AMTRAK OFFICE of INSPECTOR GENERAL
NATIONAL RAILROAD PASSENGER CORPORATION

ACQUISITION AND PROCUREMENT:

Master Services Agreements Are Not Strategically Managed, and Award and Oversight Processes Can Be Improved

OIG-A-2017-006 | February 22, 2017

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AMTRAK OFFICE of INSPECTOR GENERAL
NATIONAL RAILROAD PASSENGER CORPORATION

Memorandum

To: DJ Stadtler
Executive Vice President/Chief Administration Officer

Stephen Gardner
Executive Vice President; Planning, Technology and Public Affairs

From: Stephen Lord
Assistant Inspector General, Audits

Date: February 22, 2017

Subject: *Acquisition and Procurement: Master Services Agreements Are Not Strategically Managed, and Award and Oversight Processes Can Be Improved* (OIG-A-2017-006)

Since fiscal year (FY) 2009, Amtrak (the company) has increased its use of a contracting vehicle called a Master Services Agreement (MSA) from as few as 10 in FY 2009 to at least 76 ongoing in FY 2016. Designed as a mechanism to expedite acquiring professional services, such as information technology (IT) support, the company has spent at least $404 million on MSA contracts from October 2008 through September 2016, based on available data.[1] The company uses these MSAs for a variety of purposes. For example, the company's IT department began using MSAs in FY 2009 to augment its permanent staff by acquiring contractors with specialized skillsets, and other departments are using them to complete specific projects when professional services are needed.

Our objective was to evaluate the company's use of MSAs. To do this, we identified leading practices for awarding and overseeing service contracts from the American Productivity and Quality Center, U.S. Office of Management and Budget, U.S. Department of Transportation, several universities, and other sources. We also applied management control standards from the Committee of Sponsoring Organizations of the Treadway Commission for private entities and the U.S. Government Accountability Office (GAO) for public entities. For more information on our scope and methodology,

[1] These figures are based on data the company provided and may not include all expenditures. For additional information, see Appendix A.

see Appendix A. For more information on the leading practices highlighted in our report, see Appendix B.

SUMMARY OF RESULTS

The company is not strategically managing the use of MSAs. As a result, there are opportunities to strengthen management controls over MSAs and incorporate the use of leading practices that could result in significant cost savings and the opportunity to put funds to better use. For example, the company was unable to identify all the MSAs currently in use, their costs, and how they are being used because it does not track or centrally monitor these contracts. Moreover, company policy allows other departments to enter into contracts without the substantive involvement of the Procurement department. A more coordinated and strategically oriented approach to managing MSAs could improve the company's ability to monitor and control costs, coordinate procurement decisions, and ensure company-wide accountability.

Opportunities also exist for the company to improve its processes for awarding and overseeing MSAs in order to better manage them and reduce costs. In particular, we found that the company did not fully adhere to certain contract award requirements in the Amtrak Procurement Manual and did not use other leading practices when awarding MSAs, and that its post-award oversight of MSAs was weak. These weaknesses exist because policies and procedures did not address MSA post-award activities or provide training to end-user departments on how to effectively oversee MSAs—which is crucial given the company's decentralized approach to implementing these agreements.

Further, when awarding the 17 MSAs we reviewed in detail, the company did not consistently follow its own policies and procedures or use leading practices, such as incorporating performance metrics and incentives. Performance metrics and incentives—whether positive or negative—provide a means for assessing contractor performance, inducing better quality performance, and controlling costs. Similarly, the 17 MSAs did not include various cost-saving procurement approaches commonly used in the private and public sectors. One such approach—incorporating early payment discounts—could help the company save about $500,000 to $1 million annually. Another approach—using firm fixed pricing when possible—could have contributed to an additional $2.8 million in savings.

The company also continues to engage in practices that may be unnecessarily costly, such as relying on staff augmentees obtained under MSAs for long periods of time. As of September 2016, nearly 40 percent of the staff augmentees in the IT and Marketing departments (116 of 297) had been with the company for more than two years. Although using staff augmentees on a temporary basis can be cost-effective, using them for longer periods—typically more than two years—can be more costly than hiring full-time employees. For example, the IT department paid an average rate of about $113 per hour for staff augmentees, compared to the average fully loaded rate of $80 per hour for full-time IT employees.

Moreover, staff augmentees make up nearly half of the IT department's workforce—more than double what is suggested by leading practices. Achieving a ratio of IT contractors to full-time staff in line with leading practices could save $10.0 million to $14.2 million in FY 2017. Using augmentees on a long-term basis may also expose the company to potential legal risks related to employee misclassification. Company officials agreed that reducing their reliance on long-term IT staff augmentees is appropriate but cited budgetary constraints and other challenges in doing so.

Finally, there are significant weaknesses in the company's management controls for overseeing post-award activities for MSAs. For example, the company was not effectively overseeing hours billed by staff augmentees, particularly hours beyond the standard 40-hour workweek. During FY 2016, four staff augmentees in the IT department billed extra hours that represented 24 percent to 38 percent of their total hours billed, and we estimated their services cost the company from $253,127 to $349,008 during that year. Because the department did not have a method for approving the hours in advance or validating the accuracy of hours billed, the company cannot ensure that the charges were necessary or accurate.

We are making nine recommendations aimed at strengthening strategic oversight of MSAs that will help the company better manage these contracts and realize additional cost savings. These recommendations include establishing a central tracking mechanism to collect information on the company's use of MSAs, developing a plan to reduce the company's reliance on long-term IT staff augmentees, developing new management controls and guidance, and providing additional staff training. In commenting on a draft of this report, the company's Executive Vice President/Chief Administration Officer stated that the company agreed with all or part of our nine recommendations, and described in its response planned actions to address to the intent of eight of these recommendations, including targeted completion dates. While management generally agreed with our recommendation to develop a plan to reduce the company's reliance on long-term staff augmentees in the IT department, the management response did not communicate intended actions and a time frame for developing a plan for achieving this goal. The company subsequently submitted a document describing plans aimed at decreasing the number of staff augmentees in the IT department's workforce; however, the document was unsigned and undated, and raised additional questions about the IT department's overall plan for reducing its reliance on long-term staff augmentees. Accordingly, we do not consider management's comments responsive to the intent of this recommendation. We are requesting that management provide us with additional information by March 24, 2017, to clarify when and how it will develop a plan to reduce the number of long-term staff augmentees in the IT department's workforce.

BACKGROUND

MSAs are a type of service contract typically used to obtain staff with special skillsets (staff augmentation) and to acquire professional services such as IT support or maintenance activities. With MSAs, companies can negotiate the general scope of the contract and certain terms up front, without identifying the specific work to be performed until after the award of the initial contract. The terms negotiated before the work is identified can include the general service to be provided, the period of performance, key personnel, and general contract provisions. The specific work to be performed is then identified in follow-on contracts or task orders, depending on the type of MSA, as follows:

- **Staff augmentation MSAs** set forth the terms and conditions under which a contractor will provide staff augmentation services to the company. After the MSA is awarded, the company submits requests to the contractor for the specific staffing services the company needs. The company establishes and the contractor agrees to a statement of work with the predetermined rates and qualifications of the personnel who will fulfill the staffing need. Each statement of work is considered a separate follow-on contract that includes the terms and conditions established under the original MSA. Multiple individuals can be chosen under a single staff augmentation MSA. In addition, staff augmentation MSAs can be awarded to multiple contractors who must compete for follow-on contracts.

- **Task order–based MSAs** set forth the terms and conditions under which services will be performed. They may be initially awarded to one or more contractors who must compete for follow-on task orders to accomplish the actual work. For example, as previously reported, the Marketing department awarded MSAs to multiple contractors for the design work associated with the installation of Passenger Information Display Systems.[2] When work is required at individual stations, the department prepares task orders, and these contractors compete for the work.

Company officials believe they can acquire services more quickly by using MSAs than by using traditional contracting vehicles, and similar contracting vehicles are used in both the private and public sectors. For example, the Federal Acquisition Regulation discusses the use of basic ordering agreements,[3] which are similar to MSAs in that they include (1) terms and clauses that apply to future contracts awarded under these agreements, (2) descriptions of services to be provided, and (3) methods for pricing, issuing, and delivering future orders under these agreements.

The Amtrak Procurement Manual, updated in December 2015, does not specifically address MSAs; therefore, the company's Procurement department uses the same process to award the initial MSA that it uses for other contracts. Generally, the Procurement department will solicit bids or proposals for the services required and evaluate them on the basis of pricing, technical qualifications, and other factors. However, once MSAs are awarded, the company oversees post-award activities differently from how it oversees them for other contracts. For non-MSA contracts, the Procurement department typically is responsible for administering the entire contract process—including award and post-award activities—with assistance from the end-user department. For MSA contracts, the Procurement department awards the initial MSA, and the end-user departments assume responsibility for administering and overseeing post-award activities, including developing statements of work, awarding follow-on task orders, and ensuring that the work and deliverables are appropriately completed.

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[2] In June 2016, we reported on the company's use of MSAs to support this project as part of the company's Americans with Disabilities Act Program in *Acquisition and Procurement: Adequate Competition for Most Contracts Awarded under Americans with Disabilities Act Program, but Procurement Policies Could be Improved* (OIG-A-2016-008, June 8, 2016). The report made several recommendations to improve company policy on MSAs, including the need to define an MSA contract and specifically address the extent to which competition should occur in awarding follow-on task orders under MSAs. The company agreed with these recommendations.

[3] Federal Acquisition Regulation, 48 C.F.R. §16.702 (2015).

The IT and Marketing departments have used MSAs most extensively, as shown in Table 1 on the next page. Of the 76 MSAs awarded, 42 were to augment the staffs of the IT and Marketing departments, and 34 were for task order–based agreements for other professional services.

Table 1. Number and Estimated Costs of MSAs by End-User Department, October 2008 through September 2016

Department	Number of MSAs	Estimated Value ($ millions)	Estimated Expenditure ($ millions)
Information Technology	38	$485.5	$302.0[a]
Marketing	22	$142.9	$83.4
Law	6	$16.4	$14.8
Emergency Management and Corporate Security	9	$2.4	$2.4
Human Capital	1	$7.5	$1.4
Total	**76**	**$654.7**	**$404.0**

Source: OIG analysis of available Procurement and end-user department cost data, as of September 30, 2016
Note:
[a] We calculated these figures based on data provided by the company. We did not receive expenditure data for IT MSAs for February 1, 2015, through June 30, 2015.

MSAs ARE NOT STRATEGICALLY MANAGED

The company has opportunities to strengthen management controls and incorporate leading practices that will enable it to more strategically manage MSAs. First, the company does not track or centrally monitor its use of MSAs, which limits oversight and hinders the company's ability to coordinate procurement decisions across departments. Second, the company relies heavily on long-term staff augmentees obtained under MSAs, which is more costly than using full-time staff. Third, the company's reliance on MSAs for long-term staff augmentation may expose the company to legal risks.

Use of MSAs is Not Tracked or Centrally Monitored

The company is limited in its ability to strategically manage its MSAs because it does not track or centrally monitor them, as leading practices call for. We previously reported that when leading organizations conduct strategic planning for procurements, they understand the company-wide context of the procurement, manage risk, and assess performance across the organization.[4] Further, our leading practices research found that companies are moving toward a centralized procurement approach in which the procurement function serves as a strategic partner with end-user departments throughout the organization.[5]

Leading practice: *Management should monitor key activities and communicate their status throughout the organization to facilitate the achievement of company-wide objectives.*

The company's ability to know and communicate the status of MSAs is limited by the absence of management controls to track and monitor them. For example, the company was not able to provide a complete list of all MSAs and their related expenditures. We were able to identify the 76 MSAs listed in Table 1 above by supplementing a partial list provided by the Procurement department with information we obtained independently from other departments. Procurement department officials told us that their ability to collect the information necessary to track MSAs throughout the company is limited because company policy[6] enables other departments to enter into these types of contracts without the substantive involvement of the Procurement department. In addition, end-user departments may not have identified all the MSAs they are using because they did not always understand the differences between MSAs and other types of contracts.

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[4] See *Acquisition and Procurement: Closer Alignment with Leading Practices Can Improve Effectiveness* (OIG-A-2014-006, May 7, 2014).
[5] An October 2016 study performed by a third party for Amtrak confirmed that a more integrated procurement approach could result in cost savings for the company.
[6] See the company's policy P/I 11.39.00, "Purchase, Expenditure and Control Approval Authorizations Procurement," dated March 4, 2004.

The lack of centralization also limits the information available to coordinate procurement decisions across the company. For example, the rates for project managers obtained under MSAs are not tracked across the company, according to a Procurement department official. During our review, we found that several MSAs had varying rates for IT project managers serving in essentially the same role. Specifically, the company was paying project managers obtained under the Marketing department's technology-focused MSAs about $11 per hour more, on average, than those obtained under the IT department's initial staff augmentation MSAs. In discussing the rate difference, Marketing department officials stated that the specialized skillsets they needed for their department's projects were not available within the IT department's pool of project managers. Nonetheless, our research of leading practices found that project managers are primarily generalists who have a skillset that can be broadly applied across multiple departments because of their focus on general planning, staffing, and project management issues.

Leading practice: *A more coordinated and strategically oriented approach to procurement can help ensure that a company obtains the best rates for services.*

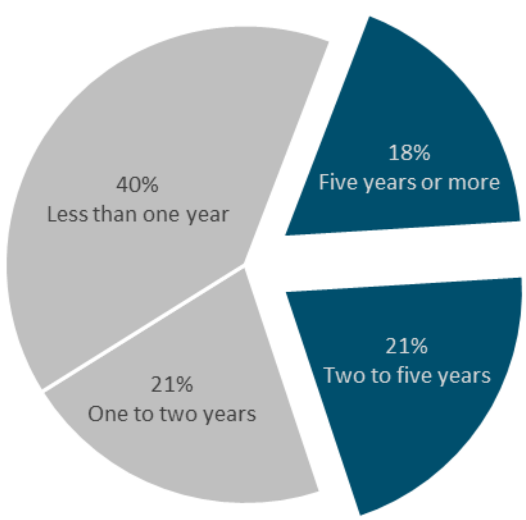
In March 2016, the IT department established an additional MSA to develop a new approach to building IT applications. The MSA includes several project management augmentees to support the effort. The rates for these project managers averaged about $36 more per hour than the rates under the IT department's prior MSAs—even though the project managers under each MSA serve basically the same functions. The higher rates were comparable to rates included in another contract the vendor has with the company. A Procurement department official told us that the company may pay different rates depending on the level of expertise of the project manager. Nevertheless, having a company-wide perspective that leverages available vendor pricing information across departments could help the company reduce costs when it procures staff resources that fulfill similar roles—even when a premium rate may be justified for a certain expertise or level of institutional knowledge. An October 2016 study performed by a third party for Amtrak confirmed that reviewing and renegotiating rates for IT contractors could result in cost savings for the company.

Long-term Reliance on Staff Augmentees is Costly

The company, particularly the IT department, relies heavily on long-term staff augmentees obtained under MSAs, resulting in higher costs over time. Our research found that using staff augmentees on a temporary basis can be cost-effective compared to hiring full-time staff for short-term projects; however, using augmentees for longer periods—typically more than two years—can be more costly than using full-time employees. As of September 2016, nearly 40 percent of the staff augmentees in the Marketing and IT departments (116 of 297) had been with the company for more than two years, as shown in Figure 1.

> ***Leading practice:*** *Staff augmentation is cost-effective for short-term projects but may increase costs if used as a long-term staffing solution.*

Figure 1. Tenure of 297 Staff Augmentees for the Marketing and IT Departments, as of September 2016



Source: OIG analysis of MSA end-user department data, as of September 30, 2016
Note: Of the 17 MSAs we reviewed, the Marketing and IT departments were the only departments identified with staff augmentee MSAs.

Because of the extended use of staff augmentees, a large portion of the IT department's workforce consists of contractors who cost more, on average, than full-time employees. In FY 2014, about 60 percent of the department's workforce were augmentees; leading practices suggest an IT workforce of about 20 percent augmentees. The ratio was 41 percent in December 2015, and the IT department planned to reduce that number to approximately 25 percent by the end of FY 2016. However, the IT department's ratio of staff augmentees to full-time staff appears to be increasing. According to an IT department official, in FY 2016, the IT department downsized 25 of its full-time employees for budgetary reasons. However, 51 augmentees were added through a two-year $80 million MSA—for a net addition of 26 staff. With these additions, almost half of the IT department's workforce were staff augmentees as of September 2016.

Leading practice: *A typical IT workforce is approximately 80 percent full-time staff and 20 percent contractors.*

An IT department official told us that this two-year contract, which was awarded in March 2016, is designed to help address some of the challenges resulting from the use of long-term staff augmentees. According to the official, the contract is intended to establish a new approach to how the IT department manages and develops its projects, which includes (1) leveraging discounts on contract volume and negotiating reduced individual rates with the preferred contractor, (2) training and enabling full-time staff to gain the knowledge necessary to maintain legacy IT systems currently managed by staff augmentees, and (3) paying contractors for completed deliverables versus direct staff augmentee hours. Nonetheless, the company has not yet developed a plan to identify how these or other actions would reduce its reliance on long-term staff augmentees and avoid unnecessary costs.

Senior company officials concurred that a reduction in the number of long-term IT staff augmentees may be appropriate. However, they cited budgetary constraints and human resources challenges (such as employee head count restrictions) that may impede them from achieving a workforce balance in the company's IT department that is consistent with the leading practice noted above. Nonetheless, the IT department paid an average rate of about $113 per hour for staff augmentees as of September 2016, compared to the average fully loaded rate of $80 per hour for full-time IT employees.[7] We estimate that reducing the number of augmentees to 20 percent of the IT department's workforce and replacing them with full-time employees could save $10.0 million to $14.2 million annually[8] and could significantly contribute to company-wide efforts to reduce costs.

Long-term Staff Augmentation May Expose Amtrak to Legal Risks

The company's strategy of using MSAs for long-term staff augmentation may also expose the company to the potentially costly legal risk of employee misclassification. Misclassification generally occurs when companies classify workers as contractors despite meeting requirements qualifying them as employees. According to work conducted by the U.S. Department of Labor and GAO, misclassification of workers as independent contractors, rather than as employees, can result in a significant loss of revenues to federal, state, and local tax departments; Social Security; Medicare; the unemployment insurance trust funds; and workers compensation funds.[9] Almost half the states and the District of Columbia have passed laws intended to address this issue.[10]

In addition to requiring companies to pay back-taxes for employees determined to be misclassified, some of these laws provide for civil and criminal penalties, debarment from state contracts, and rights to bring lawsuits. Further, some misclassified employees have sued for unpaid wages, benefits, vacation pay, and other costs, resulting in costly

[7] The fully loaded rate includes the employee's salary and cost of benefits. The average hourly rate for FY 2016 for IT department staff was $80, which includes the company's estimated FY 2016 benefit rate of 40 percent.

[8] The variance in the potential cost savings relates to whether the IT department continues using contractors under the different MSA providers or consolidates under one MSA vendor obtained in March 2016.

[9] See Fredric C. Leffler, J.D., *Misclassifying Workers as Independent Contractors*, American Bar Association, Labor and Employment Law Section, 2010; *Employee Misclassification: Improved Outreach Could Help Ensure Proper Worker Classification* (GAO-07-859T, May 8, 2007); and *Employee Misclassification: Improved Coordination, Outreach, and Targeting Could Better Ensure Detection and Prevention* (GAO-09-717, August 10, 2009).

[10] The Workplace Fraud Amendment Act of 2012, which is applicable to the construction services industry, imposes liability on employers in the District of Columbia for misclassifying employees as independent contractors. See D.C. Code Ann. § 32–1331.02.

settlements for some large companies, including Microsoft and Federal Express. We identified misclassification settlements ranging from $277,000 to $466 million.

The criteria for determining whether workers have been misclassified is complex and often involves an application of various tests,[11] depending on the company, its location, and applicability of federal, state, or case law. Although we did not conduct a comprehensive analysis of the company's use of contractors, we did identify some potential indicators of misclassification. For example, when determining whether a contractor is misclassified, the federal government and some state and local jurisdictions consider factors including (1) whether the employer supervises the individual's time and work schedules and (2) whether the individual's time with the company is considered temporary. Our review found that company employees directly supervise staff augmentees, and as noted above, nearly 40 percent of the company's augmentees have been with the company for two years or more, which is inconsistent with leading practices.

A senior official in the Law department told us that the company has established indemnification and insurance clauses in contracts to help mitigate potential financial risks if a staff augmentee is determined to have been misclassified. However, we believe that these clauses may not address all the risks associated with employee misclassification. For example, indemnification clauses may not completely shield the company from financial loss and risk if the contractor is not financially stable and able to cover costs resulting from employee misclassification. In that case, the company may be potentially liable for the resulting penalties.

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[11] The Department of Labor and the Internal Revenue Service have both generated their own set of criteria to apply in determining whether an employee has been misclassified as an independent contractor. The Internal Revenue Service employs a "20-Factor Test," which includes the degree of control by an employer over the work being conducted, whether expenses are reimbursed, whether tools or materials are provided, and other factors. Similarly, the Department of Labor looks to criteria including the permanency of the worker's relationship with the employer or the nature and degree of control by the employer.

Additional management controls may help further mitigate against employee classification risks, including using a managed service provider to oversee staff augmentees so the company is not directly supervising the augmentees' time and work schedules. They could also include a policy to review the use and tenure of MSAs—similar to the policy the company uses to review independent contractors.[12] These additional risk mitigation approaches could help limit the company's exposure to legal risks related to possible employee misclassification.

> ***Leading practice:*** *Companies should implement controls for using and managing contractors to mitigate employee misclassification risks.*

WEAKNESSES IDENTIFIED IN MSA AWARD AND OVERSIGHT PROCESSES

Improving its processes for awarding and overseeing MSAs could help the company better manage and reduce the costs of MSAs. In particular, we found that the company did not fully adhere to the policies and procedures in the Amtrak Procurement Manual, that it did not use other leading practices when awarding MSAs, and that its post-award oversight of MSAs was weak.

MSAs Did Not Always Include Performance Metrics

When awarding the 17 MSAs we reviewed in detail, the policies and procedures in the Amtrak Procurement Manual were not always followed. The manual states that a contractor's performance on ongoing contracts should be monitored to ensure the successful outcome of the contracts, and leading practices suggest monitoring performance helps ensure that future work is not awarded to poorly performing contractors.

> ***Leading practice:*** *At the outset of a contract, companies should establish performance metrics to provide a means for assessing contractor performance.*

However, 12 of the 17 MSAs we reviewed did not contain clauses establishing performance metrics to monitor and assess performance. Further, Procurement department officials told us that two of the five MSAs that contained performance metrics in the original MSA are not enforceable because the metrics were not included in subsequently issued task orders. Without such metrics, the company had no

[12] See the company's policy P/I 7.13.2, "Independent Contractor Services," dated March 8, 2013.

enforceable means of determining the impact of the contractor's performance and controlling costs. For example, when a contractor responsible for developing a wireless network did not meet the agreed-upon performance and schedule, the lack of performance metrics in the contract made it challenging for the company to take action against the contractor.

MSAs Did Not Always Include Performance Incentives

The company did not use other leading practices when awarding the 17 MSAs we reviewed. Specifically, we found that 15 of the 17 MSAs we reviewed did not include performance incentives as called for by leading practices. Notably, in one case where they were included, they helped the company save money. Specifically, performance incentives in the $7.5 million Human Capital MSA for employee health and welfare services saved the company $45,000 over three months when the service quality of the call center fell below the required standard. In another case, the Procurement and IT departments included performance incentives in the $80 million MSA, noted above, that was awarded in March 2016. At the time of our review, it was too early in the contract to determine whether the incentives resulted in cost savings; however, including incentives may make it easier for the company to take action in cases of inadequate contractor performance.

Leading practice: *Performance incentives in service contracts—whether positive or negative—can help induce better quality performance and control costs.*

MSAs Did Not Utilize Certain Cost-saving Procurement Approaches Used in the Private and Public Sectors

For the 17 MSAs we reviewed, we found that the company did not take advantage of two standard procurement approaches that leading companies use to save money. First, the company did not take advantage of *payment discounts*. We previously reported that taking advantage of payment discounts, such as paying earlier than the 30- or 60-day standard, can help reduce costs.[13] In response to our prior report, the Procurement department agreed with our recommendation to implement, where possible and practical, the use of practices such as negotiating early payment discounts.

[13] See *Governance: Opportunities Exist to Improve the Efficiency of Procurement Practices for Goods and Services* (OIG-A-2015-005, February 11, 2015).

In August 2016, the Procurement department established a goal that new and existing contracts include a 45-day payment term, early payment discounts, or both, according to a Procurement department official.[14] We estimate that, in alignment with leading procurement practices, negotiating a discount of 1 or 2 percent with contractors for early payments, when possible, could save the company about $500,000 to $1 million annually on MSAs.[15]

***Leading practice:** Taking advantage of early payment discounts, when possible, can reduce costs.*

Second, the company did not use *fixed pricing* for MSAs when possible. We found that the company priced some MSAs we reviewed as time and material/labor hour contracts and was not timely in converting them to firm-fixed-price contracts when pricing information became available. For example, the company did not convert an MSA awarded in 2008 to a firm-fixed-price contract until nearly three years after pricing information became available.[16] When the contract was converted to a firm-fixed-price contract and consolidated with another contract, the number of contractors on the help desk was reduced from 10 to 2. According to an IT department official, the company delayed converting the contract to firm fixed price until the contract could also be consolidated with the other contract. As a result of the staff reduction, contract consolidation, and contract conversion to firm fixed price, the annual cost of the help desk decreased. Accordingly, the company could have saved about $2.8 million if these actions had been taken in 2013 at the end of the original MSA term.

***Leading practice:** When pricing information becomes available, companies should convert time and material/labor hour contracts to firm-fixed-price to shift the risk of cost overruns to the contractor.*

[14] According to a company official, extended payment terms of 45 days will help increase liquidity and the available cash flow for the company.
[15] A recent study performed by a third party for Amtrak confirmed that using payment discounts in its contracts was another method of potential cost savings for the company.
[16] The MSA was for IT help desk support for the Engineering and Mechanical departments and was not converted to firm fixed price until 2016, approximately three years after its original contract term ended in 2013 at which point pricing information would have been available.

Post-Award Oversight of MSAs Was Weak

We found significant weaknesses in the company's management controls for overseeing post-award activities for MSAs. Once the MSA is awarded, the end-user departments are responsible for administering and overseeing the MSA without assistance from the Procurement department. However, as we previously reported, the Amtrak Procurement Manual does not contain guidance on follow-on task orders for MSAs, including how and by whom they should be awarded and monitored. This complicates company efforts to oversee and monitor MSAs.[17]

The company has not trained end-user department staff to ensure they are competent in identifying, monitoring, and managing MSAs, as leading practices call for. Of the nine project managers we interviewed who oversaw MSAs, only one received formal training from the Procurement department regarding how to monitor contracts. The lack of specific procedures and training contributed to weak oversight because the end-user departments were not aware of the need to manage and oversee contracts or how to accomplish this. Specifically, we found weaknesses in the end-user department's oversight of MSA activities in the following three areas.

Leading practice: *Personnel need to maintain the competence to accomplish their responsibilities and understand the importance of internal controls.*

Regularly assessing MSA contractor performance. End-user departments did not regularly monitor and assess their MSA contractors' performance in accordance with leading practices. Regularly assessing contractors' performance is necessary to ensure that contractors are delivering the required results. Despite the lack of guidance and performance metrics in the MSAs as discussed above, the end-user

Leading practice: *Companies should monitor and evaluate the contractor's performance to help ensure that the contractor delivers required results.*

[17] See *Acquisition and Procurement: Adequate Competition for Most Contracts Awarded under Americans with Disabilities Act Program, but Procurement Policies Could be Improved* (OIG-A-2016-008, June 8, 2016). Our report recommended that the company update the Amtrak Procurement Manual to clarify the extent to which competition should occur when task orders are awarded under MSAs. The company agreed and communicated a plan to develop such a policy.

departments could have implemented ways to measure performance when they negotiated the statements of work with contractors after the MSA award, such as a quality assurance surveillance plan or a similar monitoring control.

Ensuring adequate competition after MSA award. We found adequate competition for the initial award of each MSA, but the extent of competition when end-user departments awarded follow-on task orders was unclear. On one MSA, the Marketing department did not document its selection when awarding about $14.6 million of $20.4 million to one of the four contractors that competed for a follow-on award for staff augmentation resources. By not competing the work for the award of subsequent contracts, the company could not ensure that the work provided after the initial MSA was at a competitive price.

Leading practice: *Competition for follow-on task orders helps ensure that contractors improve performance or reduce costs beyond the minimum necessary to receive additional work.*

Overseeing augmentees' extra hours. In addition, we found that the controls over staff augmentees' extra hours were weak. For example, the IT department was not effectively overseeing hours billed by staff augmentees it obtained under MSAs. In FY 2013 and FY 2014, these augmentees billed extra hours—hours beyond a standard 40-hour week—that cost the company about $1.3 million each year. In FY 2015, extra hours decreased by almost 50 percent (about $730,000), but were back up in FY 2016 and cost nearly the same as in FY 2013 and FY 2014 (more than $1.1 million).

Leading practice: *Companies should implement controls to ensure that commitments of financial resources are appropriately initiated, authorized, and validated for accuracy.*

Table 2 on the next page lists the five most expensive staff augmentee resources (with extra hours) for FY 2016, based on the rates and hours charged by the augmentees, through September 2016. These augmentees' tenures ranged from one to eight years. Over the last three years, the five highest augmentees' annual charges—including extra hours—averaged about $270,000 per year.[18]

[18] The augmentees included in this list varied from year to year.

Table 2. Five Highest Augmentees' Estimated Total Charges for FY 2016

Staff Augmentee Role	**Estimated Total Charges**	**Tenure**	**Extra Hour Charges as a Percent of Estimated Total Charges**
System Engineer–Senior	$349,008	4 years	38% 
Principal Technologist	$332,633	4 years	31% 
Principal Technologist	$261,664	8 years	12% 
Project Management Office System Engineer/Subject Matter Expert Senior	$257,633	1 years	25% 
Quality Assurance Analyst	$253,127	8 years	24% 

Source: OIG analysis of MSA Time Charges and Master Resource List as of September 30, 2016
Note: Estimated total charges are the fees paid by the company to the MSA contractor under which the augmentee was employed. The figures do not represent the annual salaries provided to the augmentee directly.

In FY 2015, the IT department tried to reduce augmentees' extra hours by establishing controls that project managers track extra hours and justify to approving officials when augmentees work more than five extra hours per month. However, these hours did not need to be approved in advance, and the IT department did not have a method for validating the accuracy of the hours billed. These weak controls likely contributed to the increase in extra hours in FY 2016—in conjunction with the need to complete high-priority or urgent tasks and meet capital project goals that IT department officials told us were not met in FY 2015.

CONCLUSIONS

The company's lack of oversight over MSAs impedes its efforts to strategically manage them and improve departmental accountability. These weaknesses leave the company vulnerable to increased costs and other risks. Although end-user departments should play a role in managing MSAs, adopting a more centralized, strategic approach could help reduce costs and mitigate risks.

In addition, by more broadly implementing leading practices, the company could further reduce costs and mitigate the possible legal risks associated with the long-term use of MSAs, particularly for the high percentage of staff augmentees employed by the IT department. Implementing cost-saving procurement approaches and strengthening management controls related to contractor performance, consistent with leading practices identified in our report, could also lead to further efficiencies and cost reductions.

Implementing the recommendations and leading practices we identified in our report could have resulted in cost savings of up to $2.8 million in prior year funds that could have been put to better use, and could result in cost savings of up to $15.2 million in FY 2017 funds that could be put to better use—for a total of up to $18 million. These potential savings could contribute to the company-wide effort to reduce costs.

RECOMMENDATIONS

We recommend that the company take the following actions:

1. Provide a central office with the authority and resources to collect the information necessary for identifying and tracking all MSAs in use throughout the company.
2. Develop controls to ensure that MSA decisions are made with a company-wide perspective, including capitalizing on price information available throughout the company for making cost comparisons for similar services when possible.
3. Assess and document a plan to decrease the number of long-term staff augmentees in the IT department's workforce to help potentially avoid the additional costs associated with using these augmentees.

4. Assess and document whether additional steps are needed to further mitigate the legal risks associated with possible employee misclassification of staff augmentees.
5. Develop guidance for awarding MSAs consistent with established company procedures on the use of other types of service contracts, and ensure that any performance metrics and incentives are properly documented in such contracts.
6. Take advantage of available early payment discounts when possible to potentially save on MSAs.
7. Ensure that MSAs are converted to firm-fixed-price contracts in a timely manner to avoid unnecessary costs.
8. Provide training for end-users on how to monitor MSAs and assess MSA performance.
9. Assess and document IT staff augmentees' use of extra hours and implement stronger controls to limit their extra hours and avoid unnecessary costs.

MANAGEMENT COMMENTS AND OIG ANALYSIS

In commenting on a draft of the report, the company's Executive Vice President/Chief Administration Officer stated that the company agreed with all or part of our nine recommendations and described planned actions responsive to the intent of eight of these recommendations, including targeted completion dates. He is responsible for recommendations 1, 2, 5, 6, 7, and 8; the Executive Vice President for Planning, Technology, and Public Affairs is responsible for recommendations 3 and 9; and the Executive Vice President/General Counsel and Corporate Secretary is responsible for recommendation 4. The company's planned actions are summarized below.

- **Recommendation 1**: Management agreed with our recommendation to provide a central office with the authority and resources to collect the information necessary for identifying and tracking all MSAs in use throughout the company. Management also stated that it intends for this authority to reside with the Procurement department, which already has started to engage various departments affected by this centralization. The estimated completion date for this recommendation is October 2017.

- **Recommendation 2**: Management agreed with the recommendation to develop controls to ensure that MSA decisions are made with a company-wide perspective and noted planned actions to ensure that MSA cost data is effectively tracked, monitored, and quantified for price comparison across the company. According to the company, these data will be utilized to strategically negotiate the best value for the company on all future agreements. The estimated completion date for this recommendation is October 2017.

- **Recommendation 3**: Management agreed that decreasing the number of long-term staff augmentees in the IT department's workforce is in the company's interest. However, in its January 30, 2017 response, it did not communicate intended actions to assess and document a plan for achieving this goal, as we recommended, or provide a targeted completion date. Instead, management noted several challenges that would limit the company's ability to reduce the ratio between employees and contractors. We recognized these challenges in our analysis and highlighted them in our draft report. For example, our report notes the budgetary and human resources challenges the company highlighted that may impede its ability to significantly reduce augmentees.

  Management also identified several actions that it had taken to reduce the cost of MSAs. For example, as we highlighted in our report, the two-year MSA the IT department awarded in March 2016 is a new approach to managing IT contracts and included certain discounts and a focus on paying for deliverables rather than direct staff augmentee hours. However, it is unlikely that the company will be able to achieve the intent of our recommendation without a plan to assess and document when and how these or other planned actions will help reduce the number of long-term staff augmentees.

  On February 17, 2017, the company provided us with a document describing plans to transition certain MSAs to outcome-based contracts, like the MSA noted above, in an effort to decrease the number of long-term staff augmentees in the IT department's workforce. However, this document was unsigned and undated, and raised additional questions about the IT department's overall plan for reducing its reliance on long-term staff augmentees. Accordingly, we do not consider management's comments responsive to the intent of this recommendation. Therefore, we request that management provide us with additional information by March 24, 2017, to clarify when and how it will develop a plan to reduce the number of long-term staff augmentees in the IT department's workforce.

- **Recommendation 4**: Management agreed with the recommendation to assess and document whether additional steps are needed to further mitigate the legal risks associated with possible employee misclassification of staff augmentees. The company's response stated that the Law department will work with the Human Capital office to review the current policy and process for retaining and monitoring staff augmentees, including a consideration of the legal risks associated with the current augmentee employment profile at Amtrak. The estimated completion date for this recommendation is July 2017.

- **Recommendation 5**: Management agreed with the recommendation to develop guidance for awarding MSAs consistent with established company procedures on the use of other types of service contracts, and to ensure that any performance metrics and incentives are properly documented in such contracts. Management noted several actions to document MSA procedures, including defining the term "MSA" and clarifying the extent to which competition should occur for MSA task orders. The estimated completion date for this recommendation is July 2017.

- **Recommendation 6**: Management agreed with the recommendation to take advantage of available early payment discounts when possible on MSAs and noted the company's actions to negotiate early payment discounts and extended payment terms on contracts. The company noted, however, that it is not always possible to negotiate both an early payment discount and extended payment terms for the same contract and suggested it would be difficult to do so for existing contracts. We recognize that the company will need to use discretion in how it implements this recommendation for new or existing contracts. However, we believe that the company's plan to negotiate favorable payment terms when possible for new MSAs—such as early payment discounts or extended payment terms—meets the intent of our recommendation. The estimated completion date for this recommendation is July 2017.

- **Recommendation 7**: Management agreed with the recommendation to ensure that MSAs are converted to firm-fixed-price contracts in a timely manner to avoid unnecessary costs. Management stated that the Procurement department will actively pursue identification and conversion of selected MSAs to firm-fixed-price contracts, provided it is in Amtrak's best interest to do so. The estimated completion date for this recommendation is December 2017.

- **Recommendation 8**: Management agreed with the recommendation to provide training for end-users on how to monitor MSAs and assess MSA performance. Management stated that the company's Procurement department will develop and implement a formal training program that explains the procedures required to issue and track MSA task orders, as well as how to monitor and assess performance under an MSA. The estimated completion date for this recommendation is December 2017.

- **Recommendation 9**: Management agreed with the recommendation to assess and document IT staff augmentees' use of extra hours and implement stronger controls to limit their extra hours and avoid unnecessary costs. Management described controls it put in place in FY 2015 to limit unnecessary costs related to extra hours, which we identified in our report; however, as we noted, these controls were not effective, and extra hours totaled about $1.1 million in FY 2016—a 50 percent increase from FY 2015. Management also identified additional controls it plans to implement to address our recommendation, including issuing a policy to document controls related to staff augmentees' extra hours. The estimated completion date for this recommendation is March 2017.

For management's complete response, see Appendix C.[19] The company also provided us with technical comments on a draft of this report, which we incorporated as appropriate.

[19] The company provided its final response to our report on January 30, 2017, which is included in Appendix C. During the management comment period, the company also provided an initial draft response, dated December 23, 2016, that it subsequently updated upon our request to clarify planned actions and provide targeted completion dates in response to our recommendations.

APPENDIX A

Scope and Methodology

This report provides the results of our audit of the company's use of MSAs, including its management of MSAs and its processes for awarding and overseeing them. The scope of our work focused on the Procurement department's processes to award and oversee MSAs, and the contracts and post-award activities of five end-user departments: Information Technology, Marketing, Law, Emergency Management and Corporate Security, and Human Capital. We conducted our audit work from March 2015 through December 2016 in Philadelphia, Pennsylvania, and Washington, D.C.

We evaluated MSA contracts and other MSA-related data from October 10, 2008, to September 30, 2016, which included 76 MSAs. We calculated the MSAs' values and related expenditures based on information provided by the Procurement department and end-user departments; therefore, the information may not include all MSAs, their values, and expenditures throughout the company. The company could not provide expenditure data for IT MSAs for February 1, 2015, through June 30, 2015. However, because we used these data primarily for background and informational purposes, the incomplete data do not have a material effect on the report's findings and conclusions.

From the 76 MSAs, we selected for a more detailed analysis 17 MSAs valued at about $312 million at the time of our review. Our sample included both staff augmentation and task order–based MSAs from four of the five departments noted above. Our sample included MSAs awarded from October 2008 through March 2016 that were among the larger dollar-value MSAs from each of the four departments. We discussed our sample selection with the Procurement department to ensure that it was as representative as possible given the incomplete information on MSAs throughout the company.

To evaluate the company's use of MSAs, we assessed the company's processes to strategically manage, award, and oversee MSAs and compared them to relevant leading practices in the private and public sectors. We reviewed the company's financial systems to determine the extent to which MSAs were tracked and centrally managed; assessed available policies and procedures, such as the Amtrak Procurement Manual;[20]

[20] We reviewed both the July 2008 and the December 2015 versions of the Amtrak Procurement Manual.

and interviewed company officials in the Procurement department and the five departments noted above.

For staff augmentation MSAs, we collected workforce data from the Marketing and IT departments, which were the only departments identified with staff augmentation MSAs in our sample. We identified the average rates paid by the Marketing and IT departments for technology-related project managers under certain MSAs as of June 30, 2016, and September 30, 2016, and we calculated and compared the differences in the rates obtained by the two departments.

We also determined the number of augmentees in the Marketing and IT departments and the length of time they had been with the company through September 30, 2016. For the IT department, which had the most augmentees in the company, we also examined the ratio of staff augmentees to full-time employees and estimated the cost savings that could be realized if the company reduced this ratio to align with what leading practices suggest. These estimates do not account for (1) additional cost benefits the company may realize by not paying contractors for hours worked above those of a full-time employee, (2) contractors obtained under non-MSA contracts because they were not in scope for our review, and (3) all potential offsetting costs because they could not be practically calculated.

To estimate the potential cost savings from early payment discounts, we averaged the estimated annual expenses of the MSAs for our review period, based on available company data, and applied potential early payment discounts we identified in leading practices. Although there may be offsetting costs and instances when MSA contractors do not offer such discounts, data were not available to identify those costs; therefore, we did not calculate them. Accordingly, our analysis represents an upper limit of potential cost savings.

To estimate the potential cost savings from converting a time and material/labor hour contract to a firm-fixed-price contract, we compared what the company estimates it will pay annually for the Engineering and Mechanical department's help desk under a consolidated firm-fixed-price contract (which includes other departments' help desks) to what the company paid annually under a prior time and material/labor hour contract in place solely for the Engineering and Mechanical help desk.

We also conducted research and legal analysis regarding risks related to employee misclassification. We compared the company's use of staff augmentees to various factors that states and local jurisdictions consider when determining whether employees are misclassified. We identified leading practices for mitigating these risks through a review of legal publications.

To identify additional leading practices that apply to MSAs more broadly, we reviewed academic, private-sector, and public-sector studies and guidance for awarding and overseeing service contracts, as well as management control standards for private and public entities. We identified a number of leading practices related to the award and oversight of MSAs from a number of sources, including the following:

- American Productivity and Quality Center, *Procurement: Centralization versus Decentralization,* December 2015
- Harvard University, *Harvard University Procure-to-Pay Guide*, November 2015
- GAO, *Standards for Internal Control in the Federal Government,*(GAO-14-704G, September 10, 2014)
- GAO, *USDA Contracting–Further Actions Needed to Strengthen Oversight of Contracts for Professional Services* (GAO-14-819, September 29, 2014)
- KPMG, *The Monumental Opportunity Facing Procurement*, July 2014
- University of Maryland, *Performance-based Services Acquisition*, 2014
- Committee of Sponsoring Organizations of the Treadway Commission, *Internal Control Integrated Framework,* May 2013
- American Productivity and Quality Center/University of Tennessee, Center for Executive Education, *Essentials to Developing a Successful Outsourcing Contract*, 2012
- Office of Inspector General of the Department of Transportation, *FAA's Contracting Practices are Insufficient to Effectively Manage Its Systems Engineering 2020 Contracts* (ZA-2012-082, March 28, 2012)
- American Productivity and Quality Center, *Accounts Payable Discounts: Enabling Contributions to Working Capital,* 2010
- Fredric C. Leffler, J.D., *Misclassifying Workers as Independent Contractors*, American Bar Association, Labor and Employment Law Section, 2010
- GAO, *Employee Misclassification: Improved Coordination, Outreach, and Targeting Could Better Ensure Detection and Prevention* (GAO-09-717, August 10, 2009)
- GAO, *Defense Contracting: Improved Insight and Controls Needed over DOD's Time-and-Materials Contracts* (GAO-07-273, June 29, 2007)

- GAO, *Employee Misclassification: Improved Outreach Could Help Ensure Proper Worker Classification* (GAO-07-859T, May 8, 2007)
- Office of Management and Budget, *Best Practices for Multiple Award Task and Delivery Order Contracting,* February 1999

We conducted this performance audit 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.

Internal Controls

We reviewed selected management controls that the Procurement department and the five departments noted above had in place for awarding and overseeing MSAs and post-award MSA activities. For the award process, we focused on controls involving competition, contractor performance, and contractor selection. For the oversight process, we assessed controls related to tracking MSAs, monitoring contractor performance, and managing post-award activities. We limited our conclusions and recommendations to controls in those areas. We did not review the company's or any of the department's overall system of controls.

Computer-Processed Data

We received computer-processed data from two company systems. We received MSA expenditures from FY 2009 through FY 2016 from the Procurement department and end-user departments based on data from the company's Ariba system (e-Trax). We were able to trace several transactions back to a source system and determined that the data were reliable for our purposes in the report. We also received augmentee timekeeping data from the Enterprise Project Management system. We compared the data we obtained to source records and determined that the data were sufficiently reliable for our purposes in this report. In summary, we determined that these data were sufficiently reliable for how we used them in the report.

Prior Audit Reports

In conducting our analysis, we reviewed and used information from the following Amtrak OIG reports:

- *Acquisition and Procurement: Adequate Competition for Most Contracts Awarded Under Americans with Disabilities Act Program, but Procurement Policies Could be Improved* (OIG-A-2016-008, June 8, 2016)
- *Governance: Opportunities Exist to Improve the Efficiency Of Procurement Practices For Goods And Services* (OIG-A-2015-005, February 11, 2015)
- *Acquisition And Procurement: Closer Alignment With Best Practices Can Improve Effectiveness* (OIG-A-2014-006, May 7, 2014)
- *Information Technology: Opportunities Exist to Improve Services, Economies, and Contract Performance* (OIG-A-2013-013, April 16, 2013)

APPENDIX B

List of Leading Practices

The leading practices we relied on in this report are listed below.

CATEGORY	LEADING PRACTICES
Strategic Management	• When leading organizations conduct strategic planning for procurements, they understand the company-wide context of the procurement, manage risk, and assess performance across the organization. • Management should monitor key activities and communicate their status throughout the organization to facilitate the achievement of company-wide objectives. • Companies are moving toward a centralized procurement approach in which the procurement function serves as a strategic partner with end-user departments throughout the organization. • A more coordinated and strategically oriented approach to procurement can help ensure that a company obtains the best rates for services.
Staff Augmentation	• Staff augmentation is cost-effective for short-term projects but may increase costs if used as a long-term staffing solution. • A typical IT workforce is approximately 80 percent full-time staff and 20 percent contractors. • Companies should implement controls for using and managing contractors to mitigate employee misclassification risks.
Contract Award	• At the outset of a contract, companies should establish performance metrics to provide a means for assessing contractor performance. • Performance incentives in service contracts—whether positive or negative—can help induce better quality performance and control costs. • Taking advantage of early payment discounts, when possible, can reduce costs. • When pricing information becomes available, companies should convert time and material/labor hour contracts to firm-fixed-price to shift the risk of cost overruns to the contractor.
Contract Oversight	• Personnel need to maintain the competence to accomplish their responsibilities and understand the importance of internal controls. • Companies should monitor and evaluate the contractor's performance to help ensure that the contractor delivers required results. • Competition for follow-on task orders helps ensure that contractors improve performance or reduce costs beyond the minimum necessary to receive additional work. • Companies should implement controls to ensure that commitments of financial resources are appropriately initiated, authorized, and validated for accuracy.

Source: OIG research of available literature to identify leading practices

APPENDIX C

Management Response from the Chief Administration Officer

NATIONAL RAILROAD PASSENGER CORPORATION

Memo

AMTRAK

Date *January 30, 2017*

From DJ Stadtler
DJ Stadtler
Executive Vice President/Chief Administration Officer

To *Stephen Lord*
Assistant Inspector General, Audits

Department *Administration*

cc *Eldie Acheson*
Michael Alexis
Mario Bergeron
Matthew Gagnon
Stephen Gardner
Byl Herrmann
Ghada Ijam
Jason Molfetas
Scot Naparstek
Bernard Reynolds
Jerry Sokol
Scott Wilkinson

Subject: *Acquisition and Procurement: Master Services Agreements Are Not Strategically Managed, and Award and Oversight Processes Can Be Improved*
(Audit Report for Project No. 008-2015)

This memorandum provides Amtrak's response to the OIG Audit Report: "*Acquisition and Procurement: Master Services Agreements Are Not Strategically Managed, and Award and Oversight Processes Can Be Improved* (Audit Report for Project No. 008-2015)".

We appreciate the efforts and thoughtful evaluation by the entire OIG audit team, and the spirit in which the recommendations are made. We also welcome the on-going constructive dialogue we have with OIG's representatives. We believe that this process can help increase the likelihood of success as we improve Amtrak's procurement and other control processes.

Thank you for this opportunity to comment on the audit report. As indicated in our responses, we agree with all or part of all of the recommendations. Where possible at this time, we have assigned responsibility to appropriate Amtrak associates to take timely actions to address. In several cases, we will evaluate alternative responses and provide our action plans when finalized.

Recommendation 1:
Provide a central office with the authority and resources to collect the information necessary for identifying and tracking all MSAs in use throughout the company.

Management Response/Action Plan: Management agrees with this recommendation, and intends for this authority to reside with the Procurement & Logistics Department. This will represent a significant strategic shift for Amtrak, and Procurement & Logistics has begun the process of engaging with the various department heads impacted by this centralization. This process will likely involve significant internal discussion, as the necessary policies and documentation, containing appropriate exceptions, are prepared.

Management will provide updates to this response, and to the related responses below, as needed. Responsible Amtrak Official(s): Vice President and Chief Procurement & Logistics Officer

Target Completion Date: 10/31/2017

Recommendation 2:
Develop controls to ensure that MSA decisions are made with a company-wide perspective, including capitalizing on price information available throughout the company for making cost comparisons for similar services when possible.

Management Response/Action Plan: Management agrees with this recommendation. Amtrak will implement the necessary systematic controls to track, monitor and quantify all MSA cost data effectively. This data will be utilized to strategically negotiate the best value for Amtrak on all future agreements.

Responsible Amtrak Official(s): Vice President and Chief Procurement & Logistics Officer

Target Completion Date: 10/31/2017

Recommendation 3:
Assess and document a plan to decrease the number of long-term staff augmentees in the IT Department's workforce to help avoid the additional costs of $10 million to $14.2 million potentially associated with using these augmentees.

Management Response/Action Plan: Amtrak IT is in agreement that reducing long-term staff augmentees is the right long-term direction for the organization. However, there are Amtrak-wide considerations within Human Capital policies, and union contract restrictions that limit IT's ability to achieve the 80/20 ratio between employees and contractors. Nonetheless, in 2015, we continued our pursuit of financial excellence and collaborated with Procurement to reduce vendor rates. As a result, Tier 1 and 2 vendor classifications were established and a new policy mandated all requisitions be submitted to lower cost Tier 1 vendors.

Early in the 2016 Financial Year (FY), there were many issues facing Amtrak IT including: a) outsourcing of large multi-year programs (Customer Experience EPIC, Ops Foundation); b) intellectual property residing in disparate systems managed by external contractors; c) fragmented human capital resourcing practices; and d) no volume discounts, or quality incentives with resource vendors.

Consequently, in April 2016, the Packetized Development (PD) initiative[1] was launched, which will greatly reduce the Information Technology department's dependence on MSA staff augmentation. To date, several major milestones have been achieved:

- Signed *Strategic Agreement for Amtrak CIO Support Ser*vices with a global consulting firm in April 2016. This agreement permits outcome-based contract agreements. ;

[1] Packetized Development is an outcome-based sourcing strategy to delivering Amtrak lead IT solutions.

- In June 2016, incorporated PD principles, which permits outcome based contract agreements, to Option Year 3 Contract extension with another international consulting firm for all SAP platform related services.;
- In November 2016, issued *PD Phase II Request For Proposal (RFP)*, a RFP to allow for PD with a variety of vendors (including current MSAs) across the identified major IT platforms and technologies. Contracts under this RFP will be awarded in January 2017 to several approved vendors.; and
- Negotiated significant cost savings as well as greater accountability, knowledge transfer, and overall governance. For example, in FY 2016 achieved 12% savings over MSA rates ($1,537,817.12) as a result of negotiated reduced individual rates and an enterprise volume discount (3%).

During FY 2017, we will continue to evaluate business needs, and assess the employee-to-contractor balance.

Recommendation 4:
Assess and document whether additional steps are needed to further mitigate the legal risks associated with possible employee misclassification of staff augmentees.

Management Response/Action Plan: Management agrees with this recommendation. The Law Department will work in conjunction with Human Capital to review the current policy and process for retaining and monitoring staff augmentees. This review will include a consideration of the legal risks associated with the current augmentee employment profile at Amtrak.

Responsible Amtrak Official(s): Keren Rabin, Senior Associate General Counsel (Law); Denyse Nelson-Burney, Senior Director Human Capital Compliance and Leave Management (Human Capital)

Target Completion Date: July, 2017

Recommendation 5:
Develop guidance for awarding MSAs consistent with established company procedures on the use of other types of service contracts, and ensure that any performance metrics and incentives are properly documented in such contracts.

Management Response/Action Plan: Management agrees with this recommendation. Amtrak will document and clarify the proper procedures required to award and administer an MSA in accordance with the Procurement Manual and Amtrak policy. This will include defining the term MSA, clarifying the extent to which competition should occur when task orders are issued, specifying the record-keeping requirements for issuing task orders, and ensuring performance metrics and, where appropriate, incentives, are incorporated into these agreements.

Responsible Amtrak Official(s): Vice President and Chief Procurement & Logistics Officer

Target Completion Date: 7/31/2017

Recommendation 6:
Take advantage of available early payment discounts when possible to potentially save $500,000 to $1 million per year on MSAs.

Management Response/Action Plan: Management agrees with this recommendation. Procurement & Logistics actively negotiates both early payment discounts and extended payment terms; however, it is not always possible to negotiate both an early payment discount and extended payment terms on the same contract. Amtrak may not be able to mandate an early payment discount with respect to existing agreements without additional consideration.

Furthermore, this report assumes that if a contractor had agreed to whatever percentage discount was used to calculate these potential savings, that there would be no impact to the costs associated with time, material, and/or services contained within these contracts.

Amtrak will negotiate either early payment discounts or extended payment terms on all future MSAs, when possible.

Responsible Amtrak Official(s): Vice President and Chief Procurement & Logistics Officer

Target Completion Date: 7/31/17 (with respect to implementing a strategy to negotiate discounts where applicable).

Recommendation 7:
Ensure that MSAs are converted to firm fixed-price contracts in a timely manner to avoid unnecessary costs, such as the estimated $2.8 million from a prior contract that could have been put to better use.

Management Response/Action Plan: Management agrees with this recommendation. As part of the governance and oversight of a centralized MSA program, Procurement will actively pursue identification and conversion of select MSAs to firm-fixed price contracts, provided it is in Amtrak's best interest to do so.

Responsible Amtrak Official(s): Vice President and Chief Procurement & Logistics Officer

Target Completion Date: 12/31/2017

Recommendation 8:
Provide training for end-users on how to monitor MSAs and assess MSA performance.

Management Response/Action Plan: Management agrees with this recommendation. Amtrak Procurement will develop and implement a formal training program that explains the procedures required to issue and track MSA task orders as well as how to monitor and assess performance under an MSA.

Responsible Amtrak Official(s): Vice President and Chief Procurement & Logistics Officer

Target Completion Date: 12/31/2017

Recommendation 9:
Assess and document IT staff augmentees' use of extra hours and implement stronger controls to limit their extra hours and avoid unnecessary costs.

Management Response/Action Plan: Management agrees with the recommendation and has already put in place controls to limit unnecessary costs. Our business needs often require that contractors work over 40 hours per week to respond to unplanned events like production outages or project deliverables and milestones; however, since FY 2015 we have proactively managed costs in several ways:

- IT Communications distributed a directive, which informed IT management and contractor staff that work hours over 40 per week require pre-approval. An updated directive will be issued every six months each fiscal year to ensure compliance.
- Written documentation stating exactly how many hours and specific tasks for the pre-approval is required to all Resource Manager and Project Managers. Their approval then must be sent to ITFinance@amtrak.com as well so they can add it to a sub folder on the IT Finance SharePoint site to store all documentation regarding overtime which is utilized when paying invoices or for budget questions.
- The existing staff augmentation MSA provides for payment by only one hourly rate, therefore, when overtime is required and approved, the standard hourly rate is paid and not a premium or time and a half rate.
- IT management will track and report extra hours and costs each monthly cycle. In addition, project managers are required to monitor and manage resource usage to ensure that costs beyond standard workweek billing do not become the norm. Managers are to review by each resource and look for those that have routine overtime hours. If it becomes a trend, the manager will work with IT Resource Management to add additional resources to cover the workload as necessary.
- IT has developed a draft policy that will be reviewed, revised and promulgated by 3/1/2017.

Responsible Amtrak Official(s): Chief Information Officer

Target Completion Date: 3/1/2017

APPENDIX D

Acronyms and Abbreviations

FY	fiscal year
GAO	Government Accountability Office
IT	Information Technology
MSA	Master Services Agreement
OIG	Amtrak Office of Inspector General
the company	Amtrak

APPENDIX E

OIG Team Members

Anne Keenaghan	Senior Director, Audits
Carl Manora	Senior Audit Manager
Joseph Zammarella	Senior Auditor, Lead
Sheila Holmes	Senior Auditor, Lead

OIG MISSION AND CONTACT INFORMATION

Mission

The Amtrak OIG's mission is to provide independent, objective oversight of Amtrak's programs and operations through audits and investigations focused on recommending improvements to Amtrak's economy, efficiency, and effectiveness; preventing and detecting fraud, waste, and abuse; and providing Congress, Amtrak management, and Amtrak's Board of Directors with timely information about problems and deficiencies relating to Amtrak's programs and operations.

Obtaining Copies of Reports and Testimony

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Report suspicious or illegal activities to the OIG Hotline

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or

800-468-5469

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