



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE OF INSPECTOR GENERAL

AUDIT SERVICES

March 9, 2010

FINAL ALERT MEMORANDUM

TO: Danny Harris
Chief Information Officer
Office of the Chief Information Officer

Thomas Skelly
Acting Chief Financial Officer
Office of the Chief Financial Officer

FROM: Keith West /s/
Assistant Inspector General for Audit

SUBJECT: Untimely Resolution of Issues Impacting Performance Validation and Payment
Calculations Under the EDUCATE Contract
Control Number ED-OIG/L19K0001

While responding to allegations received by the Office of Inspector General's (OIG) Hotline regarding the U.S. Department of Education's (Department) management of the Education Department Utility for Communications, Applications, and Technology Environment (EDUCATE) contract, we became aware that the Department did not act timely to resolve issues impacting performance validation and payment calculations after the execution of a contract modification in December 2008. As a result, the Department may have paid the EDUCATE contractor money it was not entitled to receive under the terms of the contract. The purpose of this alert memorandum is to bring our concerns to your attention in order to expedite corrective action.

Contract Background

The EDUCATE contract established a Contractor-Owned Contractor-Operated Information Technology (IT) service model for the Department under which the contractor is required to provide the total IT platform and infrastructure to support Department employees in meeting the Department's mission. This includes items such as desktop and printer services, helpdesk support, data center operations, e-mail, network, disaster recovery, and other special services. The rendered IT services are monitored and evaluated through established Service Level Agreements (SLA) that involve the application of incentives and disincentives if services provided fall above or below the standards.

The Department's process to calculate and approve incentives/disincentives under the SLA framework includes multiple Department officials and the support of an Independent Verification and Validation contractor (IV&V). The Department's SLA owners are tasked with validating contractor-provided performance data and calculations. SLA owners meet weekly with the EDUCATE contractor to resolve discrepancies, with the accumulated data flowing into a monthly SLA report that summarizes performance and compares actual results to standards established in the SLA framework. The SLA report flows through multiple members of the contract administration team, including the Contracting Officer's

Representative (COR), Assistant COR (ACOR), and Project Manager (PM). The PM makes recommendations for final approval on invoice payment to the COR, who subsequently submits the information to Contracts and Acquisition Management (CAM) for payment processing. The IV&V's responsibilities include independently verifying and validating the performance of the EDUCATE contractor to determine if it is meeting desired performance goals. Within this role, the IV&V submits monthly reports to the Department's contract administration team that summarize the EDUCATE contractor's performance during the prior month.

The Department Did Not Act Timely to Resolve Noted Concerns

Contract Modification (MOD) 23, effective December 1, 2008, modified the SLA framework by revising and creating SLAs. Among other changes, the modification implemented a new algorithm to determine the amount of downtime for servers, allowing 30 hours of monthly downtime beginning with the December 2008 performance period. During our review, we became aware that the Department did not act timely to resolve conditions impacting the determination and validation of amounts due to the EDUCATE contractor under the modified SLA framework.

In February 2009, the EDUCATE contractor submitted its December 2008 performance invoice to the Department in the amount of \$3,571,685. The Department withheld \$135,767 from the payment issued, claiming that performance was not reported in accordance with new SLA metrics established under MOD 23.

In July 2009, the EDUCATE contractor submitted an invoice to recoup \$129,307 from the amount withheld for the December 2008 performance period. The ACOR conducted a review of performance by sampling SLAs and unit-based charges reported in the resubmitted December 2008 invoice, noting that the results of her review conflicted with the results of the SLA report. The ACOR stated she utilized the services of the IV&V to validate the SLA algorithms and metrics for the resubmitted December 2008 invoice, and on August 3, 2009, recommended the PM and COR withhold \$71,642 from the invoice payment.

The PM indicated she initiated follow-up with the ACOR regarding the results of her review, but the ACOR was involved in an automobile accident and was out of the office for several days after submitting her recommendation. According to the PM, the COR took the ACOR's recommendation to a regularly scheduled meeting on August 6, 2009, involving the PM, COR, and CAM. The PM further indicated the COR reviewed each recommendation with those in attendance and the ACOR was later advised via telephone that the outcome was to withhold only \$2,160 from payment. Ultimately, the ACOR submitted the required information to CAM on August 7, 2009, to ensure the resubmitted invoice was paid timely.

The PM stated she relied on the December 2008 SLA report provided by the Department's SLA coordinator as the basis for approving the invoice because the ACOR's recommendation was a separate internal analysis and the related calculations had not been vetted or approved by the SLA owners. She further stated the ACOR's recommendation was not based on the official SLA calculations and determinations of the SLA owners.

During our review, we found concerns regarding SLA calculations had been reported by the IV&V since April 2009. The IV&V stated uncertainty existed regarding the methodology used to calculate server downtime and that without defined rules, it could not determine whether SLA performance was within contractual requirements. In its March 2009 Monthly Report,¹ the IV&V first stated it could not monitor

¹ IV&V's March 2009 Monthly Report was released in April 2009.

the EDUCATE contractor's performance following MOD 23 because performance data was either incomplete or not submitted. The report specifically stated the EDUCATE contractor was not:

1. Tracking scheduled downtime following the requirements of MOD 23;
2. Using correct SLA initiation times to verify compliance;
3. Providing correct data to support SLA compliance; and
4. Providing full and complete back-up data to support some SLAs.

Concerns were repeated in monthly IV&V reports through November 2009 (the last report issued at the time of our review). In December 2009, after completion of our work, we were advised a meeting was held that included Department officials, including the COR and SLA owners, the EDUCATE contractor, and the IV&V. Issues noted as being discussed included properly tracking scheduled downtime, using correct initiation times, and providing correct data to support SLA compliance following MOD 23 (items 1, 2 and 3 above). The COR and IV&V reported the noted issues were adequately addressed and resolved. However, the IV&V stated full and complete backup data to support other SLAs (item 4 above) was a recurring issue that was still not resolved.

Departmental Directive, Office of the Chief Financial Officer (OCFO): 2-108, dated August 6 2009 (Directive), Subpart VI.B.2, requires the PM to ensure that effective and cooperative relations and communications are maintained among the PM, the CORs, and the Contracting Officer (CO)/Contract Specialist for all monitoring and administration matters, particularly in the sharing of monitoring information and in the review of reports, deliverables, invoices, and other administrative matters.

Subpart VI.E of the Directive states the COR "Monitors individual contracts to ensure a contractor's technical performance is in accordance with the contract."

Subpart VII.H.2.d notes it is the responsibility of the COR to become familiar with the payment provisions applicable to each contract he or she must monitor.

Subpart VII.P.2 states "A COR who believes that a contractor has failed (or may be expected to fail) to perform under a contract must notify the CO promptly so that swift, positive, and firm steps can be taken to protect the Government's interests. If a COR fails to initiate corrective action in the face of known performance deficiencies, such inaction could be judged to constitute a waiver of the Government's right later to demand remedy by the contractor."

The individuals involved in the administration of the EDUCATE contract have not effectively fulfilled their roles in the oversight and monitoring of the contract, to include establishing an effective process to assign responsibility for timely resolving issues identified in the IV&V reports. The COR stated he did not take action to resolve the noted concerns as he believed the responsibility resided with the PM because the issues were technical and not contractual in nature.

As a result, the Department cannot assure services are being offered following the contracted terms and that the Department's interests are being protected. The Department may have already paid the EDUCATE contractor money it was not entitled to receive under the terms of the contract. In addition, submission of incomplete data and uncertainties with calculation methodologies limits the ability of the IV&V to be able to effectively perform its intended role in contract performance monitoring.

Recommendations

We recommend the Chief Information Officer and Chief Financial Officer:

- 1.1 Instruct the PM and COR to review all payments made to the EDUCATE contractor for performance under the modified SLA framework (MOD 23) and request reimbursement for money it was not entitled to receive under the terms of the contract.
- 1.2 Proceed as quickly as possible to resolve the issue repeatedly presented in the IV&V reports regarding submission of incomplete data to support some SLAs.
- 1.3 Establish a process, to include the assignment of an accountable official, for timely resolving issues identified in the IV&V reports.
- 1.4 Ensure any future concerns relating to EDUCATE performance validation or payment calculations are resolved in a timely manner and communicated to all critical contract administration team officials.
- 1.5 Ensure all EDUCATE contract administration team members understand their responsibilities in order to better protect the Department's interests.

Department Comments

A draft of this memorandum was provided to the Office of the Chief Information Officer (OCIO) and OCFO for comment. In its response to the draft alert memorandum, OCIO/OCFO concurred with our finding and recommendations and described the corrective actions already taken or planned. The response is included in its entirety as an Attachment to this memorandum.

Corrective actions proposed (resolution phase) and implemented (closure phase) will be monitored and tracked through the Department's Audit Accountability and Resolution Tracking System (AARTS).

Alert memoranda issued by the Office of Inspector General will be made available to members of the press and general public to the extent information contained in the memoranda is not subject to exemptions in the Freedom of Information Act (5 U.S.C. § 552).

For further information, please contact Michele Weaver-Dugan, Director, Operations Internal Audit Team, at (202) 245-6941.

Attachment



UNITED STATES DEPARTMENT OF EDUCATION

WASHINGTON, D.C. 20202-_____

FEB 26 2010

Memorandum

To: Keith West
Assistant Inspector General for Audit
Office of the Inspector General

From: Danny Harris
Chief Information Officer
Office of the Chief Information Officer

Thomas Skelly
Acting Chief Financial Officer
Office of the Chief Financial Officer

Subject: Response to Draft Alert Memo Entitled Untimely Resolution of issues Impacting Performance Validation and Payment Calculations under the EDUCATE Contract (Control Number ED-OIG/L19K0001)

Thank you for providing the subject Alert Memo dated February 4, 2010. The Office of the Chief Information Officer (OCIO) considers this a serious matter and greatly appreciates your review and concluding recommendations for corrective action.

Please find below our comments, corrective action plans and completion dates for each of your respective recommendations.

Recommendation 1.1

Instruct the PM and COR to review all payments made to the EDUCATE contractor for performance under the modified SLA framework (MOD 23) and request reimbursement for money it was not entitled to receive under the terms of the contract.

OCIO Response

We concur with this recommendation. The PM, COR and Assistant Contracting Officer's Representative (ACOR) as officially delegated by the Contracting Officer, will be instructed to review all payments made to the EDUCATE contractor under MOD 23 and withhold from payment any monies it was not entitled to receive under the terms of the contract. This review and resulting withholding will be completed by March 31, 2010.



Recommendation 1.2

Proceed as quickly as possible to resolve the issue repeatedly presented in the IV&V reports regarding submission of incomplete data to support some SLAs.

OCIO Response

We concur with this recommendation and have already begun corrective action. A team was established late December, 2009, to assess the various SLA review processes, identify discrepancies between SLA Monitors (SLAMs) the EDUCATE Contractor and the IV&V Contractor's interpretation of individual Service Level Agreements, and improve SLA assessment processes where necessary. Much progress has been made, as reflected in comparative weekly IV&V status reports. Training has been initiated, SLAM access to core data provided, analyses of Contractor data conducted, and individual SLAM monitoring practices established. Further assessment and improvements are anticipated, but corrective action is aggressively underway. A corrective Action Plan will be in place and formal action initiated by March 19, 2010.

Recommendation 1.3

Establish a process, to include the assignment of an accountable official, for timely resolving issues identified in the IV&V reports.

OCIO Response

We concur with this recommendation. An official OCIO Standard Operating Procedure will be established which designates the Information Technology Services Director as the Program Manager of the EDUCATE contract and addresses the Director as being accountable for timely resolution of the issues raised by IV&V. This Standard Operating Procedure will be completed and published in the OCIO Procedures That Work library by March 12, 2010.

Recommendation 1.4

Ensure any future concerns relating to EDUCATE performance validation or payment calculations are resolved in a timely manner and communicated to all critical contract administration team officials.

OCIO Response

We concur with this recommendation and as stated above, will prepare a Standard Operating Procedure detailing formal steps to be taken to address EDUCATE Contract concerns relating to performance validation and payment calculations in a timely manner. All OCIO staff shall be provided copies of these procedures by March 31, 2010.

Recommendation 1.5

Ensure all EDUCATE contract administration team members understand their responsibilities in order to better protect the Department's interests.

OCIO Response

We concur with this recommendation and implemented training of all contract administration team members early October of last year. The biweekly CLIN Owner training program was established to address roles and responsibilities of all contract administrative team members, to introduce the Integrated Master Schedule of all EDUCATE Contract Deliverables, to assure understanding of contract deliverable processes and to provide a forum for continued Service Level Agreement assessment. This program has proven to be a tremendous success and has helped to bring the team to consensus on contract processes, responsibilities and timeframes. The training program will continue indefinitely.

Thank you again for bringing this matter to our attention and for providing recommended action plans to assure expeditious corrective action. OCIO is committed to accurate and timely contract management and will continue to aggressively address any business management issues that might arise. We look forward to our continued relationship with your office and are available to discuss this matter further if you feel necessary.