



AMTRAK | Office of
Inspector General
www.amtrakoig.gov

ACELA CAR PURCHASE DRAFT REQUEST FOR PROPOSAL:

Additional Requirements and Pre-Award Audit Clause
Needed to Help Assess Proposed Cost and Price

Report No. 009-2011 | September 21, 2011





Memorandum

To: Jeff Martin
Chief Logistics Officer

From: David R. Warren 
Assistant Inspector General, Audits

Date: September 21, 2011

Subject: *Acela Car Purchase Draft Request for Proposal: Additional Requirements and Pre-Award Audit Clause Needed to Help Assess Proposed Cost and Price (Report 009-2011)*

This is our report entitled *Acela Car Purchase Draft Request for Proposal: Additional Requirements and Pre-Award Audit Clause Needed to Help Assess Proposed Cost and Price (Report 009-2011)*. The objective of this audit was to review the draft request for proposal (RFP) and determine whether it contained adequate requirements to assess the proposed cost and price.

BACKGROUND

In August 2011, Amtrak issued an RFP to purchase 40 Acela coach cars through a firm, fixed-price contract. These cars will be inserted into the existing Acela trainsets and must integrate technologically as well as cosmetically with the current fleet. The coaches are to be equipped with all current applicable modifications provided by the original equipment manufacturer and/or by Amtrak. This includes all modifications and alterations that are currently in the process of implementation on the Acela fleet. Because the original equipment manufacturer holds the intellectual property required to produce the cars and maintains the original electronic manufacturing drawings, Amtrak plans to award the Acela coach car contract on a sole-source basis to the original manufacturer.

Amtrak Office of Inspector General
**Acela Car Purchase Draft Request for Proposal:
Additional Requirements and Pre-Award Audit Clause
Needed to Help Assess Proposed Cost and Price**
Report No. 009-2011, September 21, 2011

RESULTS IN BRIEF

While the draft RFP required the offeror to submit a price proposal that included necessary costs, there are two areas in the draft RFP that, if improved, would enhance Amtrak's ability to assess the reasonableness of the price proposal. These improvements represent acquisition best practices that are based on the Federal Acquisition Regulation. First, the draft RFP did not require that the offeror provide certified cost and pricing data sufficient for a detailed assessment of the reasonableness of the price proposal. Second, the draft RFP did not include a pre-award audit and inspection clause providing Amtrak with access to the offeror's supporting documentation. These gaps occurred because Amtrak's standard contracting policies for sole-source RFPs do not contain specific guidance on requirements for certified cost and pricing data or a pre-award audit clause. Without these elements, Amtrak will potentially not have sufficient information to assess the reasonableness of the offeror's proposal and negotiate a fair and reasonable firm, fixed price.

RFP CAN BE IMPROVED BY ADDING REQUIREMENTS TO HELP ASSESS COST AND PRICING DATA

When awarding a sole-source contract, best practices dictate that certain safeguards be used. While Amtrak is not required to comply with the Federal Acquisition Regulation, the regulation provides many best practices that serve to safeguard acquisition and procurement actions. The Federal Acquisition Regulation requires various safeguards when the federal government acquires goods and services on a sole-source basis. While the draft Acela RFP contains many of the Federal Acquisition Regulation-required safeguards, two areas exist where the draft Acela RFP and the procurement policy for standard RFP requirements can be improved.

The Federal Acquisition Regulation safeguards help assure that the federal government is obtaining goods and services at a fair and reasonable price. These safeguards include the requirement that, in certain circumstances, offerors submit certified cost or pricing

Amtrak Office of Inspector General
**Acela Car Purchase Draft Request for Proposal:
Additional Requirements and Pre-Award Audit Clause
Needed to Help Assess Proposed Cost and Price**
Report No. 009-2011, September 21, 2011

data with their proposals, and standard clauses, such as the requirement that each RFP include a pre-award audit and inspection clause.¹

Certified Cost and Pricing Data

The Acela draft RFP did not require the offeror to submit certified cost and pricing data. The submission requirement included in the Acela coach car draft RFP stated:

“Submit the Price Proposal on a firm fixed price basis (to include a breakdown of pricing as indicated) and include all costs of design, manufacture, labor, materials, tools, supplies, insurance, bonds or guarantees, and any other items necessary to successfully supply the Supplies described herein.”

This practice is not consistent with Amtrak’s procurement policies for contract modification, which require construction contractors to submit certified cost or pricing data in specified formats.² For example, Form 26CP, *Certification of Cost or Pricing Data*, requires the contractor to certify that its proposed costs are accurate, complete, and current at the time of submission. Also, Form 25, *Request for Cost Proposal*, requires the contractor to specifically identify the direct and indirect costs that support the proposal. The draft Acela coach car RFP did not require the offeror to certify that its cost and pricing data were accurate, complete, and current, nor did it require the additional forms that specifically identify direct and indirect costs.

Audit and Inspection Clause

The standard RFP used by the Procurement Department for the Acela coach car purchase did not include a pre-award audit and inspection clause. Such a clause would ensure that our office, Amtrak, or its representatives have access to the offeror’s supporting documentation, historical records, and personnel that support the development of the offeror’s proposal. We analyzed Amtrak’s general provisions and identified the audit and inspection clause that is effective for established contracts.

¹ The Federal Acquisition Regulation, section 2.101, defines certified cost or pricing data as cost or pricing data in which the offeror states that “...to the best of the person’s knowledge and belief, the cost or pricing data are accurate, complete, and current as of the date certain before the contract award.”

² The contract modification forms include forms 24EC, 25, 26CP, 27CP, 27FB, 27L, 27LB, 27M, and 27SP.

Amtrak Office of Inspector General
**Acela Car Purchase Draft Request for Proposal:
Additional Requirements and Pre-Award Audit Clause
Needed to Help Assess Proposed Cost and Price**
Report No. 009-2011, September 21, 2011

Using that, we identified the following elements that appear appropriate to establish an effective audit and inspection clause for RFPs:

- A. Offeror acknowledges and agrees that Amtrak's Office of Inspector General (OIG), Amtrak, or other Amtrak representatives, with reasonable notice, may inspect, copy, and/or audit offeror's data and records (in hard copy and/or electronic format) related in any way to the proposal. This includes, without limitation, all data and records relating to support for all direct and indirect costs or prices to be charged to Amtrak, as required in this request for proposal.*
- B. In connection with audit and inspection activities, Amtrak OIG or other Amtrak representatives shall be afforded, upon request, (1) access to offeror's facilities, (2) the opportunity to interview offeror's employees concerning any matter relating to the proposal, and (3) adequate and appropriate workspace.*
- C. Nothing in this proposal shall be construed to limit the rights, obligations, authority, or responsibilities of Amtrak OIG pursuant to the Inspector General Act of 1978, as amended.*
- D. The offeror acknowledges that the information resulting from the audit may be used in negotiations leading to a final contract award price.*

CONCLUSION

Procurement policies do not require that specific cost and pricing data or a pre-award audit clause be included in the Acela or any other RFP. Amtrak established general policies for Procurement Department personnel, emphasized procurement best practices, and encouraged the use of standard forms. However, without a requirement for items such as certified cost and pricing data or an audit clause in the pre-award process, Amtrak is potentially missing essential elements in sole-source procurements—elements that would help ensure that it is getting a fair and reasonable price.

Amtrak Office of Inspector General
**Acela Car Purchase Draft Request for Proposal:
Additional Requirements and Pre-Award Audit Clause
Needed to Help Assess Proposed Cost and Price**
Report No. 009-2011, September 21, 2011

RECOMMENDATIONS

We recommend that you make the following revisions to the Acela RFP and amend Amtrak's procurement policy to require these revisions in all sole-source RFPs in excess of Amtrak's small dollar procurement threshold (currently \$100,000):

1. Require the offeror to submit certified cost and pricing data similar to Cost Proposal Forms numbered 24EC, 25, 26CP, 27CP, 27FB, 27L, 27LB, 27M, and 27SP. As these forms are designed for construction contract modifications, they should be revised to apply to new sole-source solicitations.
2. Add a pre-award audit and inspection clause that contains the elements or provisions discussed in this report.

MANAGEMENT COMMENTS AND OIG ANALYSIS

In commenting on a draft of this report, Amtrak management agreed with both recommendations. Amtrak officials noted that they had implemented our recommendation to revise the Acela RFP, and that those revisions were reflected in the RFP that was issued on August 30, 2011.

Subsequent to receiving management's comment letter, we discussed with senior procurement officials Amtrak's plans for addressing our recommendation to revise its procurement policies. The officials advised us that Amtrak plans to update the standard forms for sole-source RFPs over the small dollar procurement threshold by November 30, 2011. We agree that a dollar threshold is appropriate; our final recommendation includes the \$100,000 threshold. We believe the actions Amtrak has taken and plans to take will meet the intent of our recommendations. Amtrak's letter commenting on the draft report is reprinted as Appendix 1. The Company also provided separate technical comments, which we have incorporated as appropriate.

Thank you for your cooperation during the course of this audit. If you have any questions, please contact me (david.warren@amtrakoig.gov, 202.906.4742) or Matthew Simber, Senior Director, Audits (matt.simber@amtrakoig.gov, 215.349.1077).

Amtrak Office of Inspector General
**Acela Car Purchase Draft Request for Proposal:
Additional Requirements and Pre-Award Audit Clause
Needed to Help Assess Proposed Cost and Price**
Report No. 009-2011, September 21, 2011

cc: D.J. Stadtler, Chief Financial Officer
William Herrmann, Managing Deputy General Counsel
Gordon Hutchinson, Controller
Bernard Reynolds, Deputy Chief Logistics Officer
Jessica Scritchfield, Senior Director, Internal Controls/Audit
Virginia Squitieri, Senior Director, Procurement

Amtrak Office of Inspector General
**Acela Car Purchase Draft Request for Proposal:
 Additional Requirements and Pre-Award Audit Clause
 Needed to Help Assess Proposed Cost and Price**
 Report No. 009-2011, September 21, 2011

Appendix 1

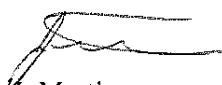
COMMENTS FROM AMTRAK'S CHIEF LOGISTICS OFFICER

NATIONAL RAILROAD PASSENGER CORPORATION
 30th Street Station, 5th Floor Southeast, Philadelphia, PA 19104

Memo



Date September 8, 2011

From 
 J. Martin
 Chief Logistics Officer

To David R. Warren
 Assistant Inspector General, Audits

Department Procurement and Materials Management

Subject Response to Amtrak Office of Inspector
 General's (OIG) Draft Report No. 009-
 2011, dated August 12, 2011

Message The Procurement and Materials Management department has reviewed the OIG's Draft Report No. 009-2011, *"Acela Car Purchase Draft Request for Proposal: Additional Requirements and Pre-Award Audit Clause Needed to Help Assess Proposed Price and Cost"* dated August 12, 2011.

Management agrees with both OIG recommendations. The recommendations have been incorporated into the "Acela Car Purchase" Request for Proposal by Virginia Squitieri, Amtrak Senior Director, Capital Equipment.

I would like to thank Matt Simber, Senior Director, Audits, Amtrak, Office of Inspector General for his time and effort in working with senior representatives of the Amtrak Procurement department. My team looks forward to working with Matt and his staff on upcoming audits.

Amtrak Office of Inspector General
**Acela Car Purchase Draft Request for Proposal:
Additional Requirements and Pre-Award Audit Clause
Needed to Help Assess Proposed Cost and Price**
Report No. 009-2011, September 21, 2011

Appendix 2

SCOPE AND METHODOLOGY

We performed audit work from July 25 through August 8, 2011, 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.

We met with procurement staff to determine Amtrak's timeline for issuing the RFP and making the contract award, and discussed the draft RFP requirements and procurement policies and practices for sole-source contract awards. We reviewed the draft RFP for the Acela coach car purchase, corresponding pre-award policies and procedures, and procurement policies and related forms for contract modifications. We reviewed the Federal Acquisition Regulation relating to new awards and sole-source procurements. We did not request any computer-processed data for this audit and, therefore, did not rely on any computer-generated information. This portion of our audit work was specifically designed to test the internal controls over Amtrak's policies and procedures for RFP issuance. We also reviewed our recent procurement report (*Amtrak Should Negotiate a Price Adjustment to Contract S 063 03069 Based on OIG-identified Cost Reductions, OIG Report 219-2010, January 12, 2011*); however, that audit focused on the price proposal only and did not review the RFP.

Amtrak Office of Inspector General
**Acela Car Purchase Draft Request for Proposal:
Additional Requirements and Pre-Award Audit Clause
Needed to Help Assess Proposed Cost and Price**
Report No. 009-2011, September 21, 2011

Appendix 3

ABBREVIATIONS

OIG Office of Inspector General

RFP request for proposal

Amtrak Office of Inspector General
**Acela Car Purchase Draft Request for Proposal:
Additional Requirements and Pre-Award Audit Clause
Needed to Help Assess Proposed Cost and Price**
Report No. 009-2011, September 21, 2011

Appendix 4

TEAM MEMBERS

David R. Warren, Assistant Inspector General, Audits

Colin Carriere, General Counsel

Kathleen Ranowsky, Deputy Counsel

Matthew Simber, Senior Director, Audits

David Burrell, Principal Auditor

Michael P. Fruitman, Principal Communications Officer

Amtrak Office of Inspector General
**Acela Car Purchase Draft Request for Proposal:
 Additional Requirements and Pre-Award Audit Clause
 Needed to Help Assess Proposed Cost and Price**
 Report No. 009-2011, September 21, 2011

OIG MISSION AND CONTACT INFORMATION

Amtrak OIG's Mission	<p>Amtrak OIG's mission is to</p> <ul style="list-style-type: none"> ▪ conduct and supervise independent and objective audits, inspections, evaluations, and investigations relating to agency programs and operations; ▪ promote economy, effectiveness, and efficiency within Amtrak; ▪ prevent and detect fraud, waste, and abuse in Amtrak's programs and operations; ▪ review security and safety policies and programs; and ▪ review and make recommendations regarding existing and proposed legislation and regulations relating to Amtrak's programs and operations.
Obtaining Copies of OIG Reports and Testimony	<p>Available at our website: www.amtrakoig.gov</p>
To Report Fraud, Waste, or Abuse	<p>Report suspicious or illegal activities to the OIG Hotline (you can remain anonymous):</p> <p>Web: www.amtrakoig.gov/hotline Phone: 800-468-5469</p>
Congressional and Public Affairs	<p>E. Bret Coulson, Senior Director Congressional and Public Affairs</p> <p>Mail: Amtrak OIG 10 G Street, N.E., 3W-300 Washington, D.C. 20002</p> <p>Phone: 202-906-4134 Email: bret.coulson@amtrakoig.gov</p>
