**UNITED STATES DEPARTMENT OF EDUCATION**

OFFICE OF THE CHIEF FINANCIAL OFFICER

**Fiscal Year 2014 Service Contract Inventory Analysis**

**(February 2015)**

This report contains a detailed analysis of the Department of Education’s (Department) Fiscal Year (FY) 2014 service contract inventory (SCI) in response to Section 743 of Division C of the FY 2010 Consolidated Appropriations Act, P.L. 111-117. The Department prepared the annual FY 2014 SCI in accordance with the Office of Federal Procurement Policy’s (OFPP) memoranda dated November 5, 2010, December 19, 2011, December 21, 2012, and September 8, 2015.

 The purpose of the evaluation is to identify and determine the following:

* Whether contractors perform any of the functions outlined below:
	+ Inherently Governmental Functions (IGF)
	+ Personal Services
	+ Contract Services Closely Associated with IGF
	+ Contract Services that include the Performance of Mission Critical Functions
* Whether the mix of Federal and contractor employees is appropriately balanced under the reviewed contracts.
* Whether the Department has sufficiently trained and experienced employees available within the Department to manage and oversee contract administrative functions, with particular emphasis on service contract functions that are IGF and contract services closely associated with IGF.
* If there is an over-reliance on contractors and there is sufficient contract management and oversight to ensure contractor functions don’t transition into IGF tasks.

The Department’s procurement function is comprised of two separate contracting activities identified as Federal Student Aid (FSA) Acquisitions and Contracts and Acquisitions Management (CAM), and an office supporting the Senior Procurement Executive known as Enterprise Procurement Initiatives (EPI).

**SCOPE OF REVIEW**

**Special Interest Functions Studied**

The review team reviewed the FY 2014 contract inventory for special interest functions that require increased management attention due to heightened risk of workforce imbalance. The special interest functions selected for review are primarily in the “D” and “R” Product and Service Codes (PSC). Contracts within these codes include those that provide professional administrative and management services, which may lead to an agency’s over-reliance of contractor services. The selections of these codes are consistent with PSC selections during the FY 2010 through FY 2013 service contract inventory reviews.

The Department selected a total of 10 PSCs for the FY 2014 SCI analysis. The Department determined the percentage of dollars obligated under each PSC by dividing the amount obligated under each PSC by the total contract obligations during FY 2014. Additional detailed rationale for selecting each PSC for review is illustrated below.

**Product and Service Codes (PSC) Selected for Evaluation**

*Table 1*

|  |  |  |  |
| --- | --- | --- | --- |
| **PSC** | **Description** | **Amount****Obligated** | **% of Total Obligations** |
| AF11 | Research and Development-Education (Basic) | $ 75,269,109 | 2.8% |
| B506 | Study/Data Other Than Scientific | $ 75,637,807 | 2.8% |
| B542 | Special Studies/Analysis - Education | $ 79,617,633 | 3.0% |
| D301 | IT & Telecom-Facility Operation & Maintenance | $ 109,635,392 | 4.1% |
| D313 | IT & Telecom-Computer Aided Design | $ 96,185,129 | 3.6% |
| D399 | IT & Telecom-Other IT & Telecommunications | $ 28,895,707 | 1.0% |
| R499 | Support – Professional Other | $ 50,959,288 | 1.8% |
| R705 | Support – Management Debt Collection | $ 1,241,887,321 | 46.8% |
| R710 | Support – Management Financial | $ 948,911,179 | 35.7% |
| U009 | Education/Training General | $ 57,426,912 | 2.1% |

**Rationale for FY 2014 PSC Selection**

**AF11** - The Department spent $75M (2.8% of its total FY 2014 obligations) for these services.

**B506** - Many of the contracts reviewed in this PSC are for non-commercial services; there is a higher risk for over-reliance on contractors for these types of contracts. The Department spent $76M (2.8% of its total FY 2014 obligations) for these services.

**B542** - Many of the contracts reviewed in this PSC were for non-commercial services; there is a higher risk for over-reliance on contractors for these types of contracts. The Department spent $80M (3.0% of its total FY 2014 obligations) for these services.

**D301** –The Department spent $110M (4.1% of its total FY 2014 obligations) for these Information Technology (IT) Support Services.

**D313** – This PSC includes contracts for IT Support Services, which are high on the Office of Management and Budget’s (OMB) priority list. The Department spent $96M (3.6% of its total FY 2014 obligations) for these services.

**D399** – Identified as a targeted PSC under the ongoing effort to reduce contract spending for management support services (OMB initiative). The Department spent $29M (1.0% of its total FY 2014 obligations) for these services. This PSC is considered to be a function closely associated with IGF.

**R499** - Identified as a targeted PSC under the ongoing effort to reduce contract spending for management support services (OMB initiative). The Department spent $51M (1.8% of its total FY 2014 obligations) for these services. PSC is considered to be a function closely associated with IGF.

**R705** - The Department spent $1.2B (46.8% of its total FY 2014 obligations) for these services. This PSC is included to guard against expansion of the contractor’s duties converting into IGF and to ensure sufficient management and oversight remains in place.

**R710** - The Department spent $949M (35.7% of its total FY 2014 obligations) for these services. This PSC is included to guard against expansion of the contractor’s duties transforming into IGF and to ensure sufficient management and oversight remains in place.

**U009** - The Department spent $57M (2.1% of its total FY2014 obligations) for these services. The PSC is included to guard against expansion of the contractor’s duties transforming into IGF and to ensure sufficient management and oversight remains in place.

**METHODOLOGY**

This year’s SCI was performed in conjunction with the Department’s contract management review (CMR) that examined a wider range of contract actions. The sample size for the CMR is based upon a universe of 1009 unique contracts represented in the population of all FY14 contract actions. Out of this universe, 385 contracts had a “top-ten” PSC (AF11, B506, B542, D301, D313, D399, R499, R705, R710, or U009). To maintain a 95% confidence level with a confidence interval of 10, the review team reviewed 78 random contracts as part of the SCI. Based on percentage of total Departmental spend, the team reviewed 15 service contracts in CAM and 63 in FSA Acquisitions.

To conduct the FY14 SCI, EPI and CAM analysts gathered contract information from Contracting Officers (COs) and interviewed the Department’s Contracting Officer Representatives (CORs) about each of the sampled contracts. The review team used an evaluation checklist from prior years to focus on pertinent and essential questions when reviewing IGF, closely associated with IGF, mission critical functions, potential personal services contracts, and contract administrative functions.

**FINDINGS**

**Inherently Governmental Functions (IGF)**

Based on the careful evaluations the reviewers performed and careful reviews of the established criteria for classifying functions as inherently governmental, the review team determined that none of the contractors are performing IGFs.

**Functions Closely Associated with IGFs**

During the interviews, the review team used the evaluation checklist questions to detect the expansion of closely associated work that may have become IGF. The checklist included various subjects of responsibilities, including limiting or guiding the contractor’s discretion, assigning Federal employees to give special management attention to the contractor’s activities, and taking steps to avoid or mitigate conflicts of interest. Reviewers identified several contracts where the Department gave special consideration during the planning phase of the procurement to use Federal employees in lieu of contractor employees to perform duties closely associated with IGF. When sufficient Governmental resources were available, these duties were retained in-house. When the level of available resources was not sufficient for performance by a Federal employee, consideration was given to ensure that sufficient resources were available for proper oversight. Reviewers did not identify any contracts as having services closely associated with IGF.

**Contract Management and Oversight**

Reviewers found that 100% of the contracts reviewed disclosed the Department as having sufficiently trained and experienced employees available within the agency to manage and oversee contract administration functions. Reviewers determined that 100% of the contract sample size contained contract monitoring plans (CMP).

**Mission Critical Functions**

Reviewers identified approximately 40 contracts where contractors were performing services that are considered to be critical functions close to the Department’s mission and operations. Examples of activities identified by reviewers as “mission critical” are assessments of educational progress, grant application reviews, technical assistance, and education research. Reviewers examined the specific work activities being performed under these contracts and found none of them to be problematic because the Department has sufficient resources in place to manage and oversee the contracts. The Department will continue to pay close attention to contracts where contractors are performing these kinds of services in order to maintain sufficient internal control capabilities. 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.

**Personal Services**

Reviewers examined the contractual relationship between government and contractor employees without identifying any characteristics of a personal service nature. The reviewers studied the definition of personal services contracts provided in Federal Acquisition Regulation Part 37 and examples of what contractor personnel cannot do under a non-personal services contract, such as supervising Federal employees. The group 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, and disciplinary actions. Additionally, the review team held discussions with the CORs to reinforce the need to continue exercising caution in preventing non-personal services from becoming personal services in the future.

**Summary**

The analysis of the contracts reviewed indicates:

* No evidence of contractors performing IGF services
* No evidence of contractors performing personal services
* No evidence of contractors performing services identified as closely associated with IGF
* Approximately 40 contracts reviewed included performance of mission critical functions
* All 78 contracts reviewed disclosed the Department as having enough sufficiently trained and experienced employees available within the agency to manage and oversee contract administration functions
* No contracts recommended for further in-sourcing study

**ACTION ITEMS**

There are no action items based on the FY 2014 service contract inventory review process.

**STATUS OF PREVIOUS ACTION ITEMS**

The status of prior years’ service contract inventory recommendations were implemented as follows.

*Table 3*

|  |  |
| --- | --- |
| **SCI RECOMMENDATIONS** | **STATUS** |
| **FY 2010** -CAM improved their procedures for organizing contract files to require use of a comprehensive list of file documents (Acquisition Procedures Manual Chapter 4.803 – Content of Contract Files). | Completed during FY 2011 |
| **FY 2011** - Revised Departmental Directive OCFO: 2-108, Contract Monitoring for Program Officials. | Completed during FY 2012 |
| **FY 2012** - Develop guidance to further define mission critical functions. | Completed during FY 2013 |
| **FY 2013** – No SCI recommendations. | N/A |

**POINTS OF CONTACT**

The Department’s senior management official accountable for the development of agency policies, procedures, and training associated with the OFPP Letter 11-01 addressing the performance of inherently governmental and critical functions *(this designation is already required by section 5-4(e) of the Policy Letter)* isJames L. Ropelewski, Senior Procurement Executive. Mr. Ropelewski serves as the senior management official accountable for generating the service contract inventory from the Federal Procurement Data System – Next Generation (FPDS-NG), for providing procurement related support for the development and execution of the inventory analysis plan, and for ensuring appropriate internal management attention is given to the development and analysis of service contract inventories. OFPP intends to re-establish a working group to share best practices and lessons learned in the use of inventories as a management tool. The individuals serving on OFPP’s working group are Ms. Michele Moore, Group Manager, CAM, Performance and Logistics Group (PLG) and Ms. Pier Connors, Contract Price Analyst of CAM.