



Florida Department of TRANSPORTATION

Office of Inspector General
Kristofer B. Sullivan, Inspector General

A handwritten signature in black ink that reads "KSullivan".

Audit Report No. 19I-9003
Master University Agreements

July 22, 2020

What We Did

The Florida Department of Transportation's (Department) Office of Inspector General at the request of the Procurement Office, audited the Master University Agreements (MUA) process. Our review included obtaining an understanding of the Master University Agreements' universe, as well as the statutory support for its inception and management. We evaluated the design and operating effectiveness of the governance (oversight), internal controls (policies and procedures), and support systems (including information technology) supporting this process, based on selected Task Work Orders issued under these contracts.

What We Found

We determined the original intent of the MUA process has evolved since its inception, shifting from a centralized oversight to a broad assortment of processes resulting in:

- ineffective governance over the MUA process due to insufficient accountability and standardized written policies and procedures;
- non-inclusion of the cost analysis for non-competitive solicitations; and
- unrestricted utilization of the non-competitive solicitation exemption.

This inconsistent network of processes does not sufficiently protect the Department from financial and reputational risks associated with the MUA processes.

What We Recommend

Based on our review and evaluation of the MUA processes, **we recommend:**

- the Assistant Secretary for Engineering and Operations define and assign roles and responsibilities for governing the MUA process including:
 - assignment of responsibility for the MUA process to an organizational function;
 - defining what activities can use the MUA process; and
 - assignment of financial limits to MUAs which includes monitoring for compliance with encumbrance requirements.

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- the appropriate function develop a standard set of written policies and procedures for the issuance and maintenance of MUAs and related TWOs, including templates;
- the scope of each parent contract be limited to the area of activity managed by the identified contract manager; and
- the appropriate staff develop clearly defined policies and procedures for users to understand the circumstances, regulatory requirements, and scope limitation associated with non-competitive solicitation. Additionally, processes to enforce these policies should also be implemented to ensure the Department remains compliant with statutory regulations.

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BACKGROUND AND INTRODUCTION

The United States Department of Transportation coordinates the allocation of federal funds for transportation research purposes through the Federal Highway Administration (FHWA) and in state-local channels. One of the recipients and coordinators of these efforts is the Florida Department of Transportation's (Department) Research Center.

The Department's Research Center created the Master University Agreements (MUA) concept around 2000 as a contracting tool to create contract management efficiencies and readily identify the universities associated with research projects. The primary purpose of this contracting tool was to establish an authorized timeframe (initially five years and later extended to ten years) for the Research Center to award individual research projects, based on the needs of the Department's functional areas or Districts. Once MUAs were executed with selected universities, individual projects could be awarded on a case-by-case basis by issuing Task Work Orders (TWOs) under existing MUAs. The Research Center administered this program and maintained a vetting process including a review of final deliverables by FHWA.

To comply with FHWA's requirements, the Research Center also developed the "Research Program Manual" defining roles, responsibilities, and coordinating efforts. This manual lists three different methods of contracting:

1. Direct contracting using a Master University Agreement (non-competitive);
2. Competitive selection using the Request for Research Proposal (RFRP); and
3. Competitive selection using the Request for Proposal (RFP).

The second option, RFRP, has been discontinued and removed from the Research Program Manual. Direct contracting using an MUA is the most efficient means to negotiate contracts as it deals with public universities statutorily exempt from the competitive solicitation process.

The primary functions of the Research Center are carried out by:

- *Research Coordinators* staffed in major functional areas of the Department. They are primary liaisons between their functional area and the Research Center.
- *Project Managers* with technical expertise located within the functional areas. They are the primary point of contact with the principal investigators and provide technical oversight of the project.
- *Principal Investigators* with technical expertise to perform and oversee the research. Generally, they are the project managers for the university.
- *Divisions of sponsored research* which are the primary administrative points of contact at the universities.

Expansion to Department-Wide Use

As previously stated, MUAs were originally intended for use by the Research Center for research-related activity. However, MUA participation was extended (around 2008) to all available users throughout the agency. This expansion empowered functional areas and cost centers to authorize projects under existing MUAs, or on occasion to seek the assistance of the Procurement Office (upon approval by an assistant secretary or chief program officer) to create new master agreements. They have expended over \$220M since their inception.

Current Organizational Structure

The MUA's current structure consists of:

- 9 contract series generated in the Contract Fund Management (CFM) system;
- 36 Master University Agreements, 10 of which contain current activity;
- 18 universities; and
- 58 cost centers.

Similar to other master agreements, MUAs use broad terms and they do not contain financial limits, the scope of work, or deliverables. Instead, these terms are detailed in TWOs which are developed for specific services. They specify the scope, deliverable, consideration, and any additional information regarding the individual project. Below are some of the main characteristics of MUAs:

- They are drafted using the standard contract language contained in Form 375-040-64;
- They have a ten-year life; and
- They represent a non-competitive (direct) method of procurement.

The approaching MUA renewal period in 2023 presents opportunities to address the concerns surrounding this process. The Office of Inspector General (OIG) evaluated the overall MUA process utilizing data associated with active master agreements (Fiscal Year 2017-18), emphasizing its assessment on the determination of:

- the adequacy in the design and operating effectiveness of the governing structure;
- completeness, accuracy, integrity, and consistency of MUAs and related data;
- the existence and operating effectiveness of the internal control framework; and
- appropriateness of the issuance and utilization of MUAs and TWOs.

RESULTS OF REVIEW

To understand the MUA concept, we interviewed selected participants, assessed their understanding over this process through a survey, and tested specific procedures. We identified two findings and two observations, as presented below.

Finding 1 – Governance Over the MUA Process

We determined the Department has not established sufficient accountability over the MUA process, including the:

1. assignment of roles and responsibilities;
2. development of policies and procedures; and
3. identification of contract managers.

Condition 1 – Assignment of Roles and Responsibilities

We determined there is a lack of defined roles and responsibilities for oversight of the MUA process.

This is evidenced by:

- the Research Office has assigned overall responsibility for managing the MUA process; however, management of the TWOs is decentralized and not governed or managed by the Research Office;
- TWOs can be issued under any MUA by any cost center. Each cost center manages (creates, monitors, and tracks) its own TWOs by its own procedures;
- MUAs are not subject to financial limits; and
- TWOs are not monitored for compliance with encumbrance requirements. During our review, we noted one instance of an unencumbered task work order.

Both federal and state regulations contain minimum standards for accountability over funds:

Federal Criteria

Title 2, Part 200.303, Code of Federal Regulations (C.F.R.)-Internal Controls, states:

The Non-Federal entity must:

- (a) Establish and maintain effective internal control over the Federal award that provides reasonable assurance that the non-Federal entity is managing the Federal award in compliance with Federal statutes, regulations, and the terms and conditions of the Federal award. These internal controls should be in compliance with guidance in “Standards for

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Internal Control in the Federal Government” issued by the Comptroller General of the United States or the “Internal Control Integrated Framework”, issued by the Committee of Sponsoring Organizations of the Treadway Commission (COSO).¹

Per the “Standards for Internal Control in the Federal Government” issued by the Comptroller General of the United States:

Management should establish an organizational structure, assign responsibility, and delegate authority to achieve the entity’s objectives. (Section 3.01).

State Criteria

Section 334.048(3)-(4), Florida Statutes (F.S.) (2018), summarizes the central office’s responsibilities as:

(3) The central office shall adopt policies, rules, procedures, and standards which are necessary for the Department to function properly, including establishing accountability for all aspects of the Department’s operations.

(4) The central office shall monitor the districts and central office units that provide transportation programs to assess performance; determine compliance with all applicable laws, rules, and procedures; and provide useful information for Department managers to take corrective action when necessary.

Condition 2 – Development of Policies and Procedures

We determined inadequate and conflicting policies and procedures maintained on different platforms have led to inconsistent application statewide. For instance:

- **Research Center Manual.** Per interviews with the Research Center, this desk manual was developed exclusively for the use of the Research Center. The manual contains the following conflicting references to contracting methods for universities:

¹ The COSO internal control framework is the most widely recognized framework in use in the United States. The “Standards for Internal Control in the Federal Government” issued by the Comptroller General of the United States (also known as the United States General Accountability Office [GAO] “Green Book”) is based on the COSO framework.

- Non-competitive solicitation with universities by the issuance of a TWO under an MUA (the “direct method” for contracting universities), and
- Competitive solicitation by RFP, in coordination with the Procurement Office. If the final respondent selected happens to be a university with an existing MUA, a TWO will be issued under that MUA. Management has noted, however, that this method of solicitation is no longer utilized in practice.

While the Research Center Manual outlines these two methods of solicitation, it does not provide guidance on which method is appropriate to create a TWO in MUA.

- ***Professional Services Procurement Manual.*** Per Topic No. 375-030-003:

The University Master Agreement is the appropriate means for contracting with Florida universities. When necessary for a professional services contract, the Department’s Project Manager may procure university services by means of a task work order issued against a University Master Agreement (Section 11.2.5).

No other details are provided regarding the potential use of a competitive solicitation as an alternative; eligible project type, scope, or approval processes; or oversight.

A survey of 17 selected MUA users (cost centers) revealed either a lack of knowledge of the process or inconsistent procedures. For instance:

- Not all cost centers were familiar with the existence and location of procedures:
 - 6 cost centers were not aware of the existence of any formal MUA guidance;
 - 6 cost centers said the guidance used was found on FDOT SharePoint (Research Center and/or Procurement Office); and
 - 5 cost centers either developed their own process or treated MUAs as any other state contract.
- Not all cost centers use MUAs consistently:
 - 13 cost centers use MUAs based on the type of project and purpose;
 - 3 cost centers use MUAs whenever they deal with a university; and
 - 1 cost center admitted to a lack of guidance on the use of MUAs.

Condition 3 – Identification of Contract Managers

We determined the contract manager identified in the parent contract (MUA) does not have responsibility for managing all activities (TWOs) under the contract.

Section 287.057(14), F.S. (2019), states:

(14) For each contractual service contract, the agency shall designate an employee to function as a contract manager who is responsible for enforcing the performance of the contract terms and conditions and serve as a liaison with the contractor.

Although the Department expanded the use of existing MUAs to all cost centers, the Research Center continued to be identified as the primary point of contact on each MUA. However, the Research Center only manages its own projects. According to our interviews, it does not currently have resources to extend its current roles to projects sponsored by other cost centers.

Recommendations

We **recommend** the Assistant Secretary for Engineering and Operations define and assign roles and responsibilities for governing the MUA process including:

- assignment of responsibility for the MUA process to an organizational function;
- defining what activities can use the MUA process; and
- assignment of financial limits to MUAs which includes monitoring for compliance with encumbrance requirements.

We **recommend** the appropriate function develop a standard set of written policies and procedures for the issuance and maintenance of MUAs and related TWOs, including templates.

We **recommend** the scope of each parent contract be limited to the area of activity managed by the identified contract manager.

Finding 2 – Cost Analyses for Non-competitive Solicitations

We **determined** the statutory requirement to include cost analyses during the solicitation process (required for non-competitive agreements) is not always met when TWOs are issued.

Section 216.3475, F.S. (2019), states:

A person or entity that is designated by the General Appropriations Act, or that is awarded funding on a non-competitive basis, to provide services for which funds are appropriated by that act may not receive a rate of payment in excess of the competitive prevailing rate for those services unless expressly authorized in the General Appropriations Act. Each agency shall maintain records to support a cost analysis, which includes a detailed budget submitted by the person or entity

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awarded funding and the agency's documented review of individual cost elements from the submitted budget for allowability, reasonableness, and necessity.

Section 287.057(4), F.S., states:

An agency must document its compliance with s. 216.3475 if the purchase of contractual services exceeds the threshold amount provided in s. 287.017 for CATEGORY TWO and such services are not competitively procured... [Each agency shall maintain records to support a cost analysis, which includes a detailed budget submitted by the person or entity awarded funding and the agency's documented review of individual cost elements from the submitted budget for allowability, reasonableness, and necessity]

We selected and reviewed 18 TWOs to assess appropriateness in MUAs' issuance and utilization. One of the selected TWOs was treated as a competitive procurement with proposals from several universities responding to the procurement request by a technical review committee. The remaining 17 TWOs were treated as non-competitive.

Concerning the 17 TWOs, we observed:

- 10 instances where cost centers developed and documented the cost analysis form; and
- 7 instances where task work orders were processed without the inclusion of the cost analysis form as stipulated in the criteria cited above.

The absence of standard procedures and lack of enforcement might increase the possibility the Department performs activities outside of statutory processes.

We **recommend** that appropriate staff develop clearly defined policies and procedures for users to understand the circumstances, regulatory requirements, and scope limitations associated with non-competitive solicitation. Additionally, processes to enforce these policies should also be implemented to ensure the Department remains compliant with statutory regulations.

Observation 1 – Unrestricted Use of Non-competitive Solicitation Exemption

We observed the legislative intent of the competitive solicitation process may not be met when TWOs are issued under the MUA process.

Section 287.001, F.S., defines the legislative intent as:

The Legislature recognizes that fair and open competition is a basic tenet of public procurement; that such competition reduces the appearance and opportunity for favoritism and inspires public confidence that contracts are awarded equitably and economically; and that documentation of the acts taken and effective monitoring mechanisms are important means of curbing any improprieties and establishing public confidence in the process by which commodities and contractual services are procured. It is essential to the effective and ethical procurement of commodities and contractual services that there be a system of uniform procedures to be utilized by state agencies in managing and procuring commodities and contractual services; that detailed justification of agency decisions in the procurement of commodities and contractual services be maintained, and that adherence by the agency and the vendor to specific ethical considerations be required.

Section 287.001, F.S., demonstrates the legislative intent to promote open competition. The open and unrestricted utilization of MUAs may contradict the legislative intent. Universities, under the MUA program, are exempt from the competitive solicitation process as per Section 287.057(e)(12), F.S., which lists "[s]ervices or commodities provided by governmental entities" as one of the conditions for non-competitive solicitation. The lack of clarity regarding the scope of work to be performed by universities opens an inadvertent legal channel to avoid competition, and the lack of oversight over the MUA process presents opportunities for favoritism.

As previously described, the issuance of TWOs under MUAs was extended throughout the Department. This decision coupled with the lack of a central function to oversee this process enables cost centers to issue task work orders based on their own discretion.

APPENDIX A – Purpose, Scope, and Methodology

The **purpose** of this engagement was to evaluate governance and risk management over the Master University Agreements process by assessing the stability and reliability of its infrastructure, the design and operating effectiveness of its governance, and its internal control environment.

The **scope** of this audit included all processes surrounding Master University Agreements. It also included the Procurement and the Research Center Offices as well as selected cost center and project managers who participate in this process.


The **methodology** included:

- interviewing Procurement Office personnel on multiple occasions;
- interviewing Research Center Office personnel on multiple occasions;
- conducting online research to understand the roles and procedures for both offices;
- analyzing extensive data to compile what we consider “The MUA Universe”;
- interviewing multiple cost centers who participate in the MUA process;
- reviewing contracts, templates, policies, procedures;
- testing of selected contracts; and
- presenting our conclusions and findings to management.

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APPENDIX B – Management Response

The following response was submitted by Darryl Dockstader, Manager at the Research Center, on the behalf of the Assistant Secretary for Engineering and Operations.



Florida Department of Transportation
605 Suwannee Street
Tallahassee, FL 32399-0450

RON DESANTIS
GOVERNOR

KEVIN J. THIBAULT, P.E.
SECRETARY

July 14, 2020

Mr. Kristofer B. Sullivan, Inspector General
Office of Inspector General
Florida Department of Transportation
3185 South Blairstone Road
Tallahassee, FL 32399

Dear Mr. Sullivan:

Below please find the responses to the two findings presented in Audit Report No. 19I-9003, Master University Agreements.

Issue 1 – Governance Over the MUA Process

Issue: The Department has not established sufficient accountability over the MUA process, including the:

1. assignment of roles and responsibilities;
2. development of policies and procedures; and
3. identification of contract managers.

Recommendation:

We recommend the Assistant Secretary for Engineering and Operations define and assign roles and responsibilities for governing the MUA process including:

- assignment of responsibility for the MUA process to an organizational function;
- defining what activities can use the MUA process; and
- assignment of financial limits to MUAs which includes monitoring for compliance with encumbrance requirements.

We recommend the appropriate function develop a standard set of written policies and procedures for the issuance and maintenance of MUAs and related Task Work Orders (TWO), including templates.

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We recommend the scope of each parent contract be limited to the area of activity managed by the identified contract manager.

Response to Finding: We concur with the finding and recommendation.

Corrective Action: The Research Center, in coordination with the Procurement Office, will process map the development of MUAs and the preparation and execution of TWOs and amendments thereto, and develop a procedure for the use of the Master University Agreements statewide. The procedure shall define activities for which MUAs may be used, provide guidance for use of MUAs, and place controls on their use. An assignment of financial limits will be established based on an analysis of current MUA usage. These actions will be taken preliminary to the development of new MUAs to replace those that begin to expire in 2023.

Estimated Completion Date: July 31, 2021

Finding 2 – Cost Analyses for Non-competitive Solicitations

Finding: The statutory requirement to include cost analyses during the solicitation process (required for non-competitive agreements) is not always met when TWOs are issued.

Recommendation: We recommend that appropriate staff develop clearly defined policies and procedures for users to understand the circumstances, regulatory requirements, and scope limitations associated with non-competitive solicitation. Additionally, processes to enforce these policies should also be implemented to ensure the Department remains compliant with statutory regulations.

Response to Finding: We concur with the finding and recommendation.

Corrective Action: Procedure as described in response to Finding 1 shall address Finding 2.

Estimated Completion Date: July 31, 2021

Sincerely,



J. Darryll Dockstader, Manager
Research Center

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Approved by:
Kristofer B. Sullivan, Inspector General

STATEMENT OF ACCORDANCE

The Department's mission is to provide a safe transportation system that ensures the mobility of people and goods, enhances economic prosperity, and preserves the quality of our environment and communities.

The Office of Inspector General's mission is to promote integrity, accountability, and process improvement in the Department of Transportation by providing objective, fact-based assessments to the DOT team.

This work product was prepared pursuant to section 20.055, Florida Statutes, in accordance with the Association of Inspectors General *Principles and Standards for Offices of Inspector General*, and conforms with The Institute of Internal Auditors' *International Standards for the Professional Practice of Internal Auditing*.

Please address inquiries regarding this report to the Department's Office of Inspector General at (850) 410-5800.