

IR 09-002

FEDERAL TRADE COMMISSION

Office of Inspector General



**FINAL INSPECTION REPORT OF THE FTC
COTR OVERSIGHT OF SOLE SOURCE CONTRACTS**

September 29, 2009

Abbreviations Used in This Report

CFO	Chief Financial Officer
COTR	Contracting Officer Technical Representative
FPDS-NG	Federal Procurement Data System – Next Generation
FTC	Federal Trade Commission
GSA	General Services Administration
OIG	Office of Inspector General
OPM	Office of Personnel Management
IG	Inspector General



Office of Inspector General

UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
WASHINGTON, D.C. 20580

September 29, 2009

MEMORANDUM

TO: Steven A. Fisher
Chief Financial Officer

Edwin Franklin
Acting Assistant CFO for Acquisitions and Chief Acquisition Officer

FROM: John M. Seeba
Inspector General

SUBJECT: Final Inspection Report IR 09-002 – COTR Oversight of Sole Source Contracts

This report presents the results of our inspection of the Federal Trade Commission's (FTC) Contracting Officer Technical Representative (COTR) Oversight of Sole Source Contracts. This inspection was initiated as part of our FY 2009 annual audit plan. The objective of this inspection was to determine whether COTRs are monitoring sole source contractors' activities to ensure that they deliver the goods or services listed in the contract in a timely manner, meet or exceed contract requirements, and control overall contract costs. We reviewed a sample of 34 sole source contracts (11%) valued at about \$3.3 million (24%) from a universe of 296 contracts valued at \$13.6 million issued in fiscal years 2008 and 2009.

We found that overall COTRs were adequately monitoring contractor activities; that the FTC received goods and services in a timely manner; contractors met or exceeded contract requirements and staff was cognizant of cost controls. We did, however, find that training for COTRs as well as training for continuing education requirements as mandated by OMB, did not meet the needs of the COTRs assigned to oversee sole source contracts for expert witnesses and consultants. Because the FTC hires outside contractors to teach COTR classes, we found that the "standard" classes used to educate first-time COTRs provided too much information related to the procurement of regular goods and services and

insufficient information related to the procurement of services provided by expert witnesses and consultants.

We also found that the COTRs did not necessarily have a good understanding of the procurement process to effectively and efficiently marshal the proposed contract through the required contracting processes. Several COTRs we interviewed suggested that a primer about the contracting process would significantly help in their working with the acquisition branch to issue a contract. COTRs tasked with locating expert witnesses or consultants for their projects expressed concerns that they were not fully cognizant of all contracting requirements and wanted to ensure that they did not violate contracting procedures.

In addition, COTRs expressed the need for further training on how to write a statement of work to better define contract requirements and expectations. COTRs in some cases, believed that the statement of work was written too broadly on their contract to hold contractors accountable for substandard work. A better defined statement of work should help to address this issue. We also found that most COTRs did not have their duties as a COTR written into their performance standards. In general, except for a few COTRs we interviewed, most did not expend a great deal of time performing the duties of a COTR. The absence of these duties separately listed in an employee's performance plan creates the appearance that this function is not as important as other listed job duties. This leads to potential problems in that contracts awarded for possibly hundreds of thousands of dollars may not receive the attention necessary to achieve effective cost control or oversight. One of the reasons this inspection was initiated was because of a sole source contract issued in FY 2007 that was initially awarded at \$200,000 and grew uncontrolled to over \$800,000 without effective oversight. Including COTR duties in an employee's performance plan would ensure that COTR duties would receive the proper attention by assigned staff.

As a result of our findings, we contacted the Federal Acquisition Institute (FAI), an organization charged with fostering and promoting the development of a federal acquisition workforce. FAI facilitates and promotes career development in the acquisition field and seeks to ensure availability of exceptional training, promote professionalism, and improve acquisition workforce management. We discussed with FAI officials the issues facing the FTC and alternative solutions that would address these shortcomings. The FAI has resources available to work with the FTC either to develop or tailor current courses to specifically target the needs of COTRs that work mainly on sole source and consultant contracts.

Recommendations

1. We recommend that the Assistant CFO for Acquisition, in coordination with the Bureau of Competition and the Bureau of Consumer Protection, work with representatives of the Federal Acquisition Institute to:
 - a. develop an introductory training program to address the specific needs of COTRs who oversee expert witness and consultant contracts: including training on processing invoices, contract close-out, and developing statements of work.
 - b. tailor a continuing education program to address FTC staff who are assigned COTR duties for expert witness and consultant contracts.
2. We recommend that the Assistant CFO for Acquisition develop a training or instructional vehicle such as a brochure or include in the COTR initial training class, an explanation of contracting process and the requirements to assist the acquisition staff in completing a contracting action.
3. We recommend that the Assistant CFO for Acquisition work with the Human Resources Management Office to define the duties of a COTR and include them in the performance plans of all staff who are assigned COTR duties.

Management generally agreed with the recommendations in the report. In areas where they partially concurred, management offered additional clarification or alternatives to our recommendations that will result in achieving the intent of the recommendations. Management's comments were fully responsive to our recommendations. The full texts of management's comments are shown in appendix B.

We appreciate the courtesies and cooperation extended to us by members of your staff during the review. Should you have any questions please contact me at 202-326-2800.

cc: Jon Leibowitz, Chairman
Marian Bruno, Deputy Director, Bureau of Competition
Daniel Kaufman, Chief of Staff, Bureau of Consumer Protection
Diane Reinertson, Assistant CFO and Audit Liaison

Attachment

Appendix A – Methodology

Methodology

We interviewed the Assistant CFO for Acquisition and the COTRs assigned to the contracts. We also interviewed senior level managers who were involved in the contracting process or were responsible for overseeing the procurement of expert witness and consultant contracts. In addition, we met with an outside organization, the Federal Acquisition Institute, to obtain further guidance and input on best practices for contracting in the Federal government environment.

Contract data was obtained from the Assistant CFO for Acquisition who obtained the data from the General Services Administration (GSA) database known as the Federal Procurement Database – Next Generation (FPDS-NG). We did not specifically test the accuracy of the entire database, but instead traced the selected sample of contracts to their source documents contained in paper contract files. We found that the data contained in the paper files matched the sample data contained in spreadsheets provided to us from the FPDS-NG. We therefore believe the data was sufficiently reliable to satisfy our inspection objectives.

Office of Management and Budget memorandums and FTC internal policies require COTRs to monitor contractor activities to ensure that the contractor delivers goods or services listed in the contract in a timely manner, meets or exceeds contract requirements, and controls overall contract costs.

We conducted this inspection in accordance with Quality Standards for Inspections, January 2005 as adopted by the Council of Inspectors General for Integrity and Efficiency. The inspection was conducted during the period of February through August 2009. No prior audits have been conducted in this subject area for the FTC in the last five years by the FTC OIG or the Government Accountability Office.

Appendix B – Management Comments



Financial Management Office

UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
WASHINGTON, D.C. 20580

To: John Seeba, Inspector General

From: Steven A. Fisher, Chief Financial Officer (CFO)

Subject: Draft Report on COTR Oversight of Sole Source Contracts

We reviewed the draft report of your inspection of the FTC's Contracting Officer's Technical Representative (COTR) Oversight of Sole Source Contracts (IR 09-002) and are pleased with your overall finding that: COTRs were adequately monitoring contractor activities; the FTC received goods and services in a timely manner; contractors met or exceeded contract requirements and that staff was cognizant of cost controls. While we generally concur with the recommendations contained in the report, our detailed comments regarding the findings and recommendations are provided below for your consideration in finalizing the report.

Detailed Comments on Findings:

COTR Training and Continuing Education

The draft report states that training for COTRs as well as training for continuing education requirements did not meet the needs of the COTRs assigned to oversee sole source contracts. In addition, the report suggests that the COTRs did not necessarily have a good understanding of the procurement process. We concur that there is room for tailoring courses to emphasize applicability within the FTC environment.

Appendix B – Management Comments

While we agree that tailoring of the course offerings would better serve the FTC, it is important to note that the core competency content of COTR training has been defined by the Office of Management and Budget (OMB) Office of Federal Procurement Policy (OFPP) in a memorandum issued in FY 2008. The OMB/OFPP training requirement specifies that of the 40 hours required, 22 hours must cover essential core competencies. The FTC's Office of General Counsel has reviewed the guidance and opined that the Federal Acquisition Certification (FAC)-COTR program is mandatory and applicable to FTC.

FTC Actions Taken

I note our significant previous and ongoing efforts in developing a training program for COTRs. For example, prior to issuance of the OMB/OFPP policy, FTC already had a policy that only employees who have completed adequate training and have the necessary experience and judgment shall be appointed as COTRs. In addition, prospective COTRs must have completed one hour of ethics training and a minimum of 16 hours of approved COTR training course(s) prior to appointment. To help satisfy this requirement, the FTC had established an in-house mandatory training course for all staff who are nominated for appointment as COTR. Specifically, in FY 2006 and 2007 the Financial Management Office (FMO) partnered with the FTC's Office of General Counsel and Office of Inspector General in developing the content for a computer based training (CBT) course that includes a test which the staff member is required to pass prior to appointment. This course is now used as refresher training.

In response to OMB's more recently issued FAC-COTR training requirements, the Assistant CFO (ACFO) for Acquisition has taken the following actions:

- Updated and documented standard procedures implementing FAC-COTR requirements. The procedures provide several options (which include online training) for satisfying the 22 hour initial training requirement in core competency areas.
- Developed guidance outlining training options to satisfy the FAC-COTR continuing education requirements.
- Worked with HRMO to obtain on site training specifically designed to satisfy the core competencies requirements (See attached dates for on-site training)
- Obtained on-site training for writing proper Statements of Work that was provided by a contractor certified by the Defense Acquisition University (DAU).

We agree that the FMO is responsible for developing a training program and for ensuring that COTRs complete required training to meet OMB requirement and ensure FTC maintains a qualified pool of COTRs.

Appendix B – Management Comments

Statement of Work (SOW) Training

The report noted that some COTRs expressed the need for further training on how to write a SOW and that in some cases the SOW that they had written were too broad to hold contractors accountable for substandard work. Our past offering was a 3 day on-site training course on how to write SOWs. Although the content did not exclusively focus on expert witness contracts, the comprehensive course did cover expert witness and information technology contracts.

The CFO also partnered with senior managers across the agency to encourage their staff (who had served as COTR) to complete the on-site training offered. For example, the Chief Information Officer (CIO) made attendance mandatory for all ITMO COTRs. Staff within the Acquisition branch will continue to work closely with COTRs in reviewing and offering assistance with writing SOWs, including those for sole source contracts.

Senior Management Emphasis on the Importance of COTR duties

It is important to note that while FMO can continue to procure and offer relevant training, there is a need for senior managers across the agency to help stress the importance of completing mandatory COTR training (as defined by OMB and the ACFO for Acquisition) to staff. We agree that one way to emphasize the importance of COTR duties is to incorporate them into the appropriate staff members' performance plans. Such language should include provisions for satisfying applicable training requirements.

Detailed Comments on Recommendations:

1.a. Partially Concur. During Fiscal Year 2010 the FMO will partner with the Bureau of Competition and Bureau of Consumer Protection to provide training that not only satisfies the mandatory requirements, but also better addresses FTC specific needs. We will review our existing training program, and make necessary revisions to address the specific needs of COTRs who oversee expert witness and consultant contracts. However, we will not limit our options for solutions to only consulting with the Federal Acquisition Institute (FAI).

1.b. Concur. During Fiscal Year 2010 FMO will review our existing continuing education program for opportunities to better address special needs of COTRs managing expert witness and consultant contracts.

2. Concur. FMO will develop brochures or other instructional vehicles such as an FTC COTR handbook. Although the initial COTR training program developed by the ACFO for Acquisition includes provisions to ensure that initial courses include an overview and materials that explain the overall contracting process, the ACFO for Acquisition will take appropriate action to verify this aspect of training is responsive to staff needs.

Appendix B – Management Comments

3. Partially Concur. The FMO has already defined COTR duties which are specified in the FTC Administrative Manual and are further explained in COTR appointment letters. The FMO will partner with HRMO, Bureaus and Offices to designate staff who will serve as COTRs and to incorporate language describing responsibilities as COTR into performance plans of those staff who are designated to perform such duties.

We noted that the methodology section of the inspection report did not include a review of the course materials that were provided for either of the 3 day training courses that were offered to staff. Rather than relying solely on feedback of COTRs, we believe that a review of the materials would show the courses do cover explanations and an overview of the contracting process as contained in recommendations 1 and 2.

FY 2009 Training dates for on site COTR Training

Course

Basic COTR	October 21-23, 2008
Basic COTR	August 4 - 6, 2009
Writing for Results (SOW)	November 18 - 19, 2008
Writing for Results (SOW)	May 19 - 20, 2009

Appendix B – Management Comments



Office of the Director
Bureau of Consumer Protection

UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
WASHINGTON, D.C. 20580

September 22, 2009

TO: John Seeba
Inspector General

FROM: David Vladeck *DV/DK*
Director

SUBJECT: Response to Draft Report on COTR Oversight of Sole Source Contracts

Thank you for the opportunity to respond to the recommendations in the draft inspection report, dated September 8, 2009, regarding COTR Oversight of Sole Source Contracts. We agree with your recommendation that the Assistant CFO for Acquisition, in coordination with the Bureaus, should work with representatives of the Federal Acquisition Institute to develop customized introductory and continuing training programs to address the specific needs of FTC COTRs who oversee expert witness and consultant contracts. We think it would be useful if basic and customized training was accessible through the agency's e-Train learning system. We also concur with your recommendation that the Assistant CFO for Acquisition develop a brochure for distribution to staff that explains the contracting process and the requirements to assist the acquisition staff in completing a contracting action. Further, we believe that, if the training is customized to address our specific needs, the bi-annual COTR training requirement should be condensed. The current requirement for 40 hours of COTR training every two years is cumbersome for our staff, many of whom perform minimal COTR duties.

With regard to your final recommendation to include COTR duties in performance plans, we believe that would be appropriate only for a limited number of employees whose COTR duties are a major component of their jobs. While these duties are important for the achievement of agency outcomes, for many employees, the COTR duties are infrequent or non-recurring, and, therefore, we believe that they should not be specifically listed in their performance plans. To maintain the flexibility needed for changing work requirements, we believe that any performance issues related to COTR duties should be addressed within the context of the more broadly-stated critical elements and performance standards related to communication, productivity, initiative, teamwork, and professionalism.

We appreciate the opportunity to respond to the recommendations in the report, and hope the information we have provided is helpful.