



Office of Inspector General

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

MANAGEMENT ADVISORY
REVIEW ON FLRA'S
APPOINTMENT OF
CONTRACTING OFFICER'S
REPRESENTATIVES

Report No. MAR-20-07
September 2020

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

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Abbreviations

ACM	Acquisition Career Manager
ASD	Administrative Services Division
CLP	Continuous Learning Points
CO	Contracting Officer
COR	Contracting Officer’s Representative
DAU	Defense Acquisition University
DOD	Department of Defense
FAC	Federal Acquisition Certification
FAI	Federal Acquisition Institute
FAITAS	Federal Acquisition Institute Training Acquisition System
FAR	Federal Acquisition Regulation
FFP	Firm-Fixed-Price
FLRA	Federal Labor Relations Authority
FY	Fiscal Year
GAO	Government Accountability Office
GSA	General Services Administration
OFPP	Office of Federal Procurement Policy
OIG	Office of Inspector General
OMB	Office of Management and Budget
PO	Purchase Order
SACM	Super Agency Certification Manager

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

Report No. MAR-20-07

September 8, 2020

The Honorable Colleen Duffy Kiko, Chairman

The Federal Labor Relations Authority (FLRA) Office of Inspector General (OIG) completed a Management Advisory Review of FLRA's Appointment of Contracting Officer's Representatives (CORs).

The objective was to assess whether FLRA employees assuming the responsibilities of a COR were appropriately certified and whether FLRA complied with the Office of Management and Budget (OMB) and the Federal Acquisition Regulation (FAR) requirements for appointing CORs to contracts for Fiscal Year (FY) 2020 (to date). Our review found several areas that need improvement.

Results in Brief

The OIG performed a review of FLRA's appointment of COR's to verify compliance with OMB memorandums and the FAR regulation.¹ As part of this review, we found that FLRA has only one appointed Contracting Officer (CO), and as such, he has primary responsibility for FLRA's implementation of the FAR, including the appointment of CORs. The CO is required under the FAR to designate a certified COR for most types of contracts or retain the responsibilities of the COR. Also, the FAR assigns responsibility to the CO to safeguard the contractual interests of the United States.

The designation of a certified and properly trained COR for each contract (or retention and fulfillment of COR duties by the CO for the contract) not only fulfills the FAR's requirement for such, but it helps the CO to meet his obligation to safeguard the contractual interests of the United States. However, we found that a COR and possibly the CO were not currently certified or could not provide documentation for their current certification for their COR roles. Failure to complete the biennial continuous learning required by the FAR (as specified by OMB) automatically results in the expiration (or the lapsing) of contracting personnel's (CORs or COs) certifications, which should result in the contracting personnel being ineligible to continue their contracting duties.

Other issues identified include the following:

- Late appointment of CORs to contracts.
- The period of COR responsibility for contract oversight is not being provided in the COR designation letter.
- Contractors are not being sent copies of the COR designation letters.

¹ 48 C.F.R.

To address CORs not being certified and for the other unimplemented COR requirements, we made six recommendations; four recommendations address the lack of certification by contracting personnel and two recommendations address the late and inadequate COR designation procedures.

Background

Federal civilian agencies spent billions of dollars for contracted services and products during FY 2019, and although not comparable in magnitude, FLRA spending on contracts was a significant part of its budget, totaling 11.6% of its obligations, or about 3 million dollars during the period.² Regarding the spending of Federal funds for contracted services by Federal agencies, OMB's Circular A-76 states:

...when properly used, provide a wide variety of useful services that play an important part in helping agencies to accomplish their missions. Agencies use service contracts to acquire special knowledge and skills not available in the Government, obtain cost effective services, or obtain temporary or intermittent services, among other reasons.³

The Government Accountability Office (GAO), in one of its studies highlighted the following concerning the use of contactors:

Agencies across the government are increasingly reliant on contractors to execute their missions. With hundreds of billions of taxpayer dollars at stake, the government needs strong controls to provide reasonable assurance that these contract funds are not being lost to improper payments (fraud and errors), waste, and mismanagement. Effective contract oversight, which includes effective internal controls throughout the contracting process, is essential to protecting government and taxpayer interests.⁴

As pointed out by OMB and GAO, contracted services play a vital role in helping Federal agencies meet their mission requirements. For FLRA, it is no less so, with contracts being issued for computer services, personnel services, and for access to online legal research, et cetera. However, to ensure that the amounts charged and the services provided are appropriate, GAO found that contract oversight needs to be maintained throughout the contract to help ensure there is no fraud, waste, abuse or mismanagement, and to protect the government interests.

² The percentage information was computed by taking 2019 contract expenditure data on USASpending.gov and dividing that by the amount of 2019 obligations shown on the FLRA Congressional Budget Justification for 2021. See <https://www.flra.gov/system/files/webfm/FLRA%20Agency-wide/Public%20Affairs/CBJ/FLRA%202021%20CBJ%20Final.pdf>

³ U.S. Executive Office of The President, *OMB Circular A-76, Revised Supplemental Handbook, Performance Of Commercial Activities*, (1996), <https://www.whitehouse.gov/wp-content/uploads/2017/11/1997-Supplemental-Handbook-to-OMB-Circular-A-76.pdf>

⁴ 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>

Congress, recognizing the need to have effective contract oversight and procurement procedures created the Office of Federal Procurement Policy (OFPP) within the Office of Management and Budget.⁵ The OFPP established policies for the certification and training of CORs and COs.⁶ OFPP also provides policy direction to the Federal Acquisition Institute (FAI), that provides certification and training for CORs and COs, and maintains and tracks this information within its system.⁷ In addition, OFPP developed guidelines for the issuance of the FAR, which is issued by the Department of Defense (DOD), the General Services Administration (GSA) and the National Aeronautics and Space Administration. “The FAR is the primary regulation for use by all executive agencies in their acquisition of supplies and services with appropriated funds.”⁸

Findings

As mentioned under the background section above, COR’s assist COs in managing agency contracts by helping to provide oversight and helping to ensure that contractors are meeting their contractual responsibilities. Therefore, it is important that employees taking on COR responsibilities are knowledgeable about the contracts they oversee and about the regulations which govern them. The government has instituted a framework of laws, regulations and regulators to help ensure this oversight knowledge is known and utilized; not meeting these requirements jeopardizes the integrity of the contracting oversight process.

Finding No. 1 - CORs Not Certified

The OFPP’s requirements for COR certification, training and the biennial requirement for continuous learning were issued in a Memorandum dated September 6, 2011, “Revisions to the Federal Acquisition Certification [(FAC)] for Contracting Officer’s Representatives (FAC-COR).” The COR certification requirements became effective January 1, 2012 for all civilian agencies. The memorandum requires all CORs to become certified at 1 of 3 levels, according to the risk and complexity of the contract(s) being overseen by the COR.

⁵ 41 U.S.C. § 1101. OFPP was created to: “(1) provide overall direction of Government-wide procurement policies, regulations, procedures, and forms for executive agencies; and (2) promote economy, efficiency, and effectiveness in the procurement of property and services by the executive branch of the Federal Government.”

⁶ CORs can assist in the development of contract requirements, oversee that contractor responsibilities are met, and assist the CO in managing the contract. COs are appointed by agencies and are the only individuals authorized to sign contracts on behalf of the United States. Numerous other responsibilities are associated with the COs contracting authority.

⁷ FAI’s, training and tracking system is known as, the Federal Acquisition Institute Training Acquisition System or FAITAS. The training provided by FAI and its affiliate, the Defense Acquisition University (DAU), and other approved training courses are reflected in the history FAI maintains for CORs and COs. For training courses taken outside of FAI or DAU, training equivalency requests are submitted for approval through the FAITAS system, which has a tool (the agency must have pre-authorized the use of this tool) for such requests that allows for the uploads of documents.

⁸ The FAR, Volume I-Parts 1 To 51, Foreword (2019),
<https://acquisition.gov/sites/default/files/current/far/pdf/FAR.pdf>

The COR certification requirements are the following: for a “Level I” certification (the contracts with the least risk, e.g., supply contracts and orders), 8 hours of training⁹ and no experience; for a “Level II” certification (for contracts with moderate to high complexity (e.g., supply and service contracts)), 40 hours of training and 1 year of COR experience; and for a “Level III” certification (for contracts that are the most complex and/or agency mission critical), 60 hours of training and 2 years of COR experience on moderate to high complexity contracts that require significant acquisition investment. All the hourly training requirements for certification, cited above, are also the biennial continuous learning requirements for COR recertification, except for level III continuous learning, which has a 40-hour Continuous Learning Point (CLP) requirement.

FLRA has 14 active contracts, 8 of which require a COR appointment, the remaining 6 contracts are issued as purchase orders (POs) for which no COR was necessary.¹⁰ FLRA had 2 CORs appointed on 3 FY to date 2020 contracts,¹¹ the CO retained the COR responsibilities for 5 other contracts. As a result, there were 3 individuals performing COR duties on 8 of FLRA’s 14 contracts. Of the 3 employees performing COR duties, only 1 provided evidence of a current COR certification (i.e., the appropriate courses were taken, and the required CLPs were earned to retain the COR certification). She is a COR on 1 of the 8 contracts, leaving the other 7 contracts, approximately 88% of the contracts, without certified personnel (or personnel that could not provide evidence of their certification) overseeing them.

The other employee appointed as COR was unable to provide his original COR certification and he did not have a current COR certification. Instead of the 40 biennial CLP hours we believe were needed for his Level II COR certification renewal, he had only earned 2 hours.¹²

OFPP’s 2011 memorandum regarding certification of CORs states that, “CORs must have the minimum training and experience... and [they] must maintain their skills currency through continuous learning.” Further, that “it is the CORs responsibility to ensure that his or her continuous learning requirements are met,” that “[A]gencies and individuals are responsible for maintaining certification documentation...” that a COR’s certification expires if continuous learning requirements are not met, that the CO may revoke the COR appointment for not meeting those requirements, and that once the COR

⁹ Training courses are assigned specific “Continuous Learning Points” and are said to approximate each hour spent on the course.

¹⁰ The CO maintains that the POs are not contracts and that no COR is necessary. We disagree that the POs are not contracts but we do not dispute the CO’s contention that CORs are not needed. Regarding the definition of a contract, FAR 2.101 states a “[c]ontract . . . includes all types of commitments that obligate the Government to an expenditure of appropriated funds and . . . include . . . orders, such as *purchase orders*.” Regarding the need for CORs, which comes from the FAR, CORs may not be necessary because of the: (1) ambiguous language concerning when CORs are required for firm-fixed-price/fixed-price contracts, (2) the lower risk involved in these particular POs, i.e., they are FFP contracts with annual amounts under the “Simplified Acquisition Threshold” and (3) because it was found that this position was consistent with the FAR’s guiding principles of minimizing administrative costs. FAR 1.102 (b)(2).

¹¹ These are contracts where work was performed during the period from, 10/1/19 through 4/30/20; the start of FLRA’s FY through the date we received the final list of FLRA contracts from the CO.

¹² The employee was said to have taken CLP courses for his original 2013 certification and that he was unaware of the biennial continuous learning requirement.

appointment is revoked, that the necessary training must be completed before the COR can be reinstated.¹³ Although the OFPP says that the CO “may revoke the COR appointment,”¹⁴ the FAR states that the CO should only designate (as CORs) employees that have FAC-COR certification and maintain that certification¹⁵ (i.e., CO’s should not utilize CORs that are not certified or do not remain certified).

Under the FAR 1.602-2, COs have the authority to retain the duties of a COR for Firm-Fixed-Price (FFP) contracts (contracts with a fixed price are often not complex). Since COs have contracting experience and have requirements for a higher amount of continuous learning (and in addition, a college educational requirements) than those required of CORs, it follows that COs should be competent to also perform the COR’s duties for these types of contracts. Regarding the certification and continuous learning requirement for COs, OFPP issued a memorandum on May 7, 2014, “Revisions to the Federal Acquisition Certification in Contracting (FAC-C),” which like the COR certification has 3 different certification levels depending upon the risk identified in the contracts being overseen.

All FAC-C certification levels require at least 80 CLPs to be earned biennially. However, when FLRA’s CO was asked to supply his FAC-C certificate and training documentation (or any other supporting documentation for his recertification and training, e.g., email correspondence), the only documentation provided was for 16 CLP credits earned in April 2018¹⁶ (which may or may not be applicable to the current period certification). The CO said, he was trying to collect the remaining documentation from other providers and from FAI but had so far been unable.

Per OFPP’s FAC-C memorandum, “[t]he FAC-C program applies to all executive agencies...,” and that those “holding Contracting Officer (CO) warrants ... must be certified...” Also, that “...FAITAS [is] the official system of records for the FAC-C program,” and that “agencies and individuals are responsible for maintaining certification supporting documentation...” In addition, that, “[a]ll contracting professionals were required to be registered in FAITAS by January 1, 2014.”

Completion of the biennial continuous learning requirements and the resultant recertification for CORs and COs helps to ensure that both CORs and COs remain knowledgeable about the rules that govern contracts and helps to reduce costly mistakes

¹³ The OFPP memo also states: “... the certification process shall be managed by each agency.” The agency’s chief acquisition and procurement personnel (and other agency officials) are responsible for developing and maintaining the acquisition training program and the “agency Acquisition Career Manager (ACM) is responsible for administering the agency certification program in accordance with this [OFPP’s] guidance.” Note: The Small Agency Council, of which FLRA is a part, appoints SACMs to small agencies. The sole function of the SACM is to support FAC and continuous learning achievement requests.

¹⁴ The DOD takes an additional step to ensure COR performance, and requires COR supervisors to include COR responsibilities throughout the period of the contract to be in the employee’s performance appraisal. *U.S. Department of Defense COR Handbook* (2012), https://www.acq.osd.mil/dpap/epic/cp/docs/USA001390-12_DoD_COR_Handbook_Signed.pdf. It should also be noted that OFPP’s 2011 memo recommends including COR responsibilities as a critical element in an employee’s performance appraisal, along with the recommendation that the COR’s supervisor have a performance standard related to oversight of COR responsibilities.

¹⁵ FAR 1.602-2.

¹⁶ Other documentation provided was for training completed in 2014 and a copy of the CO’s warrant of contracting authority with FLRA.

by both contracting officials and contractors. Given the FAR's and OFPP's requirements that CORs and COs need to be certified with appropriate documentation maintained, we believe FLRA needs to establish a method to monitor and enforce the certification, recertification, and continuous learning requirements for CORs and COs. Regardless of how FLRA chooses to monitor COR and CO certifications, the CO needs to know the certification status of his CORs and himself. In coordination with agency policy, if any, the CO needs to suspend COR designations if their FAC-COR certifications are not kept current. Similarly, the CO's contracting authority needs to be suspended by FLRA if the CO does not maintain currency with his FAC-C certification or the documentation for the certification is not maintained.

Recommendations:

To improve FLRA's COR program, we recommend that:

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

Management's Response

Management concurs with the recommendation and reported having begun work to timely implement it. Management stated that it is now requiring monthly status reports from procurement personnel regarding deficient CLP training and its date for completion. In addition, that they are reviewing and confirming with the agency's Super Agency Certification Manager that FAC certifications and FAITAS' registration requirements are being met.

OIG Comment

We appreciate management's agreement to resolve this recommendation and that it has already begun to address it. Management comment's, are included as Appendix 2.

2. The Executive Director consider requiring supervisors to have FAC-COR and FAC-C certification requirements and duties in their employees' performance appraisals as ratable performance elements, as applicable.

Management's Response

Management concurs with the recommendation and stated that FLRA will require both the CO and the CORs to have a critical element in their performance appraisals on FAC certification.

OIG Comment

We appreciate management's agreement to resolve this recommendation. Management comment's, are included as Appendix 2.

3. The Director, Administrative Services Division (ASD), 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.

Management's Response

Management concurs with the recommendation and reported that ASD has started to build an electronic records file to implement the recommendation.

OIG Comment

We appreciate management's agreement to resolve this recommendation and that it has already begun to address it. Management comment's, are included as Appendix 2.

4. The Executive Director 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.

Management's Response

Management concurs with the recommendation and stated that employees have already started to take their FAC certification training and that they will, at a minimum, meet the 90-day deadline to provide the Executive Director a copy of their CLP and FAC certificates.

OIG Comment

We appreciate management's agreement to resolve this recommendation and that it has already begun to address it. Management comment's, are included as Appendix 2.

Finding No. 2 - Other Requirements for CORs Not Implemented

COR Appointments/Designations Not Made Timely

The requirements for when CORs should be appointed to a contract are contained in Section 7.104 (e) of the FAR, that states, the "...COR [should be] nominated as early as practicable in the acquisition process..." and [t]he contracting officer shall designate and authorize a COR as early as practicable after the nomination." In addition, FAITAS' website explains that, "[t]hey [CORs] facilitate proper development of requirements and assist Contracting Officers in developing and managing their contracts."¹⁷ The development of requirements is done as part of the planning phase, before the solicitation, and negotiation and award phases.¹⁸

As discussed in previous parts of this report, there were 3 COR appointments made for

¹⁷ "Contracting Officer's Representative (FAC-COR)," Accessed June 23, 2020 6/23/20, FAITAS, <https://www.fai.gov/certification/fac-cor>

¹⁸ "Our Acquisition Process," Accessed, June 22, 2020, GSA's Office of Assisted Acquisition Services, <https://aas.gsa.gov/process.html>

FLRA contracts during the review period. For these CORs, we found that 2 CORs should have been appointed more timely and for the remaining COR, we could not determine when during the contracting process the COR was appointed.¹⁹ Regarding the untimely appointed CORs, they were appointed during the first month of the contract's period of performance.²⁰

When discussing the timeliness of COR appointments with management, they did not dispute the untimeliness of COR appointments. However, they did tell us that "others"²¹ often work on early phases of the contract, such as the solicitation, without knowing who will be the COR. The use of potential COR personnel in the earlier stages of the contracting process, who will not be nominated or named as CORs until later, might get at some of the reasons for why the FAR calls for early appointment of CORs (e.g., benefits derived by better acquisition requirements and more knowledgeable CORs) but still other reasons may exist. For example, if a person knows that he is (or going to be) the COR, their focus on the project is likely to be greater, which can have further positive impacts on both the quality of the acquisition requirements and on the knowledge of the COR. Earlier nomination of the COR can also allow for additional time for training and certification. In addition, earlier appointment of CORs, "as early as practicable," is required by the FAR. In contemplating the difficulties in nominating and appointing CORs early in the acquisition process, we believe that any difficulties FLRA might encounter are probably commensurate with the difficulties that other agencies might encounter.

Because of the potential benefits and the FAR requirement for nomination and appointment of CORs as early as possible in the acquisition process, we recommend that FLRA comply with the FAR's appointment timeframe for COR appointments.

COR Designation Letters Missing Information and Not Sent to the Contractor

FAR 1.602-2, regarding the COR designation, states the following:

- (7) [CORs] [s]hall be designated in writing, with copies furnished to the contractor and the contract administration office-
 - (i) Specifying the extent of the COR's authority to act on behalf of the contracting officer;
 - (ii) Identifying the limitations on the COR's authority;
 - (iii) Specifying the period covered by the designation;
 - (iv) Stating the authority is not redelegable; and
 - (v) Stating that the COR may be personally liable for unauthorized acts.

Item 7 of the above requirement specifies that a copy of the COR designation

¹⁹ The contract number listed on the designation letter could not be found on USAspending.gov, which was used to research the contract information.

²⁰ These CORs were appointed in the first contract years (the contract's base years) of 2015 and 2017, which were not during the review period.

²¹ We assumed this means employees who are knowledgeable about the subject matter of the acquisition and are potential COR appointees.

letter be sent to the Contractor.²² We noticed that the COR designation letter did not contain a carbon copy (“cc”) notation indicating that a copy of the letter had been sent to the contractor. So, to confirm whether a copy of the designation letter had been sent, we requested that one of the contractors verify its receipt, but they could not locate it. We also checked the contract to see if there was any CO communication with the contractor about the COR. The COR was named in the contract as a point of contact.

However, FLRA’s COR designation letter needs to be sent to the contractor as required by the FAR. The letter provides important information, it is the method by which the contractor is informed about the COR, and the COR’s roles, responsibilities, and limitations (especially that the COR is charged with overseeing the contract and that he cannot make changes to the contract or obligate the government for any costs). The CO should put a “cc:” to the contractor on each designation letter to indicate that a copy of the designation letter will be sent. The CO then needs to follow-through on sending a copy of the letter to the contractor after acceptance of the designation by the employee.²³

Regarding, the rest of the COR designation requirements listed in items (i) through (v), we found them to be incorporated in the COR designation letters, except for item (iii), specifying the period covered by the designation. There were no dates, nor were there any references to the period of the designation. From the contract numbers in the designation letter, the reader maybe able to estimate the contract period, but the period of specific COR responsibility needs to be assigned to avoid any misunderstanding that could result in a future lack of COR performance.

Recommendations:

To ensure FLRA’s CORs are appropriately appointed, we recommend that:

5. The Director, ASD, appoint 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’s Response

Management concurs with the recommendation and stated that a COR appointment will be made immediately, upon knowing who will be designated as the COR.

OIG Comment

We appreciate management’s concurrence with the recommendation, and we agree with their implementation plans provided an expeditious determination is made to identify the COR once the need for the COR has been identified. Management comment’s, are included as Appendix 2.

²² The requirement of furnishing a copy of the COR designation letter to the contract administration office is not germane, since FLRA does not have such an administrative office, other than defacto administration provided by the CO.

²³ The CO, when discussing this report said, that he agrees with it, and that he is “up to the challenge,” but emphasized that he lacks the support of larger contracting offices at other agencies, and that ASD also has to oversee 19 other programs.

6. The Director, ASD, 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.

Management's Response

Management concurs with the recommendation and stated that it has changed its COR designation memo to comply with the recommendation.

OIG Comment

We appreciate management's concurrence and timely implementation of the recommendation. Management comment's, are included as Appendix 2.

Appendix 1: Objectives, Scope, and Methodology

The objectives of the management advisory review were to determine whether FLRA employees assuming the responsibilities of a COR were appropriately certified and appointed to FLRA contracts in accordance with OMB and the FAR requirements.

We conducted this review between April and July 2020 utilizing information provided from employees based at FLRA's office in Washington, DC. The review encompassed COR certifications and their assignments to FLRA contracts that were in effect anytime during the period from October 1, 2019 through April 30, 2020.

Our methodology included background research of FLRA's invoice processing to determine what contracts were in effect during the review period, and who was listed as COR for those contracts. This information was compiled into a spreadsheet and sent to FLRA's CO for verification and for any corrections. Also, as part of our background research and for research into specific contracts, we looked at FLRA's filing information on USAspending.gov. We also looked at FLRA's Congressional Budget Justification for 2021 to get 2019 financial information. We started our field work by holding an entrance conference with FLRA's management to discuss the objective's, scope, and planned methodology, and to answer any questions.

For the review, we sought and/or obtained documentation that showed CORs (or the CO, who had assumed COR responsibilities) were FAC certified and that CORs had taken the continuous learning required to retain their FAC certifications. This information consisted mostly of CLP certificates, FAC certificates, and FAITAS system printouts that tracked this information. In addition, we obtained COR designation letters, and we made other requests for information related to the assumption of COR duties. Much of the documentation requested was not available because continuous learning was not done or because it could not be obtained.²⁴

We researched the FAR, OFPP Letters, FAI's website, FAITAS, and other sources of information to ascertain what was required of CORs and COs to obtain FAC certifications and maintain them, the background behind them, and also what the requirements were for appointing or assuming the duties of a COR. We also sought and obtained a legal opinion from the FLRA's Solicitor's Office²⁵ concerning the legal definition of a contract and under what circumstances a COR need not be appointed for a FFP contract.²⁶ See page 5. In addition, we discussed with FAI's help desk what training information was supposed to be maintained within FAITAS and the procedures utilized to get credit for CLP courses. Finally, we took note of what the ramifications were or could be for CORs or for the CO failing to maintain their FAC certifications.

We compared the aforementioned criteria to the current COR situations at FLRA and determined if there were any compliance shortfalls in FLRA's COR related activities, e.g., FAC certifications and COR designations, and what recommendations were needed to address any

²⁴ Per statements made by the CO, the information was not obtained.

²⁵ The Solicitor's Office is part of the FLRA, and the FLRA OIG exercises no oversight or control over the Solicitor's Office. Also, although the FLRA OIG relied on the Solicitor's Office for its legal opinion for a part of this report as mentioned above, the user should consider that its statement's, findings, conclusions and legal opinion may not be independent.

²⁶ We also discussed this wording directly with Solicitor's Office to help clarify its ambiguity.

issues. All meetings, correspondence, discussions, applicable research and comparisons between criteria and FLRA procedures were analyzed and documented to support the information in various draft versions of the report. This report was then drafted for issuance.

Appendix 2: Management Response



UNITED STATES OF AMERICA
FEDERAL LABOR RELATIONS AUTHORITY

September 1, 2020

MEMORANDUM

TO: Dana Rooney
Inspector General

FROM: Michael Jeffries
Executive Director

SUBJECT: Management Response to Draft Report Management Advisory Review on FLRA's Appointment of Contracting Officer's Representative (Report No. MAR-20-07)

Thank you for the opportunity to review and provide comments on the Office of Inspector General's (OIG) draft Management Advisory Review report "*FLRA's Appointment of Contracting Officer's Representative*" (Report No. MAR-20-07). The Federal Labor Relations Authority (FLRA) takes seriously its responsibility to ensure FLRA employees assigned responsibilities of a Contractor Officer Representative (COR) are appropriately certified and comply with the Office of Management and Budget (OMB) and the Federal Acquisition Regulation (FAR) requirements for appointing them.

We concur with the 6 recommendations associated with the 2 findings in the draft report. Below, we provide our responses

Recommendations for Finding No. 1 - CORs Not Certified.

1. *"The Executive Director require quarterly certification e-mails from the CO that attest to employees being registered in FAITAS prior to their certification and appointment as CORs, and that all current CORs are certified with appropriate training having been completed.*
2. *The Executive Director consider requiring supervisors to have FAC-COR and FAC-C certification requirements and duties in their employees' performance appraisals as ratable performance elements, as applicable.*
3. *The Director, Administrative Services Division (ASD), 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.*
4. *The Executive Director 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.”

Management Response: The Executive Director concurs with the recommendations and will work with the Director of Administrative Services Division to ensure they are implemented timely. The Agency has already begun to address each of the recommendations.

- The Agency has appointed the Executive Director as the Senior Procurement Executive (SPE).
- The SPE will issue a waiver for the CO to continue his CO duties during the 90 days while addressing CLPs.
- All three individuals identified in the report have begun training and will meet or exceed the recommendation to provide their current FAC certificate and CLPs within 90 days of this report.
- All Agency COs and CORs will report to the SPE and the Agency Chairman monthly as to the status of any deficient CLPs and estimated completion date.
- SPE will review completed training and confirm with the Super Agency Certification Managers (SACM) that all COs and CORs meet current government-wide Federal Acquisition Certification in Contracting (FAC-C) and Contracting Officer Representatives (FAC-COR) requirements and that all training is properly registered in the Federal Acquisition Institute Training Application System (FAITAS) or updated platform. The SPE and Agency Chairman will determine whether additional courses are necessary based on review and feedback from the SACM.
- The Agency will ensure that all COs and CORs have a critical element in their performance standards on their certification as a CO or COR.
- The Agency’s procurement policy will be revised, consistent with OFPP and FAI current requirements, and updated to incorporate any necessary steps/roles/duties in accordance with this report.
- Also, to immediately begin addressing the recommendations for keeping Agency COR certification records, the Director of ASD has begun building an electronic record file for all CORs and COs to strengthen the program records for retaining all relevant information.

Recommendations for Finding No. 2 - Other Requirements for CORs Not Implemented

5. *“The Director, ASD, appoint 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.*

6. *The Director, ASD, 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.”

Management Response: The Executive Director concurs with the recommendations and will work with the Director of Administrative Services Division to address them. The Agency has already implemented an updated COR’s designation memo to comply with this recommendation. Appointment of the COR will happen immediately upon knowing who that designee will be.

We appreciate your consideration of these responses in finalizing the report and look forward to continuing our efforts to find innovative ways to improve.

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, Ernest DuBester, Member

The Honorable, James Abbott, Member

Michael Jeffries, Executive Director

Xavier Storr, Director, Administrative Services Division