



Office of Inspector General

Follow-up Management Advisory Review on
FLRA's Appointment of Contracting
Officer's Representatives

**FOLLOW-UP MANAGEMENT
ADVISORY REVIEW ON
FLRA'S APPOINTMENT OF
CONTRACTING OFFICER'S
REPRESENTATIVES**

Report No. MAR-22-05

May 2022

Federal Labor Relations Authority
1400 K Street, N.W. Suite 250, Washington, D.C. 20424

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Acronyms

ASD	Administrative Services Division (includes contracting)
CLP	Continuous Learning Points
CO	Contracting Officer
COR	Contracting Officer's Representative
EIS	Enterprise Infrastructure Solutions
FAC	Federal Acquisition Certification
FAC-C	Federal Acquisition Certification in Contracting
FAC-COR	Federal Acquisition Certification for Contracting Officer's Representatives
FAI	Federal Acquisition Institute
FAITAS	Federal Acquisition Institute Training Acquisition System
FAR	Federal Acquisition Regulation
FLRA	Federal Labor Relations Authority
GAO	Government Accountability Office
GSA	U.S. General Services Administration
IRMD	Information Resources Management Division
OCO	Ordering Contract Officer
OFPP	Office of Federal Procurement Policy
OIG	Office of Inspector General
POP	Period of Performance

Follow-up Management Advisory Review on FLRA's Appointment of Contracting Officer's Representatives

Report No. MAR-22-05

May 25, 2022

The Honorable Ernest DuBester, Chairman

This report presents the results of our follow-up review on the Federal Labor Relations Authority's (FLRA) implementation of the six agreed upon actions recommended in our "Management Advisory Review on FLRA's Appointment of Contracting Officer's Representatives" (MAR-20-07). We found that FLRA had satisfactorily implemented five of the six recommendations. The recommendation to timely appoint Contracting Officer's Representatives (CORs) to FLRA contracts was not implemented and remains open.

Background

On September 8, 2020, the FLRA Office of Inspector General (OIG) issued a report, "Management Advisory Review on FLRA's Appointment of Contracting Officer's Representatives" (MAR-20-07). The objectives of this follow-up review were to determine whether the FLRA acceptably resolved and implemented six recommendations made in our report.

Federal agencies usually spend a significant amount of their budgets on contracted goods and services. Our 2020 report on FLRA's appointment of CORs found that, FLRA obligated approximately 11.6 percent of its budget on contracted items (for Fiscal Year 2019). Regarding Federal contracts, a Government Accountability Office (GAO) study noted that, "[E]ffective contract oversight, which includes effective internal controls throughout the contracting process, is essential to protecting government and taxpayer interests."¹

To help agencies effectively manage the contracting process, Congress established the Office of Federal Procurement Policy (OFPP) within the Office of Management and Budget. OFPP put into place certification and training requirements that apply to Contracting Officers (COs) and CORs² (collectively referred to as Acquisition Staff in this report). These requirements are effectuated through the Federal Acquisition Institute (FAI). In addition, the Federal Acquisition Regulation (FAR),³ which controls much of the federal contracting process, also has rules governing Acquisition Staff and their duties.

Prior Year Results

Our first review of FLRA's appointment of CORs found that the Federal Acquisition Certification (FAC) requirements for the appointment and retention of some of the Acquisition Staff were not always being followed; resulting in some of this staff not being properly certified for their acquisition duties. This occurred because some of the

¹ United States GAO, *Contract Audits: Role in Helping Ensure Effective Oversight and Reducing Improper Payments*, GAO-11-331T (2011) <https://www.gao.gov/assets/130/125451.pdf>

² OFPP has requirements for program and project managers but is not a topic discussed further within this report.

³ 48 C.F.R.

Acquisition Staff did not know, or apparently did not know, what their FAC requirements were: i.e., the number of Continuous Learning Points (CLPs)⁴ that were needed every 2 years, and that they needed to be registered in the government's contracting system. In addition, management was not tracking the Acquisition Staff's learning activity or their FAC certification status.

Additional issues were also found in that certain FAR requirements related to COR appointments were not being implemented. Namely, CORs were not being appointed early in the acquisition process. The result can be a less knowledgeable COR or a COR that maybe less motivated because they did not help develop the needs for the contract. In addition, we noted some FAR implementation shortfalls, i.e., missing information in the COR designation letters. The letters did not specify the period for which CORs were responsible for their contracts, and copies of designation letters describing the authorities and limitations of the CORs were not being sent to the contactors.

Results of Review

Below we have restated the 6 recommendations from the "Management Advisory Review on FLRA's Appointment of Contracting Officer's Representatives (CORs), MAR 20-07." Under each recommendation is a discussion of management's corrective action or of action that management still needs to complete. This is followed by a statement regarding the recommendation's status as to whether it remains open or has been closed.

Recommendation 1. The Executive Director [should] require quarterly certification e-mails from the CO that attest to employees being registered in [Federal Acquisition Institute Training Acquisition System] FAITAS prior to their certification and appointment as CORs, and that all current CORs are certified with appropriate training having been completed.

The Director of the Administrative Services Division (ASD) stated that she had only taken over as the head of contracting in October of 2021, and so had just in the last several months implemented this and the other recommendations from the OIG's report on CORs. In accordance with this recommendation, we saw an email from ASD's director to FLRA's Executive Director that dealt specifically with the certification status of Acquisition Staff, and then several months later a second email discussing contracting that included some certification related information. Given the recency of the ASD director's assumption of contracting oversight, we consider this recommendation to have been implemented.

Status: The recommendation has been closed.

Recommendation 2. The Executive Director [should] consider requiring supervisors to have FAC-COR [(Federal Acquisition Certification for CORs)] and FAC-C certification [(Federal Acquisition Certification in Contracting)] requirements and duties in their

⁴ CLPs are usually the same as the hours needed to complete or attend an acquisition related training course or conference as determined by FAI. CLPs can also be earned for other professional experiences and/or activities subject to prior agreements with supervisors.

employees' performance appraisals [plans] as ratable performance elements, as applicable.

Management considered our recommendation and in response to our original COR report stated that, "[t]he Agency will ensure that all COs and CORs have a critical element in their performance standards on their certification as a CO or COR." We reviewed the Acquisition Staff's performance plan information for performance elements as described in the footnote below⁵ and found critical performance elements in all of the performance plans reviewed.⁶

Status: The recommendation has been closed.

Recommendation 3. The Director, ASD, [should] collect, retain, and track all FAC and CLP certificates showing FAC certification or recertification, related training and continuous learning, provide timely advance notification to certificate holders of pending certificate expirations and related consequences, and timely suspend COR and CO duties and authorities, with formal suspension of duties and authorities of the CO by the Executive Director to coincide with the lack of FAC certification or documentation of such, should that occur.

Copies were provided of FAC certificates and CLP documentation sufficient to verify that FLRA's regular Acquisition Staff were certified or at least had taken sufficient FAC training to be certified at the minimum level.⁷ At least 2 CORs were being scheduled to take level II COR certification training later this year. In addition, ASD held a meeting with CORs to provide training and discuss the COR program. No notice of pending certificate expirations or suspension of duties were required to be given to Acquisition Staff since the issuance of the 2020 COR report.

Status: The recommendation has been closed.

Recommendation 4. The Executive Director [should] require that the COR and CO each submit a copy of their current FAC certificate or within 90 days of this report obtain their FAC certifications or recertifications and provide a copy of those certificates, with a failure to provide such certificates resulting in an immediate suspension of COR or CO duties, as applicable, until such a time as the certificate is provided.

ASD provided FAC certifications for all Acquisition Staff that were unable to provide their certifications at the time of the original COR review report, MAR-20-07. All certifications were issued within 90 days of the issuance of the original report on CORs. No suspensions of personnel were required for failure to provide certifications.

Status: The recommendation has been closed.

⁵ We looked at COR performance plan documents to see if they contained a COR critical element or elements (we did not review FLRA's Inspector General's plan, who is also a COR). We did not review performance plan documentation for COs due to turnover in that department.

⁶ Maintaining COR certification was not addressed in all plans.

⁷ Due to FAI system changes new FACs were not issued during the period reviewed.

Recommendation 5. The Director, ASD, [should] appoint [(designate)] CORs as soon as it is apparent that there is a need for a product or service that will be acquired and a COR will be needed.

Management concurred with the recommendation in our prior COR report, MAR-20-07, and issued a corrective action plan that called for “[w]orking with the program office to determine who the COR will be [as soon as possible] ASAP.” However, for 3 of the 4 new contracts awarded,⁸ we found none of these to have CORs that were appointed timely and for the remaining contract, no COR was appointed. For the 3 new contracts with untimely appointed CORs, no CORs were appointed prior to any of the contract’s starting period of performance (POP) dates. COR appointments lagged the starting POP dates by between 13 to 25 days, based on the finalization of the COR appointments.

The remaining new contract for which no COR was appointed,⁹ was issued under a U.S. General Services Administration (GSA) Government-wide acquisition contract¹⁰ that is available to Federal agencies for their technology and telecommunications needs. By its nature, these acquisitions have some technical complexity. FLRA has needed to provide feedback to the vendor about the migration of its technology, and in the future FLRA will need to provide oversight of billing and arranging service timing, etc... For this contract, FLRA has a point of contact (POC), the director of the Information Resources Management Division (IRMD), who has been providing the vendor the feedback we mentioned; however, he thought a COR had been appointed to begin performing the COR duties. Later the director said that, neither he nor the possible COR were aware of a COR designation letter having been issued. As of the end date of our fieldwork, no COR had been appointed.

ASD’s director, in response to a preliminary draft of this report stated that, she has requested the current CO issue a COR designation letter to the IRMD director, but later recognized that his appointment would not be proper and said that because of FAI changes, i.e., CLPs not being recorded and therefore the IRMD director not having his FAC-COR, that ASD would retain his services only as a POC.¹¹ Although we agree that someone is needed to perform COR duties for the EIS contract, that duty needs to be assigned to a FAC-COR. The EIS contract requirements specify that FAI certification is required for CORs.¹² Accordingly, FLRA needs to ensure that a different COR with certification is designated on this contract or the IRMD director obtains his FAC-COR.

⁸ We relied on ASD’s information about recently awarded contracts and whether a COR was assigned. We did not include in our analysis as new contracts, awards renewed under contract option agreements.

⁹ A “point of contact” (POC) was named for this contract; this is discussed later in the paragraph.

¹⁰ This agreement is the Enterprise Infrastructure Solution’s (EIS) contract.

¹¹ The ASD director noted that the POC has EIS contract training; however this is only needed by COs so that they can become a GSA authorized Ordering Contract Officers (OCOs) and can issue task orders from the contract (and also appoint CORs). FLRA currently does not have an OCO and it will need to resolve this issue to appoint a COR.

¹² The EIS contract states, “[t]he COR is a federal employee with Federal Acquisition Certification...” A non-certified COR is permitted for agencies not using FAI’s certification process (i.e., not applicable to FLRA). General Services Administration, *Enterprise Infrastructure Solutions (EIS) Contract*, Contract Administration Data, Section G.2.2.1.2 (July 2021).

In addition, ASD's director said, regarding the appointment of CORs to firm-fixed-price contracts that, "moving forward on firm fixed priced contracts that are straightforward and non-complex, a COR may not be appointed." This actually has been FLRA's past practice as 6 purchase orders at the time of our last COR review had no COR assigned. We did not (and do not) take exception to no CORs having been assigned for these type of contracts because of the ambiguous language (and for other reasons) of FAR 1.602-2 that addresses this issue.

ASD's director met with managers in October 2021 to discuss COR requirements for different offices, but to date no significant change to the timeliness of COR appointments was noted.¹³ This recommendation has not yet been implemented.

Status: The recommendation remains open.

Management's Response: The Agency believes it has successfully met the initial recommendation and FAR guidance to appoint a COR as soon as practical. The contracts reviewed during this audit were all firm fixed price contracts and the Enterprise Infrastructure Solutions (EIS) agreement did have an onset of specialized requirements, and although this is an information technology procurement, it is for telephone service and is largely a standard effort with minimal complexities. Given these factors, it is reasonable the Contracting Officer determined the EIS trained, technically proficient, previous Contracting Officer Representative (2020) named as the agreement Agency POC is more than sufficiently qualified to provide fiscal oversight and contract monitoring.

Additionally, regarding not appointing a COR for the EIS contract, the Federal Acquisition Institute (FAI) which oversees the government acquisition community certifications has been undergoing change for the past year. The entire Government Acquisition Community has been affected and waiting guidance regarding changes to the certification programs. Guidance became available May 1, 2022. The FLRA earlier in FY22 finalized the GSA Enterprise Infrastructure Solution (EIS) procurement for our national telephone services. GSA established additional requirements outside of the FAR for this contract vehicle. We are compliant with GSA requirements and it is expected the Agency POC will be a reinstated COR as soon as reasonably practical.

Regarding the 3 of the 4 new contracts determined to not have a COR appointed timely, FAR 1.602-2 Provides discretion to the Contracting Officer in the designating and authorizing in writing a Contracting Officer's Representative (COR) on firm Fixed Priced contracts. However, the Administrative Services Division enhanced commitment to fiscal edification and prudence in appointing CORs. Appointment after contract award should not equate to delinquency when not a requirement and when appointed within the first few weeks of the award. These are standard, straightforward non-complex service agreements requiring 30 days of service prior to invoicing. The Agency is small and often a determination on assigning a COR is not

¹³ Two CORs in the last report were noted as being appointed untimely with another COR appointment's timeliness being unknown.

done until after award. Again, at no point were any of the contracts without oversight, the CO and program office maintain contract oversight at all times.

The full text of management's comments can be seen in Appendix 2.

OIG Comment: Before providing comments on management's response, please note that we removed from our report any mention that the FAR or the EIS contract requires the appointment of a COR to the EIS contract.

We are disappointed management considers this finding closed when 3 out of 4 new contract awards had CORs that were not appointed timely, and 1 contract still awaits to have a COR appointed, where the need for a COR was long ago identified. We note, however, that management confirmed in their response that they plan to appoint a COR to the EIS contract as soon as possible, which will resolve this open issue.

The CO determines whether and when to appoint a COR to assist in contract administration. FLRA's CO made that determination and appointed 3 COR's after the contract performance period began. We questioned FLRA's current CO on appointing COR's and obtained the following responses: "CORs are appointed before contract award. If the agency neglected to appoint a COR prior to award (any time before the contract is issued), it's done before the Po[O]P begins," and also that, "CORs are mandatory on all contracts, except firm fixed price contracts. The CO can choose not to appoint a COR and retain COR duties on any contract (not the best solution though)."

Recommendation 6. The Director, ASD, [should] revise his COR designation letter to include the effective period or dates of the COR's designation for each contract, with a carbon copy ("cc") notation on the designation letter to the contractor, and with the CO sending a copy of the designation letter to the contractor upon the acceptance of the designation by the employee.

The COR designation letter was changed to contain the contract's period of performance dates, and also states that the designated COR is responsible for ensuring the contract's requirements are met during this period or by the specified delivery date. ASD did not add a "cc" notation with the contractor's name to its COR designation letters, but it did provide screen prints of e-mails or other evidence that copies of COR designation letters were sent to contractors¹⁴ for its 3 recently awarded contracts.¹⁵

Status: The recommendation has been closed.

¹⁴ COR designation letters were not sent prior to this follow-up review, but management said they are committed to contractors continuing to be provided copies in the future.

¹⁵ See Footnote 8.

Appendix 1: Objectives, Scope, and Methodology

The objectives of this follow-up review were to determine whether the FLRA acceptably resolved and implemented six recommendations made in our report, MAR 20-07, and whether the recommendations should be closed. Our fieldwork was conducted remotely beginning February 24, 2022 through April 4, 2022 and included the review of activity from August 27, 2021¹⁶ through April 4 2022.¹⁷

We requested documents that attest to FAC certification tracking. Also requested were performance appraisal [plan] related documents for CORs, CLP certificates, FAC certificates and certifications' earned information. In addition, we requested procurement policies or established processes related to CORs, a listing of contracts or contracts renewed with their POPs and CORs, and revised COR designation letters with evidence of its distribution to the affected contractor.

All the requested information that was provided, together with management comments about recommendation implementation were reviewed and evaluated to determine compliance with the MAR-20-07 report recommendations. We documented all the review activity and began drafting a report on the implementation of the recommendations. A discussion draft report for management's comments and later a final draft report for management's written responses were sent. We modified and/or incorporated management's comments and responses into our report as we deemed appropriate, and the final report was issued.

¹⁶ Although our review period began August 27, 2021, we allowed for any remediation of weaknesses made later in the period to take into account that the ASD director had only taken over as the head of contracting on October 1, 2021. Some of the documents and information utilized for this review were obtained during our initial review that was postponed. See the next footnote.

¹⁷ Earlier work on this review began November 12, 2020 with the OIG's review and feedback on management's Corrective Action Plan. The original entrance conference was held July 2, 2021, but follow-up work was postponed on August 26, 2021 by the Inspector General to allow time for ASD's new director to implement the recommendations and to make other changes to contracting procedures. A second follow-up entrance conference was held February 24, 2022.

Appendix 2: Management Response

MEMORANDUM

TO: Dana Rooney
Inspector General

FROM: Michael Jeffries
Executive Director

SUBJECT: Follow-up Management Advisory Review on FLRA's Appointment of Contracting Officer's Representatives

Thank you for the opportunity to review and provide comments on the Office of Inspector General's (OIG) draft Management Advisory Review report, **"Follow-up Management Advisory Review on FLRA's Appointment of Contracting Officer's Representatives."** The Federal Labor Relations Authority (FLRA) appreciates the comprehensive performance audit of our compliance with implementation of robust Acquisition Planning methodology. We are aware of the benefits to include better defined requirements, effective agreements in the procurement of goods and service, and achieving fiscal efficiency in the monitoring and tracking of services and deliverables.

We are pleased with the successful closing of 5 of the 6 recommendations. We view the summary verbiage to be without differentiation consideration afforded by the Federal Acquisition Regulations (FAR) for non-complex, straightforward agreements with a dollar amount of \$250K or below. FAR Part 13 provides the specifications for the Simplified Acquisition Threshold (SAT). We think it appropriate to acknowledge at least 70 percent of the FLRA procurements are Simplified Acquisitions on a Firm Fixed Priced (FFP) contract. FAR 1.602-2 Provides discretion to the Contracting Officer in the designating and authorizing in writing a Contracting Officer's Representative (COR) on firm Fixed Priced contracts.

Recommendation 5. The Director, ASD, [should] appoint [(designate)] CORs as soon as it is apparent that there is a need for a product or service that will be acquired and a COR will be needed.

Management concurred with the recommendation in our prior COR report, MAR-20-07, and issued a corrective action plan that called for "[w]orking with the program office to determine who the COR will be [as soon as possible] ASAP."

Management Response:

The Agency believes it has successfully met the initial recommendation and FAR guidance to appoint a COR as soon as practical. The contracts reviewed during this audit were all firm fixed price contracts and the Enterprise Infrastructure Solutions (EIS) agreement did have an onset of specialized requirements, and although this is an information technology procurement, it is for telephone service and is largely a standard effort with minimal complexities. Given these factors,

it is reasonable the Contracting Officer determined the EIS trained, technically proficient, previous Contracting Officer Representative (2020) named as the agreement Agency POC is more than sufficiently qualified to provide fiscal oversight and contract monitoring. Additionally, regarding not appointing a COR for the EIS contract, the Federal Acquisition Institute (FAI) which oversees the government acquisition community certifications has been undergoing change for the past year. The entire Government Acquisition Community has been affected and waiting guidance regarding changes to the certification programs. Guidance became available May 1, 2022. The FLRA earlier in FY22 finalized the GSA Enterprise Infrastructure Solution (EIS) procurement for our national telephone services. GSA established additional requirements outside of the FAR for this contract vehicle. We are compliant with GSA requirements and it is expected the Agency POC will be a reinstated COR as soon as reasonably practical.

Regarding the 3 of the 4 new contracts determined to not have a COR appointed timely, FAR 1.602-2 Provides discretion to the Contracting Officer in the designating and authorizing in writing a Contracting Officer's Representative (COR) on firm Fixed Priced contracts. However, the Administrative Services Division enhanced commitment to fiscal edification and prudence in appointing CORs. Appointment after contract award should not equate to delinquency when not a requirement and when appointed within the first few weeks of the award. These are standard, straightforward non-complex service agreements requiring 30 days of service prior to invoicing. The Agency is small and often a determination on assigning a COR is not done until after award. Again, at no point were any of the contracts without oversight, the CO and program office maintain contract oversight at all times.

The Agency believes we have met the intent of the recommendation and while I respect and understand the IGs right to keep the recommendation open, the Agency will provide a memo accepting the minimal/null risk remaining and request the finding be closed.

We would like to thank the OIG for your efforts and continued collaboration in support of FLRA programs.

Appendix 3: Report Distribution

Federal Labor Relations Authority

The Honorable, Colleen Duffy Kiko, Member

The Honorable, Susan Tsui Grundmann, Member

Michael Jeffries, Executive Director

Pershette Wakefield, Director, Administrative Services Division