



UNITED STATES DEPARTMENT OF EDUCATION

OFFICE OF THE DEPUTY SECRETARY

June 20, 2011

Honorable Luis Fortuño
Governor
Commonwealth of Puerto Rico
PO Box 9020082
San Juan, Puerto Rico 00902-0082

Honorable Jesús Rivera Sánchez
Secretary of Education
Puerto Rico Department of Education
Post Office Box 190759
San Juan, Puerto Rico 00919-0759

Dear Governor Fortuño and Secretary Rivera Sánchez:

Enclosed are special conditions that the U.S. Department of Education (Department) is imposing on all grants awarded to the Puerto Rico Department of Education (PRDE) for Federal fiscal year (FFY) 2011, as well as on all grants previously awarded by the Department to PRDE that are still available for obligation or liquidation on the date of these special conditions, including grants awarded under the American Recovery and Reinvestment Act of 2009 (ARRA). We are imposing the enclosed special conditions based on our review of PRDE's twelfth quarterly report under the 2007 Compliance Agreement between the Department, PRDE, and Puerto Rico (2007 Agreement); information gathered during the Department's site visit to Puerto Rico and PRDE from February 17-18, 2011 and our assessment of this information; and our review of certain findings by the Department's Office of the Inspector General (ED-OIG) in a recent ED-OIG audit and Alert Memo concerning personal service contracts and professional service contracts.

As you know, over the past several years, the Department and Puerto Rico have worked cooperatively toward addressing many systemic and longstanding grant management and accountability issues that PRDE has been facing with regard to the administration of Federal education grants. On October 25, 2004, the Department entered into a Compliance Agreement with Puerto Rico and PRDE to address systemic improvements that were needed in PRDE's management of Department grants to ensure compliance with Federal program and fiscal management requirements applicable to those grants (2004 Agreement). On December 17, 2007, the Department also entered into a Memorandum of Agreement (MOA) with Puerto Rico and PRDE, which governed the implementation, review, and oversight of activities conducted by Puerto Rico and PRDE in compliance with, and in follow up to, certain terms and conditions of the 2004 Agreement. As a result of the 2004 Agreement and the MOA, Puerto Rico and PRDE developed and implemented several new grants management, administrative, and fiscal management processes. In June 2009, the Department determined that Puerto Rico and PRDE had substantially satisfied requirements in the 2004 Agreement and had substantially completed the action steps under the MOA in the areas of grants management, payroll, and procurement.

However, as you are aware, shortly thereafter, events in Puerto Rico, including a serious economic downturn, a proposed reorganization of PRDE, and layoffs of over 6,000 PRDE employees pursuant to Puerto Rico Law 7 (Law 7),¹ led the Department to have concerns that PRDE would not be able to complete work on corrective actions for uncompleted MOA Tasks, that PRDE would not be able to continue its implementation of some MOA action steps, and that some of the work PRDE had done to greatly improve its administration of Department programs covered in the 2007 Agreement, might not be continued and completed by December 17, 2010.

The Governor and the PRDE Secretary of Education took several immediate actions to provide additional fiscal, administrative and program support to PRDE to address our concerns as documented in an August 21, 2009 letter. Subsequent to our August 2009 letter and our September 2009 site visit, PRDE entered into a Memorandum of Understanding (MOU) with several fiscal and oversight Puerto Rico agencies, including the Puerto Rico Department of Treasury, the Government Development Bank and the Puerto Rico Office of Management and Budget. The MOU provided for a team of fiscal, administrative and compliance staff, referred to as the “Monitoring Committee” to be embedded on site at PRDE to provide day-to-day support. The MOU also provided for an Oversight Committee to monitor and oversee the implementation of the Department’s agreements with PRDE. During the January 2010 site visit, the Department worked closely with both the Oversight Committee and the Monitoring Committee and was very encouraged by the focus, commitment, and expertise that both groups bring to addressing PRDE’s administrative, grants management and program implementation issues.

In addition, the Department entered into the 2007 Agreement with Puerto Rico and PRDE because the Department determined it would take PRDE more than one year to completely address several programmatic issues requiring corrective action, and to establish the continued cooperation of other parts of the Puerto Rico government in this effort, such as the Puerto Rico Department of the Treasury and PRDE’s Office of Management and Budget. The programs under which PRDE receives funds from the Department, and in which corrective action was deemed necessary, included Titles I, II, and IV of the Elementary and Secondary Education Act (ESEA), Title IV of the Higher Education Act of 1965, and the Individuals with Disabilities Education Act (IDEA) (covered Federal programs). The 2007 Agreement also addressed the progress and effectiveness of the PRDE Internal Audit Office (IAO) and the independent Audit Oversight Committee (Audit Committee). Grant recipients are required to provide assurances that grant funds are being spent in accordance with Federal program and legislative requirements. The Department relies on these assurances to approve grant applications. Successful operation of both the IAO and the Audit Committee will help PRDE provide these needed assurances. Accordingly, Task 16 of the 2007 Agreement required the full implementation of PRDE’s IAO and Audit Committee.

By the end of the three-year 2007 Agreement, PRDE was expected to be in full compliance with all applicable program requirements delineated in the 2007 Agreement in order to continue to receive Federal education funds under the covered Federal programs. Through the 2007 Agreement, Puerto Rico and PRDE, with technical assistance from the Department, were to have developed and implemented solutions to PRDE’s program performance and implementation problems.

During the week of February 14, 2011, the Department conducted a site visit to Puerto Rico and PRDE to gather further information to determine whether Puerto Rico and PRDE were in compliance with the requirements in the 2007 Agreement. Based on the information received during the site visit,

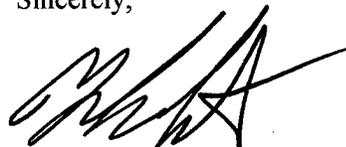
¹ Law 7 is the Puerto Rico statute requiring a government-wide reduction-in-force and hiring freeze as part of the Commonwealth’s fiscal stabilization and restructuring plan in response to a \$3.2 billion deficit in its operating budget.

along with other information and reports provided to Department program offices and in the quarterly status reports required by the 2007 Agreement, the Department has determined that Puerto Rico and PRDE are now in compliance with the requirements in the 2007 Agreement. There are still remaining issues to be resolved in the IDEA program; however, the Department's Office of Special Education Programs (OSEP) will address PRDE's progress on these requirements through the State Performance Plan and Annual Performance Report processes and, if necessary, through other grant-specific actions.

The results of the 2007 Agreement once again demonstrate your commitment to ensuring that Federal education program funds are used appropriately and effectively to educate children and students in the Commonwealth of Puerto Rico. The outcome of the 2007 Agreement is evidence that you as key officials of the Commonwealth, and officials of other entities within and outside the government, continue to recognize the need for coordination and cooperation and are working collaboratively to effect the continued change and improvement in PRDE education program administration for the benefit of Puerto Rico's students.

We look forward to continuing to work with you and other Puerto Rico officials to improve the delivery of Federal education services for the students throughout the Commonwealth.

Sincerely,

A handwritten signature in black ink, appearing to read 'P. Maestri', with a large, stylized flourish extending to the right.

Philip A. Maestri, Director
Risk Management Service

cc: Rina Gonzalez Gelpi, Director, PRDE Office of Federal Affairs

Enclosure

Commonwealth of Puerto Rico Department of Education
FFY 2011 Departmental Special Conditions

PREAMBLE: These special conditions are imposed on the Puerto Rico Department of Education's (PRDE's) Federal fiscal year (FFY) 2011 grants made available by the U.S. Department of Education (Department) on or after the date of these special conditions, and are also imposed on all grants previously awarded by the Department that are still available for obligation or liquidation by PRDE, including grants awarded under the American Recovery and Reinvestment Act of 2009 (ARRA). The special conditions are imposed to help ensure that Department grant awards are expended by PRDE in accordance with applicable legal requirements, and the appropriate fiscal accountability measures and management practices and controls, including those established by PRDE under the Memorandum of Agreement (MOA) among Puerto Rico, PRDE, and the Department, signed on December 17, 2007.

I. BACKGROUND

A. In 2002, the Department designated PRDE a "high-risk" grantee, under the Education Department General Administrative Regulations (EDGAR) (at 34 CFR § 80.12). At that time, special conditions were placed on all Department grants awarded to PRDE because of its history of unsatisfactory performance, as uncovered by audits dating back to 1994. The Department's 2002 special conditions were intended to bring about necessary changes to Federal program administration and appropriate fiscal oversight in Puerto Rico that would ultimately bring it into compliance with all Federal education program requirements. The special conditions were intended to result in important improvements to Federal grant administration in Puerto Rico so that the systemic problems uncovered by the auditors would be corrected and would not reoccur. In addressing the special conditions, and in conjunction with the Department's Cooperative Audit Resolution and Oversight Initiative (CAROI), as outlined below, PRDE has taken numerous steps to address underlying problems.

B. As a result of PRDE's demonstrated initiative and commitment to resolving the problems that led to the 2002 "high-risk" designation, and in recognition of PRDE's progress in that regard, the Department removed PRDE's "high-risk" grantee designation, on a probationary basis, upon the October 25, 2004 signing of a Compliance Agreement among Puerto Rico, PRDE, and the Department (2004 Agreement).

C. Starting in September 2003, the Department and PRDE worked together in a collaborative effort under the CAROI process, to jointly resolve the backlog of unresolved PRDE audits, which contained over six hundred audit findings dating back to 1994. As a result of this effort, PRDE has taken steps and established controls to improve its payroll and procurement processes and its management of grants to address numerous recurring audit issues and make systemic changes. It has assigned knowledgeable staff to this task and has employed expert contractors to assist in this

effort. PRDE sought to come into compliance with Federal requirements through the implementation of corrective action plans in the areas of grants management, procurement, and payroll, with the ultimate goal of improving educational services to all students in Puerto Rico.

D. The 2004 Agreement primarily addressed systemic problems in PRDE's program administration and management of Federal education funds. Under the 2004 Agreement, Puerto Rico and PRDE developed, and began to implement, several new grants management, administrative, and fiscal management processes. At the conclusion of the 2004 Agreement, the Department determined that these new processes would satisfy requirements in the 2004 Agreement if the processes were implemented fully and effectively, as approved by the Department, throughout Puerto Rico's school system, and if PRDE implemented the 2004 corrective action plans developed in conjunction with the 2004 Agreement (2004 CAPs) in the areas of grants management, payroll, and procurement. Accordingly, on December 17, 2007, Puerto Rico and PRDE entered into a Memorandum of Agreement (MOA) with the Department that governed the implementation, review, and oversight of certain activities that Puerto Rico and PRDE committed to conducting, in compliance with, and in follow up to, certain terms and conditions of the 2004 Agreement. The MOA expired on April 30, 2009. The Department determined that Puerto Rico and PRDE had substantially satisfied requirements in the 2004 Agreement and had substantially completed the action steps under the MOA in the areas of grants management, payroll, and procurement. PRDE had proposed a reorganization, which would impact how it continues implementation of action steps in the areas of program implementation, monitoring and technical assistance, and schoolwide programs, under the Office of Federal Affairs (OFA) Grants Management section of the MOA. During the Department's May 2010 site visit, PRDE reported that the reorganization would be complete on July 1, 2010 and would result in increased and improved support to schools. The Department continues to monitor the impact of the reorganization.

E. As a result of monitoring of PRDE's Federal programs, the Department identified several program areas requiring corrective action by PRDE. The programs under which PRDE receives funds from the Department, and in which the Department determined corrective action was necessary, include Titles I, II, and IV of the Elementary and Secondary Education Act (ESEA), Title IV of the Higher Education Act of 1965, and the Individuals with Disabilities Education Act (IDEA) (covered Federal programs). The Department determined that it would take more than one year for PRDE to completely address the identified program compliance issues under those covered Federal programs and to establish the continued cooperation of other parts of the Puerto Rico government in this effort, such as the Puerto Rico Department of the Treasury and Puerto Rico's Office of Management and Budget. Therefore, on December 17, 2007, under the authority of section 457 of the General Education Provisions Act (GEPA), the Department entered into a comprehensive, three-year Compliance Agreement (2007 Agreement) with Puerto Rico and PRDE.

F. In addition to programmatic issues, the 2007 Agreement also addressed the progress and effectiveness of the PRDE Internal Audit Office (IAO) and the independent Audit Oversight Committee (Audit Committee), both of which are critical in assuring the Department that grant funds it awards to PRDE are being spent in accordance with Federal program requirements. Accordingly, Task 16 of the 2007 Agreement requires the full implementation of PRDE's IAO and Audit Committee.

G. At the end of the three-year period, PRDE was to be in full compliance with all applicable program requirements in order to continue to receive Federal education funds under the covered Federal programs. During the week of February 14, 2011, the Department conducted a site visit to Puerto Rico and PRDE to gather further information to determine whether Puerto Rico and PRDE were in compliance with the requirements in the 2007 Agreement. Based on the information received during the site visit, along with other information and reports provided to Department program offices before and during the visit, and in the quarterly status reports required by the 2007 Agreement, the Department determined that Puerto Rico and PRDE were in compliance with the requirements in the 2007 Agreement. While there were still remaining issues to be resolved in the IDEA program, the Department's Office of Special Education Programs (OSEP) determined it would address PRDE's progress on these requirements through the State Performance Plan and Annual Performance Report processes and, if necessary, through other grant-specific actions.

While actions taken by Puerto Rico and PRDE during the term of the 2007 Agreement have resulted in significant improvements in PRDE's program performance and implementation, which are fundamental to ensuring PRDE's compliance with Federal program and fiscal management requirements applicable to the Department grants that it receives, PRDE must continue its work on improving the effectiveness and outcomes of its Federal education programs. In support of this objective, the Department will follow up with PRDE on its ongoing improvement efforts and is committed to providing ongoing and robust technical assistance as required. Many of PRDE's ongoing efforts in both programmatic and fiscal administration of Department grants will be reflected and incorporated in future special conditions imposed upon grants awarded by the Department to PRDE. Section II.A. includes two such conditions.

II. SPECIAL CONDITIONS

A. Enhance and Develop a System or Systems to Capture Information on Personal Services Contracts (PSC) and Professional Services Contracts (ProSC) in Order to Better Account for and Reconcile Federal Expenditures

1. A recent U.S. Department of Education-Office of the Inspector General (ED-OIG) audit, *Puerto Rico Department of Education's Award and Administration of Personal Services Contracts* (ED-OIG/A04J0005) and Alert Memo, *Insufficient Controls for the Puerto Rico Department of Education's Use of Education Funds*

for Personal Services Contracts (ED-OIG/L04K0018), have identified weaknesses in PRDE's controls over expenditures for PSCs. The Department is aware that PRDE has attempted to implement an electronic system to capture PSC information known as the Part Time and Irregular Employees System (SEPI). PRDE has indicated previously that it planned to enhance the system or implement a new one that would have the ability to upload supporting documentation such as attendance sheets, signed contracts, etc.

The SEPI system contains data including contract control numbers, a code that identifies the place where the services are going to be provided, and other useful information. However, the Department is concerned that insufficient information is captured and stored for review, either in SEPI or some other system, to assist PRDE and the Department in properly monitoring and auditing PSCs. As a result of this concern and to address the ED-OIG findings regarding PSCs in the ED-OIG audit and alert memo, by September 30, 2012, PRDE must either enhance the existing SEPI system, or implement another solution if warranted, to capture at a minimum the information listed below and any other information deemed appropriate to facilitate proper accounting for, and reconciliation of, Department grant funds for PSCs:

- a. Contract approval dates.
- b. Obligation number and/or Purchase Order number.
- c. Vendor name, address and vendor ID number.
- d. Name of the PRDE program/unit that requested the services and the name of the PRDE unit that received the services.
- e. Grant award number and account number (in some cases PRDE uses consolidated Federal funds accounts. In those cases, the system should be able to account for each funding source and the amount provided by each).
- f. Registration form numbers, attendance sheet numbers, etc.
- g. Contract amendment numbers.
- h. Amount of hours contracted.
- i. Number of training sessions to be provided or number of teachers or students to be served.
- j. The name of the final approving authority in the Central Procurement Office and Budget Office.
- k. Description of services to be provided.
 - l. The expected dates of the deliverables.
- m. Modifications to the original contracts, dates of modification, description of the modification, and names of approving official(s).
- n. Names of all persons/contracting officers responsible for monitoring the PSC and the results to be delivered (outcomes).
- o. Contract number or Registration Form Number.
- p. Award amount.
- q. Award date.
- r. ED grant award(s) to which the PSC is charged.

- s. Name of Person or Location receiving the services (school or office name, location).
2. On March 8, 2011, in response to the ED-OIG audit and alert memo, the Department conducted a conference call with PRDE staff and the Director of the PRDE IAO. During the call, the Department requested that the IAO perform an independent review (report) of the effectiveness and adequacy of the controls and procedures for PSCs and deliver a report to the Department by April 15, 2011. In order to ensure a comprehensive and complete report, the IAO requested, and RMS granted, an extension to deliver the report on May 20, 2011. The IAO requested an additional small extension, and the report was delivered to ED on May 23, 2011. The report, a copy of which is attached to these special conditions, included a set of recommendations starting on page 10 of the report for improving the effectiveness and adequacy of the controls and procedures for PSCs. In addition to the action that PRDE must take under section II.A.1 above, by September 30, 2012, PRDE must provide evidence to ED that it has implemented the recommendations listed in the IAO report.
3. ED-OIG also recently forwarded to the Department's Risk Management Service (RMS) a complaint that it received regarding possible control weaknesses concerning Professional Services contracts (ProSCs) in PRDE's Institute for the Teachers' Professional Development. The Department is aware that PRDE does have a centralized registry for ProSCs, required by the Puerto Rico Comptroller's office. However, it is unclear whether or not the registry is adequate to capture sufficient information on ProSCs, whether the data is maintained in electronic or another format, or whether the data elements in the registry are those necessary to ensure sufficient controls and accountability for Department grant funds used for ProSCs.

As a result of these concerns, by September 30, 2012, PRDE must either enhance the existing centralized registry for ProSCs as necessary, or implement another solution if warranted, to ensure that all data required by the Puerto Rico Comptroller's office is being captured, as well as any other information deemed appropriate to facilitate proper accounting for, and reconciliation of, Department grant funds for ProSCs. PRDE may utilize a set of data elements similar to those listed in Section II.A.1. PRDE may elect to develop separate systems or an integrated single system to capture all contracts or registration forms related to both personal and professional services and all necessary data, including the data elements listed above in Section II.A.1, and must make this information available to PRDE's IAO for bi-annual inspection and audit, as well as to ED on an as requested basis.

B. Continued Reporting on Implementation of Activities under the MOA and the 2007 Agreement

1. MOA.

a. Procurement Strategies for Special Education Related Purchases: PRDE reported on the implementation of strategies to identify requisitions for regional contracts and the implementation of PCards (purchasing cards) at the Service Centers with its FFY 2009 Annual Performance Report (APR) submitted on February 1, 2011. Since PRDE is in the beginning phases of implementing these new procurement strategies, the Department is requiring PRDE to continue reporting on: (1) the implementation of its strategy to identify those items in Special Education requisitions that can be included as part of the regional contracts already in place and which items should be included in new contracts; and (2) implementation of the use of PCards (purchasing cards) for special education related purchases initiated at the Special Education Service Centers. PRDE must submit this information with the FFY 2010 Annual Performance Report (APR), due February 1, 2012.

b. Special Education – Timely Correction of Noncompliance: In the FFY 2009 APR, submitted on February 1, 2011 and additionally clarified and submitted on April 19, 2011, PRDE reported 85.6% compliance with this requirement under Indicator 15. PRDE must report on the status of compliance with the requirements for timely correction of previously-identified noncompliance, that is, report on the status of ensuring correction no later than one year from identification. In its reports, to the extent appropriate, PRDE must include documentation regarding any action taken against entities that did not correct noncompliance within one year of identification including, as appropriate, enforcement actions or sanctions taken against those entities with continuing noncompliance.

In reporting on the timely correction of noncompliance, Puerto Rico must report that it has: (1) corrected all instances of noncompliance (including noncompliance identified through the State's monitoring system, through the State's data system and by the Department); and (2) consistent with Memo 09-02² issued by the Department's Office of Special Education Programs (OSEP), verified that the PRDE school, agency, or entity with identified noncompliance is correctly implementing the specific regulatory requirements that resulted in the finding of

² In its October 17, 2008 Memorandum 09-02, "Reporting on Correction of Noncompliance in the Annual Performance Report Required under Sections 616 and 642 of the IDEA," OSEP provided Chief State School Officers and Lead Agency Directors important information regarding: (1) requirements for identifying noncompliance and reporting on the correction of noncompliance in States' APRs; and (2) how OSEP will, beginning with the FFY 2008 APR, due February 1, 2010, consider the correction of noncompliance in making annual determinations for States pursuant to section 616(d) of the IDEA. It is important for PRDE to review the guidance in the memorandum, and to raise any questions with your OSEP State Contact. The memorandum may be found at: <http://spp-apr-calendar.rfcnetwork.org/explorer/view/id/656>.

noncompliance. In addition to reporting on data for FFY 2010, with the FFY 2010 APR, due February 1, 2012, PRDE must report on correction of noncompliance for the period from July 1, 2011 through December 31, 2011. PRDE should continue to report this information using the worksheet for Indicator B15 with the APR documentation.

2. 2007 Agreement.

a. Special Education – In accordance with the June 2011 APR determination letter and response table, the Department concluded that PRDE did not meet the requirements of the 2007 Agreement on the following items and that PRDE must continue to report on these items through the APR process. The specific requirements on reporting period and due dates are outlined in the June 2011 APR determination letter and response table:

- i. PRDE develops IEPs for all children transitioning from Part C to Part B of IDEA, and provides special education and related services by each child's third birthday;
- ii. PRDE completes all initial evaluations within required timelines and eliminates backlogs of students with disabilities needing evaluations to determine eligibility for special education and related services (this is the initial evaluation subset of the action item related to both initial evaluations and reevaluations);
- iii. PRDE completes all due process hearings, as set forth under 34 CFR §300.515, within the required timelines;
- iv. PRDE completes all reevaluations within required timelines and eliminate backlogs of students with disabilities needing evaluations to determine eligibility for special education and related services (this is the reevaluation subset of the action item related to both initial evaluations and reevaluations);
- v. PRDE provides children served under the IDEA with needed assistive technology devices and services in a timely manner, and eliminate the backlog of students needing such devices and services; and
- vi. PRDE resolves financial management issues, including addressing and resolving the use-of-funds requirements related to transportation contracts.

C. Internal Audit Office and Audit Oversight Committee Status Report and Review of Personal Services and Professional Services Contracts

1. On March 24, 2011, a complaint was forwarded to RMS from ED-OIG regarding concerns with Professional Services Contracts in PRDE's Institute for the Teachers' Professional Development. Based on the allegations, there appears to be a disconnect between the procedures the director of the Institute believes should be followed and the procedures the director of the Office of Federal Affairs stated they should follow (PRDE's Guide for the Selection of Professional Services Paid with

Federal Funds). Given the concerns raised by the complaint, and the possible disconnect over what procedures are to be followed and what controls are in place, PRDE's IAO shall by December 1, 2011 conduct a review to audit the controls that the Institute has in place for approving training registrations, including processes used for determining allowability, requesting funds from the Office of Federal Affairs to fund the trainings, and for complying with existing procurement/awarding processes.

2. The IAO shall also provide to ED:

- Copies of IAO reports as they are issued.
- A report on accomplishments of the PRDE IAO and the Audit Committee every six months.

D. Prompt Response to Request for Records

PRDE shall promptly provide the Department or its representatives any requested records and information.

E. Program-Specific Conditions

Additional special conditions may be imposed on FFY 2011 grant awards made under one or more Department programs, in addition to the special conditions that are contained in this document. Each such program-specific special condition will be contained in an attachment to the final grant award notification document that is provided by the Department to PRDE.

F. ARRA-Specific Conditions

ARRA-specific special conditions were contained in attachments to the final ARRA grant notification documents provided by the Department to PRDE. They remain in effect for PRDE's ARRA grant awards, and the special conditions contained in this document are in addition to the ARRA-specific special conditions.

III. FAILURE TO COMPLY WITH SPECIAL CONDITIONS:

A. Enforcement Action Steps or Additional Conditions

If a plan, report or documentation under Section II above is not provided by PRDE on a timely basis or is not considered acceptable, the Department may consider it a failure to comply with the special conditions contained in Section II above and, therefore, such a

failure may be subject to the remedies outlined below or to the terms in Section IV.A below. If the Department determines that PRDE has not made substantial progress in meeting program objectives, or has not met program requirements or the special conditions contained in Section II above, the Department may consider not continuing PRDE's grants; taking further enforcement action steps, or applying additional conditions, including:

1. Conditions under which PRDE would receive no further funds under one or more grant awards or would receive funds only on a reimbursement basis;
2. Conditions providing for the Department's recovery of misspent funds from PRDE; or
3. Conditions requiring PRDE to contract (on a competitive basis) with a third party, who must be approved by the Department, to provide the program services, financial management, or both, under one or more PRDE grant awards, in which case the third party would, at a minimum, assist in preparing the vouchers to be submitted to the Department for reimbursement, and would verify their accuracy and legitimacy as appropriate expenditures under one or more grant awards.

B. Reinstatement of "High-Risk" Status Under 34 CFR § 80.12

In the event that PRDE and Puerto Rico fail to maintain the improvements that they have instituted under the 2004 Agreement, the MOA, and the 2007 Agreement, the Department retains the authority to reinstate the "high-risk" designation that it removed from PRDE and Puerto Rico in 2004. If the Department determines that such reinstatement becomes necessary, additional special conditions or restrictions may include, but will not necessarily be limited to: (1) payment of Federal funds on a reimbursement basis; (2) withholding authority to proceed to next phase until receipt of evidence of acceptable performance within a given funding period; (3) requiring additional, more detailed financial reports; (4) requiring additional project monitoring; (5) requiring PRDE to obtain technical or management assistance, including the designation of a third-party fiduciary to administer all or part of PRDE's grants from the Department (the third party fiduciary would, at a minimum, assist in preparing the vouchers to be submitted to the Department for reimbursement, and would verify their accuracy and legitimacy as an appropriate expenditure under one or more grant awards); (6) establishing additional prior approvals; or (7) recovery of misspent funds. The use of a condition for one covered Federal program does not require or preclude its use for a different covered Federal program.

IV. OTHER TERMS

A. Enforcement

If PRDE fails to meet any of the above FFY 2011 special conditions, the Department is authorized to take other appropriate enforcement action. These terms and conditions do

not preclude the Department from taking any otherwise authorized enforcement or other actions at any time.

B. Submission of Reports

All reports that are required to be submitted by PRDE to the Department under these special conditions shall be submitted to:

Mark Robinson
U.S. Department of Education
550 12th Street, SW
PCP, Room 11053
Washington, DC 20024

C. Reconsideration and Modifications

At any time, PRDE may request reconsideration of one or more of the above special conditions contained in Section II above by contacting the Department and providing in writing the reasons why PRDE believes one or more particular conditions are no longer needed. Additionally, the Department may impose additional special conditions or modify these special conditions, as appropriate. The Department will remove one or more of the special conditions contained in Section II above at such time as PRDE meets, to the Department's satisfaction, these conditions and other applicable requirements.

Dated (Same as Program Special Conditions, if any, or date of grant award):

ATTACHMENT

Personal Services Contracts

Executive Summary



Puerto Rico Department of Education
Internal Audit Office

Personal Service Contracts
Agreed Upon Procedure
I.E. 11-78-5

EXECUTIVE SUMMARY

We, the PRDE's Internal Audit Office (IAO)¹, had completed our review of the Personal Service Contracts' administration process. The overall objective of the review was to identify and assess the design of the internal controls system over the Personal Service Contracts (PSC) management as of April 2011, to determine if it provides for the compliance with the applicable laws and regulations and for the retention of the required supporting documentation.

The scope of our review included, but was not limited to, the processes that follow:

- Budget award and recruitment processes documentation
- Contract preparation and approval processes
- Information system *Part-Time and Irregular Employees System* (a/k/a SEPI by its acronyms in Spanish)
- Understanding of SEPI's interfaces with other applications
- Complaints and adjustments process
- Observation of the supporting documentation archiving methodology
- Management's assertions regarding the PSC's process controls

The review considered relevant risks that could result in errors or irregularities, among others, such as:

- Lack of proper authorization or funding for a PSC
- Inaccurate or non-timely preparation of the official PSC
- Ineffective process steps order
- Inaccurate SEPI's application controls (e.g. internal data validations, logical security and audit trails)
- Ineffective or inefficient practices to retrieve PSCs' supporting documentation
- Inaccuracy of PSC's financial information
- The noncompliance with Federal and State laws requirements

In addition, were taken into consideration the United States Department of Education (USDE) areas of concerns informed by the USDE's Risk Management Service Office resulting from the Final Audit Report² entitled *Administration of Personal Service Contracts* dated January 2011, issued by the USDE's Office of Inspector General.

OPINION

The overall current internal control system over the Personal Service Contracts administration process needs improvements. The implementation of comprehensive policies and procedures supplementing the current regulations and memorandums that govern the PSC's administration and the appointment of a SEPI's administrator are imperative. By standardizing the Educational Regions and Central Office practices with clear guidance, including the archiving methods, can be ensure an effective execution of

¹ In transition process to the Office of the Inspector General of the Government of Puerto Rico, according to Law No. 42 of April 16, 2010.

² No. ED-OIG/A04J0005

the process. The Human Resources Auxiliary Secretariat oversight of the human resources personnel at the Educational Regions need to be strengthened in order to effectively enforce their performance to be in compliance with the State and Federal laws and regulations.

However, based on the IAO's experience obtained through multiple reviews performed³ directly or indirectly related with the PSC's, improvements to the controls design over the process had been noted. The most relevant was the migration of the PSC's administration from a decentralized and paper-based to an automated environment with the implementation of the information system *Part-Time and Irregular Employees System*. It provides PRDE's Management better visibility over the PSCs activities across the Agency in an effective manner. Among the controls that were improved due to the migration to SEPI are: (a) the existence of a PSCs Registry with detail data⁴, (b) that the contractors' attendance data is gather through the biometric clocks, (c) that the calculation of the payment requirements are performed by the information system⁵, which provides for certain data validations of the payables⁶ and (d) that payments process required less data entry points reducing the possibility of errors⁷.

Considering the above mentioned, PRDE's Management should continue improving the PSC's system of internal controls over SEPI. Also, should increase the personnel awareness regarding the importance of their execution in adherence with the policies and procedures in order to ensure the compliance with the State and Federal requirements. These should ensure the process is effectively and efficiently executed.

INFORMATION FRAMEWORK:

The *Enmienda al Reglamento de Normas y Procedimientos sobre Contratación de Servicios Personales del Departamento de Instrucción Pública del 4 de agosto de 1976* (last amended June 3, 2004) (a/k/a Regulation 6820) establishes the policies and procedures for the administration of the PSCs. This type of contracting is allowable when extraordinary needs are identified and no other alternatives exist to meet the service requirements. The information system used to manage the PSCs is the *Part-Time and Irregular Employees System* (a/k/a SEPI). It is a module of the human resources application STAFF and was created to manage the part-timers and irregular personnel contracts, which compensation is based on the actual services provided registered through the biometric clocks⁸. The SEPI module, launched on July 1, 2008, provides for the registration of the contracts, such as an electronic copy, and also is used to determine the compensation of the contractors. The total expenditures forecasted based on the active PSCs during the current state fiscal year as of February 2011 were \$47.2 million. Detail information follows:

³ Among others, the (a) report no. I.E. 07-78-26 dated December 2006, entitled *Community Integrated Services Program*, through which the committed fraud during July 2002 through June 2006 amounting \$342,664, approximately, was identified allowing PRDE to refer it to the Department of Justice, USDE's OIG, Office of the Controller of PR, Governmental Ethics Office and to the Treasury Department. The IAO collaborated with all other agencies by providing the information and explanation of the methods identified that validated the crime. (b) The report no. I.E. 10-78-8 dated June 17, 2010, entitled *Alleged Alteration of Personal Service Contracts and Destruction of Public Documents*.

⁴ E.g. position, hourly rate, effective period, schedule, accounting account

⁵ Instead of a representative of the Program funding the PSC. Therefore, the segregation of duties was improved.

⁶ E.g. if worked hours are out of the assigned schedule are excluded from the payment calculation.

⁷ Are being processed by the Payroll Division, instead of by the School Community Administration both ascribed to the Auxiliary Secretariat of Finance.

⁸ Managed by a separate application, named KRONOS a/k/a Time, Attendance and Leave (TAL) System.

SFY 2010-2011 PSC's Estimated Total Expenditures to be Incurred vs. Expenditures Recorded in SIFDE

Fund	Fund Description	No. of PSC Awarded*	No. of Related Projects or Programs	Total Estimated PSC Expenditures**		YTD Expenditures as of February 2011***	
111	States Funds	225	4	\$717,067.71	1.5%	\$535,992.70	2.1%
205	Vocational and Technical Educations	241	1	974,745.54	2.1%	296,698.82	1.2%
212	Vocational Agricultural	0		-	0.0%	1,329.56	0.0%
217	School Foods Authority	6		23,344.20	0.0%	16,809.81	0.1%
221	Schoolwide	94	1	343,374.35	0.7%	196,383.21	0.8%
222	Federal Funds	546	4	4,325,450.12	9.2%	3,146,583.98	12.2%
256	ARRA Funds	2,988	3	11,498,812.50	24.4%	7,837,343.71	30.4%
265	Educational Fund	2	1	36,000.00	0.1%	8,090.56	0.0%
272	Federal Funds	6,562	12	29,199,265.98	61.9%	13,708,672.69	53.2%
290	Approving Agency of Academic Services for Veterans	1	1	8,989.20	0.0%		0.0%
411	Printing Office	3	1	59,421.60	0.1%	-	0.0%
Totals		<u>10,668</u>	<u>28</u>	<u>\$47,186,471.20</u>	100.0%	<u>\$ 25,747,905.04</u>	100.0%
						54.6%	

* Excludes PSC with status *In Process* and *Rejected*. Source: SEPI database query provided by Rock Solid Technologies, Inc.

** Estimated by multiplying each PSC's hourly rate and amount of hours.

***Source: Financial Information System, SIFDE. Expenditures registered for the period July 2010 through February 2011.

The observations that follow⁹ were discussed with each of the responsible persons, and serve to assure PRDE's continued progress toward the improvement of the operational internal controls of process subjected to review.

OBSERVATIONS:

Justification of Extraordinary Needs

1. PRDE's Management indicated that *the office* (i.e. Programs or Offices at the Central or Educational Region level) *sends their justification submission to the Office of Human Resources for evaluation and approval*. However, during the process' walkthroughs performed, no evidences were noted of such evaluations. This increases the risk of noncompliance with the justification requirements established. **Classification: Modified Internal Control¹⁰**

⁹ Based on IAO's review of information provided and walkthroughs performed at the San Juan, Ponce and Caguas Educational Regions and at Central Office – Human Resources Auxiliary Secretariat, Associated Secretariat of Special Education, Auxiliary Secretariat of Vocational and Technical Education.

¹⁰ The process steps were not executed in the required order or the control effectiveness needs to be improved. Applies in all instances this description is used.

Eligibility and Awarding Process

2. The job openings to be filled by Personal Service Contracts were not required to be consistently published and announced. During the walkthroughs were noted instances in which the job openings were announced, while others were not since the needs justification included the name of the resource to be contracted. The current policy, *Enmienda al Reglamento de Normas y Procedimientos sobre Contratación de Servicios Personales del Departamento de Instrucción Pública del 4 de agosto de 1976* (last amended June 3, 2004), does not include guidance about this matter. In addition, no other written policy and procedure existed to govern the process to be executed by the different Programs and Offices at the Central and Regional levels. This lack of guidance can result in non-uniform practices and can prevent qualified candidates to compete for the job opportunity. **Classification: Missing Internal Control**
3. An employment application for the job posting to be filled by a PSC did not exist. Was observed at the Educational Regions that the possible candidates were required to register in an attendance list. However, it does not provide for to document whether the candidates submitted the required information that qualifies them to be interviewed for the job opportunity. Should be mentioned that the document format used to gather the candidate personal information varied among Regions. **Classification: Missing Internal Control**
4. The candidates' eligibility evaluation's process considers inquiry the applicant if is providing services under an existing Personal Service Contract¹¹, in which case is ineligible for the job. However, that type of validation was being performed through verbal confirmation, instead of being documented and validated against the Human Resources systems. During the walkthrough performed at San Juan Region was brought to our attention an instance in which a candidate confirmed that had no active contract, therefore went through the interview process and was selected. Then, during the contract preparation was identified that the information provided by the candidate was incorrect since had an active contract. Due to the lack of documentation of the candidates' asseveration and its validation prior the interview, the risk of not identifying timely if is an unqualified one increases. This could results in inefficiencies of the recruitment process. **Classification: Modified Internal Control**
5. The *Carta Circular Núm. 1300-29-03, Requirement for Filing of Income Tax Returns to Recruit or Retain Public Employees*, issued by the Treasury Department establishes that the employment application¹² should be accompanied by, among others, a *Certification of Filing of Returns* (Form SC-6088 and/or SC-2781¹³) to validate if the candidate was in compliance with it tax responsibility for the past 4 years. Otherwise, is automatically unqualified for the job. The candidates' eligibility evaluation's process did not take into consideration this requirement. As a result, this increases the risk of selecting an unqualified candidate due to his/her non-compliance with the State's Laws and Public Policy requirements. **Classification: Modified Internal Control**

Contracts Preparation and Archiving

6. The Personal Service Contracts prepared by the Programs or Offices at the Educational Regions or Central Office level were in non-compliance with the Memorandum dated November 3, 2009 entitled *Personal Services Contract*. Was noted that the contracts were prepared in two pages, instead of being one page printed on both sides. As a result, the required signatures to formalize the contract were apart of the main contract's terms and conditions. This increases the risk of

¹¹ As required by the *Enmienda al Reglamento de Normas y Procedimientos sobre Contratación de Servicios Personales del Departamento de Instrucción Pública del 4 de agosto de 1976* (last amended June 3, 2004)

¹² Applicable to any position status and category types.

¹³ Titled, *Certification Reasons Why Taxpayer Is Not Required in Law To Pay Income Tax Return for Individuals*

potential modification to the contract terms, such as the hourly rate, position, effective period, without the proper review and approval of the contracting parties. **Classification: Modified Internal Control**

7. Each Educational Region Programs, and the Central Office Programs and Offices applied different procedures to maintain safeguarded the Personal Service Contracts records. The methodology observed varied regarding the order that the files were archived¹⁴ and the person that execute it. Specifically, the HR personnel at the San Juan Educational Region informed that, in instances, once the contracts were approved either person the one that registered or approved it can receive it for it filing. No written policy and procedure existed to govern the process to be executed by the different Programs and Offices at the Central and Regional levels. The lack of standardized guidance can difficult the access to required documentation and even can propitiate it loss. **Classification: Missing Internal Control**

Contract Registration into SEPI

8. PRDE's Management establishes that before the contracts registration in SEPI, among others, the following should be performed:

Once the PSC has been signed, then PRDE goes through several subsequent rounds of verifying that the PSC has been awarded properly and includes all requisite and accurate information. Specifically, the contracting office preparing the PSC is required to again verify that funds have been authorized for the respective PSC... Further, it is mandated that the office preparing the PSC verify that the contractor has submitted all of the required documents.

However, during the walkthroughs, interviews and reviews performed the followings were noted:

- The SEPI's end-users responsible for the contracts registration in the system¹⁵ were entering the data prior the official approval of the contracts. Meaning that unauthorized contracts were being registered in SEPI, since the all required signatures¹⁶ were missing at that point in time.
- The data to be registered was gathered directly from the documents provided by the selected candidates, instead of from the approved contract.
- The information regarding the funds authorizations that defray the positions were not always available to the HR staffs at the moment that were keying-in the contracts details in SEPI. Therefore, the accounting accounts of previous PSC granted to the same contractor were being assigned to the new contract in some instances. As a result, some assigned accounts could differed from the one approved in the funds authorizations.
- PSC and irregular employees' related expenses amounting \$306,359¹⁷ were recorded in SIFDE's general ledger against the cost object 1110 - Regular Employee's Payroll Expenses. As a result, expenditures for PSC could be understated. This situation increases the risk of variance between the contracts awarded budgets and the actual expense recorded as incurred.

Since the PSC were not fully executed and approved by management prior it registration into SEPI, the responsible persons for entering and approving the data in SEPI are unable to perform the reviews as established by PRDE's Management¹⁸. Consequently, the automated process to

¹⁴ The methodologies used were as follow: at the Caguas Educational Region the order was by district and then JP number of the PSC; at the Ponce Educational Region was by district and program; and at the San Juan Educational Region was by program.

¹⁵ At the Educational Region was performed by the Human Resources personnel and at the Central Office by the Program/Office personnel.

¹⁶ Including the Educational Region Director or Auxiliary Secretary of Human Resources signatures which were missing.

¹⁷ Against federal funds

¹⁸ Memorandum dated June 12, 2010, entitled *Instructions for the Management of Personal Services Contract*.

activate a contract¹⁹ was being triggered and the contracted party started providing their services prior the actual approval of the official contract. This represents severe weaknesses in the execution of the PSC due to the increased risk of errors and inaccurate information that could propitiate PRDE non-compliance with the terms and conditions and/or accounts overdraft. **Classification: Modified Internal Control**

Interface between SEPI and Kronos

9. The interface between SEPI module and KRONOS (a/k/a Time, Attendance and Leave (TAL) System) is executed daily at 5:30 pm, during which KRONOS is fed with the signed-up contractor data along with the contract information (e.g. hourly rate, funding account, and schedule). If successful, the new employee's biometry can be taken by the Office or School Director allowing the contractor to register his/her daily assistance through the biometric clock. On the other hand, those records rejected by KRONOS during the interface are captured in the report entitled *Employees Import Rejections from STAFF to KRONOS (TAL)*²⁰; however, it was not being monitored. In consequence the detected cases with errors or exceptions that required to be fixed to allow the new employee to register his/her attendance in KRONOS (TAL) were not corrected promptly. This situation creates process inefficiencies, such as high volume of complaints including payment delays for services received. **Classification: Missing Internal Control**

SEPI's Database Queries

10. A test performed to the 2,973 active contracts as of February 2011 based on the provided SEPI's database query, revealed significant delays for the contracts' registration and approval. The detail results were:
 - a. The contracts were registered in an average of 40.1 days after its effective start date. The period noted ranged up to 248 days.
 - b. The contracts were approved in an average of 50.2 days after its effective start date. The period noted ranged up to 254 days.
 - c. The contract approval process took an average of 10.56 days after its registration in SEPI. The period noted ranged up to 462.

In addition, the SEPI module allows contract registration with effective start date retroactive of up to one year. The combination of these undermines the sense of urgency that should have the SEPI's end users' responsible for the timely registration of the contracts. This could increase the risk of receiving a high volume of complaints at the Central and Regional Level from the contractors which could be prevented. Also, the Department's public image could be negatively impacted due to the lack of timely issuance of the payments to the contractors for services received and properly funded. **Classification: Modified Internal Control**

11. The PSCs created in the SEPI module go through different status until their final approval, which progresses are documented in various fields that are interrelated. The *Status* field is the one that determines if the PSC is ready for its payment processing. Each PSC is identified by this field as In Process, Submitted for Approval, Active, Submitted for Approval/Amendment, Terminated, Cancelled or Rejected. A review to a SEPI's database query²¹ which contained 10,668 PSC²², corresponding to the period from July 2010 through February 2011 was performed. The detailed results were:

¹⁹ Once a contract is activated/approved in SEPI the corresponding interfaces with other applications are triggered allowing the gathering of data required for the payment process.

²⁰ In Spanish, *Informe de Rechazos en la Importación de Empleados de STAFF a KRONOS (TAL)*

²¹ Submitted by Rock Solid Technologies.

²² Excluding the PSC with *Status* field identified as *In Process* and *Rejected*.

- a. 3,531 (33.1%) contracts with *Approved* status had no data of the user ID that approved them and when. The contracts were created by the user ID *RST*.
- b. 104 contracts, which effective periods were current, were identified as *In Process* in the *Status* field, although were created in SEPI on or before April 2011. These contracts records had the *Approval Date*, *Approval Status* and *Approval User* fields in blank.
- c. 20 contracts, which effective periods were current, were identified as *Submitted For Approval* in the *Status* field, although were created in SEPI on or before March 2011. These contracts' *Approval Status* field were *In Process*.
- d. 25 contracts with *Approval Date* data had the *Approval Status* field in blank, *In Process* or *Returned*.
- e. 17 contracts identified as *Terminated* in the *Status* field indicated that the *Approval Status* field were *In Process*, *Returned* or in blank.

The identified inconsistencies between the Approval and the Status fields' data can difficult the administration of the PSC and can diminished the end-user reliability over the system. As a result, this increases the risk of not completing the overall process in a timely manner due to the inaccuracy of the PSC's SEPI status. **Classification: Modified Internal Control**

Contracts Payments Process

12. An employee within the Payroll Division was assigned to work with the payments process related with SEPI. Among other duties, he was responsible for making required name and social security number changes to the contractors' SEPI's records, when errors were identified by them²³. A copy of the social security card and the paystub was required by the Payroll Division prior to perform the requested change. However, documentation supporting the contractor's change request was not maintained. In addition, once the modification in the system was performed no approval and/or review process was being executed to assure the accuracy of data. **Classification: Missing Internal Control**

13. A review to the SEPI's payroll files submitted to the Treasury Department requesting the payment of the first payroll cycles of February and March 2011, revealed the following:
 - a. The files were generated in an Excel file which format was modifiable increasing the risk of unauthorized changes go through undetected.
 - b. The files lacked the control number of the PSC as well as the contractor's worked period being paid. As a result, the required payments could not be linked to the corresponding contracts. Also, this prevents the identification of potential simultaneous contracts with a provider or of duplicate payments for a PSC.**Classification: Missing Internal Control**

14. The Payroll Division did not perform reviews to the SEPI's payroll files generated by Rock Solid Technologies, before its submission to the Treasury Department. On the contrary, the reviews are being performed after the payments are processed and issued by the Treasury Department.
 - a. A comparison of the 10,668²⁴ PSC registered per the provided SEPI's database query corresponding to the period July 2010 through February 2011 against the first payroll cycles files of February and March 2011, revealed that 286 (i.e. 118 and 168, respectively) payments were issued to non-active contracts.
 - b. A comparison of the 2,973 active approved contracts as of February 2011 per the SEPI's database query against the first payroll cycles files of February and March 2011 showed that:
 - i. 1,012 (34.0%) contracts were not included in the February 2011 file.

²³ In this type of cases the contractor was receiving his/her payment.

²⁴ Excluding the PSC with *Status* field identified as *In Process* and *Rejected*.

- ii. 556 (18.7%) contracts were not included in the March 2011 file.
- iii. 78 (2.6%) contracts were excluded from the payment request file for March although were included in the file of the prior month.

This denotes the absence of effective monitoring over the PSC's payment process. This situation increases the risks, such as (a) of not processing timely the payments of active contracts for services received, (b) for payment errors to not be timely detected, (c) of over or under payments and (d) the generation of a high volume of complaints at the Educational Regions or Central level due to the payments delays. **Classification: Missing Internal Control**

SEPI's Application Controls

15. Data entry errors were not prevented by the SEPI module due to application missing controls, such as:

- a. Absence of a drop-down list with the valid accounting accounts from which the end-user can select the corresponding code, instead of having to key it in.
- b. The SEPI's database query provided corresponding to the period July 2010 through February 2011, showed that 104 approved contracts were registered for an amount that exceeded the possible workable hours of 1,560 within a year, by a part-timer with a PSC. The range of hours noted were between 34,200 and 1,590 hours, data that is required to be keyed-in by the SEPI's end-user. This data entry errors occurred, even though, the system notifies to the end-user the amount of hours that the schedule and the period of the contract represent. This denotes weakness in the PSC review and approval process performed by the HR personnel at the Educational Regions and Central Office level. In addition, the module does not perform an internal validation of the data inputted in the field *Total of the Contracted Hours* to reduce the end user data entry errors. This situation could lead to a potential over payments due to the approval of hour in excess of the contracted. These *Total of the Hours* exceptions noted represented a maximum payment of \$3.5 million.
- c. PRDE's Management assertions states that *Then, an administrative assistant is in charge of reviewing the PSCs and ensuring that the PSC has been filled out in its entirety, contains all required information, that the PSC has been signed..., and that the salary assigned to the contractor is in accordance with the pay scale established by PRDE²⁵. This step, in essence, provides an additional layer of review to ensure that the contractor will be paid the correct salary over the approved time period. This step is a significant control at ensuring both that the information in the PSC complies with the terms approved for the PSC and that no changes have been made to the PSC between the time the PSC was executed and the information from the PSC is entered into PRDE's electronic finance systems.*

A review of the SEPI's database query showed the existence of PSC with hourly rates that ranged from \$40 to \$50, which exceeded the maximum allowable rate per hour based on the current salary scale of \$29.41. The module does not perform an internal validation of the data inputted in the *Rate per Hour* field to prevent potential over payments for the services contracted. Although the Secretary has the authority to approve higher hourly rates, mainly for difficult to recruit positions, the application did not require an additional level of approval to validate such exceptions.

²⁵ *The Reglamento de Normas y Procedimientos sobre contratación de Servicios Personales del Departamento de Instrucción Pública del 4 de agosto de 1976* (last amended on June 3, 2004) establishes that the PSC compensation should be calculated based on the one (1) percent of the monthly basic salary of the position being contracted.

The module does not perform internal validations of the data inputted in the fields *Total of the Contracted Hours* and *Rate per Hour* to reduce the end user data entry errors. In addition, this denotes weakness in the PSC review and approval process performed by the HR personnel at the Educational Regions and Central Office level. **Classification: Missing Internal Control**

SEPI's System User IDs

16. As of February 2011, a total of 340²⁶ users IDs of the SEPI module have been created, of which 45.6% were identified as active users. A review to the SEPI module database query detailing the user IDs privileges revealed that access controls weaknesses and lack of proper segregations of duties, based on the access roles and rights²⁷ assigned to the users, existed.

- a. Test performed to the user IDs' database showed the following:
 - i. 102 user IDs' location (i.e. office or program) and position were unknown. The status of these users were identified as null.
 - ii. 2 generic user IDs named *testcentral* and *rocksolid* were identified, which had assigned access roles of four and six modules and rights to create and update in the production environment, respectively.
- b. A comparison between the SEPI's contracts and user IDs databases queries revealed the following:
 - i. 55 user IDs' audit trails, which status were null or terminated, showed that performed contracts' registration and approval transactions, 3,518 and 4,301, respectively.

Users status	Registered	Approved
Null	3,337	4,169
Terminated	178	125
Unidentified	3	7
Total	3,518	4,301

- ii. 2 user IDs registered and approved four contracts in SEPI, although was noted that the user IDs' access rights were not supposed to allow them to perform both transaction types. This represents a logical security weakness within the application that implies a lack of proper segregation of duties. This increases the risk of unauthorized registration and/or modification of contracts data within the system.
- c. A SEPI module administrator has not been appointed. However, the administrator access roles and entitlements were granted to an employee within the Classification and Compensation Division²⁸, which provided technical support to the SEPI end-users at the Educational Regions and Central levels. Also, this employee performed transactional duties related to the contracts' review and approval process (one of the users ID mentioned in observation 16.b.ii.). The duties performed by the employee represented a lack of adequate segregation of duties.

Classification: Modified Internal Control

²⁶ The user IDs status were: 155 actives, 82 terminated, 102 null and 1 in leave without pay.
²⁷ An access role specifies a grouping of tasks a user can perform. The access rights are the specific tasks for a role. (Source: IBM Workplace for Business Strategy)
²⁸ Refer to report number I.E. 10-78-8 entitled *Alleged Alteration of Personal Service Contracts and Destruction of Public Documents* dated June 17, 2010, for details of identified weaknesses under the old paper-based internal control system.

Contracts Unit Designed Structure

17. *PRDE is in the process of establishing a new unit within the OHR²⁹, the Unidad de Contratos RRHH (Contracts Unit), which will be charged with providing on-going training and technical assistance as well as overseeing the recruitment and selection process for PSCs. The Contracts Unit will additionally be charged with monitoring the contracting process and maintaining the PSC archiving system. Any and all concerns of violations with the established PSC contracting procedures must be referred to OFA as well as the PRDE Internal Audit Office.*

Based on the IAO experience obtained through the walkthroughs, interviews and review of information, was observed that the PSC process review levels provides for the compliance with the minimum requirements of this type of process. The Contract Unit's³⁰ responsibilities as described could represent duplicity of effort, mainly, in regard to the oversight of (a) the recruitment and selection process, and (b) the PSC archiving system performed at the Educational Regions. In addition, its scope could lessen the Educational Regions personnel's awareness of it responsibility regarding the compliance with the required steps and practices established. On the other hand, a core characteristic of this process is that the volume of transactions has a seasonal trend, which is aligned with the start of the school year. Considering this and that certain identified activities will be performed once³¹, as informed to the IAO, the number of new and regular positions seems to be excessive, as well as the required candidates background. **Classification: Modified Internal Control**

RECOMMENDATIONS:

1. Develop and implement policies and procedures requiring the early submission of the PSC's justification requirements to the Office of Human Resources for evaluation and approval. The recommendation by Human Resources with the costs analysis and the availability of funds will assist the Undersecretary of Administration with the final determination of approval. **(Observation No.1 – Auxiliary Secretariat of Human Resources)**
2. Develop and implement policies and procedures to define which cases will not require the publishing and announcements for the job opportunities. This will help to achieve an adequate level of transparency during the recruitment and awarding process of positions to be filled with PSC. Also, will ensure a uniform practice through the Educational Regions and the Central Office levels. **(Observation No. 2 - Auxiliary Secretariat of Human Resources)**
3. Develop and implement an employment application form to document the candidates' qualifications and eligibility for interviews for positions to be filled by PSC. Consider a check list form type to document if the candidate provided evidence prior the interview, at a minimum, of the following:
 - a. Certification from the candidate whether or not has an active PSC
 - b. Certification of Filing of Returns (Form SC-6088 and/or SC-2781) issued by the Treasury Department
 - c. Application materials such as School Transcripts and Professional Certifications, if applicable

The implementation of the employment application will support the review perform to determine the candidate's eligibility. **(Observation No. 3, 4 and 5 - Auxiliary Secretariat of Human Resources)**

²⁹ Auxiliary Secretariat of Human Resources

³⁰ Will operate from the Central Level

³¹ Such as development of policies and procedures and design of monitoring mechanisms.

4. Enforce the compliance with the Public Policy established by the Undersecretary of Administration through the Memorandum dated November 3, 2009, entitled Personal Services Contracts. By doing so, it will prevent modifications to the terms and conditions of the contracts without the proper approvals. **(Observation No. 6 - Auxiliary Secretariat of Human Resources)**
5. Develop and implement a standardized archiving procedure to strengthen the retrieval process of the PSC's supporting documentation. The procedure should clearly define how the documents should be handle and the responsibilities of the appointed persons involved in the contracting process. By doing so, PRDE will be able to provide evidence supporting the compliance with state and federal regulations in an efficient manner. **(Observation No. 7 - Auxiliary Secretariat of Human Resources)**
6. Enforce the compliance with the Public Policy established by the Undersecretary of Administration through the Memorandum dated June 12, 2010 to approve the contracts before being registered in SEPI. As a result, it will strengthen the review process and compliance with the terms and conditions of the contracts to ensure the accuracy and reliability of the information registered. **(Observation No. 8 - Auxiliary Secretariat of Human Resources)**
7. Require to the Classification and Compensation Office to monitor daily the *Employees Import Rejections from STAFF to KRONOS (TAL)* to require the user that keyed-in the contract to review and fix the errors, as applicable, on the contract records in SEPI. This will led to a timely update of the data permitting it to go again through the daily interface between SEPI module and KRONOS allowing the registration of the contractor's biometry. By doing this, will be captured the contractor attendance in a mechanized manner strengthening the payments process timeliness and accuracy. This represents an opportunity to leverage the functionalities that the current applications offer to the end-user. **(Observation No.9 - Auxiliary Secretariat of Human Resources)**
8. Enforce the Offices and Programs at the Central and Educational Regions levels to approve the contracts prior the effective start date of the contracts in order to register them in SEPI timely. By doing so, the contracted personnel could start registering his/her attendance using Kronos since the beginning of the contract period. Consider restricting the retroactive period allowed by the system to register a PSC. **(Observation No. 10 - Auxiliary Secretariat of Human Resources)**
9. Evaluate the discrepancies between the *Approval* and *Status* fields' data in SEPI in order to identify if were generated due to internal application errors (e.g. database issues) that required to be fixed. Also, correct or edit the current status of the PSC in SEPI. This will improve the information retrieved and used by the Central and Educational Regions levels for the follow up process. **(Observation No. 11 - Auxiliary Secretariat of Human Resources)**
10. Develop and implement procedures to properly document the change requests related with already paid contractors' name or social security number to be performed through the SEPI module. The change request form can be filled out by the Educational Regions or by the Programs at the Central Level, as applicable, and send to the Payroll Division to be process. The form should provide for the certification of the documents received as well as of the identity of the individual. Also, should establish the reason for the change (e.g. error in registration) and the proper level of approval. **(Observation No. 12- Auxiliary Secretariat of Finance)**
11. Strengthen the security of the SEPI's payroll files to be submitted to the Treasury Department to protect the integrity of the data and its unauthorized modification. Also, include the control

number of the PSC and the worked periods to be paid. This will provide adequate information to monitor and analyze effectively the payments transactions made as to its completeness and accuracy. **(Observation No. 13 – Auxiliary Secretariat of Finance)**

12. Perform analytical procedures recurrently to review the number of active contracts in SEPI module versus the payment request file to be exported to the Treasury Department prior to its submission. This should strengthen the controls to assure the completeness of the data to be submitted for payment. Also, allows for the timely detection of potential discrepancies and applications errors preventing the generation of complaints. **(Observation No. 14 – Auxiliary Secretariat of Finance)**
13. Incorporate a drop-down list with the approved accounting accounts with the cost object to prevent the data entry errors. By doing this, the SEPI's end-user responsible for the PSC data entry should pay more attention to assure that the selected accounting account is equal to the authorized one. As a result, the financial data quality will be improved. **(Observation No. 15a – Auxiliary Secretariat of Human Resources)**
14. Evaluate the possibility the field *Total of the Contracted Hours* be automatically filled by the system since it already calculates the amount of hours based on the schedule and the effective period of the contract. **(Observation No. 15b - Auxiliary Secretariat of Human Resources)**
15. Evaluate the possibility the field *Rate per Hour* be automatically filled by the system, based on the salary scale of the job classification. In case of a different compensation, require an additional level of approval. This will prevent excessive or unauthorized hourly rates. **(Observation No. 15c - Auxiliary Secretariat of Human Resources)**
16. Proceed immediately with the inclusion of the descriptions of the users IDs identified as null, to assure the completeness and uniformity of the user IDs data register in SEPI to facilitate the detection of the identity and location of the user IDs activities. **(Observation No. 16a - Auxiliary Secretariat of Human Resources)**
17. Eliminate from the production environment the user ID *testcentral*. Consider blocking or deleting the user IDs access roles and privileges after a defined period of inactivity. **(Observation No. 16a - Auxiliary Secretariat of Human Resources)**
18. Develop and implement policies and procedures to strengthen the internal controls over the logical security of the application. At a minimum,
 - Define and document the SEPI's users' role names and descriptions and its alignments with the access rights. Also, for the active SEPI's user IDs, review the assigned role and rights based on their job functions and responsibilities and fix any discrepancies identified.
 - Perform periodic reviews to identify the status of the users to prevent unauthorized access to the system. The exceptions identified (e.g. null or terminated) should be resolved.**(Observation 16b - Auxiliary Secretariat of Human Resources)**
19. Appoint as SEPI Administrator a properly trained and qualified person with the required overall knowledge of how the system functions to ensure an effective and efficient administration of the application. Also this Administrator should closely monitor the SEPI user IDs activities with the generic names. **(Observation 16c - Auxiliary Secretariat of Human Resources)**

20. Reevaluate the proposed structure regarding the number of positions and the continuity of the responsibilities to be assigned over the time that justify them. Also, consider contracting personnel based on the seasonal trend in the process of awarding PSC. (**Observation No. 17 - Auxiliary Secretariat of Human Resources**)

Yamira Lajara Radinson, CPA
Director
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Attachment

³² Per last name alphabetical order