



OFFICE of INSPECTOR GENERAL
NATIONAL RAILROAD PASSENGER CORPORATION

ACQUISITION AND PROCUREMENT:

Company's Electronic Procurement System Limits Effective Contract Oversight

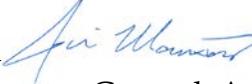
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Memorandum

To: Tracie Winbigler
Executive Vice President and Chief Financial Officer

From: Jim Morrison 
Assistant Inspector General, Audits

Date: August 16, 2022

Subject: *Acquisition and Procurement: Company's Electronic Procurement System Limits Effective Contract Oversight (OIG-MAR-2022-013)*

In fiscal year (FY) 2020, Amtrak (the company) spent about \$2.8 billion on contracts to support company operations. The recent passage of the Infrastructure Investment and Job Act (IIJA) will provide the company with access to as much as \$66 billion in new funding—the largest investment in passenger rail since the company's creation 50 years ago. As we have reported, the IIJA will significantly increase the company's capital spending and contracting needs.¹ The multitude of contracts the company expects to award over the coming years, particularly construction contracts, increases the importance of having an effective system for managing its contracts.

In December 2021, we initiated a survey to identify key risks in the company's practices for developing and managing construction contracts. During our review, we identified challenges that could limit its ability to store all contracts in a centralized place, as well as specific issues with managing construction contracts.² We raise these challenges now to inform key stakeholders as the company plans to receive its first tranche of IIJA funding, which could exacerbate these challenges.

To accomplish our work, we interviewed all 10 officials in the Procurement department who are responsible for procuring construction services for the company. We also interviewed senior officials in the Procurement, Law, Finance, and Information Technology departments, and we reviewed company documents, including internal

¹ AMTRAK: *Areas for Management Focus in Advance of Infrastructure Investment and Jobs Act Funding* (OIG-SP-2022-008), March 31, 2022.

² When we refer to contracts in this report, we are referring to legally binding agreements for the acquisition of goods and services processed by the Procurement department. We are not referring to other types of binding agreements, such as the company's agreements with its federal grantees, state partners, or host railroads.

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procurement policies. We also assessed data in Ariba on Demand, the company's electronic procurement system—an off-the-shelf "procurement to pay" system, for which it pays a yearly subscription. We conducted our work in accordance with standards we developed for alternative products. For additional details on our scope and methodology, see Appendix A.

SUMMARY OF RESULTS

We identified challenges with the company's storage and management of its contracts that pose legal and financial risks, as well as specific challenges with Ariba on Demand—as the company is using it—that limit its ability to effectively manage construction contracts:

- **Contract storage.** The company does not have a centralized and automated repository for storing its procurement contracts. Instead, the company's contract storage efforts are decentralized and manually driven, which impacts records retention, increases legal risk, and reduces the ability to oversee key procurement metrics companywide. This has been a longstanding concern; in 2018, we recommended that the company address this issue by moving toward a centralized contract management system. The company responded that it planned to use Ariba on Demand for this purpose, but the system is still not functioning in that capacity, nor is any other system.
- **System functionality for construction contracts.** Ariba on Demand is functioning well as an approval and workflow system, according to company officials. Six key challenges with the system, however, limit the company's ability to efficiently manage construction contracts. These include a limited ability to protect sensitive information from contractors who use the system, difficulties registering suppliers, and various technical limitations that require manual workarounds. Individually, none of these are major challenges, but collectively they increase the time and effort necessary to develop and manage construction contracts.

Accordingly, the company may want to determine whether Ariba on Demand has the capability to meet its needs for an automated contract repository and, if not, to explore other viable solutions. In addition, it may want to assess the relative risks of the other challenges we identified and prioritize addressing them. In commenting on a draft of this report, the Vice President and Chief Procurement and Supply Chain Officer agreed

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with both of our considerations for management and outlined actions the company plans to take by March 2023 to implement them.

THE COMPANY DOES NOT HAVE A FULLY FUNCTIONING AUTOMATED CONTRACT REPOSITORY

The company does not have an automated repository for storing all procurement contracts, which is contrary to standards for effective internal controls.³ In 2018, we reported that the absence of a contract management system was exposing the company to financial and legal risks, and we recommended that the company plan to address this issue.⁴ In response, company management stated that it planned to use Ariba on Demand, which would include a contract management module, as its enterprise-wide contract management system. Based on this plan and the company's signed contract for these services, we closed this recommendation. In practice, however, the company did not fully execute its plan due to broader challenges with the transition to the system, according to officials from the Law, Finance, and Procurement departments. Moreover, as the transition evolved, officials began to recognize that Ariba on Demand may not fulfill the company's needs for an automated, enterprise-wide contract repository. More recently, company officials told us they have yet to fully investigate Ariba on Demand's capabilities, and that certain departments—including Finance and Law—have no plans to use this system as a contract repository. Company officials also told us they have not explored other solutions that might meet their contract storage needs.

Because Ariba on Demand is not operating as a fully functioning contract repository, Procurement department officials told us contracting officers store their contract files and supporting documentation in multiple systems (including Ariba on Demand) and also in various older systems, in SharePoint,⁵ or on their personal drives. Having contract documentation distributed among disparate systems, however, limits

³ Committee of Sponsoring Organizations of the Treadway Commission, *Internal Control-Integrated Framework*, May 2013.

⁴ In our 2018 report, we found that internal controls for managing contracts were weak because the company relied on inefficient methods of contract record-keeping that were decentralized, ad hoc, manually driven, and sometimes paper-based. During that audit, we used a risk-based approach and selected 20 of the company's top 100 highest-value, highest-risk contracts in the Engineering, Mechanical, Information Technology, and Marketing departments. See *Acquisition and Procurement: Contracts Included Key Provisions to Reduce Risks, But the Company Lacks an Efficient and Effective Contract Management System* (OIG-A-2018-003), February 22, 2018.

⁵ SharePoint is a web-based collaborative platform that is primarily a document management and storage system.

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companywide oversight of contracts. When we reported in 2018, Law department officials provided instances when the absence of an automated contract management system impeded efforts to craft a clear legal strategy to effectively represent the company's interests in legal proceedings, leaving the company vulnerable to financial or legal risk. For example, these officials told us they devoted significant resources to searching for contract documents, and sometimes they had to ask suppliers for contract documentation. Similarly, during our current review, we tried to determine the total number of company contracts, suppliers, and change orders—written alterations to a contract's specifications—but were unable to do so using Ariba on Demand.⁶ Moreover, we could not readily find contract information and data for individual contracts in Ariba on Demand, such as scopes of work. The company can also not readily find such data in this or any other electronic system.

Without a repository for all Procurement contracts and supporting documentation, the company cannot effectively and efficiently monitor contracts or provide data on key procurement metrics. For example, the Procurement department is unable to generate reports on milestone dates and is instead manually tracking this information. Although the IT department has ongoing efforts to generate some reports by FY 2024, the Vice President, Procurement & Logistics, said that the quality of reporting data available is likely to remain insufficient for his department's oversight needs.

Ultimately, without an automated contract repository, the risks we identified will persist and be exacerbated by the influx of IIJA funds and the initiation of new construction projects. The company's General Counsel; Vice President and Chief Procurement and Supply Chain Officer; and Vice President, Controller of Finance, all told us the company would benefit from a centralized and automated system.

OTHER CHALLENGES LIMIT THE COMPANY'S ABILITY TO EFFECTIVELY MANAGE CONSTRUCTION CONTRACTS

Procurement and IT department officials told us that Ariba on Demand is an effective approval and workflow system. We identified six additional challenges with Ariba on Demand as the company is using it, however, that are relevant to the unique and

⁶ We found that Ariba on Demand provides information on purchase orders, but it cannot identify the associated contracts. During our review, Procurement department officials told us they worked with the IT department to link purchase orders the company issued on or after January 1, 2022, to their associated contracts. They were not, however, able to apply this retroactively, and they still do not capture key contract information.

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specific needs of construction contracting. Individually, none of these are a major challenge, but collectively they reduce the efficiency of the company's construction contracting processes.

These challenges occurred because the company did not fully identify and clarify the needs of all its users before determining Ariba on Demand's requirements, as we recently reported.⁷ These incomplete requirements limited the company's understanding of how the system would affect business processes. This led to additional steps in the procurement process and manual workarounds in the system and also increased the resources necessary to manage more time-consuming processes. This is inconsistent with internal control standards⁸ that call for organizations to ensure that their technology supports their objectives, rather than relying on manual processes to achieve them.

In our prior report, we made recommendations that, if implemented, will help avoid similar problems with future IT projects. In the meantime, however, the company plans to continue using Ariba on Demand to develop and manage its contracts, and the following challenges limit its ability to do so:



Challenges with protecting sensitive information

Ariba on Demand's default settings for purchase orders reveal certain sensitive information to suppliers, according to company officials.⁹ We identified (and the IT and Procurement departments confirmed) that some purchase orders had visible contingency amounts—funds the company sets aside for cost increases due to unknown or differing site conditions.¹⁰ If contractors are aware of these funds, they may be incentivized to increase their costs. During our review, company officials told us they resolved most of the issues related to the visible contingency amounts, but Ariba on Demand's default settings for purchase orders could continue to reveal sensitive information unless contracting officials manually override the default setting. Procurement department officials stated that the system cannot identify how frequently

⁷ *Information Technology: Better Requirements Could Help the Company Implement Technology Projects More Effectively*, (OIG-A-2022-007) March 11, 2022.

⁸ Committee of Sponsoring Organizations of the Treadway Commission, *Internal Control-Integrated Framework*, May 2013.

⁹ A contract created via purchase order, which is for routine or one-time purchases.

¹⁰ Amtrak, *Procurement Manual, Procurement and Supply Chain Management*, December 2021.

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they may be exposing sensitive information to suppliers. As a result, the company does not know if it is exposed to increased costs and, if so, by how much.



Limited ability to manage certain construction activities

Ariba on Demand has various technical limitations that limit certain construction activities and require inherently inefficient manual workarounds, according to company officials. For example, senior Procurement department officials told us Ariba on Demand limits the ability to manage the withholding of retainage, which are funds the company reserves until it verifies that a supplier satisfactorily completed the project.¹¹ Officials had to develop a manual workaround to withhold these funds when using purchase orders; specifically, they created a separate line-item to retain a percentage of the total cost until the project is complete. As another example, when using purchase orders, the system has difficulty supporting progress payments, which are funds the company pays to suppliers at specified intervals throughout a project's lifetime. Here again, contracting officers had to develop a workaround—manually reversing the price and quantity fields in the purchase order. To illustrate, a contracting officer would have to input a \$10 million bridge as 10 million bridges that cost one dollar each. Without this workaround, the system would pay the entire contract amount in a single payment rather than in increments over time.



Untested workaround to avoid spending limits on purchase orders

The company's annual subscription to Ariba on Demand limits the amount of purchase orders that can flow through the system.¹² The company plans to implement a process to avoid exceeding this limit by converting its largest existing purchase orders into blanket purchase orders (BPOs) and using them for future purchases as much as possible.¹³ According to a senior official in the Procurement department, as of July 2022,

¹¹ Project Management Institute, *Construction Extension to the Project Management Body of Knowledge Guide*, 2016.

¹² In 2020, this limit was \$1.5 billion, but the company had more than \$5 billion in open purchase orders that year. The company recognized this challenge and, in 2021, negotiated to raise its spending limit to \$12 billion over five years. This was prior to the IJIA funds being awarded to the company, however, which will further increase contract spending.

¹³ A BPO is typically used for high-dollar purchase agreements for large quantities of materials or services over longer terms.

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the company was working on a solution but had not yet determined whether BPOs could support all core construction contracting activities, such as retainage. Therefore, the company does not know if this solution will be successful for construction contracts. In addition, if these solutions do not work, and if the company exceeds the annual spending limit, it may incur fees for FY 2022 that it has not yet estimated. It previously estimated, however, that it risked incurring \$800,000 in fees for FY 2021 if it had exceeded the spending limit.



Difficulty registering suppliers

Suppliers find it difficult to register accounts in Ariba on Demand, which they are required to do before they can submit bids and invoices to the company, according to senior officials from the Procurement department. To mitigate this issue, the Procurement department assigned three staff who dedicate most of their time to assisting suppliers, and the department plans to add two more. Also, the Procurement department formed an Ariba on Demand committee to improve the process for registering suppliers. As of March 2022, however, the company had a backlog of more than 200 suppliers who needed assistance, according to a senior Procurement department official. Several Procurement department officials told us that, due to the difficulty of the process, some suppliers dropped out of the solicitation process entirely, which reduced competition. Additionally, a senior Finance department official stated that the company has granted exceptions to certain suppliers to submit invoices outside Ariba on Demand, which has led to the company tracking and managing suppliers in separate systems. According to the Vice President, Procurement & Logistics, using multiple systems increases the time and effort necessary to track and manage suppliers. Company officials told us that, as of July 2022, the Procurement department was working to enhance training options for suppliers.



Limits on file size for contract documents

Ariba on Demand limits the size of files that users can save, preventing them from storing important documents like construction drawings and large contracts, according to a Procurement department official. As a workaround, many contracting officials store their largest contract documents in SharePoint or on their personal drives. This is inconsistent with the company's procurement policy, which calls for contracts to be stored in Ariba on Demand or the company's general ledger. IT department officials

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said they are aware of this issue, and they have expanded the file size limits and plan to allow links to SharePoint in Ariba on Demand for document storage. With contract documents stored across multiple systems, however, management cannot readily generate reports on contracts for monitoring and oversight purposes.



Ariba on Demand imposes a character limit for purchase order line items, which Procurement officials told us impacts their ability to sufficiently document the scopes of construction project work in the system. IT department officials told us they cannot expand the character limit because it is already at the maximum the system allows. As a workaround, Procurement officials told us they sometimes enter details about the scope of work in other sections of the purchase order, such as in comment sections or uploaded documents. Accordingly, during our review, we identified scopes of work that were not stored in the same locations in Ariba on Demand. As a result of this inconsistency, management cannot generate reports to review scopes of work for construction contracts for monitoring and oversight purposes.

CONSIDERATIONS FOR MANAGEMENT

Based on our observations, the company should consider taking the following actions:

1. Determine whether Ariba on Demand has the capabilities to fulfill the company's needs for an automated repository for all Procurement contracts and supporting documentation. If so, implement those capabilities as soon as practical. If not, promptly explore and implement other viable solutions to ensure that the company has the capability to do the following:
 - a. Store all contract files and supporting documentation in an automated format that is centralized, easily accessible, and appropriately secure.
 - b. Generate management data on key procurement metrics.
2. If the company intends to continue using Ariba on Demand, assess the relative risk of the construction contracting challenges that we identified and prioritize addressing them accordingly.

In commenting on a draft of this report, the Vice President and Chief Procurement and Supply Chain Officer agreed with both of our considerations for management. He then

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described the company's plans to address each of them by March 2023. Planned company actions include reviewing the feasibility of using Ariba on Demand or other alternatives as a single repository for all contract-related data and assessing the risks of the other challenges we identified.

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APPENDIX A

Objective, Scope, and Methodology

This report provides the results of our survey that we initially conducted to identify key risks in the company's practices for developing and managing construction contracts. During our review, we identified challenges that could limit the company's ability to store all contracts in a centralized place, as well as specific issues with managing construction contracts. We are raising these challenges now to inform key stakeholders as the company plans to receive its first tranche of IIJA funding, which could exacerbate these challenges. Our scope included companywide storage of contracts and management of construction contracts. We performed our work from December 2021 to August 2022 in Washington, D.C.

To determine where the company stores its contracts, we assessed the Ariba on Demand system to determine if it was functioning as a contract repository. We interviewed the company's General Counsel and three senior officials of the Law department concerning ongoing risks associated with the company not maintaining a companywide repository for contracts. We also interviewed senior officials from the Procurement and Finance departments about ongoing challenges with creating a repository.

To identify challenges related to managing construction contracts in Ariba on Demand, we developed a semi-structured approach to interviewing officials from the Procurement department to gather their perspectives on the company's current procurement process and procedures. Based on these interviews, we identified challenges with the company's storage of contracts and management of construction contracts. We then interviewed several senior officials in the Procurement, Law, Finance, and IT departments to ensure that these perspectives were accurate. We also assessed data in Ariba on Demand and reviewed company documents.

We conducted our work in accordance with standards we developed for alternative products.

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APPENDIX B

Abbreviations

BPO	blanket purchase order
FY	fiscal year
IIJA	Infrastructure Investment and Job Act
OIG	Amtrak Office of Inspector General
the company	Amtrak

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APPENDIX C

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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.

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