



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE OF THE CHIEF FINANCIAL OFFICER

**Fiscal Year (FY) 10 Service Contract Inventory Analysis
Report and Recommendations**

Executive Summary

This report provides a meaningful analysis of a sample of contracts in the U.S. Department of Education's (Department) FY10 Service Contract Inventory as per the Office of Management and Budget Memorandum regarding Service Contract Inventories, dated November 5, 2010. Section 743 of Division C of the FY 2010 Consolidated Appropriations Act, P.L. 111-117 requires civilian agencies to prepare an annual inventory of their service contracts. The purpose of this analysis is to determine if contract labor is being used in an appropriate and effective manner, and if the mix of Department employees and contractors is effectively balanced.

Special Interest Functions Studied

The Department has two Contracting Activities: Federal Student Aid Acquisitions (FSA Acquisitions) and Contracts and Acquisitions Management (CAM). In FY10, the Department awarded a total of \$1,874,675,044.19 in contract spending. 1,233 contract actions greater than \$25,000 were awarded on 567 different contracts. For this review, 29 contracts were selected with 66 FY10 actions totaling \$66,024,311.

The following Product and Service Codes (PSCs) were selected from a pool comprised of those recommended by OMB and the Department's top ten PSCs by agency spend in FY10:

Product and Service Codes (PSCs) Selected for Evaluation

B506	Study/Data - Other than Scientific
B542	Educational Studies and Analyses
D301	ADP Facility Management
D302	ADP Systems Development Services
D306	ADP Systems Analysis Services
D307	Automated Information System Services
D314	ADP Acquisition Support Services
R407	Program Evaluation Services
R408	Program Management/Support Services
R419	Educational Services
R421	Technical Assistance
R704	Auditing Services
R705	Debt Collection Services
R707	MGT Services/Contract and Procurement Support
R710	Financial Services

To accomplish a meaningful analysis, FSA Acquisitions and CAM jointly convened a workgroup consisting of analysts, acquisition professionals, and program professionals with varying levels of experience in CAM, FSA Acquisitions, the Office of the Chief Financial

Officer (OCFO) and the Office of the Chief Information Officer (OCIO). The Senior Procurement Executive, CFO, CIO, and Chief Human Capital Officer reviewed and concurred with this report.

Evaluation Methodology

To prepare for this review, workgroup members reviewed previous Government sourcing initiatives and trends, including competitive sourcing and A-76 competitions. They also examined outcomes of the Department's 2009 Multi-Sector Workforce Pilot (under Attachment 2 of OMB Memorandum M-09-26), which analyzed the Contract Specialist Support Services function to determine the appropriate mix of Government and contractor resources.

Additionally, the workgroup reviewed several documents including key OMB memos, policy letters, and applicable sections of the Federal Acquisition Regulation (FAR). The workgroup established a methodology for performing in-depth reviews, which included a detailed evaluation checklist designed to identify potential signs that personal services may be occurring and determine whether or not contractors are performing inherently governmental functions (IGFs), such as decision-making, policy-making, and value judgments. The workgroup's evaluations were based upon an examination of the contract files and interviews with the Contracting Officers Representative (COR), Contracting Officer (CO), and/or Project Manager (PM). These interviews were designed to ensure the scope of the work or the circumstances did not change to the point where inherently governmental authority was transferred to the contractor.

Findings

Of 29 contracts evaluated, reviewers found:

- No evidence of contractors performing IGFs.
- No evidence of unlawful personal services occurring, although many contractors work on-site and use Government-furnished equipment.
- Some services provided by the Department's contractors (whether commercial or not) may be considered "closely associated" with IGFs and/or "mission critical." However, this is not problematic because the Department has sufficient internal resources to manage and oversee these contracts effectively.
- No major performance problems. However, 14 of the contracts reviewed either did not include a Quality Assurance Surveillance Plan (QASP) or Contract Monitoring Plan (CMP), or these documents were not made available to the reviewer. Effective contract monitoring is accomplished through the application of numerous monitoring methods that are tailored to a particular contract. The components used to monitor a contract are dependent on numerous factors, especially the complexity of the contracted service, the contract amount, and the risk if the work is not performed adequately. These components should be clearly outlined in writing and understood by all parties.
- The workgroup found no contracts to recommend for further insourcing study.

Overall, the analysis revealed that outsourcing functions (especially those commercial in nature) remains an acceptable choice, but increased oversight is needed on certain contracts to manage performance risk.

Actions Planned to Address Weaknesses/Challenges

Although reviewers found no evidence of personal services or contractors performing IGFs, the

workgroup strongly recommends the following risk reduction strategy based on its findings:

Strengthened Oversight and Improved Internal Guidance Regarding the Use of CMPs and/or QASPs When Appropriate

Based on its findings, the workgroup recommends that the Department:

1. Strengthen its internal guidance regarding the increased use of written contract monitoring plans, such as CMPs and QASPs in service contracts.
2. Update existing policies and oversight procedures to ensure that contract monitoring activities are performed in accordance with such written plans.
3. Continue its efforts to clarify the appropriate use of these monitoring tools and to revise relevant policy, guidance, or regulations as needed.

It should be noted that both contracting activities at the Department have already taken several steps to improve the deficiencies identified in this review through the implementation and/or strengthening of internal policies and procedures, resulting in a more effective contract monitoring system.

- In FY11, CAM improved their procedures for organizing contract files to require use of a comprehensive list of file documents (Acquisition Procedure Manual (APM) Chapter 4.803 Content of Contract Files).
- In FY11, FSA Acquisitions issued guidance to COs requiring them to perform a yearly review of the CORs' files. The purpose of the review is to provide reasonable assurance that CORs are maintaining artifacts related to contract monitoring as well as other aspects of their files.
- In FY11, CAM revised its procedures for reviewing contract actions (APM Chapter 4.170 Contract Action Reviews), which now includes a review of the contract file's contents. Whenever a required document is not included in the contract, a finding is issued to the CS and CO that must be addressed before the award can be made. These process improvements were used as a teaching tool throughout the year to educate contracting staff on the differences between a CMP and a QASP, and the purpose of each in contract monitoring. As a result of these changes, it has been observed that these contract monitoring tools are being used more consistently (when appropriate), a trend that is expected to continue in FY12 and beyond.
- In FY11, FSA Acquisitions began drafting a revision of its invoice policy (to be issued in FY12) to provide helpful checklists and process maps for reviewing invoices and entering accurate data in the financial management system to support inspection and acceptance.
- In FY12, both contracting offices began performing annual data quality reviews of past performance evaluations, and the CO will be required to address instances of evaluations absent from the file or evaluations that were unsuccessfully transmitted to PPIRS.

Additionally, the existing Departmental Directive that addresses the use of CMPs ([ACS Departmental Directive OCFO: 2-108 Contract Monitoring for Program Officials](#)) is under

revision to better clarify what monitoring tools are required in what circumstances. Revisions will result in an emphasized need for consistency between the contract monitoring strategy and the contract, and the necessity of maintaining artifacts to support contract monitoring, such as a written evaluation of deliverables and documentation of telephone calls between the COR and the contractor.

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Analysis of FY 2010 Inventory

a) Special Interest Functions Studied

The workgroup’s first objective was to review the inventory to identify the "special interest functions" by PSC for which a meaningful analysis would be performed. “Special interest functions” are functions that require increased management attention due to heightened risk of workforce imbalance. Close attention was given to contracts in “R codes” for professional, administrative, and management services, including acquisition support, policy and program management, and development services; and “D codes” for IT support services. These codes are considered by OMB to be areas of risk for over-reliance on contractor support. The workgroup also chose the functional area identified by the “B code” (studies and analyses) because the Department has a number of large contracts within those codes. The workgroup recognized that a large number of contracts within a particular code might not necessarily correlate with finding additional areas of risk, but agreed that it should be screened in the event that it did in fact contain areas of risk.

To identify specific PSCs, the inventory of R, D, and B coded contracts was reviewed to pinpoint PSCs where contractor performance might involve “mission-critical” functions or functions closely associated with IGF. For example, IT support services PSCs, which are high on OMB's priority list, contain several contracts that were excellent candidates for in-depth review. In OFPP’s proposed policy letter dated March 31, 2010 (this policy letter became final on September 12, 2011, after the Department’s review was completed), the “nature of the function test” requires agency managers to consider whether the work under consideration would involve exercising the Government’s sovereignty. If so, it should be deemed an IGF. The “discretion test” requires managers to evaluate whether outsourcing the work to a contractor could effectively commit the Government to a course of action. The workgroup carefully applied these two tests to each function in the inventory. Also, it was important to identify any contractor involvement in agency activities that might undermine the integrity of the Government’s decision-making process.

The following PSCs were selected from a pool comprised of R and D PSCs recommended by OMB and the Department’s top ten PSCs by agency spend in FY10.

Product and Service Codes (PSCs) Selected for Evaluation		Rationale for Selection for Review
B506	Study/Data - Other than Scientific	Includes several contracts that appear to be excellent candidates for in-depth review based on a review of the contracts’ requirements.
B542	Educational Studies and Analyses	Includes several contracts that appear to be excellent candidates for in-depth review based on a review of the contracts’ requirements.
D301	ADP Facility Management	Includes Information Technology (IT) support services contracts, which are high on OMB's priority list.
D302	ADP Systems Development Services	This category is on both OMB's priority special functions list and ED's list of top ten spending categories.
D306	ADP Systems Analysis Services	Includes contracts for services to evaluate another contractor's performance, considered to be services that approach being inherently governmental according to the FAR.
D307	Automated Information System Services	Includes IT support services contracts, which are high on OMB's priority list. Also includes one of the Department’s major IT contracts called Education Department Utility for Communications, Applications, and Technology Environment (EDUCATE).
D314	ADP Acquisition Support Services	Includes contracts for IT Acquisition Support Services, which are high on OMB's priority list.

R407	Program Evaluation Services	Includes several contracts that appear to be excellent candidates for in-depth review based on a review of the contracts' requirements.
R408	Program Management/Support Services	Includes contracts for IT Acquisition Support Services, which are high on OMB's priority list.
R419	Educational Services	Includes several contracts that appear to be excellent candidates for in-depth review based on a review of the contracts' requirements.
R421	Technical Assistance	Includes several contracts that appear to be excellent candidates for in-depth review based on a review of the contracts' requirements.
R704	Auditing Services	Includes contracts for auditing services, which are closely related to IGFs.
R705	Debt Collection Services	Selected because this PSC represents a large percentage of Federal Student Aid (FSA) total spending.
R707	Management Services/Contract and Procurement Support	Includes procurement support services are closely related to IGFs.
R710	Financial Services	Selected because this PSC represents a large percentage of Federal Student Aid (FSA) total spending.

The rationale for *excluding* certain PSCs was also documented. For example, some PSC categories either did not contain any contracts or contained too few contracts to conduct a meaningful review. Many categories contained contracts for services that are clearly commercial with virtually no risk of crossing the line into "inherently governmental" work.

b) Evaluation Methodology

Once functions and PSCs were identified, the workgroup began by preparing the reviewers, selecting individual contracts for review, and developing the evaluation checklist. Twenty-nine contracts were selected for this review, representing \$66 million of the Department's FY10 \$1.835 billion total spend. Cost reimbursement, fixed price, time and materials and labor hours contract types were selected for this review, and included contracts awarded to both large and small businesses.

The workgroup established a methodology for performing in-depth reviews, which included a detailed evaluation checklist designed to identify potential signs that personal services are occurring and determine whether or not contractors are performing IGFs, such as decision-making, policy-making, and value judgments.

Whether or not work is inherently governmental must be determined during the acquisition planning phase. However, there could unforeseeably be cases where inherently governmental authority is inadvertently transferred to a contractor, such as through inadequate attention to contract administration. The workgroup's evaluations, therefore, were also based on an examination of the contract files and interviews with the Contracting Officer (CO), Contracting Officer's Representative (COR) and/or Project Manager (PM). These interviews were designed to ensure the scope of the work or the circumstances did not change to the point where inherently governmental authority was transferred to the contractor.

c) Findings

Inherently Governmental Functions (IGFs)

Based on careful evaluations performed by the reviewers and careful review of the established criteria for classifying functions as inherently governmental, it was determined that none of the contractors associated with the contracts reviewed are performing IGFs.

Functions Closely Associated with IGFs

Reviewers found that some services provided by the Department's contractors (whether commercial or not) may be considered "closely associated" with IGFs. For these contracts, reviewers examined the specific work activities being performed under the contract and found none of them to be problematic because the Department has sufficient internal resources to manage and oversee these contracts effectively. Furthermore, while it is not considered to be a deficiency for an agency to have contractors performing services "closely associated" with IGF, heightened attention must continue to be paid to contracts where contractors are performing these kinds of services.

Reviewers answered 17 questions from the evaluation checklist to help identify contracts that could be classified in this category. Because these contracts all provided services to the Department, interactions between Government officials, the COR, and the contractors and their staff are essential to a successful outcome of the contract. These questions brought to light cases where Statements of Work (SOW) required support, recommendations, evaluations, opinions, or functions which are considered activities "closely associated" with IGF. Sample checklist items included identification of activities that indicate contractor performance of functions closely associated with IGF, such as:

- Services that involve or relate to analyses, feasibility studies, and strategy options to be used by agency personnel in developing policy.
- Services that involve or relate to the evaluation of another contractor's performance.
- Contractors participating in any situation where it might be assumed that they are agency employees or representatives.
- Services that involve or relate to reorganization and planning activities.
- Services in support of acquisition planning.
- Contractors providing support in preparing responses to Freedom of Information Act (FOIA) requests.
- Contractors participating as technical advisors to a source selection board or participating as voting or nonvoting members of a source evaluation board.

The following activities are a few of examples of activities closely associated with IGFs that are currently being performed by Department contractors:

- Acquisition support services, where contractors have access to confidential business information and other sensitive information.
- IT system audit contract, where the contractor evaluates another contractor's network and systems.
- Analysis in support of policy, legislative and regulatory initiatives, where the results may influence proposed legislative or policy changes.
- Development of a Federal student aid grant program cost estimation model and analysis, where the contractor runs "what if" scenarios to project the cost of the program and has access to sensitive student loan data.

- Modernization planning and alternatives analysis, where the contractor is making recommendations whether the Department should incorporate various IT initiatives in system modernization efforts.
- IT infrastructure and analysis services, where the contractor provides an enterprise level strategy and written recommendation for remediation of risk and vulnerability.
- Support services that involve planning activities and strategy options.
- Analysis on studies and statistical data, which may be used to develop new studies, or to develop new policies.
- Information gathering to support FOIA requests.
- Conducting special studies that provide Department personnel with information on which to develop policy.

Although functions “closely associated” with IGFs are not considered to be inherently governmental, they have the potential to approach that category because of the nature of the function. OFPP’s final policy letter issued in September 2011 directs agencies to guard against any expansion of “closely associated” work becoming an inherently government functions by following a checklist of responsibilities, including limiting or guiding the contractor’s discretion, assigning government employees to give special management attention to the contractor’s activities, and taking steps to avoid or mitigate conflicts of interest.

Critical Functions

Reviewers also found that some Department of Education contractors perform services considered to be “critical functions.” For these contracts, reviewers examined the specific work activities being performed under the contract and found none of them to be problematic because the Department has sufficient internal resources to manage and oversee these contracts effectively. Furthermore, while it is not considered to be a deficiency for an agency to have contractors performing critical functions, these functions form the core of the agency’s mission and if performed incorrectly would cause mission failure. Therefore, continued attention must be paid to contracts where contractors are performing these kinds of services in order to maintain a sufficient internal capability to control its mission and operations. As long as a critical function is not inherently governmental, it may continue to be performed by a contractor, but only when it is cost-effective to do so.

In its guidance, the OFPP requires agencies to arrive at their own determinations of what constitutes a “critical function,” which may create inconsistencies across different agencies. The workgroup reviewed the Department’s mission and core competencies in order to be able to identify activities that Department employees should be able to perform as part of its mission. Reviewers indicated that 21% of the contracts it reviewed for this analysis are performing services that are “mission critical.” Examples of activities identified by reviewers as “mission critical” are debt collection services, assessments of educational progress, grant application reviews, technical assistance, and educational research.

Personal Services

Reviewers found no unlawful personal services contracts. Reviewers examined the nature of the relationships between the contractors and Government employees and found none of them to be problematic since they were not characteristic of personal services relationships.

The workgroup reviewed the definition of personal services contracts provided in FAR Part 37, and reviewed examples of what contractor personnel cannot do under a non-personal services contract, such as supervise Federal employees or be supervised by a Federal employee. The workgroup discussed situations that Federal employees must avoid, such as signing leave slips for contractor employees or telling a contractor who should be hired or terminated. Reviewers were informed of the impact and consequences of a personal services contract, such as potential violations of the Anti-Deficiency Act, agency or Inspector General investigations, or disciplinary actions. In addition, they were expected to exercise professional judgment in their interaction with the principal offices should they become aware of any personal services-type relationship with contractors.

Eight questions in the evaluation checklist were designed (based on guidance in FAR 37.104(d)) to aid reviewers in recognizing if a contract is personal in nature, such as contractors working on-site, contractors using Government-furnished equipment to perform their work, and contracts having a duration of over one year. While each of these examples are only indicators and do not necessarily establish a personal services relationship, their existence does warrant further inspection. After a thorough analysis, it was determined that none of the contracts reviewed were personal services contracts. Additionally, discussion was held with the CORs to reinforce the need to continue exercising caution in preventing non-personal service contracts from becoming personal in nature.

Contract Monitoring

Although reviewers found evidence that contract monitoring activities were taking place, they also found that formal monitoring plans, such as CMPs and QASPS, were not in place for nearly half of all contracts reviewed. Lack of CMPs and QASPs, however, does not mean that contract monitoring is not frequently occurring, and reviewers found evidence that contract monitoring activities are taking place.

Workgroup members reviewed the requirement in FAR 37.114, which requires enhanced monitoring of contracts that “provide advice, opinions, recommendations, ideas, reports, analyses, or other work products that have the potential for influencing the authority, accountability and responsibilities of Government officials.” Furthermore, the workgroup reviewed [Departmental Directive OCFO: 2-108 Contract Monitoring for Program Officials](#). Based on the Directive, it was expected that most contracts in the sample would have a CMP and/or QASPs (required by FAR 46.401) in place.

Reviewers answered 37 questions on the evaluation checklist to ascertain how well contracts in the sample are being monitored. Reviewers were asked for examples to validate their answers in many cases, which required them to gather additional details from the CORs. Examples of contracts where proper monitoring is occurring regularly without a formal CMP or QASP include:

1. One contract awarded to support to FSA’s Technology Group for the purpose of establishing and maintaining enterprise configuration management standards and activities. In addition to the CS and CO who manage the contract and provide oversight, the COR regularly monitors satisfactory progress in performance of the contract and communicates performance issues to the CO. As defined by the terms of the contract, the contractor produces and submits weekly reports detailing activities performed, upcoming activities for the following week, and any issues that need to be addressed by the COR.

As part of the oversight activities, quarterly and annual performance evaluations are submitted to the CO.

2. One contract for Program Management Office support services to the EDUCATE contract. Project Management Office support being provided under this contract provides staff augmentation to assist the Government in performing Project Management, Investment Management and Asset Management responsibilities. From a technical perspective, the EDUCATE contract is a very large and complex and requires sufficient contractor support to provide continuous monitoring, management and oversight, which is occurring. The COR performs numerous monitoring activities, such as ensuring reports and other deliverables are of high quality, creating a written evaluation of each report, thoroughly reviewing invoices prior to recommending acceptance and creating a receipt for payment, maintaining an up-to-date deliverables schedule, and conducting annual past performance evaluations. Furthermore, this contract has a dedicated CO and CS, whose primary responsibility is to oversee the contract on a daily basis.

In all contracts studied, the reviewers found sufficient technical personnel and content knowledge for control of the contract, and found certified CORs appointed to monitor the contract. Furthermore, reviewers found overall:

- 90% of contract monitoring activities involve the use of regular progress reports.
- Deliverables were completed and submitted on or prior to the due date 100% of the time.
- 90% of the deliverables were of high quality. 83% of the time, CORs promptly reviewed the deliverables. Similar high percentages (97%) were found for the questions involving the review of invoices by the COR and CO prior to processing for payment.

However, reviewers also found written evaluation of deliverables reports in only 45% of contracts reviewed and documented telephone calls in only 38% of contracts reviewed. Finally, about half (55%) of contract files reviewed did not contain all required past performance evaluations completed and sent to Past Performance Information Retrieval System (PPIRS).

Other considerations

An unintended, but positive outcome of this review was an opportunity for meaningful dialogue between the reviewers (who are mostly acquisition professionals) and program officials on negative consequences of contractors performing IGFs and personal services, and the need for strengthened monitoring for certain types of contracts to avoid allowing contractors to cross the line into performing IGFs.

Insourcing was considered by the workgroup as an option if a contractor was found to be performing IGF or personal services (which they were not) or if insourcing certain functions closely associated with IGFs was thought to be in the Government's best interest. All future insourcing decisions will be made on a case-by-case basis, after careful consideration of critical need, whether a function is inherently governmental, and benefit demonstrated by a cost-benefit analysis. Future insourcing decisions must also be supportable within current budget levels. Pursuing an insourcing study at the Department would involve the development of an estimated

cost of Government performance of a commercial activity and comparing it to the cost of contract performance of the activity.

d) Actions Planned to Address Weaknesses/Challenges

Although reviewers found no evidence of personal services or contractors performing IGFs, the workgroup strongly recommends the following risk reduction strategy based on its findings:

Strengthened Oversight and Improved Internal Guidance Regarding the Use of CMPs and/or QASPs When Appropriate

Based on its findings, the workgroup recommends that the Department:

1. Strengthen its internal guidance regarding the increased use of written contract monitoring plans, such as CMPs and QASPs in service contracts.
2. Updates existing policies and oversight procedures to ensure that contract monitoring activities are performed in accordance with such written plans.
3. Continue its efforts to clarify the appropriate use of these monitoring tools and to revise relevant policy, guidance, or regulations as needed.

It should be noted that both contracting activities at the Department have already taken several steps to improve the deficiencies identified in this review through the implementation and/or strengthening of internal policies and procedures, resulting in a more effective contract monitoring system.

- In FY11, CAM improved their procedures for organizing contract files to require use of a comprehensive list of file documents (Acquisition Procedure Manual (APM) Chapter 4.803 Content of Contract Files).
- In FY11, FSA Acquisitions issued guidance to COs requiring them to perform a yearly review of the CORs' files. The purpose of the review is to provide reasonable assurance that CORs are maintaining artifacts related to contract monitoring as well as other aspects of their files.
- In FY11, CAM revised its procedures for reviewing contract actions (APM Chapter 4.170 Contract Action Reviews), which now includes a review of the contract file's contents. Whenever a required document is not included in the contract, a finding is issued to the CS and CO that must be addressed before the award can be made. These process improvements were used as a teaching tool throughout the year to educate contracting staff on the differences between a CMP and a QASP, and the purpose of each in contract monitoring. As a result of these changes, it has been observed that these contract monitoring tools are being used more consistently (when appropriate), a trend that is expected to continue in FY12 and beyond.
- In FY11, FSA Acquisitions began drafting a revision of its invoice policy (to be issued in FY12) to provide helpful checklists and process maps for reviewing invoices and entering accurate data in the financial management system to support inspection and acceptance.

- In FY12, both contracting offices began performing annual data quality reviews of past performance evaluations, and the CO will be required to address instances of evaluations absent from the file or evaluations that were unsuccessfully transmitted to PPIRS.

Additionally, the existing Departmental Directive that addresses the use of CMPs ([ACS Departmental Directive OCFO: 2-108 Contract Monitoring for Program Officials](#)) is under revision to better clarify what monitoring tools are required in what circumstances. Revisions will result in an emphasized need for consistency between the contract monitoring strategy and the contract, and the necessity of maintaining artifacts to support contract monitoring, such as a written evaluation of deliverables and documentation of telephone calls between the COR and the contractor.