaluations of contractor performance.

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<sup>25</sup> 41 U.S.C. 3304 (formerly 41 U.S.C. 253).

<sup>26</sup> Open cell sheet pile is a system with flat steel sheet piles driven side by side on a curve to form the face of a wharf. They are supported by sheet pile walls extending perpendicularly behind the face of the wharf, which is backfilled with granular soil.

### *MARAD Did Not Develop Written Contract Administration Plans*

MARAD did not develop written contract administration plans for any of the port project contracts. The FAR requires an agency to develop a written plan of action—prior to contract award—that describes how the contract will be administered and monitored. For example, an agency must describe how it will inspect and accept work corresponding to the work statement’s performance criteria. According to Federal regulations and the Office of Federal Procurement Policy (OFPP), a contract administration plan is essential for good contract administration, as it provides a systematic method for COTRs or other monitoring staff to evaluate the contractor’s performance and deliverables.<sup>27</sup> In addition, the 2008 DOT COTR Handbook calls for COTRs to maintain surveillance plans, contractor performance reports, and documentation for actions taken to correct contractor performance deficiencies.

MARAD stated that, instead of developing contract administration plans for the port projects, it followed established oversight processes and distinct quality assurance plans. However, MARAD did not provide documentation to support its statements. MARAD stated that it also monitored contractor performance at the Port of Anchorage project through weekly technical, administrative, and oversight meetings. However, the lack of contract administration plans at the outset of the Port of Anchorage project limited MARAD’s ability to effectively administer the contracts. For example, MARAD contracting staff stated that some task orders lacked clear scope and milestones, which made it impossible to monitor ongoing activities.

### *MARAD Did Not Follow Procedures To Establish COTR Oversight Roles*

MARAD did not follow procedures to officially designate COTRs<sup>28</sup> or designate them in a timely manner. According to OFPP, the COTR plays a critical role in the contract administration process, functioning as the “eyes and ears” of the contracting officer. For the Port of Anchorage project, MARAD did not issue letters for three of the four COTRs and was 5 months late in issuing a letter to the fourth COTR. For the Port of Guam and Hawaii Harbors projects, MARAD issued COTR designation letters late by 2 months and 11 months, respectively. Timely designation of COTRs is important because it ensures that COTRs are aware they have been assigned to oversee a contract and understand their oversight roles. As of 2011, the FAR requires COTR designation prior to award.<sup>29</sup>

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<sup>27</sup> FAR 7.103, FAR 7.105, FAR 42.1101, and FAR 46.104—all effective at the time of award; OFPP, “A Guide to Best Practices for Contract Administration,” 1994.

<sup>28</sup> TAM 1242.7104 requires DOT Operating Administrations to designate COTRs by issuing COTR designation letters, which explain the COTRs’ specific duties and tasks.

<sup>29</sup> FAR 16.301.

### *MARAD Does Not Maintain Adequate Contract File Documentation for Key Decisions or Required COTR Files*

MARAD did not follow FAR and DOT requirements to properly maintain contract files for the port projects.<sup>30</sup> Complete contract file documentation is important because it allows new staff to readily access and understand the contract's complete history and preserves prior work as a basis for future actions and oversight. In addition to missing acquisition plans and IGCEs, MARAD's files did not include documentation that the FAR requires for some significant contract-related decisions and activities. For example, while the first Port of Anchorage contract's statement of work called for bus terminal development, bus facilities were not ordered. However, MARAD's Port of Anchorage contract file lacks documentation to justify why it spent over \$35 million from FTA's transit bus and bus facilities appropriations for a variety of unrelated purposes, including a dock for Coast Guard boats and project management. MARAD stated that congressional earmark language allowed the Agency to use the FTA funds in any manner deemed necessary for an intermodal port project. Nonetheless, MARAD's decision to use the FTA funding for other purposes is an important one that warrants documentation in the contract file.

Further, MARAD did not properly maintain required COTR files for any of its port projects.<sup>31</sup> The TAM requires the COTR files to be organized and provides a framework for organizing them. However, MARAD stored contract administration information on a common shared drive rather than a designated COTR file, and the drive was disorganized and missing required documentation.

### *MARAD Did Not Conduct Contractor Performance Evaluations*

Each of MARAD's port project contracts require MARAD to prepare semiannual contractor performance evaluations in accordance with the FAR; yet MARAD did not comply with this requirement for any of the port projects.<sup>32</sup> MARAD officials stated that the Agency did not have to conduct semiannual evaluations because the FAR allows award fee evaluations to be used instead. The FAR does allow award fee evaluations to be used to meet these evaluation requirements; however, the second Port of Anchorage contract was the only MARAD port project contract that included an award fee provision (see exhibit B for each project's contract

<sup>30</sup> FAR 4.8, "Government Contract Files"; DOT COTR Program, September 2008; DOT Acquisition Policy Letter-2008-02.

<sup>31</sup> TAM 1242.7104(11)(c)—Letter of Appointment states that COTRs are required to establish and maintain an organized contract administration file to record all contractor and Government actions pertaining to the contract.

<sup>32</sup> The contracts contain a clause that call for semiannual evaluations to be prepared in accordance with FAR 42.1502(a)—which requires agencies to prepare interim evaluations to provide current information for contracts or orders with a period of performance longer than one year. According to the FAR, these interim evaluations are to be used for source selection purposes.

type). Per MARAD's reasoning, MARAD's contract files should have contained evidence of award fee evaluations for all of the port contracts. However, the Agency only performed two out of six required award fee evaluations for the second Port of Anchorage contract. MARAD did not complete any other evaluations—semiannual or award fee—for MARAD's other port project contracts.

## **CONCLUSION**

Port infrastructure development is a relatively new responsibility for MARAD and also an opportunity for it to be a major stakeholder in rebuilding the Nation's maritime infrastructure. Effective program management, oversight, and contracting are critical to the success of this endeavor. However, challenges in these areas contributed to significant setbacks at the Port of Anchorage project—including construction problems, schedule delays, and cost growth. While MARAD has begun implementing changes to improve its management of the Port of Guam project—including better defined project responsibilities and a new management information system—it is still in the process of developing the congressionally mandated port program. Until MARAD strengthens its planning, oversight, and contracting processes, ongoing and future port projects will continue to be at risk of cost overruns and schedule delays.

## **RECOMMENDATIONS**

We recommend that the Maritime Administrator take the following actions:

1. Develop guidance for port project management plans and organizational charts that outline the roles, responsibilities, and relationships of public and private stakeholders.
2. Consistently define and document MARAD's oversight responsibilities for port infrastructure development.
3. Develop formal risk management policies and procedures consistent with industry best practices.
4. Implement policies and procedures for (a) analyzing and documenting decisions related to selecting the appropriate legal arrangement (e.g., contracts or assistance agreements) before obligating funds, and (b) requiring written agreements for payment of matching funds.

5. Implement procedures to help ensure that MARAD's contract planning efforts comply with Federal acquisition regulations and requirements. These procedures should include:
  - a) establishing acquisition plans and contract administration plans in a timely manner, and maintaining supporting documentation for their rationale; and
  - b) developing independent Government cost estimates, and validating cost estimates provided by entities other than MARAD.
6. Implement procedures to help ensure that MARAD's contract award and execution efforts comply with Federal acquisition regulations and requirements. These procedures should include:
  - a) awarding and terminating contracts, especially those awarded through the 8(a) Business Development Program;
  - b) reviewing and providing written justifications for the use of proprietary technology or other factors that may limit competition on port contracts.
7. Implement procedures to help ensure that MARAD's management of cost-plus-award-fee contracts complies with Federal acquisition regulations and requirements. These procedures should include establishing timely award fee plans and properly executing those plans—including conducting award fee evaluations, documenting the results, and approving award fee payments.
8. Implement procedures to help ensure that MARAD's contract administration and oversight efforts comply with Federal acquisition regulations and requirements. These procedures should include:
  - a) issuing timely contracting officer's technical representative (COTR) designation letters with appropriate descriptions of their roles and responsibilities;
  - b) maintaining complete contract files, including COTR files; and
  - c) conducting semiannual or interim contractor performance evaluations.
9. Provide a comprehensive action plan for developing a congressionally mandated Port Infrastructure Development Program (PIDP), including milestones for incorporating each of the preceding recommendations into the program. The plan should also require MARAD to prepare clear and specific budget requests that specify how the Agency would use all Federal funding received for PIDP purposes.

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

We provided a draft of this report to MARAD on April 22, 2013, and received its response on July 10, 2013, which is included as an appendix to this report. MARAD concurred with all nine of our recommendations.

For recommendations 1, 2, 3, 7, 8, and 9, MARAD concurred and provided planned actions and time frames that meet the intent of our recommendations. We consider these recommendations resolved but open pending completion of the planned actions.

For recommendations 4, 5, and 6, MARAD concurred and provided planned actions that partially meet the intent of our recommendations. We are requesting additional information before we can determine if the planned actions address the intent of these recommendations. Specifically:

For recommendation 4, MARAD committed to completing a Port Infrastructure Program Manual by September 30, 2014, that will detail its documentation expectations regarding matching funds agreements. However, we are concerned with MARAD's planned completion date for the manual because the Administration is currently negotiating a new assistance agreement for future work in Hawaii. We request that MARAD clarify how it will ensure appropriate analysis and documentation for its selection of new assistance agreements until the manual is completed. Until we receive this information, we consider recommendation 4 open and unresolved.

For recommendation 5, MARAD committed to having an independent procurement compliance review by August 30, 2014, after which it plans to complete an action plan to address the issues identified. However, MARAD did not specify whether the action plan will include implementation of procedures to ensure compliance with the FAR in the areas of acquisition planning, contract administration, and IGCEs, as we recommend. In addition, MARAD did not specify a time frame by which it would complete its action plan. Accordingly, we request that MARAD clarify whether it plans to implement procedures as part of its action plan and provide time frames by which it will complete the action plan and implement the procedures. MARAD, in its introductory remarks, indicated that the contract for the Port of Guam project would remain in place; however, we reported that MARAD has not implemented a required contract administration plan for the project. As such, we request that MARAD clarify whether its extensive implementation plan for the Port of Guam project will include a contract administration plan. Until we receive this information, we consider recommendation 5 open and unresolved.

For recommendation 6, MARAD stated that it has issued guidance on SBA's 8(a) awards and will continue to host training sessions on SBA programs. This action appears to address the first part of our recommendation. However, we request that MARAD provide us a copy of the guidance, so that we can verify whether it meets the intent of our recommendation. In addition, MARAD did not provide planned actions to address the second part of our recommendation that MARAD implement procedures for reviewing and providing written justification for the use of proprietary technology and other factors that may limit competition on port contracts. Therefore, we request that MARAD clarify whether it will implement such procedures. Until we receive this information, we consider recommendation 6 open and unresolved.

## **ACTIONS REQUIRED**

MARAD's planned actions and time frames for recommendations 1, 2, 3, 7, 8, and 9 are responsive, and we consider them resolved but open pending completion of the planned actions. We consider recommendations 4, 5, and 6 open and unresolved. In accordance with Department of Transportation Order 8000.1C, we request that MARAD provide additional information on recommendations 4, 5, and 6, as described above, within 30 days of this report.

If you have any questions concerning this report, please contact Mitchell Behm, Assistant Inspector General for Rail, Maritime, Hazmat Transport, and Economic Analysis, at (202) 366-9970 or Mary Kay Langan-Feirson, Assistant Inspector General for Acquisition and Procurement Audits, at (202) 366-5225. If you have specific questions about program management, please contact Toayoa Aldridge, Program Director, at (202) 366-2081. If you have specific questions about contracts, please contact Ken Prather, Program Director, at (202) 366-1820.

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cc: DOT Audit Liaison (M-1)  
MARAD Audit Liaison (MAR-392)

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

We conducted our work from May 2011 through April 2013 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.

Our audit objectives were to evaluate MARAD's execution of its port infrastructure development responsibilities. Specifically, we evaluated MARAD's (1) oversight and risk management of port infrastructure development projects, and (2) oversight of port infrastructure projects' contract planning and administration.

To evaluate MARAD's oversight and risk management of port infrastructure development projects, we interviewed MARAD officials, contractor representatives at the Port of Anchorage, the Municipality of Anchorage Mayor's Office, Municipal Assembly members, Port of Anchorage staff, and Alaska State officials. We also reviewed and analyzed documentation such as MOA agreements; statements of work; and documents pertaining to risk management, roles, and stakeholder responsibilities. Additionally, we assessed the interagency roles and responsibilities for port development projects and evaluated the Agency's efforts to identify and mitigate project risks.

To evaluate MARAD's oversight of port infrastructure projects' contract planning and administration, we reviewed the Port of Anchorage project's contract history as a case study. We also assessed MARAD's contracting efforts at the Hawaii Harbors and Port of Guam projects. We reviewed the three port projects' contract files and subcontract files for the Port of Anchorage project. We interviewed MARAD officials and contractor representatives at the Port of Anchorage. We identified and reviewed relevant acquisition criteria, including the United States Code, FAR, Transportation Acquisition Regulation (TAR), TAM, and Office of Management and Budget (OMB) guidance, as well as MARAD's acquisition policies and procedures. We assessed MARAD's acquisition planning and award processes, including competition methods and contract type. Finally, we evaluated MARAD's contract administration, including mechanisms for monitoring and quality assurance, contract actions, and oversight resources.



## EXHIBIT B. SUMMARY OF PORT PROJECT CONTRACTS

Port project	Port of Anchorage	Port of Anchorage	Hawaii Harbors	Port of Guam
<b>Contract number</b>	DTMA1D03009	DTMA1D08012	DTMA1D09006	DTMA1D10002
<b>Contract award date</b>	05/30/2003	07/15/2008	07/31/2009	04/23/2010
<b>Competition Used</b>	None—8(a) sole source	None—sole source	Full and open <sup>a</sup>	Full and open
<b>Period of performance</b>	5/30/2003 - 5/31/2004 <i>plus 9 option years</i>	7/16/2008 - 5/31/2011 <i>plus 4 option years</i>	7/31/2009 - 7/31/2012 <i>plus 4 option years</i>	5/1/2010 - 4/4/2013 <i>plus 4 option years</i>
<b>Maximum award value</b>	\$427 million <sup>b</sup>	\$704 million	\$400 million	\$400 million
<b>Contractor</b>	Koniag Services, Inc. (KSI)	Integrated Concepts and Research Corporation (ICRC)	TEC, Inc.	EA Engineering, Science, and Technology, Inc.
<b>Contract type</b>	Firm-fixed-price and indefinite delivery/ indefinite quantity	Cost-plus-award-fee and indefinite delivery/ indefinite quantity	Cost-plus-fixed-fee and indefinite delivery/ indefinite quantity	Cost-plus-fixed-fee and indefinite delivery/ indefinite quantity
<b>Services provided</b>	Technical management, and staff support services, including but not limited to: program , design, and construction management; and contractor oversight	Technical management, and staff support services, including but not limited to: program , design, and construction management; and contractor oversight	Improvement activities to enhance the transportation of goods and people. Services include, but are not limited to: program, construction, and design management; port planning and preliminary design; technical management and staff augmentation; and contractor oversight	Improvement activities to enhance the transportation of goods and people. Services include, but are not limited to: program, construction, and design management; port planning and preliminary design; technical management and staff augmentation; and contractor oversight

<sup>a</sup> A best value process was used for the Hawaii Harbors and Port of Guam projects.

<sup>b</sup> The initial contract award value was \$211 million; a December 2005 contract modification increased the maximum potential value to \$427 million.

Source: Port of Anchorage, Hawaii Harbors, and Port of Guam project contract files

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

<b>Name</b>	<b>Title</b>
Toayoa Aldridge	Program Director
Ken Prather	Program Director
Aisha Evans	Project Manager
Leslie Mitchell	Senior Auditor
Paul Stark	Senior Analyst
Meghann Noon	Auditor
Meredith Howell	Analyst
Michael Broadus	Analyst
Tashaun Ross	Analyst
Deanne Titus	Analyst
Christina Lee	Writer-Editor

## APPENDIX. AGENCY RESPONSE




U.S. Department  
of Transportation

# Memorandum

### Maritime Administration

To: Calvin Scovel III  
Inspector General

Date: July 9, 2013

From: Paul N. Jaenichen,   
Acting Maritime Administrator

Re: Management Response to the Office of Inspector General (OIG) Draft Report on  
Port Development Projects and Program

The Maritime Administration (MARAD) is finalizing the development of a Congressionally-authorized Port Infrastructure Development Program (PIDP) using contemporary best practices. In doing so, we recognize that the approaches taken with Anchorage, Hawaii and Guam, the three port development projects that predate the PIDP, were not consistent with current programmatic, technical and procurement policies or practice. This is especially true as a result of a key decision in 2003 to defer to local authorities for project management in Anchorage.

MARAD no longer operates in this manner. As problems became apparent during construction at the Port of Anchorage Intermodal Expansion Project, MARAD reevaluated earlier policy decisions and instituted new project oversight and management for all three projects. This Administration has taken action to increase oversight, assign dedicated project and program staff, and increase its level of engagement with local partners. These actions led to a revised Memorandum of Agreement (MOA) in 2011 that required a project master plan, formalized the project management organization, and required a MARAD presence on site. MARAD is now in the process of terminating its involvement with the Port of Anchorage project.

Much of the OIG report focuses on the issues surrounding the Port of Anchorage project that led up to these changes. The two other projects reviewed by the report, one in Hawaii and the other in Guam, have been successful to-date, benefitting from the experience with Anchorage. MARAD's future involvement in port development will be conducted in accordance with the parameters and procedures of the new PIDP, incorporating lessons learned from all three projects and the comments contained in the OIG report.

### **MARAD Heightened Oversight on Preexisting Port Projects**

MARAD no longer conducts port development projects using the practices described in the OIG draft report relating to Anchorage, Hawaii and Guam. In each of these projects, MARAD is successfully addressing the issues identified in the OIG report. In Hawaii, MARAD is wrapping up its Federal contract and is negotiating an assistance agreement to administer any future

Federal funding. The Federal contract in Guam will stay in place for the foreseeable future with increased levels of risk management protections, including requirements for an extensive implementation plan prior to construction and the use of dual-obligation performance bonds for subcontractors to protect the Federal interest in the project. For the Port of Anchorage Intermodal Expansion Project, procurements have been the responsibility of local authorities since June 1, 2012, because there is no Federal funding remaining.

Each of these three port projects has produced significant benefits. In Hawaii, the Pier 2 Passenger Terminal Enhancement Project was completed and dedicated on June 20, 2012. Of note, the Historic Hawaii Foundation awarded the project a Preservation Media Honor on

May 30, 2013. Hawaii also completed improvements to Hilo Harbors and the project has been recognized as one of the largest job creators in the state. In Guam, construction has just begun, with new administration offices and a lighting improvement project already completed. In May 2013, Congresswoman Madeleine Bordallo of Guam sent a letter of appreciation to the Secretary of Transportation for the work completed on the project to date. In Alaska, 57 acres of new land were created and a barge berth was successfully constructed. This new land area has been used as a laydown area for a major energy project. Additionally, a two-mile haul road was completed for Joint Base Elmendorf-Richardson as well as a floating pier facility for the U.S. Coast Guard.

### **Port Infrastructure Development Program Employs Best Practices**

In the Fiscal Year (FY) 2010 National Defense Authorization Act (NDAA), Congress directed MARAD to implement a nationwide program for the improvement of port infrastructure. To date, no funding has been appropriated for this new program, although \$2 million has been requested in the President's 2014 budget. Further, the authorizing language is clear that the projects in Anchorage, Hawaii and Guam are to be kept separate and distinct from this program.

MARAD developed a conceptual framework for the new program, based on lessons learned from previous experience and best practices, which will be implemented subject to the availability of funding. In contrast to the three projects previously mentioned in which MARAD focused on administering funds or the construction phase of projects, the new program places the greatest emphasis on: a) stakeholder engagement, b) planning and c) financial strategies. In the new program, project or construction management will be a tool used only rarely in cases where the Federal government has both a large stake in a project and when there are well-documented compelling reasons for that level of involvement and risk. The new program will assist ports in planning infrastructure improvements, engaging public and private stakeholders and leveraging the existing financial mechanisms (both public and private) to fund the modernization of our Nation's ports.

### **Procurement Review to Assess Compliance with Federal Acquisition Regulations**

Due to the nature and extent of procurement related concerns identified in the OIG report associated with the three port projects, MARAD will complete a comprehensive review of compliance with Federal Acquisitions Regulations (FAR) for the procurement office. While a number of the issues relate to decisions that occurred a decade ago under a previous statutory and regulatory regime, the review is intended to confirm that deficiencies have been corrected,

## **Appendix. Agency Response**

any remaining issues will be addressed and lessons learned will be captured. MARAD is working with the Department of Transportation's Senior Procurement Executive to oversee an independent compliance review to identify any persisting compliance issues, evaluate their extent and identify a plan of action and milestones to rectify them. Separately, MARAD has begun reviewing its acquisition guidance and processes and will update its guidance and processes as necessary to ensure compliance with the FAR. This will include a review and updates to the MARAD Acquisition Guidance (MAG) notes and other internal processes with an expected completion by December 2013.

#### **OIG RECOMMENDATIONS AND MARAD RESPONSES:**

**Recommendation 1:** Develop guidance for port project management plans and organizational charts that outline the roles, responsibilities and relationships of public and private stakeholders.

**Response: Concur.** As indicated above, MARAD is establishing, through its Port Development Program, a fundamentally new approach to the agency's involvement in Port projects. In developing this program, which has been authorized, but not yet funded, MARAD will issue a Port Infrastructure Program Manual that will provide agency-specific guidance for project management plans. It will also identify specific roles, responsibilities and relationships of public and private stakeholders. This guidance will specify features unique to port development projects while implementing industry standards with a distinct emphasis on scope, schedule and budget for the projects. To meet this goal, MARAD will utilize best practices learned from previous experience, other Federal agencies and the construction and project management industry. MARAD intends to complete this manual by September 30, 2014.

**Recommendation 2:** Consistently define and document MARAD's oversight responsibilities for port infrastructure development.

**Response: Concur.** As indicated above, a Port Infrastructure Program Manual is being developed for the Port Development Program. The program manual will include a set of clearly delineated responsibilities for each participant in a given project, and will include specific expectations for the level of Federal involvement and MARAD's oversight responsibilities. MARAD intends to complete this manual by September 30, 2014.

**Recommendation 3:** Develop formal risk management policies and procedures consistent with industry best practices.

**Response: Concur.** As indicated in response to Recommendation 1, a Port Infrastructure Program Manual is being developed for the Port Development Program. The program manual will include a set of risk management policies consistent with previous lessons learned, along with Federal and commercial best practices. MARAD intends to complete this manual by September 30, 2014.

**Recommendation 4:** Implement policies and procedures for (a) analyzing and documenting decisions related to selecting the appropriate legal arrangement (e.g., contracts or assistance agreements) before obligating funds, and (b) requiring written agreements for payment of matching funds.

**Response: Concur.** From the project management perspective, documentation expectations will be included as part of the Port Infrastructure Program Manual, expected to be completed by September 30, 2014. The manual will also detail expectations with regard to planning and executing agreements with regard to matching funds.

**Recommendation 5:** Implement procedures to help ensure that MARAD's contract planning efforts comply with Federal acquisition regulations and requirements. These procedures should include:

- a. Establishing acquisition plans and contract administration plans in a timely manner, and maintaining supporting documentation for their rationale; and
- b. Developing independent Government cost estimates, and validating cost estimates provided by entities other than MARAD.

**Response: Concur.** MARAD recognizes there were issues with execution of procurement processes particularly with regard to the Port of Anchorage Intermodal Expansion Project. MARAD will not handle future projects in the same or a similar manner. Rather, MARAD will conduct its procurement activities in full compliance with the FARs. MARAD is working with the Department's Office of the Senior Procurement Executive to arrange for an independent procurement compliance review. The specific procurement issues of planning cost estimations, administration and documentation will be included as focus areas in the review. Subsequent to the review, an action plan will be completed to address any procurement management issues identified. This review will be completed by August 30, 2014.

**Recommendation 6:** Implement procedures to help ensure that MARAD's contract award and execution efforts comply with Federal acquisition regulations and requirements. These procedures should include:

- a. Awarding and terminating contracts, especially those awarded through the 8(a) Business Development Program;
- b. Reviewing and providing written justifications for the use of proprietary technology or other factors that may limit competition on port contracts.

**Response: Concur.** As part of the reform of acquisitions procedures and guidance, MARAD will focus on the award and termination of contracts through the 8(a) Business Development Program as well as written justifications for other than full-and-open competition. Earlier this year, the MARAD Small Business Specialist issued guidance to all contract specialists on the Department's partnership agreement with the Small Business Administration (SBA) on 8(a) awards, and MARAD hosted a training session for the mode's acquisition staff on SBA programs. MARAD will schedule a follow up training session with S-40 on the 8(a) program to be completed by November 2013. In addition, MARAD will hold formal training sessions on FAR requirements on other than full and open competition requirements by December 31, 2013.

## Appendix. Agency Response

**Recommendation 7:** Implement procedures to help ensure that MARAD's management of cost-plus-award-fee contracts complies with Federal acquisition regulations and requirements. These procedures should include establishing timely award fee plans and properly executing those plans—including conducting award fee evaluations, documenting the results, and approving award fee payments.

**Response: Concur.** OST recently issued guidance for award fee contracts. MARAD will complete formal training on this guidance by November 2013. In addition, MARAD will increase the level and extent of oversight by defining specific procedures for informing senior management, including the Chief Counsel and the Executive Director, of any award fee payments. These procedures will be included in a MAG note expected to be issued by February 28, 2014.

**Recommendation 8:** Implement procedures to help ensure that MARAD's contract administration and oversight efforts comply with Federal acquisition regulations and requirements. These procedures should include:

- a. Issuing timely contracting officer's representative (COR) designation letters with appropriate descriptions of their roles and responsibilities;
- b. Maintaining complete contract files, including COR files; and
- c. Conducting semiannual or interim contractor performance evaluations.

**Response: Concur. (A)** All individuals appointed by the Contracting Officer to support contract administration will be issued designation letters providing appropriate descriptions of their roles and responsibilities as CORs. The process is in place to ensure timely designation and detailed guidance will be implemented in the forthcoming updated MARAD Acquisition Guidance (MAG) note, which will be issued by November 30, 2013. **(B)** The contracts in Hawaii, Guam and Anchorage underscore the importance of proper documentation and record keeping on these complex acquisitions. MARAD has adopted the Department's standard COR appointment letter which sets forth the required documents in a COR file and will issue updated guidance on the maintenance of complete contract and COR files in the November 30, 2013 MAG note. The guidance will update and refine previous guidance and reinforce the lessons learned. **(C)** As required by contract and consistent with the FAR, MARAD will conduct semiannual or interim contractor performance evaluations. Interim evaluations of Hawaii and Guam contracts will be completed by October 31, 2013. Guidance regarding the evaluations as well as when they are required will be issued in an August 30, 2013 MAG note.

**Recommendation 9:** Provide a comprehensive action plan for developing a congressionally mandated Port Infrastructure Development Program (PIDP), including milestones for incorporating each of the preceding recommendations into the program. The plan should also require MARAD to prepare clear and specific budget requests that specify how the Agency would use all Federal funding received for PIDP purposes.

**Response: Concur.** MARAD has been working on establishing a PIDP since 2010 and will incorporate OIG recommendations into the program based on appropriate milestones. MARAD will provide the action plan before February 28, 2014.

## Appendix. Agency Response

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I appreciate the opportunity to offer additional perspective on the OIG draft report and would like to thank you for the professionalism of the OIG Staff and the detailed recommendations developed in conducting this review. Please contact Joel Szabat, MARAD Executive Director, at (202) 366-5823 with any questions or requests for additional assistance.