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**UNITED STATES DEPARTMENT OF EDUCATION**

**OFFICE OF MANAGEMENT**

**Office of the Chief Privacy Officer**

July 30, 2018

RE: FOIA Request No. 18-01325-F

This letter is a final response to your request for information pursuant to the Freedom of Information Act (FOIA), 5 U.S.C. § 552, dated March 16<sup>th</sup>, 2018 and received in this office on March 21<sup>st</sup>, 2018. Your request was forwarded to the appropriate office to search for documents that may be responsive to your request: Office of the Chief Financial Officer (OCFO).

You requested the following:

- A copy of the 10 (ten) most recent annual reports of the “advocate for competition” for the Department.

Attached to this e-mail are 63 pages of fully releasable documents that are responsive to your request. The documents provided are:

- The U.S. Department of Education Competition Advocate Reports for FY 2008 – FY 2016.

Provisions of the FOIA allow us to recover the costs pertaining to your request. The Department has concluded that you fall within the category of “an all other use requester.” However, the Department has provided you with these responsive documents, at no cost. The Department’s release of information at no cost does not constitute the grant of a fee waiver, and does not infer or imply that you will be granted a fee waiver for future requests made under FOIA to the Department.

The Department has completed the processing of your request. You have the right to seek further assistance from the Department’s FOIA Public Liaison, Robert Wehausen. The Department’s FOIA Public Liaison can be reached by e-mail at [robert.wehausen@ed.gov](mailto:robert.wehausen@ed.gov); by phone at 202-205-0733; by fax at 202-401-0920; or by mail at Office of the Chief Privacy Officer, U.S. Department of Education, 400 Maryland Ave., SW, LBJ 2W208-26, Washington, DC 20202-4536, Attn: FOIA Public Liaison.

If you have any questions, please contact the FOIA Service Center at (202) 401-8365 or via e-mail at [EDFOIAManager@ed.gov](mailto:EDFOIAManager@ed.gov).

Sincerely,

*Arthur Caliguiran*

Arthur Caliguiran  
FOIA Analyst  
FOIA Service Center

Enclosure




UNITED STATES DEPARTMENT OF EDUCATION  
*Office of the Chief Financial Officer*  
*Contracts and Acquisitions Management*

**MEMORANDUM**

DATE: January 30, 2009

TO: Thomas P. Skelly  
Acting Chief Acquisition Officer

FROM:   
Hugh J. Hurwitz  
Director, Contracts and Acquisitions Management, and  
Senior Procurement Executive

SUBJECT: FY2008 U.S. Department of Education Competition Advocate  
Report

Attached for your information is the FY2008 U.S. Department of Education Competition Advocate Report. FAR 6.502(b)(2) requires the agency Competition Advocate to submit an annual report to the Senior Procurement Executive and Chief Acquisition Officer. I will have further discussions with Jim Ropelewski concerning implementing his recommendations.

If you have any questions regarding this report, please do not hesitate to contact Jim Ropelewski at (202) 245-6621.



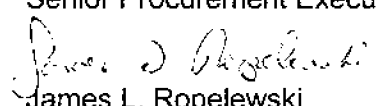
**UNITED STATES DEPARTMENT OF EDUCATION**  
*Office of the Chief Financial Officer*  
*Contracts and Acquisitions Management*

**MEMORANDUM**

DATE: January 30, 2009

TO: Thomas Skelly  
Acting Chief Financial Officer, and  
Acting Chief Acquisition Officer

THROUGH:   
Hugh J. Hurwitz  
Director, Contracts and Acquisitions Management, and  
Senior Procurement Executive

FROM:   
James L. Ropelewski  
Deputy Director, Contracts and Acquisitions Management  
Agency Competition Advocate

SUBJECT: FY2008 U.S. Department of Education Competition Advocate Report

**Introduction**

In accordance with Federal Acquisition Regulation (FAR) 6.5, the U.S. Department of Education (ED or "the Department") has appointed an Agency Competition Advocate (CA) responsible for promoting and challenging barriers to full and open competition and the acquisition of commercial items. In addition, both of the Department's contracting activities (Contracts and Acquisitions Management (CAM) and Federal Student Aid Acquisitions (FSA)) are served by Procuring Activity Competition Advocates.

In Fiscal Year (FY) 2008, ED designated James Ropelewski, Deputy Director, CAM, as the Agency Competition Advocate. The Procuring Activity Competition Advocates are James Ropelewski for CAM, and John Fare for FSA.

The Department's acquisition leaders are champions for competition and take a personal interest in organizational acquisitions and programs. From being involved as part of brainstorming sessions that help define acquisition strategies, to reviewing solicitations to ensure requirements are not overly restrictive, acquisition leadership sends the message that competition is the standard for accomplishing the mission. This attitude resonates with the Contract Specialists and Contracting Officers in the contracting activities. Contracting personnel recognize the value that competition brings to the acquisition process - dollar savings, increased quality in performance, innovative solutions, better service, and transparency of publicly-funded activities. These values are illustrated by the fact that, for FY

2007, OFPP ranked ED third among agencies in the use of competition.<sup>1</sup>

ED contracting personnel use market research to help define or refine their requirements, and use a variety of methods in acquiring goods and services, including the use of GSA Schedules, internal IDIQ contracts, Blanket Purchase Agreements, and various contract types resulting from competition on the open market. Contracting personnel also use FedBizOpps to assure the widest dissemination of their requirements and to solicit information regarding the marketplace.

The remainder of this report summarizes competition at ED and includes plans to expand and promote competition. The Department anticipates that strengthening competition will lead to better prices and greater quality and responsiveness in delivery of goods and services.

### **Competition Summary**

The following table provides a high-level summary of competition at ED for fiscal year 2007 and 2008. ED is consistently competing over 83% of its dollars. The table is populated with data obtained from standard reports in the Federal Procurement Data System—Next Generation (FPDS—NG). It should be noted that FPDS—NG contains a number of limitations that result in a smaller percentage of competed actions than is actually the case. For instance, ED makes widespread use of Blanket Purchase Agreements. ED's Blanket Purchase Agreements are competitively awarded, and are based upon Federal Supply Schedules that are also competitively awarded. However, it was recently discovered that FPDS—NG records tasks issued off of Blanket Purchase Agreements as non-competitive, notwithstanding the fact that the tasks are competitive. A work around has been identified to record the competitive nature of the awards, and actions are being undertaken to make the changes. This limitation impacts the accurate recording of a large number of acquisitions. While the table below notes that 84% of ED's contract dollars were competitively awarded, the actual number of competitive awards and competitively awarded dollars are higher.

| COMPETITION REPORT |                               |                       |                                  |
|--------------------|-------------------------------|-----------------------|----------------------------------|
| FY                 | Competition Base<br>(Dollars) | Competed<br>(Dollars) | Percentage<br>Competed (Dollars) |
| 2007               | \$1,291,696,335.62            | \$1,074,757,579.55    | 83%                              |
| 2008               | \$1,283,161,785.17            | \$1,074,336,032.25    | 84%                              |

*Source: FPDS Standard Competition Report (January 2009)*

### **Actions Taken During the Reporting Period**

#### **Opportunities and actions taken to acquire commercial items to meet the needs of the agency.**

ED as a whole increased the number of actions and dollars for which commercial item acquisition procedures were used from FY 2007 to FY 2008. Contracting personnel work with their program offices to define requirements as soon as a need is identified; including reviewing the market's capability to respond to a requirement with commercially available products or services. Acquisition planning plays a key role in identifying commercially available services and supplies that will satisfy the government's requirement.

<sup>1</sup> OFPP Memo on Effective Practices for Enhancing Competition to Senior Procurement Executives dated July 18, 2008

ED, for example, makes widespread use of commercial supplies and services through Federal Supply Schedules and Blanket Purchase Agreements (BPA), all of which include commercial terms and conditions. In addition, the contracting activities use the commercial item acquisition procedures in FAR Part 12 to make open market awards of commercial supplies and services. Finally, ED has utilized the Federal Strategic Sourcing Initiative (FSSI) to award contracts for both office supplies and express and ground domestic delivery services. By using the FSSI BPAs for these common commercial items, ED is leveraging its buying power and anticipates reducing costs, increasing achievement of socio-economic goals, and improving supplier management.

The following chart contains data extracted from standard reports in FPDS—NG for FY 2008. Please note, previous comments relative to FPDS—NG limitations apply in the commercial item acquisition area as well.

| COMMERCIAL ITEM ACQUISITIONS |                               |                               |
|------------------------------|-------------------------------|-------------------------------|
| FY                           | Commercial Procedures Actions | Commercial Procedures Dollars |
| 2007                         | 58                            | \$44,346,200.47               |
| 2008                         | 103                           | \$45,782,872.03               |

Source: FPDS Standard Report Total Actions by PSC (January 2009)

#### **Opportunities and actions taken to achieve full and open competition in the contracting operations of the agency.**

ED is committed to maximizing full and open competition in its contracting activities. As per the FAR, the CAs review Justifications for Other than Full and Open Competition for all acquisitions for between \$550,000 and \$11.5 million. Accordingly, at those thresholds, non-competitive actions must be approved by the CA. Also, ED uses the acquisition planning and Contract Review Board (CRB) processes to emphasize the need for full and open competition. In FY 2008, CAM's CRB procedure was rewritten and includes CRB review for adequate competition. FSA's CRB also reviews for adequate competition. Both CRBs challenge proposed exceptions to competition and the period of performance for acquisitions that have a legitimate basis for award under other than full and open competition.

In addition, both contracting activities use requests for information and pre-proposal conferences to facilitate competition. The goal of these activities is to explain requirements and answer questions for complex contracts before potential offerors develop proposals. By doing so, potential offerors' understanding of ED requirements can be improved, allowing them to judge how they can satisfy the Department's requirements and increase their efficiency in proposal preparation.

ED is proactive in utilizing the internet to increase competition. In addition to following the FAR requirements for publicizing contract opportunities over \$25,000 on FedBizOpps, the Department also posts most business opportunities in the \$10,000 to \$25,000 range. At the same time, ED publishes on the [www.ed.gov](http://www.ed.gov) website a guide to "Doing Business with the U.S. Department of Education," a document written in conjunction with the Office of Small Disadvantaged Business Utilization (OSDBU) that emphasizes business opportunities for small businesses, a Forecast of ED Contract Opportunities, and a link to currently available contract solicitations.

ED also is taking steps to award multiple award vehicles that assure continued competition.

The unrestricted Enterprise Data Support Services (EDSS) contracts were awarded to five contractors to provide information technology development services for FSA. An additional group of small business set-aside EDSS contracts will provide a pool of service contracts for FSA. The Private Collection Agency (PCA) contracts will support collection resolution from borrowers who default on Federal Student Aid loans. Through fair opportunity for consideration, FSA anticipates they will continue to receive competitive and qualitative proposals from contractors as they continue to compete for the government's business.

**Actions taken to challenge requirements that are not stated in terms of functions to be performed, performance required, or essential physical characteristics.**

ED uses the CRB review process to ensure requirements are properly defined. During reviews, the CRB checks proposed contract actions to examine how well the actions further public policy goals, including the use of performance-based acquisition requirements.

For several years now, CAM has awarded multiple task order contracts under its Multiple Award Task Order (MATO) contracting program. The MATO initiative has been an important part of how the Department does business since FY 2004. The purpose of the MATO program is to make available to ED components a streamlined, competitively priced contracting mechanism that helps individual program offices meet their procurement needs for products and services across a wide range of subject areas relating to key education issues. More than 100 separate vendors are available through the MATO program, and these vendors' contracts were awarded using full and open competition. As a matter of policy, all task orders awarded under the MATO vehicle must be awarded as performance-based acquisitions. The performance-based MATO requirements state the activity's desired result(s) and allow for the winning contractor to propose the best method of attainment.

Finally, to assist the acquisition workforce in defining requirements in terms of functions to be performed, ED maintains a web site on its intranet dedicated to performance-based acquisition. The site contains links to such tools as an ED Performance-Based Contracting Kit, a link to performance-based acquisition resources from the Defense Acquisition University, a PBA Toolkit, and a link to the Seven Steps to PBA website.

The table below shows ED performance-based acquisition results for FY 2007 and FY 2008.

**Any condition or action that has the effect of unnecessarily restricting the acquisition of commercial items or competition in the contract actions of the agency.**

In general, ED did not have any conditions or actions, such as urgent or compelling acquisitions for high priority or politically sensitive programs, that would unnecessarily restrict the acquisition of commercial items or competition in the contract actions of the agency.

In the FSA arena, however, recent legislation including the College Cost Reduction Authorization Act (CCRAA) and the Ensuring Continued Access to Student Loans Act (ECASLA), required FSA to assume former Federal Family Education Loan Program (FFELP) loans in the form of additional Direct Loan (DL) capacity, and to purchase FFELP loans as far back as 2003, in an effort to bring liquidity and stability back to the student loan market. While a modification to the existing Common Services for Borrowers (CSB) contract was immediately necessary, FSA recognized the need to have additional sources in the market capable of servicing federal debt. A competitive acquisition is underway, with the ultimate goal of fostering a competitive market capable of servicing federal debt.

**Opportunities and actions taken to improve the quality of planning, executing, and managing task and delivery orders.**

ED contracting personnel engage in advance acquisition planning with their Program Offices. It is ED's policy to conduct acquisition planning in advance of the fiscal year in which contract awards are required and in concert with the budget formulation process and information technology investment management process. Acquisition planning is performed in order to promote acquisition of commercial items, to promote full and open competition, or when full and open competition is not required, obtaining competition to the maximum extent practicable in consideration of the products or services to be acquired. In addition to supporting documentation, Statements of Work, Performance Work Statements, Statements of Objectives, and evaluation criteria are reviewed by the Contract Specialist, Contracting Officer, Supervisory Group Manager, and CRB (if meeting thresholds), to ensure clearly defined government requirements and meaningful evaluation criteria that discriminate amongst competitors.

As mentioned above, for several years now, CAM has awarded multiple task order contracts under its MATO contracting program. To ensure competition within the MATO task order process, requirements being competed under the MATO program are provided to every MATO contractor at the beginning of the procurement process. Each vendor is provided an opportunity to submit a capability statement in response to an ED requirement.

### **New Initiatives for Future Reporting Period(s)**

#### **New initiatives required to increase the acquisition of commercial items.**

ED uses the acquisition planning and the CRB processes to increase the acquisition of commercial items. As stated above, acquisition planning is performed in order to promote and provide for acquisition of commercial items to the extent that commercial items are available or suitable for ED's needs, or items of a non-developmental nature. At the same time, CRB reviewers regularly consult with Contracting Officers about requirements that can be procured as commercial items. Recently, CAM used commercial item acquisition procedures to procure IT infrastructure and support services including desktop services, helpdesk support services, systems/data center operations services, e-mail, network services, disaster recovery services, special services, and printer services.

It is clear there is an immediate need for methods to work around FPDS—NG system limitations. Solutions are being developed and greater accuracy in reporting is expected to have a long-term impact on results that are extracted from reports.

#### **New initiatives required to increase competition.**

In FY 2009, CAM is adopting best practices identified in OMB's Report on Effective Practices for Enhancing Competition. The best practices include:

- Ensuring that the acquisition strategy section of the OMB Exhibit 300 business case adequately addresses competition – CAM staff will attend training on Exhibit 300 given by the Office of the Chief Information Officer (OCIO); and,
- Using Contract Management Reviews to identify and address any barriers to competition.

The National Student Clearinghouse contract provides student enrollment data to FSA. This long-term contract was initially awarded on a sole source basis. While a subsequent requirement was issued competitively, only one proposal was received. As part of acquisition planning for a re-competition of this contract, FSA examined the market and identified similar types of services that were being performed by contract for other federal agencies. By more closely examining the government's requirement and eliminating terms and conditions that may



restrict competition, FSA anticipates increasing the pool of contractors that can respond to the government's requirement. The EDSS contracts, mentioned earlier in this report, are another example of new initiatives designed to increase competition.

**New initiatives to ensure requirements are stated in terms of functions to be performed, performance required, or essential physical characteristics.**

In FY 2009, ED will re compete the MATO contracts. Once again, all task orders under this vehicle will be performance-based. At the same time, ED will conduct additional training on performance-based acquisition. Specifically, FSA has a class scheduled for February 25, 2009 on performance-based acquisitions and CAM intends to offer a performance-based acquisition seminar to members of the acquisition workforce, including contracting officer's representatives (CORs). Finally, ED's solution to the FPDS-NG systems limitations, mentioned above, will include a section on the appropriate recording of performance-based actions.

**Any barriers to the acquisition of commercial items or competition that remain.**

ED has not identified any significant barriers to the acquisition of commercial items or competition that remain. While some legacy systems continue to require contracting from a single source, retirement and decommission of these systems and restructuring the approach for their replacement will open additional dollars to competition.

**Other ways in which the agency has emphasized the acquisition of commercial items and competition in areas such as acquisition training and research.**

ED was diligent over the past twelve months in assuring that acquisition personnel were certified at the appropriate FAC-C Level and are working towards their next appropriate level. Competition and commercial contracting are part of the training curriculum of FAC-C classes. Additionally, ED will supplement training with lessons learned, as situations present themselves.

Training for all Department Contracting Officer's Representatives (CORs) was provided on the acquisition of commercial items and competition during the new OMB/OFPP mandated FAC-COTR certification training.

FSA and CAM plan to expand their working relationship with OSDBU during FY 2009. Monthly meetings were initiated in the fourth quarter of 2008 by FSA. CAM and FSA are currently exploring ways to further small business participation/interest within ED.

Finally, CAM reorganized in FY 2009. As a result, a new group was formed, the Performance and Logistics Group, which will assist the acquisition staff in the areas of market research, strategic planning, acquisition of commercial items, and competition through methods such as training, reporting, and liaison with the OSDBU.

**New initiatives to improve the quality of planning, executing, and managing task and delivery orders.**

In FY 2009, CAM will re compete the MATO contracts. Prior to starting the new competition, CAM conducted a complete review of the program and it was determined that it remains an effective approach to meeting ED's task order contracting needs.

**Initiatives that ensure task and delivery orders over \$1,000,000 issued under multiple award contracts are properly planned, issued, and comply with 8.405 and 16.505.**

ED complies with FAR Subparts 8.405 and 16.505. As stated above, in FY 2009, the

Department will conduct Contract Management Reviews to ensure ED contracting complies with all FAR and ED-specific rules and regulations.

### **Recommendations**

#### **Recommendation regarding establishing goals and plans for increasing competition on a fiscal year basis.**

The Competition Advocate recommends the following actions:

1. Engage contracting staff and Program Offices in providing early input into establishing meaningful competition goals.
2. Use the Acquisition Plan as a forecast tool to identify opportunities to increase competitively awarded contracts and the use of commercial procedures and performance-based strategies.
3. Provide regular updates to the procurement forecast to assure the widest dissemination of the government's planned contract activities.
4. Develop a communication strategy that includes updates that document progress towards goal achievement.

#### **Recommendation regarding establishing a system of personal and organizational accountability for competition, which may include the use of recognition and awards to motivate program managers, contracting officers, and others in authority to promote competition in acquisition.**

ED presently has a recognition program tied to individual performance. ED uses monetary and non-monetary awards to motivate Contract Specialists and Contracting Officers to achieve desired outcomes including promoting competition in acquisition. The Senior Procurement Executive has encouraged the use of the FAI awards program, including the Shine Initiative, and the contracting activities will be encouraged to nominate outstanding staff members for such awards. FSA nominated an individual for the SHINE award during FY 2008, and that nominee was a finalist.




**UNITED STATES DEPARTMENT OF EDUCATION**  
*Office of the Chief Financial Officer*  
*Contracts and Acquisitions Management*

**MEMORANDUM**

TO: Thomas Skelly  
Chief Acquisition Officer (Acting)

TO: Hugh J. Hurwitz  
Senior Procurement Executive

FROM:   
James Ropelewski  
Agency Competition Advocate

DATE: January 29, 2010

SUBJECT: FY2009 U.S. Department of Education Competition Advocate Report

**Introduction**

As stated in the FY2009 Competition Advocate Report I, the U.S. Department of Education (ED) has appointed an Agency Competition Advocate (CA) responsible for promoting and challenging barriers to full and open competition and the acquisition of commercial items in both Contracts and Acquisition Management (CAM) and Federal Student Aid (FSA). This is in accordance with Federal Acquisition Regulation (FAR) 6.5 which also requires the CA to prepare an annual report for the Senior Procurement Executive (SPE) and the Chief Acquisition Officer (CAO).

ED continues rank among the top of the agencies in the use of competition with an increase of one percent each year since FY2007. The reported number of commercial procedures actions increased significantly in FY2009 from 103 actions reported in FY2008 to 580 actions reported in FY2009.

ED continues to have a low number of approved Justifications for Other than Full and Open Competition. Both CAM and FSA contracting personnel continue to use market research to help define or refine their requirements, and use a variety of methods in acquiring goods and services, including the use of GSA Schedules, internal IDIQ contracts, Blanket Purchase Agreements (BPA), and various contract types resulting from competition on the open market. The Contracts Review Board (CRB) process continues to be used to ensure requirements are properly defined. This year the American Recovery and Reinvestment Act (ARRA) increased awareness of the need for full and open competition and a higher review for sole sourcing. ED

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followed all the OMB guidance related to competing ARRA actions and implemented additional ED-specific measures

The remainder of this report summarizes competition at ED and includes plans to expand and promote competition. ED anticipates that continuing to strengthen competition will lead to better prices and greater quality and responsiveness in delivery of goods and services.

### **Competition Summary Table**

The following table provides a high-level summary of competition at ED for fiscal years 2007, 2008 and 2009. In FY 2009, ED competed 85% of its dollars. In both 2008 and 2009 there was an increase of 1% annually in dollars competed. A significant percentage of dollars not competed are due to continued reliance on legacy systems for which no other provider is available. The table below is populated with data obtained from standard reports in the Federal Procurement Data System—Next Generation (FPDS—NG).

| COMPETITION REPORT |                               |                       |                                  |
|--------------------|-------------------------------|-----------------------|----------------------------------|
| FY                 | Competition Base<br>(Dollars) | Competed<br>(Dollars) | Percentage Competed<br>(Dollars) |
| 2007               | \$1,291,696,335.62            | \$1,074,757,579.55    | 83%                              |
| 2008               | \$1,283,161,785.17            | \$1,074,336,032.25    | 84%                              |
| 2009               | \$1,411,635,499.20            | \$1,205,391,720.67    | 85%                              |

### **Actions Taken During the Reporting Period**

#### **Opportunities and actions taken to acquire commercial items to meet the needs of the agency**

ED makes widespread use of commercial supplies and services through BPAs, all of which include commercial terms and conditions.

Contracting personnel continue to work with their program offices to define requirements as soon as a need is identified, including reviewing the market to identify the market's capability to respond to a requirement with commercially available products or services. Acquisition planning plays a key role in identifying commercially available services and supplies that will satisfy the government's requirement.

This year contracting personnel received training in defining requirements. This training will better enable the contracting workforce to define requirements in terms that will encourage competition and support the use of commercial items.

The following chart contains data extracted from standard reports in FPDS—NG for FY 2009.

| COMMERCIAL ITEM ACQUISITIONS |                               |                               |
|------------------------------|-------------------------------|-------------------------------|
| FY                           | Commercial Procedures Actions | Commercial Procedures Dollars |
| 2007                         | 58                            | \$44,346,200.47               |
| 2008                         | 103                           | \$45,782,872.03               |
| 2009                         | 580                           | \$136,254,589.80              |

Note: Greater strides are being made in the acquisition of commercial items based on reported FPDS—NG data. ED staff is coding commercial item acquisitions more accurately due to training by CAM's Performance and Logistics Group (PLG). Product Service Codes (PSC) with the highest increase in commercial item acquisitions include the codes for education and training, technical assistance, logistical support and program evaluation, ADP and telecommunication, research and development, and software, office supplies, printed materials and furniture.

However the actions and dollars are still underrepresented due to the improper commercial item acquisition coding of Federal Supply Schedules by GSA. ED is unaware of any planned corrections. As a result, task and delivery orders awarded off of the miscoded vehicles are recorded as "Commercial Item Procedures not Used." Since the field is not editable in FPDS—NG, our ability to accurately report our achievements in this area is limited. ED makes widespread use of these vehicles, so the impact is significant.

#### **Opportunities and actions taken to achieve full and open competition in the contracting operations of the agency**

ED is committed to maximizing full and open competition in its contracting activities. As per the FAR, the CA's review Justifications for Other than Full and Open Competition (JOFOC) for all acquisitions for between \$550,000 and \$11.5 million.

Both contracting activities continue to use requests for information and pre-proposal conferences to facilitate competition. Federal Student Aid uses Pre-Planning Conferences (PPC) as an opportunity for Contracting Officers and members of the acquisition team to discuss planned approaches in addressing upcoming acquisitions with Contract Review Board (CRB) members. The PPC is an informal discussion where alternative solutions may be debated or considered. A challenge to competition may be addressed at this time or during the conduct of the Solicitation CRB. If the acquisition meets the threshold requiring signatures of the CA, Head of the Contracting Activity (HCA), or SPE, challenges may occur at this level as well.

Also, over the course of FY 2009, FSA's competition statistics were routinely updated and posted to give a visual picture of FSA acquisition teams' relative standing with each other in awarding contracts subject to competitive procedures and towards meeting socio-economic objectives. The statistics served as an incentive for cross-team competition, and also provided an example of metrics that would be used to document team achievement in FY10 individual performance plan goals.

ARRA policy has increased awareness of the need for full and open competition and a higher review for sole sourcing. ED followed all the OMB guidance related to competing ARRA

actions, to include, required postings to FedBizOpps, etc. In addition, ED implemented specific measures for ARRA actions to reinforce the importance of competition. The ED measures included:

- All ARRA awards anticipated to exceed \$25,000 are forwarded to the appropriate CRB. This included modifications that increased the overall contract value to exceed this threshold. The SPE could review any action less than \$25,000 at his discretion.
- Also, in order to ensure competition to the maximum extent possible, the threshold for the Contracting Activity's CA approval was lowered to \$100,000 for all ARRA actions.
- Finally, all ARRA actions that were not competed, regardless of dollar value, required a Determination and Findings (D&F). The D&F required HCA and CA review and approval.

The awareness brought about by ARRA influenced all contracts work.

In last year's report, CAM stated that it would adopt best practices identified in OMB's Report on Effective Practices for Enhancing Competition. The adopted best practices included:

- Ensuring that the acquisition strategy section of the OMB Exhibit 300 business case adequately addresses competition – CAM staff attended training on Exhibit 300 given by the Office of the Chief Information Officer (OCIO); and,
- Using Contract Management Reviews (CMR) to identify and address any barriers to competition. In FY2009 eight CMRs were held. As a part of the process, restrictions to competition were identified and guidance was given to the Program and contracting offices.

FSA and CAM also reported that they planned to expand their working relationship with Office of Small and Disadvantaged Business Utilization (OSDBU) during FY 2009. The Small Business Administration (SBA) held three information sessions for CAM contracting personnel to promote the participation of small businesses in competing for ED contracts.

The financial crisis this year created problems in the student loan market. Many banks stopped offering student loans and many others threatened to do so. In order to provide capital to expand the availability of aid, FSA bought \$30 billion in student loans. At the same time, schools started turning towards the Direct Loan program to secure their financial aid. A side effect of this action was to significantly expand the volume of federal loan assets and a corresponding increase in the number of borrowers serviced by FSA. A single contractor serviced these loans, and the potential volume increase threatened to overwhelm the capacity of the contractor to service the loans. In response, FSA awarded four additional contracts to commercial providers to handle the growth of loan servicing requirements.

The Enterprise Development Support Services (EDSS) Model developed by FSA uses a more in-depth approach to analyze business needs and the vision of the organization. The model recognizes that a "single vendor" may not bring the best value to the organization. The resulting EDSS IDIQ contracts are segmented into defined functional areas, and provide multiple sources from which to solicit technical solutions across each stage of a system life cycle.

**Actions taken to challenge requirements that are not stated in terms of functions to be performed, performance required, or essential physical characteristics**

ED continues to use the CRB review process to ensure requirements are properly defined. During reviews, the CRB checks proposed contract actions to examine how well the actions further public policy goals, including performance-based acquisition.

As reported last year, since FY2004 CAM has awarded multiple task order contracts under its Multiple Award Task Order (MATO) contracting program. The purpose of the MATO program is to make available to ED components a streamlined, competitively priced contracting mechanism that helps individual program offices meet their procurement needs for products and services across a wide range of subject areas relating to key education issues. CAM continued to use the MATO program during FY2009.

FSA awarded 22 Private Collection Agency (PCA) contracts this year to collect defaulted student loans. These flagship performance-based contracts provide for contract payment based upon the amount of debt the contractor is able to successfully collect and the relative standings of the contractors against each other. With the distribution of loans dependent upon contractor achievements in these measures, the PCA's are results-driven and assure competition across the duration of the contracts.

As stated above, CAM held training on defining requirements for its staff in FY 2009. FSA also held a class in February 2009 on performance-based acquisitions and CAM offered a performance-based acquisition seminar to members of the acquisition workforce, including contracting officer's representatives (CORs). ED's solution to FPDS-NG systems limitations included training on the appropriate recording of performance-based actions in FPDS-NG.

The table below shows ED performance-based acquisition results for FY 2007, FY 2008 and FY2009.

| PERFORMANCE-BASED ACQUISITION REPORT |                      |                        |                  |               |
|--------------------------------------|----------------------|------------------------|------------------|---------------|
| FY                                   | Eligible PBA Dollars | % Eligible PBA Dollars | PBA Dollars      | % PBA Dollars |
| 2007                                 | \$1,216,128,970.21   | 100.00%                | \$827,803,697.74 | 68 %          |
| 2008                                 | \$1,228,379,962.98   | 100.00%                | \$701,947,107.37 | 57%           |
| 2009                                 | \$1,340,697,360.69   | 100.00%                | \$962,548,571.04 | 72%           |

Source: FPDS Standard Performance-Based Acquisition Report (January 2009)

**Any condition or action that has the effect of unnecessarily restricting the acquisition of commercial items or competition in the contract actions of the agency**

Presidential or congressional mandates requiring immediate action on activities associated with student loans and grants may restrict competition when industry response time to accommodate the changes is extensive. The resulting action may lead to modification of existing contracts instead of a competitive action.

## **Opportunities and actions taken to improve the quality of planning, executing, and managing task and delivery orders**

ED contracting personnel continue to engage in advance acquisition planning with their Program Offices in advance of the fiscal year in which contract awards are required and in concert with the budget formulation process and information technology investment management process.

As mentioned above, for several years now, CAM has awarded multiple task order contracts under its MATO contracting program. To ensure competition within the MATO task order process, requirements being competed under the MATO program are provided to every MATO contractor at the beginning of the procurement process. Each vendor is provided an opportunity to submit a capability statement in response to an ED requirement.

## **New Initiatives for Future Reporting Period(s)**

### **New initiatives required to increase the acquisition of commercial items**

ED continues to use the acquisition planning and the CRB processes to increase the acquisition of commercial items. As stated above, acquisition planning is performed in order to promote and provide for acquisition of commercial items to the extent that commercial items are available or suitable for ED's needs, or items of a non-developmental nature. At the same time, CRB reviewers regularly consult with Contracting Officers about requirements that can be procured as commercial items.

### **New initiatives required to increase competition**

OMB issued Memorandum M-09-25, *Improving Government Acquisition*. ED was required to submit to OMB the *Department of Education Plan for Improving Acquisition*. The plan was submitted to OMB in November 2009 and ED has had discussions with OMB about the plan. One element of the plan was to increase Competition Advocate and Contract Review Board scrutiny.

In addition, ED recently established higher scrutiny (than required by the FAR) through a CRB review process for all high-risk contracting types, including non-competitive contracting. Because non-competitive contracting poses special risks of overspending, ED acquisition managers will closely examine planned actions using this high-risk contracting authority. In CAM, during the acquisition planning process, prior to the formal CRB review process, acquisition managers will identify actions intending to use high-risk contracting authorities. Contracting Officers will be required to justify the use of any of these contracting methods or types before proceeding with the acquisition.

Also ED issued guidance on reducing high-risk contracting, which includes non-competitive contracts. It requires new acquisition planning considerations, and acquisition planning review when considering high-risk contracting.

ED will continue to use Contract Management Reviews to identify and address any barriers to competition. There are 19 CMRs scheduled for FY2010, which covers both contracting activities and every POC.



**New initiatives to ensure requirements are stated in terms of functions to be performed, performance required, or essential physical characteristics**

In FY 2009, ED recompeted the MATO contracts. The contracts, now called ED-SAT, will be issued as BPAs in FY2010. Once again, all purchase orders issued under this vehicle will be performance-based.

The performance work statement for the BPAs in the ED-SAT program specifies: 'The work to be performed by the contractor will be defined in specific work assignments (orders) which will specify task objectives, list all detailed requirements, and describe the work to be performed, deliverables, and schedules.' In addition, internal policies governing Contracting Officer and Contract Specialist use of the ED-SAT procurement vehicle will specify that calls issued under the ED-SAT BPAs shall be performance-based."

**Any barriers to the acquisition of commercial items or competition that remain**

ED has not identified any significant barriers to the acquisition of commercial items or competition.

**Other ways in which the agency has emphasized the acquisition of commercial items and competition in areas such as acquisition training and research**

ED is planning an Acquisition Conference to be held in the Spring of FY2010. The conference will provide an opportunity for learning and sharing of best practices. The conference, which is still in the planning stages, is expected to include a session focused on promoting competition.

CAM contracting officers and contract specialists under the oversight of CAM PLG are revising or writing new chapters in their Acquisitions Procedures Manual (APM), including some that will address the acquisition of commercial items and competition. The chapters related to acquisition of commercial items and competition scheduled to be published in FY2010 include:

- Reducing High-Risk Contracting (see a description in the section on *New initiatives required to increase competition*;) )
- Writing Individual Acquisition Plans- including planning for PBAs, acquisition of commercial items, and competition;
- Synopsizing in FedBizOps – which promotes competition by the early wide-spread dissemination of information on ED contracting; and
- Ensuring Competition in Subcontracting – which brings competition to the level below the contractor.

The FSA Acquisitions Group presented a 2-hour session on an overview of the procurement process to FSA employees. The interactive session helped deliver a greater awareness of the role of acquisitions in the delivery of our mission and an understanding of some of the limits and considerations of the acquisition function. Other training opportunities this year included Small Business Contracting and Performance-Based Contracting; both of these classes received wide attendance.

## **New initiatives to improve the quality of planning, executing, and managing task and delivery orders**

As stated before, in FY 2009, ED recompeted the MATO contracts. The contracts, now called ED-SAT, will be issued as BPAs in FY2010. Once again, all purchase orders issued under this vehicle will be performance-based.

**Initiatives that ensure task and delivery orders over \$1,000,000 issued under multiple award contracts are properly planned, issued, and comply with 8.405 and 16.505.**

In FY 2010, the Department will conduct additional Contract Management Reviews to review compliance with the FAR on 8.405 – Ordering Procedures for Federal Supply Schedules and 16.505 – Ordering (under Indefinite Delivery Contracts.)

## **Recommendations**

### **Recommendation regarding establishing goals and plans for increasing competition on a fiscal year basis**

Competition Advocate recommends the following actions for FY2010 to assist in increasing competition:

- Hiring a pricing analyst to project costs and help contracting officers determine if prices offered are fair and reasonable and to enlighten internal customers on the realities of pricing which then increases competition;
- Training the contracting workforce in researching market practices, describing requirements, and building contracts that encourage robust competition and incentivize strong contractor performance; and
- Issuing an APM chapter on Reducing High-Risk Contracting.

### **Recommendation regarding establishing a system of personal and organizational accountability for competition, which may include the use of recognition and awards to motivate program managers, contracting officers, and others in authority to promote competition in acquisition**

ED's performance awards are tied to individual performance. ED uses monetary and non-monetary awards to motivate Contract Specialists and Contracting Officers to promote best practices in acquisition, including increasing competition, performance-based acquisition, and the use of commercial items.

In FY2009, FSA implemented a Contract Management Review aspect of acquisition personnel performance evaluations. A team identified measurable and achievable criteria by which individuals will be evaluated during the fiscal year 2010 performance cycle. Quarterly progress towards competition, file maintenance, socio-economic goals and internal controls will be provided to individuals and teams so that they have opportunity to reflect improvement and influence their overall rating for the evaluation period.

A team of CAM contracting officers and contracting specialists is developing customer awards, which will recognize the staff in program offices who have successfully worked toward increasing competition for their requirements.

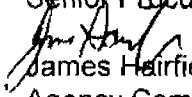


UNITED STATES DEPARTMENT OF EDUCATION  
*Office of the Chief Financial Officer*  
*Contracts and Acquisitions Management*

**MEMORANDUM**

TO: Thomas Skelly  
Chief Acquisition Officer

TO: James Ropelewski  
Senior Procurement Executive

FROM:   
James Hairfield  
Agency Competition Advocate

DATE: December 31, 2013

SUBJECT: FY2010 and FY2011 U.S. Department of Education Competition Advocate Report

**Introduction**

The U.S. Department of Education's (Department) Agency Competition Advocate (CA) continues to identify and challenge barriers to full and open competition in the acquisition of commercial items in accordance with Federal Acquisition Regulation (FAR) 6.5. In accordance with the assigned duties, the CA is required to prepare an annual report for the Senior Procurement Executive (SPE) and the Chief Acquisition Officer (CAO). The following satisfies the reporting requirements and serves as the Fiscal Years (FY) 2010 and 2011 Competition Advocate Report.

As further detailed in the following discussion, the Department continues to rank among top federal agencies in the use of competition as reported in the Federal Procurement Data System-Next Generation (FPDS-NG) as evidenced by the organization's ranking 15<sup>th</sup> among 67 agencies in FY10 and 16<sup>th</sup> among 66 agencies in FY11. The reported number of commercial procedures actions increased substantially from 580 actions reported in FY 2009 to 1,030 actions reported in FY 2010 and 1,104 actions in FY 2011. Although the Department continued to emphasize the use of commercial procedures during these time periods, some of the increase may be attributed to the commercial procedures actions field being made a mandatory field in FPDS-NG during FY 2010.

We tracked the percentage of competitive contracts during FY 2010 and FY 2011 and conducted a number of initiatives (as identified in this report) to strengthen competition, even though these efforts were not documented in writing.

The Department's acquisition workforce continues to maximize the use of competition by conducting extensive market research to help define or refine the associated requirements and using a variety of methods to procure goods and services, including the use of GSA Schedules, internal Indefinite Delivery Indefinite Quantity (IDIQ) contracts, Blanket Purchase Agreements (BPA), and the various contract types. As a result of these efforts, the dollar

amount for 'Other than Full and Open Competition' was only 13.8% in FY10 and 13.2% in FY11 of the total dollars available for competition.

The Department's acquisition workforce consistently serves as champions for competition as they are personally involved with each of the organization's acquisitions and programs. From being involved as part of brainstorming sessions that help define acquisition strategies, to reviewing solicitations so as to ensure requirements are not overly restrictive, the Department has established an organizational culture that appreciates and expects competition as a necessary component to achieving the Department's mission and fulfilling its fiduciary responsibilities. This ingrained culture is consistently reinforced by the Contract Specialists (CS) and Contracting Officers (CO) in each of the two contracting activities who recognize the value that competition brings to the acquisition process - dollar savings, increased quality in performance, innovative solutions, better service, and transparency of publicly-funded activities.

The remainder of this report summarizes the Department's competition efforts and outcomes.

### **Competition Summary**

The following table provides a high-level summary of those contract dollars that were eligible for competition and obligated by the Department for FYs 2010 and 2011. The presented data was obtained from FPDS-NG, and as illustrated, the Department has consistently competed over 85% of its dollars.

| <b>COMPETITION REPORT</b> |                                       |                               |  |
|---------------------------|---------------------------------------|-------------------------------|--|
| <b>FY</b>                 | <b>Competition Base<br/>(Dollars)</b> | <b>Competed<br/>(Dollars)</b> | <b>Percentage<br/>Competed (Dollars)</b> |
| <b>2009</b>               | <b>\$1,411,635,499.00</b>             | <b>\$1,205,391,721.00</b>     | <b>85%</b>                               |
| <b>2010</b>               | <b>\$1,835,371,280.00</b>             | <b>\$1,584,048,124.00</b>     | <b>86%</b>                               |
| <b>2011</b>               | <b>\$1,864,995,865.00</b>             | <b>\$1,618,175,289.00</b>     | <b>87%</b>                               |

*Source: FPDS Standard Competition Report (Sep 2013)*

### **Opportunities and actions taken to acquire commercial items to meet the needs of the agency**

As a whole, the Department increased the number of actions and dollars for which commercial item acquisition procedures were used from FY 2007 to FY 2011. Acquisition planning is central to identifying commercially available services and supplies that will satisfy the government's requirement. It is during the acquisition planning phase that the CO and CS work with their program office counterparts to define requirements and conduct an analysis of the market to identify the commercially available products and services that can satisfy the Department's requirements.

The Department, for example, made widespread use of commercial supplies and services through FSSs and BPAs, all of which include commercial terms and conditions. In addition, the two contracting activities relied heavily on the commercial item acquisition procedures, as authorized by FAR Part 12, in order to make open market awards of commercial supplies and services. Finally, the Department has relied on the Federal Strategic Sourcing Initiative (FSSI) to award contracts for both office supplies and express and ground domestic delivery services. By using the FSSI BPAs for these common commercial items, the Department has enjoyed the U.S. Government's leveraged buying power which promotes continued reduction of costs, an increase in the achievement of socio-economic goals, and improved supplier management.

The following illustration contains the related commercial item data that was extracted from FPDS-NG for FY 2009, 10 and 11.

| COMMERCIAL ITEM ACQUISITIONS |                               |                               |
|------------------------------|-------------------------------|-------------------------------|
| FY                           | Commercial Procedures Actions | Commercial Procedures Dollars |
| 2009                         | 580                           | \$136,254,590.00              |
| 2010                         | 1,030                         | \$358,034,596.00              |
| 2011                         | 1,104                         | \$522,633,493.00              |

Source: FPDS Standard Report Total Actions by PSC (Sep 2013)

### **Opportunities and actions taken to achieve full and open competition in the contracting operations of the agency**

The Department is committed to maximizing full and open competition in its contracting activities. As per the FAR, the CA's review and approval is required in advance for all Justifications for Other than Full and Open Competition for all acquisitions for between \$650,000 and \$12.5 million. Planned actions above \$12.5M require approval from the head of the contracting activity, as established by FAR 6.304(a) (3). Also, the Department uses the acquisition planning and Contract Review Board (CRB) review processes to identify any additional opportunities to promote full and open competition for each proposed contract action, which is further mirrored by FSA's CRB that reviews for opportunities to promote competition. Both CRBs challenge proposed exceptions to competition and they independently review for unduly restrictive requirements that can stifle competition or later result in follow-on contracts that will require competition exceptions. In addition, both contracting activities use requests for information and pre-proposal conferences to facilitate competition. The Department developed and instituted Acquisition Procedure Manual (APM) Chapter 7.7 in order to reduce high risk contracting. Although the APM Chapter addresses a number of issues that present contracting risk, such as the use of time-and-materials contracts, the chapter requires the acquisition team to explore a number of questions if the planned acquisition will include certain requirements that impact competition, such as the use of brand name products or services. The responses, if found to be acceptable by the acquisition team, are subject to various reviews that begin with an in-person discussion with an independent third party and end with the CA's review and final determination. This process ensures that the Department not only reduces the number of non-competed acquisitions, but it further ensures that interested parties have a sound understanding of requirements prior to submitting an offer which reinforces the Department's opportunity to receive innovative solutions and decrease contract costs.

The Department relies heavily on the Internet to increase competition. In addition to following the FAR requirements for publicizing contract opportunities over \$25,000 on the government point of entry, FedBizOpps, the Department also posts most business opportunities in the \$10,000 to \$25,000 range. At the same time, the Department publishes a guide to "Doing Business with the U.S. Department of Education," which is a document written in conjunction with the Office of Small Disadvantaged Business Utilization (OSDBU) that emphasizes business opportunities for small businesses, a forecast of available contract opportunities, and a link to currently available contract solicitations.

The Department continued to make use of issuing multiple award vehicles that establishes a pool of contracts with contract holders whereby task orders can be competed and issued in an expeditious manner while still receiving innovative solutions and savings. For example, the unrestricted Enterprise Data Support Services (EDSS) contracts were awarded to provide information technology development services for FSA, which has proven valuable as the pool of contractors continue to propose competitively priced and innovative solutions. Another example

includes FSA's Private Collection Agency (PCA) contracts that support collection resolution from borrowers who default on Federal Student Aid loans. FSA anticipates that they will continue to receive competitively priced proposals that are of high quality from contractors as they continue to compete for the Department's business.

**Actions taken to challenge requirements that are not stated in terms of functions to be performed, performance required or essential physical characteristics**

The Department uses the CRB review process to ensure requirements are properly defined in terms of the desired outcomes or performance standards as opposed to prescriptive requirements that mandate how the requirements must be fulfilled. During their respective reviews, the CRB reviews proposed contract actions to determine how well the requirements are written in order to promote the receipt of innovative solutions.

As mentioned above, the Department developed APM Chapter 7.7 intended to reduce high-risk contracting. This chapter arises from the October 27, 2009, Office of Management and Budget (OMB) memorandum, Increasing Competition and Structuring Contracts for the Best Results, which followed two related memoranda:

- Improving Government Acquisition, OMB, July 29, 2009
- Government Contracting, the White House, March 4, 2009

This APM chapter requires contracting professionals to not only examine and reduce high-risk contracts that can stem from prescriptive requirements, but to identify how prescriptive requirements will be addressed in future acquisitions in the event that the prescriptive approach is presently warranted.

Finally, to assist the acquisition workforce in defining requirements in terms of functions to be performed, the Department maintains a Web site on its intranet dedicated to performance-based acquisition. The site ([share.ed.gov/ocfo/cam/Documents/pbc\\_kit.doc](http://share.ed.gov/ocfo/cam/Documents/pbc_kit.doc)) contains links to such tools as the "Performance-Based Contracting Kit", a link to performance-based acquisition resources from the Defense Acquisition University, and a link to the Seven Steps to Performance-based Acquisition (PBA) website.

The table below, which includes data extracted from FPDS-NG, demonstrates the dollars that were eligible and obligated by the Department as performance-based acquisition for FY 2009 through FY 2011.

| PERFORMANCE-BASED ACQUISITION REPORT |                      |                        |                    |               |
|--------------------------------------|----------------------|------------------------|--------------------|---------------|
| FY                                   | Eligible PBA Dollars | % Eligible PBA Dollars | PBA Dollars        | % PBA Dollars |
| 2009                                 | \$1,340,697,361.00   | 100.0000%              | \$962,548,571.00   | 72%           |
| 2010                                 | \$1,750,953,238.00   | 100.0000%              | \$1,409,777,015.00 | 81%           |
| 2011                                 | \$1,767,867,364.00   | 100.0000%              | \$1,411,875,038.00 | 80%           |

Source: FPDS Standard Performance-Based Acquisition Report (Sep 2013)

**Any condition or action that has the effect of unnecessarily restricting the acquisition of commercial items or competition in the contract actions of the agency**

In general, the Department did not have any conditions or actions, such as urgent or compelling acquisitions that would unnecessarily restrict the acquisition of commercial items or competition in the agency's contract actions.

In accordance with Section 2212 of the Health Care and Education Reconciliation Act of 2010 (Pub.L. 111-152, 124 Stat. 1029), FSA was required to contract with eligible and qualified Not-For-Profit vendors to service student loans. The resulting contracts were awarded in FY11 under Public Law 111-152. Although clearly required by law, this legislation did result in the restriction of competition in that no other vendors were authorized to compete. In addition, the Department continued to experience the non-competitive acquisition of software licensing and maintenance; however, this is not a condition that is unique to the Department or commercial sector as the renewal of licensing and maintenance inherently results in brand name restrictions.

**New Initiatives for Future Reporting Period(s): other ways in which the agency has emphasized the acquisition of commercial items and competition in areas such as acquisition training and research**

As noted above, both FSA's and CAM's diligence during the evaluation period ensured that, during the evaluated period, acquisition personnel were certified at the appropriate FAC-C Level and are working towards their next level. Competition and commercial contracting are part of the training curriculum of FAC-C classes. Additionally, FSA and CAM supplement training with lessons learned as situations present themselves and the Department holds an Acquisition Conference every 18 months which has proven to be an extremely effective venue to deliver new developments in the field of federal acquisitions. The Department intends to continue these efforts as they have proven to be the most effective way to emphasize the acquisition of commercial items and to maintain the Department's culture that is committed to competition.

In addition, FSA and CAM have expanded their working relationship with OSDBU with the appointment in March 2011 of a Small Business Liaison Specialist for each of the two major contracting activities. The two Small Business Liaison Specialists actively worked with OSDBU in FY11, as evidenced by their participation in 15 outreach sessions sponsored by the Department or the U.S. Small Business Administration. These efforts proved to be central to researching available sources and, although most acquisition professionals focus on the stimulation of competition for higher valued procurements, the efforts increase the likelihood of competition for small business set asides. The Department intends to continue to emphasize the role, importance and authority of the Small Business Liaison Specialists.

**Recommendations**

**Recommendation regarding establishing goals and plans for increasing competition on a fiscal year basis**

In response to a memorandum from OMB dated October 27, 2009 regarding 'Increasing Competition and Structuring Contracts for the Best Results,' the Department issued chapter 7.70, Reducing High-Risk Contracting, of the Acquisition Procedures Manual to reduce the use of high-risk contracting authorities including noncompetitive, cost-reimbursement, time-and-materials and labor-hour contracts, as well as competitions that yield only one offer. This chapter encourages contracting professionals to examine and reduce these categories of acquisitions, which will lead to increased effectiveness of the Department's competition practices and contract type selection.

In addition, the Department in coordination with the Competition Advocate will set goals and plans to increase competition each fiscal year.

**Recommendation regarding establishing a system of personal and organizational accountability for competition, which may include the use of recognition and awards to motivate program managers, contracting officers, and others in authority to promote competition in acquisition**

The Department will review competition data on a fiscal year basis to ensure that any set goals are met. We will continue to use On-the-Spot Awards (monetary and in-kind) to motivate contracting personnel. Public recognition during conferences, meetings, etc. is also used to recognize individuals who were outstanding in promoting competition.

We acknowledge the fact that this report is submitted late due to an oversight on our part and we are taking action to ensure that it will not happen again. We are now collecting data and preparing the report as each fiscal year ends, and the status of the report is provided on an internal tracker.



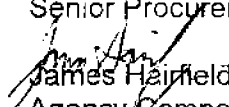


UNITED STATES DEPARTMENT OF EDUCATION  
*Office of the Chief Financial Officer*  
*Contracts and Acquisitions Management*

**MEMORANDUM**

TO: Thomas Skelly  
Chief Acquisition Officer

TO: James Ropelewski  
Senior Procurement Executive

FROM:  James Hairfield  
Agency Competition Advocate

DATE: December 31, 2013

SUBJECT: FY 2012 U.S. Department of Education Competition Advocate Report

**Introduction**

The U.S. Department of Education's (Department) Agency Competition Advocate (CA) continues to identify and challenge barriers to full and open competition in the acquisition of commercial items in accordance with Federal Acquisition Regulation (FAR) Subpart 6.5. In accordance with the assigned duties, the CA is required to prepare an annual report for the Senior Procurement Executive (SPE) and the Chief Acquisition Officer (CAO). The following satisfies the reporting requirements and serves as the Fiscal Year (FY) 2012 Competition Advocate Report.

The Department continues to rank among top federal agencies in the use of competition as reported in the Federal Procurement Data System-Next Generation (FPDS-NG), ranking 19 among 66 agencies in FY 2012 for the amount of competed dollars. The reported number of commercial procedures actions increased from 1,104 actions reported in FY 2011 to 1,343 actions reported in FY 2012.

As further explained below, the Department continues to maximize the use of competition with our contract personnel continuing to use market research to help define or refine their requirements and use a variety of methods in acquiring goods and services, including the use of GSA Schedules, internal IDIQ contracts, Blanket Purchase Agreements (BPA), and various other contract vehicles. As a result, the dollar amount for 'Other than Full and Open Competition' was only 14.8% of the total dollars available for competition in FY 2012.

The Department's acquisition workforce consistently champions competition while being personally involved with each of the organization's acquisitions and programs. From being involved as part of brainstorming sessions that help define acquisition strategies, to reviewing

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solicitations so as to ensure requirements are not overly restrictive, the Department has established an organizational culture that appreciates and expects competition as a necessary component to achieving the Department's mission and fulfilling its fiduciary responsibilities. This culture is consistently reinforced by the Contract Specialists (CS) and Contracting Officers (CO) in each of the two contracting activities who recognize the value that competition brings to the acquisition process - dollar savings, increased quality in performance, innovative solutions, better service, and transparency of publicly-funded activities.

The remainder of this report summarizes the Department's competition efforts and outcomes, and includes plans to further expand and promote competition that is expected to lead to better prices and improved quality of delivered goods and services.

### **Competition Summary**

The following table provides a high-level summary of those contract dollars that were obligated and eligible to be competed at the Department for FY 2012 based on the data extracted from FPDS-NG.

| COMPETITION REPORT |                               |                       |                                  |
|--------------------|-------------------------------|-----------------------|----------------------------------|
| FY                 | Competition Base<br>(Dollars) | Competed<br>(Dollars) | Percentage<br>Competed (Dollars) |
| 2011               | \$1,864,775,990.00            | \$1,618,175,289.00    | 87%                              |
| 2012               | \$2,061,720,712.00            | \$1,755,653,762.00    | 85%                              |

*Source: FPDS Standard Competition Report (Sep 2013)*

Even though there was an approx. 2% decrease in competed dollars from 2011 to 2012, the total dollars available for competition increased by approx. 11%, which demonstrates the Department's unwavering commitment to ensuring that competition is maximized.

### **Actions Taken During the Reporting Period**

#### **Opportunities and actions taken to acquire commercial items to meet the needs of the agency**

As a whole, the Department increased the number of actions and dollars for which commercial item acquisition procedures were used from FY 2011 to FY 2012. Acquisition planning is central to identifying commercially available services and supplies that will satisfy the government's requirement. It is during the acquisition planning phase that the COs and CSs work with their program offices to define requirements and conduct an analysis of the market to identify the commercially available products and services that can satisfy the Department's requirements.

The Department, for example, makes widespread use of commercial supplies and services through FSSI BPAs, all of which include commercial terms and conditions. In addition, the contracting activities use the commercial item acquisition procedures in FAR Part 12 to make open market awards of commercial supplies and services. Finally, the Department has relied on the Federal Strategic Sourcing Initiative (FSSI) to award contracts for both office supplies and express and ground domestic delivery services. By using the FSSI BPAs for these common commercial items and services, the Department has leveraged its buying power and

anticipates a continued reduction of costs, an increase in the achievement of socio-economic goals, and improved supplier management.

The following chart provides more detailed FPDS-NG data regarding the Department's commercial item expenditures for FY 2011 and 2012.

| COMMERCIAL ITEM ACQUISITIONS |                               |                               |
|------------------------------|-------------------------------|-------------------------------|
| FY                           | Commercial Procedures Actions | Commercial Procedures Dollars |
| 2011                         | 1,104                         | \$522,633,493.00              |
| 2012                         | 1,343                         | \$694,466,123.00              |

Source: FPDS Standard Report Total Actions by PSC (Sep 2013)

### **Opportunities and actions taken to achieve full and open competition in the contracting operations of the agency.**

The Department is committed to maximizing full and open competition in its contracting activities. As per the FAR, the CA's review and approval is required for all Justifications for Other than Full and Open Competition for all acquisitions for between \$650,000 and \$12.5 million. Planned actions above \$12.5M require approval from the head of the contracting activity, as established by FAR 6.304(a)(3). Also, the Department uses the acquisition planning and the Contract Review Board (CRB) review processes to identify any additional opportunities to promote full and open competition for each proposed contract actions which is further mirrored by FSA's CRB that reviews for opportunities to promote competition. Both CRBs challenge proposed exceptions to competition and they independently review for unduly restrictive requirements that can stifle competition or later result in follow-on contracts that will require competition exceptions.

Furthermore, both contracting activities use requests for information and pre-proposal conferences to facilitate competition. The Department developed and instituted Acquisition Procedure Manual (APM) Chapter 7.7 in order to reduce high risk contracting. Although the APM Chapter addresses a number of issues that present contracting risk, such as the use of time-and-materials contracts, the chapter requires the acquisition team to explore a number of questions if the planned acquisition will include certain requirements that impact competition, such as the use of brand name products or services. The responses, if found to be acceptable by the acquisition team, are subject to various reviews that begin with an in-person discussion with an independent third party and end with the CA's review and final determination. This process ensures that the Department not only reduces the number of non-competed acquisitions, but it further ensures that interested parties have a sound understanding of requirements prior to submitting an offer which reinforces the Department's opportunity to receive innovative solutions and decrease contract costs.

The Department relies heavily on the Internet to increase competition. In addition to following the FAR requirements for publicizing contract opportunities over \$25,000 on the government point of entry, FedBizOpps, the Department also posts most business opportunities in the \$10,000 to \$25,000 range. At the same time, the Department publishes a guide to "Doing Business with the U.S. Department of Education," which is a document written in conjunction with the Office of Small Disadvantaged Business Utilization (OSDBU) that emphasizes business opportunities for small businesses, a forecast of available contract opportunities, and a link to currently available contract solicitations.

The Department also implemented APM Chapter 10.002, entitled Vendor Communication, in January 2012, which requires that a vendor communication strategy be developed for any planned acquisition that will have an estimated value of \$5M or more or if the prior award resulted in one offer being received. The Department has enjoyed increased competition as a result of the associated strategies that were employed, such as pre solicitation and pre-proposal conferences. However, the Department has used teleconferences or webinars in lieu of the traditional in-person conferences. These virtual events can attract interested parties that may not have expressed interest or attended similar events in the past due to not being physically located within the immediate Washington, D.C. metropolitan area where such events were held in-person without the use of similar technology.

**Actions taken to challenge requirements that are not stated in terms of functions to be performed, performance required or essential physical characteristics.**

The Department uses the CRB review process to ensure requirements are properly defined in terms of the desired outcomes and are not overly restrictive. During their respective reviews, the CRB checks proposed contract actions to examine how well the actions further public policy goals, including performance-based acquisition that focus on the required outcomes in terms of satisfying requirements, as opposed to the more prescriptive approach of instructing how the requirements should be satisfied.

As mentioned above, the Department has developed an APM Chapter 7.7 intended to reduce high-risk contracting. This chapter arises from the October 27, 2009, Office of Management and Budget (OMB) memorandum, Increasing Competition and Structuring Contracts for the Best Results, which followed two related memoranda:

- Improving Government Acquisition, OMB, July 29, 2009
- Government Contracting, the White House, March 4, 2009

The APM Chapter requires contracting professionals to examine and reduce high-risk contracts, which will lead to increase the effectiveness of the Department's competition practice and contract type selection.

Furthermore, the Department has used service level agreements (SLAs) in order to evaluate the rendered service or deliverable. In FY 2012, the Department used SLAs in the solicitation and resulting award of the Contract and Purchasing Support System II (CPSS II) contract. Although the system itself will not be fully implemented until Nov 2014 (FY 2015), the contractor's performance will be evaluated in terms of the associated SLAs and the Department has included incentives and disincentives in order to further ensure high quality services that can be fulfilled in an innovative manner.

Finally, to assist the acquisition workforce in defining requirements in terms of functions to be performed, the Department maintains a Web site on its intranet dedicated to performance-based acquisition. The site ([share.ed.gov/ocfo/cam/Documents/pbc\\_kit.doc](http://share.ed.gov/ocfo/cam/Documents/pbc_kit.doc)) contains links to such tools as the "Performance-Based Contracting Kit", a link to performance-based acquisition resources from the Defense Acquisition University, and a link to the Seven Steps to PBA website.

In total, the Department increased its performance based contracting by 5% when comparing FY2011 to FY2012 results, as illustrated from the table below that relies on data extracted from FPDS-NG.

| FY   | Eligible PBA Dollars | PBA Dollars        | % PBA Dollars |
|------|----------------------|--------------------|---------------|
| 2011 | \$1,767,867,364.00   | \$1,411,875,038.00 | 80%           |
| 2012 | \$1,981,857,875.00   | \$1,677,359,911.00 | 85%           |

Source: FPDS Standard Performance-Based Acquisition Report (Sep 2013)

**Any condition or action that has the effect of unnecessarily restricting the acquisition of commercial items or competition in the contract actions of the agency.**

In general, the Department did not have any conditions or actions, such as urgent or compelling acquisitions for high priority or politically sensitive programs that would unnecessarily restrict the acquisition of commercial items or competition in the contract actions of the agency.

#### **New Initiatives for Future Reporting Period(s)**

##### **New initiatives required to increase the acquisition of commercial items.**

The Department issued Chapter 8.4, Guidance on Using Federal Supply Schedules, of the Acquisition Procedures Manual (APM) on June 12, 2012 and will continue to increase purchases through GSA schedules. This will be reinforced during the review of Requests for Proposals (RFPs) by the Contract Review Board (CRB).

##### **New initiatives required to increase competition.**

We will develop a Chapter for the APM which will define the roles and responsibilities of the Chief Acquisition Officer (CAO) and Senior Procurement Executive (SPE) which will include that the CAO is responsible for strategic planning for the use of full and open competition.

The Department will continue to make use of every competitive contracting approach to award contracts, and begin planning for upcoming procurements to replace or continue mission critical operations. The Department will also continue to emphasize the use of small businesses in meeting contract requirements.

The CRB will continue to closely examine the government's requirements and eliminate terms and conditions that may restrict competition. The CRB challenges proposed exceptions to competition and the period of performance for acquisitions that have a legitimate basis for award under other than full and open competition.

##### **New initiatives to ensure requirements are stated in terms of functions to be performed, performance required, or essential physical characteristics.**

As stated above, The CRB will continue to closely examine the government's requirements and eliminate terms and conditions that may restrict competition. Furthermore, the Department will continue to provide training, internally and externally, to CORs in the development of Performance Statements of Work (PSWs) that do not provide undue restrictions to competition.

##### **Any barriers to the acquisition of commercial items or competition that remain.**

- There is a degree of difficulty with pricing of some requirements as fixed-priced (FP) or Time & Materials (T&M) to be commercial

- Congress specifically limits sources when it prescribes that awards must be made to a University or a Non-profit organization. As an example, in accordance with Section 2212 of the Health Care and Education Reconciliation Act of 2010 (Public Law 111-152, 124 Stat. 1029), FSA was required to contract with eligible and qualified Not-For-Profit vendors to service loans. Loan service contracts were awarded in FY11 and FY12 under Public Law 111-152. This legislation restricted competition in that no other vendors were authorized to compete.
- Other non-competitive actions included proprietary software maintenance.

**Other ways in which the agency has emphasized the acquisition of commercial items and competition in areas such as acquisition training and research.**

Both of the Department's contracting activities plan for and participate in an Acquisition Conference that is held every 18 months. The Acquisition Conference addresses a wide-array of subjects, including the procurement of commercial items and how to maximize competition. These efforts translate into training that can be used to earn or maintain the Federal Acquisition Certification-Contracting (FAC-C), Federal Acquisition Certification-Contracting Officer's Representative (FAC-COR) or Federal Acquisition Certification –Program and Project Managers (FAC-P/PM) certifications. In addition, the Department carefully considers each topic that is explored in order to ensure that its acquisition workforce is getting the most beneficial information during the event and to recognize those that go above and beyond in order to maximize competition or reduce the Department's reliance on non-commercial items.

**New initiatives to improve the quality of planning, executing, and managing task and delivery orders.**

The Department's contracting personnel engage in advance acquisition planning with their Program Offices. It is the Department's policy to conduct acquisition planning in advance of the fiscal year in which contract awards are required and in concert with the budget formulation process and information technology investment management process. Acquisition planning is performed in order to promote acquisition of commercial items, to promote full and open competition, or when full and open competition is not required, obtaining competition to the maximum extent practicable in consideration of the products or services to be acquired. In addition to supporting documentation, Statements of Work, Performance Work Statements, Statements of Objectives, and evaluation criteria are reviewed by the Contract Specialist, Contracting Officer, Supervisory Group Manager, and CRB (if meeting thresholds), to ensure clearly defined government requirements and meaningful evaluation criteria that discriminate amongst competitors.

**Recommendations**

**Recommendation regarding establishing goals and plans for increasing competition on a fiscal year basis.**

We set as a goal in FY 2013 the development of a Chapter for the APM which would define the roles and responsibilities of the Chief Acquisition Officer (CAO) and Senior Procurement Executive (SPE) and specify that the CAO is responsible for strategic planning for the use of full and open competition.

**Recommendation regarding establishing a system of personal and organizational accountability for competition, which may include the use of recognition and awards to motivate program managers, contracting officers, and others in authority to promote competition in acquisition.**

A system of On-the-Spot Awards (monetary and time-off) is currently in place to motivate contracting personnel. Public recognition during conferences, meetings, etc. is also used to recognize individuals who were outstanding in promoting competition.



**UNITED STATES DEPARTMENT OF EDUCATION**  
*Office of the Chief Financial Officer*  
*Contracts and Acquisitions Management*

**MEMORANDUM**

TO: Thomas Skelly  
Chief Acquisition Officer (Acting)

TO: James L. Ropelewski  
Senior Procurement Executive

FROM: James Hairfield  
Agency Competition Advocate

DATE: May 14, 2014

SUBJECT: FY 2013 U.S. Department of Education Competition Advocate Report

**Introduction**

The U.S. Department of Education's (Department) Agency Competition Advocate (CA) continues to identify and challenge barriers to full and open competition in the acquisition of commercial items in accordance with Federal Acquisition Regulation (FAR) 6.5. The FAR requires the CA to prepare a CA's annual report for the Senior Procurement Executive (SPE) and the Chief Acquisition Officer (CAO). The following satisfies the reporting requirements and serves as the Fiscal Year (FY) 2013 Competition Advocate Report.

The Department continues to rank among top federal agencies in the use of competition as reported in the Federal Procurement Data System-Next Generation (FPDS-NG), ranking 17 among 65 agencies in FY13. The reported number of commercial procedures actions increased substantially from 1,343 actions reported in FY12 to 1,575 actions reported in FY13. This is an increase of 17.2%.

As further explained below, the Department continues to maximize the use of competition. Our contract personnel use market research to help define or refine their requirements, using a variety of competitive methods in acquiring goods and services, including the use of GSA Schedules, internal indefinite delivery/indefinite quantity (IDIQ) contracts, Blanket Purchase Agreements (BPA), and various contract types. As a result, the number of actions awarded without providing for competition only represented 27% of all possible actions in FY13.

The Department's acquisition workforce consistently strives for competition while being personally involved with each of the organization's acquisitions and programs. From being involved as part of brainstorming sessions that help define acquisition strategies, to reviewing solicitations to ensure requirements are not overly restrictive, the Department has established an organizational culture that appreciates and expects competition as a necessary component to achieving the Department's mission and fulfilling its fiduciary responsibilities.

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This culture is consistently reinforced by the Contract Specialists (CS) and Contracting Officers (CO) in each of the two contracting activities who recognize the value that competition brings to the acquisition process - dollar savings, increased quality in performance, innovative solutions, better service, and transparency of publicly-funded activities.

The remainder of this report summarizes the Department's competition efforts and outcomes, and includes plans to further expand and promote competition that is expected to lead to better prices and improved quality of delivered goods and services.

## **Competition Summary**

The following table provides a high-level summary of those contract dollars that were obligated and eligible to be competed at the Department for FY13 based on the data extracted from FPDS-NG. Information from FY12 is included for comparison purposes.

| <b>COMPETITION REPORT</b> |                                       |                               |  |
|---------------------------|---------------------------------------|-------------------------------|--|
| <b>FY</b>                 | <b>Competition Base<br/>(Dollars)</b> | <b>Competed<br/>(Dollars)</b> | <b>Percentage<br/>Competed (Dollars)</b> |
| <b>2012</b>               | \$2,061,720,712.00                    | \$1,755,653,762.00            | 85%                                      |
| <b>2013</b>               | \$2,621,649,784.46                    | \$2,332,888,801.88            | 89%                                      |

*Source: FPDS Standard Competition Report (December 2013)*

As indicated, the Department increased its competed dollars from FY12 to FY13 by 4%, which demonstrates the Department's commitment to ensuring that competition is maximized.

## **Actions Taken During the Reporting Period**

### **Opportunities and actions taken to acquire commercial items to meet the needs of the agency**

As a whole, the Department increased the number of actions and dollars for which commercial item acquisition procedures were used from FY12 to FY13. Acquisition planning is central to identifying commercially available services and supplies that will satisfy the government's requirement. It is during the acquisition planning phase that the CO and CS work with their program offices to define requirements and conduct an analysis of the market to identify the commercially available products and services that can satisfy the Department's requirements.

The Department, for example, makes widespread use of commercial supplies and services through Federal Supply Schedules (FSS) and Blanket Purchase Agreements (BPA), all of which include commercial terms and conditions. In addition, the contracting activities use the commercial item acquisition procedures in FAR Part 12 to make open market awards of commercial supplies and services. Finally, the Department has relied on the Federal Strategic Sourcing Initiative (FSSI) to award contracts for both office supplies and express and ground domestic delivery services. By using the FSSI BPAs for these common commercial items, the Department has leveraged its buying power and anticipates a continued reduction of costs, an increase in the achievement of socio-economic goals, and improved supplier management. Please note, most of the use of the FSSI contracts is made with a purchase card, whose use is not reported in FPDS-NG due to the dollar value of each transaction. The Department's use of commercial item acquisitions is actually higher than that reported in FPDS-NG.

The following chart contains data extracted from standard reports in FPDS-NG for FYs12 and 13. Information from FY12 is provided for comparison purposes.

| <b>COMMERCIAL ITEM ACQUISITIONS</b> |                                      |                                      |
|-------------------------------------|--------------------------------------|--------------------------------------|
| <b>FY</b>                           | <b>Commercial Procedures Actions</b> | <b>Commercial Procedures Dollars</b> |
| 2012                                | 1,343                                | \$694,466,123.00                     |
| 2013                                | 1,575                                | \$872,706,410.04                     |

*Source: FPDS Standard Report Total Actions by PSC (December 2013)*

### **Opportunities and actions taken to achieve full and open competition in the contracting operations of the agency.**

The Department is committed to maximizing full and open competition in its contracting activities. Consistent with the FAR, the CA's review and approval is required for all Justifications for Other than Full and Open Competition for all acquisitions over \$650,000 but not exceeding \$12.5M. Planned actions above \$12.5M but less than \$62.5M require review and approval from the Head of the Contracting Activity, and actions exceeding \$62.5M require the review and approval of the Senior Procurement Executive. The Department uses the acquisition planning and Contract Review Board (CRB) review processes to identify any additional opportunities to promote full and open competition for each proposed contract action, which is further mirrored by FSA's CRB that reviews acquisitions for opportunities to promote competition. Both contracting activity CRBs challenge proposed exceptions to competition and independently review unduly restrictive requirements that can limit competition or later result in follow-on contracts that will require competition exceptions.

Furthermore, both contracting activities use requests for information and pre-proposal conferences to facilitate competition. The Department developed and instituted Acquisition Procedure Manual (APM) Chapter 7.7 in order to reduce high risk contracting. Although the APM Chapter addresses a number of issues that present contracting risk, such as the use of time-and-materials contracts, the chapter requires the acquisition team to explore a number of questions if the planned acquisition will include certain requirements that impact competition, such as the use of brand name products or services. The responses, if found to be acceptable by the acquisition team, are subject to various reviews that begin with an in-person discussion with an independent third party and, depending upon certain attributes of the planned procurement, may end with the Group Manager's or CA's review and final determination. This process ensures that the Department not only reduces the number of non-competed acquisitions, but it further ensures that interested parties have a sound understanding of requirements prior to submitting an offer, which reinforces the Department's opportunity to receive innovative solutions and decrease contract costs.

The Department relies heavily on the Internet to increase competition. In addition to following the FAR requirements for publicizing open market contract opportunities over \$25,000 on the government point of entry, FedBizOpps, the Department also posts open market business opportunities in the \$10,000 to \$25,000 range. The Department also uses eBuy to post notices when fulfilling a need under Federal Supply Schedules. At the same time, the Department publishes a guide to "Doing Business with the U.S. Department of Education," which is a document written in conjunction with the Office of Small Disadvantaged Business Utilization (OSDBU) that emphasizes business opportunities for small

businesses, provides a forecast of available contract opportunities, and includes a link to currently available contract solicitations.

The Department has enjoyed increased competition as a result of the associated strategies that were employed, such as pre-solicitation and pre-proposal conferences. As a strategic cost-saving measure, the Department made use of teleconferences or webinars in lieu of the traditional in-person conferences. These virtual events attract interested parties that may not have expressed interest or attended similar events in the past due to not being physically located within the immediate Washington, D.C. metropolitan area, where such events were held in-person without the use of similar technology.

### **Actions taken to challenge requirements that are not stated in terms of functions to be performed, performance required or essential physical characteristics.**

The Department uses the CRB process to ensure requirements are properly defined in terms of the desired outcomes and are not overly restrictive to competition. The CRB reviews proposed contract actions to examine how well the actions further public policy goals, including performance-based acquisition that focuses on the required outcomes in terms of satisfying requirements, as opposed to the more prescriptive approach of instructing how the requirements should be satisfied.

Furthermore, to assist the acquisition workforce in defining requirements in terms of functions to be performed, the Department maintains a Web site on its intranet dedicated to performance-based acquisition. The site ([share.ed.gov/ocfo/cam/Documents/pbc\\_kit.doc](http://share.ed.gov/ocfo/cam/Documents/pbc_kit.doc)) contains links to such tools as the "Performance-Based Contracting Kit," a link to performance-based acquisition resources from the Defense Acquisition University, and a link to the Seven Steps to PBA website. Federal Student Aid and the Department have several model performance-based contracts. In Federal Student Aid, the debt collection contracts provide for vendor payment only if the vendor is successful in getting a delinquent loan holder to submit a payment. At the Department, the improper payment contract provides for a contingency fee payment if a vendor successfully identifies an improper payment that the Department can recover. In each of these instances, outcomes are measured, and payment only occurs once an outcome is achieved.

In total, the Department increased its performance based contracting by 4% when comparing FY12 to FY13 results, as illustrated in the table below that relies on data extracted from FPDS-NG. Although the Department's use of performance based contracting is impressive at 89%, the remaining 11% of non-performance based awards can be accounted for due to the inherent requirements that necessitate prescriptive requirements, such as the installation of software that is highly interoperable with other software solutions that collectively account for an overall system. In such instances, prescriptive requirements are used due to more unique constraints that are not known or could be known by the successful offeror, but are required to ensure programmatic success.

| <b>PERFORMANCE-BASED ACQUISITION REPORT</b> |                             |                               |                    |                      |
|---|-----------------------------|-------------------------------|--------------------|----------------------|
| <b>FY</b>                                   | <b>Eligible PBA Dollars</b> | <b>% Eligible PBA Dollars</b> | <b>PBA Dollars</b> | <b>% PBA Dollars</b> |
| 2012  | \$1,981,857,875.00          | 100.0000%                     | \$1,677,359,911.00 | 85%                  |
| 2013  | \$2,501,733,360.47          | 100.0000%                     | \$2,221,750,760.68 | 89%                  |

*Source: FPDS Standard Performance Based Acquisition Report (December 2013)*

**Any condition or action that has the effect of unnecessarily restricting the acquisition of commercial items or competition in the contract actions of the agency.**

In general, the Department had limited conditions or actions that would unnecessarily restrict the acquisition of commercial items or competition. Obligations against previously awarded contracts to Not-for-Profit entities did continue, however. These contracts were not awarded competitively in previous fiscal years, the result of prescriptive legislation requiring their award. Another instance where competition is restricted in the Department's contracts includes requirements for maintenance of brand name software. In this case, where software is purchased and used across the enterprise, continued maintenance of the software required the use of brand name specifications.

**New initiatives for Future Reporting Period(s)**

**New initiatives required to increase competition.**

In January 2014, the Department hosted a small business outreach event that provided an overview of future procurement opportunities. Four program offices participated by providing a brief overview of nine new procurement opportunities. Program officials as well as contracting staff were available during a networking session to discuss technical capabilities of interested small businesses. In addition, five large business vendors participated in the event during the networking session to foster new subcontracting partnerships with small business attendees. Approximately 175 small business vendors attended the event. CAM will continue to partner and plan together with the program offices in the Department to establish this activity as an annual event.

APM Chapter 7.70 requires the CO to conduct a vendor survey when only one offer is received from a solicitation that is not supported by a Justification for Other Than Full and Open Competition (JOFOC). The intent of this requirement is to ensure that the Department understands if there were any obstacles to competition, such as unduly restrictive or vague requirements, and what the Department could do in the future in order to ensure that competition is maximized for that particular procurement when and if it is re-competed. For those procurements that were not supported by a JOFOC and only received one offer, CAM will analyze the vendor survey responses in order to determine if there is a discernable pattern, such as type of supply or service, program office, acquisition strategy, etc. Dependent upon the findings, CAM will take the appropriate action to remove any barriers or obstacles that are stifling competition.

**Any barriers to the acquisition of commercial items or competition that remain.**

- There is a degree of difficulty with the pricing of some requirements as Fixed-priced (FP) or Time and Materials (T&M) when they are the only approved types of contracts for commercial procurements.
- Congress specifically limits competition through language used in legislation. For example, in accordance with Section 2212 of the Health Care and Education Reconciliation Act of 2010 (Public Law 111-152, 124 Stat. 1029), FSA was required to contract with eligible and qualified Not-For-Profit vendors to service loans.
- Other non-competitive actions included proprietary software maintenance.

## **Other ways in which the agency has emphasized the acquisition of commercial items and competition in areas such as acquisition training and research.**

Both of the Department's contracting activities plan for and participate in the Department's Acquisition Conference that is held every 18 months. The last one was held April 9<sup>th</sup> -11<sup>th</sup> 2013. The Acquisition Conference addresses a variety of subjects, including the procurement of commercial items and how to maximize competition. These efforts translate into training that can be used to earn or maintain the Federal Acquisition Certifications for COs, Contracting Officer's Representatives or Program and Project Managers. In addition, the Department carefully considers each potential topic to ensure that its acquisition workforce is getting the most beneficial information during the event and to recognize those that go above and beyond in order to maximize competition or reduce the Department's reliance on non-commercial items. The next conference is planned for December 2014. Areas such as competition and the procurement of commercial items will be explored.

## **New initiatives to improve the quality of planning , executing, and managing task and delivery orders.**

The Department's contracting personnel continue to engage in advance acquisition planning with their Program Offices. It is the Department's policy to conduct acquisition planning in advance of the fiscal year in which contract awards are required and in concert with the budget formulation process and information technology investment management process. Acquisition planning is performed in order to promote acquisition of commercial items; to promote full and open competition; or when full and open competition is not required, pursue competition to the maximum extent practicable in consideration of the products or services to be acquired. In addition to supporting documentation, PWSs, Statements of Objectives, and evaluation criteria are reviewed by the CS, CO, Supervisory Group Manager, and CRB (if required), to ensure the use of clearly defined government requirements and meaningful evaluation criteria that discriminate amongst competitors. No new initiatives are planned at this time. However, the Department consistently meets its high standards it has in place for executing and managing task and delivery orders and will continue to push for more multiple IDIQ contracts and BPAs in the future.

## **Recommendations**

### **Recommendation regarding establishing goals and plans for increasing competition on a fiscal year basis.**

The Department plans to continue to increase competition in the small business area by setting projects aside for small businesses. Through market research, the review of the history of a project, and taking a fresh look at the old statements of work, the Department is and has been able to increase our small business contracting.

As previously mentioned, CAM plans to survey prospective vendors to understand the basis for their decision not to participate in solicitations when there is a single bid that was not supported by a justification for full and open competition. CAM staff will further analyze the results of the surveys to identify barriers or common issues that vendors might be facing that would prevent them from submitting proposals for future solicitations. If a trend is uncovered, further action would be taken to alleviate any barrier to competition.

**Recommendation regarding establishing a system of personal and organizational accountability for competition, which may include the use of recognition and awards to motivate program managers, contracting officers, and others in authority to promote competition in acquisition.**

The Department has designated a pool of award funds that it plans to fully deplete in FY14 to include cash and time-off awards. The Department plans to further institute peer-nominated awards to further recognize superior performance, all of which can include an award for promoting competition. As stated in the previous section, CAM intends to recognize the promotion of competition in small business set asides.



**UNITED STATES DEPARTMENT OF EDUCATION**  
*Office of the Chief Financial Officer*  
*Contracts and Acquisitions Management*

**MEMORANDUM**

TO: Thomas Skelly  
Chief Acquisition Officer (Acting)

TO: James L. Ropelewski  
Senior Procurement Executive

FROM: James Hairfield  
Agency Competition Advocate

DATE: February 20, 2015

SUBJECT: FY 2014 U.S. Department of Education Competition Advocate Report

**Introduction**

The U.S. Department of Education's (Department) Agency Competition Advocate (CA) promotes the acquisition of commercial items, supports full and open competition, and identifies and challenges barriers to full and open competition in the acquisition of commercial items in accordance with Federal Acquisition Regulation (FAR) 6.5. The FAR requires the CA to prepare a CA's annual report for the Senior Procurement Executive (SPE) and the Chief Acquisition Officer (CAO). The following satisfies the reporting requirements and serves as the Fiscal Year (FY) 2014 Competition Advocate Report.

The Department continues to rank among top federal agencies in the use of competition as reported in the Federal Procurement Data System-Next Generation (FPDS-NG), ranking 16 among 62 agencies in FY 2014. The reported number of commercial procedures actions increased substantially from 1,575 actions reported in FY 2013 to 1,869 actions reported in FY 2014. This is an increase of 19%.

As further explained below, the Department continues to maximize the use of competition. Our contract personnel use market research to help define or refine their requirements, using a variety of competitive methods in acquiring goods and services, including the use of Federal Supply Schedules, internal indefinite delivery/indefinite quantity (IDIQ) contracts, Blanket Purchase Agreements (BPAs), and various contract types. As a result, non-competitive dollars decreased by 32% from FY 2013 to FY 2014. For comparison purposes, the number of actions awarded without providing for competition represented 27% of all possible actions in FY 2013. For FY 2014 the number of non-competitive awarded actions was 32%.

The Department's acquisition workforce consistently strives for competition while being personally involved with each of the organization's acquisitions and programs. From being involved as part of brainstorming sessions that help define acquisition strategies, to reviewing solicitations to ensure requirements are not overly restrictive, the Department has established an organizational culture that

appreciates and expects competition as a necessary component to achieve the Department's mission and fulfill its fiduciary responsibilities.

This culture is consistently reinforced by the Contract Specialists (CS) and Contracting Officers (CO) in each of the Department's two contracting activities, Contracts and Acquisitions Management (CAM) and Federal Student Aid (FSA) Acquisitions. Both organizations recognize the value that competition brings to the acquisition process - dollar savings, increased quality in performance, innovative solutions, better service, and transparency of publicly-funded activities.

The remainder of this report summarizes the Department's competition efforts and outcomes, and includes plans to further expand and promote competition that is expected to lead to better prices and improved quality of delivered goods and services.

### **Competition Summary**

The following table provides a high-level summary of those contract dollars that were obligated and eligible to be competed at the Department for FY 2014 based on the data extracted from FPDS-NG. Information from FY 2013 is included for comparison purposes.

| <b>COMPETITION REPORT</b> |                                       |                               |  |
|---------------------------|---------------------------------------|-------------------------------|--|
| <b>FY</b>                 | <b>Competition Base<br/>(Dollars)</b> | <b>Competed<br/>(Dollars)</b> | <b>Percentage<br/>Competed (Dollars)</b> |
| <b>2013</b>               | \$2,621,649,784.46                    | \$2,332,888,801.88            | 89%                                      |
| <b>2014</b>               | \$2,925,423,473.11                    | \$2,729,380,245.12            | 93%                                      |

*Source: FPDS-NG Standard Competition Report (December 2014)*

As indicated, the Department increased its percentage of competed dollars from FY 2013 to FY 2014 by four percentage points. However, the increase in actual dollars amounted to an increase of 17% which demonstrates the Department's commitment to ensuring that competition is maximized.

### **Actions Taken During the Reporting Period**

#### **Opportunities and actions taken to acquire commercial items to meet the needs of the agency.**

As a whole, the Department increased the number of actions and dollars for which commercial item acquisition procedures were used from FY 2013 to FY 2014. Acquisition planning is central to identifying commercially available services and supplies that will satisfy the government's requirement. It is during the acquisition planning phase that the CO and CS work with their program offices to define requirements and conduct an analysis of the market to identify the commercially available products and services that can satisfy the Department's requirements.

The Department, for example, makes widespread use of commercial supplies and services through Federal Supply Schedules and BPAs, all of which include commercial terms and conditions. In addition, the contracting activities use the commercial item acquisition procedures in FAR Part 12 to make open market awards of commercial supplies and services. Finally, the Department has relied on the Federal Strategic Sourcing Initiative (FSSI) to award contracts for both office supplies, express and ground domestic delivery services. By using the FSSI BPAs for these common commercial items, the



Department has leveraged its buying power and anticipates a continued reduction of costs, an increase in the achievement of socio-economic goals, and improved supplier management. Most of the use of the FSSI contracts is made with a purchase card, whose use is not reported in FPDS-NG due to the dollar value of each transaction. The Department's use of commercial item acquisitions is actually higher than that reported in FPDS-NG. The General Services Administration (GSA) launched the Office Supplies 3 (OS3) contract in December 2014. The Department will issue a policy memorandum soon to direct Department staff to begin using only those vendors listed on the contract for the purchase of office supplies.

The following chart contains data extracted from standard reports in FPDS-NG for FY 2013 and 2014. Information from FY 2013 is provided for comparison purposes.

| <b>COMMERCIAL ITEM ACQUISITIONS</b> |                                      |                                      |
|-------------------------------------|--------------------------------------|--------------------------------------|
| <b>FY</b>                           | <b>Commercial Procedures Actions</b> | <b>Commercial Procedures Dollars</b> |
| 2013                                | 1,575                                | \$872,706,410.04                     |
| 2014                                | 1,869                                | \$1,117,902,531.32                   |

*Source: FPDS-NG Standard Report Total Actions by PSC (December 2014)*

#### **Opportunities and actions taken to achieve full and open competition in the contracting operations of the agency.**

The Department is committed to maximizing full and open competition in its contracting activities. Consistent with the FAR, the CA's review and approval is required for all Justifications for Other than Full and Open Competition for all acquisitions over \$650,000 but not exceeding \$12.5M. Planned actions above \$12.5M but less than \$62.5M require review and approval from the Head of the Contracting Activity (HCA), and actions exceeding \$62.5M require the review and approval of the Senior Procurement Executive. The Department uses acquisition planning and the Contract Review Board (CRB) review processes to identify any additional opportunities to promote full and open competition for each proposed contract action, which is further mirrored by FSA's CRB that reviews acquisitions for opportunities to promote competition. Both contracting activity CRBs challenge proposed exceptions to competition and independently review unduly restrictive requirements that can limit competition or later result in follow-on contracts that will require competition exceptions.

Furthermore, both contracting activities use requests for information and pre-proposal conferences to facilitate competition. The Department developed and instituted Acquisition Procedures Manual (APM) Chapter 7.7 in order to reduce high-risk contracting. Although the APM Chapter addresses a number of issues that present contracting risk, such as the use of time-and-materials contracts, the chapter requires the acquisition team to explore a number of questions if the planned acquisition will include certain requirements that impact competition, such as the use of brand name products or services. The responses, if found to be acceptable by the acquisition team, are subject to various reviews that begin with an in-person discussion with an independent third party and end with the CA's review and final determination. This process ensures that the Department not only reduces the number of non-competed acquisitions, but it further ensures that interested parties have a sound understanding of requirements prior to submitting an offer which reinforces the Department's opportunity to receive innovative solutions and decrease contract costs.

The Department relies heavily on the Internet to increase competition. In addition to following the FAR requirements for publicizing open market contract opportunities over \$25,000 on the government-wide point of entry, FedBizOpps (FBO), the Department also posts open market business opportunities in the \$10,000 to \$25,000 range. The Department also uses eBay to post notices when fulfilling a need under Federal Supply Schedules. At the same time, the Department publishes a guide to “Doing Business with the U.S. Department of Education,” which is a document written in conjunction with the Office of Small and Disadvantaged Business Utilization (OSDBU) that emphasizes business opportunities for small businesses, provides a forecast of available contract opportunities, and includes a link to currently available contract solicitations.

The Department has enjoyed increased competition as a result of the associated strategies that were employed, such as pre-solicitation and pre-proposal conferences. As a strategic cost-saving measure, the Department made use of teleconferences or webinars in lieu of the traditional in-person conferences. These virtual events attract interested parties that may not have expressed interest or attended similar events in the past due to not being physically located within the immediate Washington, D.C. metropolitan area, where such events were held in-person and without the use of similar technology.

**Actions taken to challenge requirements that are not stated in terms of functions to be performed, performance required or essential physical characteristics.**

The Department uses the CRB process to ensure requirements are properly defined in terms of the desired outcomes and are not overly restrictive to competition. The CRB reviews proposed contract actions to examine how well the actions further public policy goals, including performance-based acquisition that focuses on the required outcomes in terms of satisfying requirements, as opposed to the more prescriptive approach of instructing how the requirements should be satisfied.

Furthermore, to assist the acquisition workforce in defining requirements in terms of functions to be performed, Federal Student Aid and the Department have several model performance-based contracts. In Federal Student Aid, the debt collection contracts provide for vendor payment only if the vendor is successful in getting a delinquent loan holder to submit a payment. The Department’s improper payment contract came to a close in 2014 because it was determined it was not needed. The vendor wasn’t able to identify improper payments to warrant continued use of their services. This contract provided for a contingency fee payment if the vendor successfully identified an improper payment that the Department could recover. In each of these instances, outcomes are measured, and payment only occurs once an outcome is achieved.

In total, the Department increased its performance-based contracting by 2% when comparing FY 2013 to FY 2014 results, as illustrated from the table below that relies on data extracted from FPDS-NG. The main impediment limiting performance-based contracting is that many of the activities and responsibilities that the Department carries out are not appropriate for that type of contracting method. An example of contract type that wouldn’t fit a PBA-type award is one such as a labor hour contract where the Department only pays for an amount of time toward meeting a particular goal, instead of measuring an output, the input is measured and payments are based on that.

| <b>PERFORMANCE-BASED ACQUISITION REPORT</b> |                             |                               |                    |                      |
|---|-----------------------------|-------------------------------|--------------------|----------------------|
| <b>FY</b>                                   | <b>Eligible PBA Dollars</b> | <b>% Eligible PBA Dollars</b> | <b>PBA Dollars</b> | <b>% PBA Dollars</b> |
| 2013  | \$2,501,733,360.47          | 100%                          | \$2,221,750,760.68 | 89%                  |

|      |                    |      |                    |     |
|------|--------------------|------|--------------------|-----|
| 2014 | \$2,801,081,974.11 | 100% | \$2,562,810,925.62 | 91% |
|------|--------------------|------|--------------------|-----|

*Source: FPDS-NG Standard Performance-Based Acquisition Report (December 2014)*

**Any condition or action that has the effect of unnecessarily restricting the acquisition of commercial items or competition in the contract actions of the agency.**

In general, the Department had limited conditions or actions that would unnecessarily restrict the acquisition of commercial items or competition. Obligations against previously awarded contracts to Not-for-Profit entities did continue, however, these contracts were not awarded competitively in previous fiscal years, as the result of prescriptive legislation requiring their award. Another instance where competition is restricted in the Department's contracts includes requirements for maintenance of brand name software. In these cases, software is purchased and used across the enterprise and continued maintenance of the software required the use of brand name specifications.

**New initiatives for Future Reporting Period(s)**

**New initiatives required to increase competition.**

In FY 2014, the OSDBU, in collaboration with representatives from the Department's two contracting activities, planned, conducted and/or participated in numerous initiatives and activities designed to increase small business participation and utilization. Department representatives delivered information and technical assistance via a myriad of formats such as individual and group training and staff development, one-on-one and large group sessions with small business concerns, staff development presentations for the Department's contracting staff and program officials, and a talk on presenting information, matchmaking, and exhibiting at local and regional outreach conferences. During FY 2014 OSDBU participated in a total of 32 Small Business Outreach Events; five of which focused on Women Owned Businesses, four on Veteran and Service Disabled Small Businesses, and two events featuring HUBZone Small Businesses.

One of the highlights of the Department's outreach efforts was that it hosted a small business matchmaking event, where large business or not-for-profit loan servicers were matched with small businesses for potential subcontracting opportunities. By engaging in this activity, the Department helped increase competition through subcontracting. Later in the year, the re-competition of the debt collection contracts used innovative terms to ensure future competition in the small business set-aside pool.

Furthermore, the Department entered into a membership with the HUB Zone Council. In addition to supporting their annual conference, Department COs have used the Council's Opportunities Board to announce upcoming procurements and to expand market research efforts.

Of particular note, OSDBU carried out the following key activities and initiatives in FY 2014.

- Conducted multiple pre-scheduled one-on-one outreach sessions with individual small business owners. The purpose of these sessions was to ensure small businesses had ample opportunity to engage the OSDBU team, program officials and/or contracting staff on a routine basis. At these sessions, businesses introduced themselves to Department representatives and briefed them on their capabilities. In turn, Department representatives provided strategies and information to them on how to market their capabilities to the Department.
- Participated in all procurement planning meetings, where it advocated for small business utilization and fostered increased awareness of small business program goals, requirements and initiatives.

- Marketed and broadly disseminated the FY 2014 Forecast of Contract Opportunities, which listed planned procurement opportunities and provided points of contact.
- Conducted or co-sponsored socioeconomic program-specific activities to increase awareness and understanding of small business vehicles by Department staff and to promote more substantial market research and increased utilization of qualified small, 8(a), women-owned, HUBZone and service-disabled veteran-owned small businesses to address identified contractual requirements.
- Expanded the Department's posting of Requests for Information (RFI) on FBO and on the National HUBZone Council website.
- Conducted, sponsored and/or facilitated training and consultation for contracting officials, program officials and other stakeholders regarding all aspects of the Department's small business programs.
- Promoted and supported matchmaking initiatives between the Department's prime contractors and well-qualified vendors for subcontracting opportunities.
- Participated in expos, conferences and trade fairs to increase small business access to the Department's procurement opportunities.

In FY 2015, the Department's OSDBU and both CAM and FSA plan to partner to host small business outreach events and provide technical assistance to current and potential new small business vendors.

Lastly, in FY 2014, COs were required to conduct a vendor survey when only one offer was received from a solicitation that is not supported by a Justification for Other Than Full and Open Competition (JOFOC). The intent of this requirement is to ensure that the Department understands whether there were any obstacles to competition, such as unduly restrictive or vague requirements, and what the Department could do in the future in order to ensure that competition is maximized for that particular procurement when, and if, it is re-competed.

CAM analyzed the vendor survey responses to determine whether there were discernable patterns that hindered competition, such as issues the vendor might have had with the type of supply or service, program office, acquisition strategy, etc. Based on the findings, it was determined that there wasn't enough information from the surveys to indicate a pattern(s) present that prevented competition in FY 2014.

Of the 22 contracts that were identified in FPDS-NG as having received one proposal, two vendors responded to the survey. A summary of the two responses are below.

- One vendor felt that there were unduly restrictive requirements, insufficient time to respond to an RFP, as well as they couldn't overcome incumbent advantage. This same vendor commented that it would be helpful if the Department would expand real opportunities to new vendors who have demonstrated technical competencies, but who may not have specific program area experience.
- A different vendor felt that the Department did not meet with them one-on-one to talk about the detailed requirements of a particular project which prevented them from submitting a proposal.

Of the remaining 20 contracts, the vendors either did not respond to the survey that was sent to them or the particular solicitation possessed specific factors that wouldn't require the CO to send out a survey. For example, a survey was not sent because the action was awarded under the CIO SP3 GWAC. Another example why a survey was not sent is because the contract was executed as a Delivery Order under FAR Part 8, with a best-value determination being made to issue the Order directly to UPS. Per GSA, agencies

with an IGCE below the Simplified Acquisition Threshold were instructed to analyze the BPA prices between two vendors (UPS and FEDEX) and make a best-value determination as to whether to use one or both of the vendors, and send an order directly to the vendors.

After further review and analysis of the two surveys received and other documentation associated with the solicitations, it was determined that the Department made the appropriate decisions, in both cases, in awarding the contracts to the chosen vendor. Competition was not hindered in any way. The Department provided every opportunity available under current policies and procedures so that the vendors could compete and submit a proposal for the particular solicitation.

CAM will continue to survey vendors on an ongoing basis and take the appropriate action to remove any barriers or obstacles as necessary that might be hindering competition when they are identified.

Lastly, the Department also acknowledges the changes that resulted from the Bipartisan Budget Act of 2013 which eliminated the requirement for additional NFP servicer contracts. Because of this modification, the Department sees the opportunity and is looking forward to increasing competition in future solicitations in order to maximize cost savings and improved outcomes for the taxpayer.

#### **Any barriers to the acquisition of commercial items or competition that remain.**

- There is a degree of difficulty with the pricing of some requirements as Fixed-Priced (FP) or Time and Materials (T&M) when they are the only approved types of contracts for commercial procurements.
- Proprietary software maintenance continues to represent a barrier to competition. While competition may occur when software is being considered, maintenance of the software will remain to be something that must be acquired non-competitively.

#### **Other ways in which the agency has emphasized the acquisition of commercial items and competition in areas such as acquisition training and research.**

Both of the Department's contracting activities plan for and participate in the Department's Acquisition Conference that is held every 18 months. The last one was held December 3rd - 5th 2014. The Acquisition Conference addresses a variety of subjects, including the procurement of commercial items and how to maximize competition. These efforts translate into training that can be used to earn or maintain the Federal Acquisition Certifications for COs, Contracting Officer's Representatives, or Program and Project Managers. In addition, the Department carefully considers each potential topic to ensure that its acquisition workforce is getting the most beneficial information during the event and to recognize those that go above and beyond in order to maximize competition or reduce the Department's reliance on non-commercial items. The Department's next Acquisition Conference is planned for the Spring of 2016.

#### **New initiatives to improve the quality of planning, executing, and managing task and delivery orders.**

The Department's contracting personnel continue to engage in advance acquisition planning with their Program Offices. It is the Department's policy to conduct acquisition planning in advance of the fiscal year in which contract awards are required and in concert with the budget formulation process and information technology investment management process. Acquisition planning is performed in order to promote acquisition of commercial items; to promote full and open competition; or when full and open competition is not required, pursue competition to the maximum extent practicable in consideration of the

products or services to be acquired. In addition to supporting documentation, Performance Work Statements (PWS), Statements of Objectives, and evaluation criteria are reviewed by the CS, CO, Chief of the Contracting Office, and CRB (if required), to ensure the use of clearly defined government requirements and meaningful evaluation criteria that will differentiate competitors. Finally, with the Department's high standards it has in place for executing and managing task and delivery orders, the Department will continue to push for more multiple IDIQ contracts and BPAs in the future.

### **Recommendations**

#### **Recommendation regarding establishing goals and plans for increasing competition on a fiscal year basis.**

In addition to receiving an 'A' from the Small Business Administration (SBA) for our FY 2013 efforts, the Department also expects to receive an 'A' for FY 2014 because of the increased number of contracts awarded to small business. The Department will continue to strive to increase competition in the small business area by setting projects aside for small businesses. Through market research, the review of the history of a project, and taking a fresh look at the old statements of work, the Department is, and has been, able to increase small business contracting.

Furthermore, CAM plans to continue to survey prospective vendors, on an annual basis, as it did for the first time in FY 2014, to understand their decision not to participate in solicitations when there is a single bid that was not supported by a justification for other than full and open competition. CAM staff will further analyze the results of the surveys to identify barriers or common issues that vendors might be facing that would prevent them from submitting proposals for future solicitations. If a trend is uncovered, further action would be taken to alleviate any barrier to competition.

#### **Recommendation regarding establishing a system of personal and organizational accountability for competition, which may include the use of recognition and awards to motivate program managers, contracting officers, and others in authority to promote competition in acquisition.**

The Department has in place a peer recognition program that can be used for promoting competition. For example, when a contract is awarded to a new small business, CAM recognizes staff during 'CAM-EBRATION' events and issues a Certificate of Recognition to the staff that were involved in the process.



UNITED STATES DEPARTMENT OF EDUCATION  
*Office of the Chief Financial Officer*  
*Contracts and Acquisitions Management*

**MEMORANDUM**

TO: Tim Soltis  
Chief Acquisition Officer (Acting)

TO: James L. Ropelewski  
Senior Procurement Executive

THRU: James Hairfield  
Director, Contracts and Acquisitions Management

FROM: Cynthia Duncan  
Agency Competition Advocate

DATE: May 27, 2016

SUBJECT: FY 2015 U.S. Department of Education Competition Advocate Report

**Introduction**

The U.S. Department of Education's (Department) Agency Competition Advocate (CA) performs the duties outlined in Federal Acquisition Regulation (FAR) 6.5 including promoting the acquisition of commercial items, promoting full and open competition, and challenging barriers to the acquisition of commercial items. The FAR requires the CA to prepare an annual report for the Senior Procurement Executive (SPE) and the Chief Acquisition Officer (CAO). The following satisfies the reporting requirements and serves as the Fiscal Year (FY) 2015 Competition Advocate Report.

The Department continues to rank among the top federal agencies in the use of competition as reported in the Federal Procurement Data System-Next Generation (FPDS-NG), ranking 14<sup>th</sup> among 62 agencies in FY 2015. As further explained below, the Department continues to maximize the use of competition. Our contract personnel use market research to help define or refine their requirements, using a variety of competitive methods in acquiring goods and services, including the use of Federal Supply Schedules, internal indefinite delivery/indefinite quantity (IDIQ) contracts, Blanket Purchase Agreements (BPAs), and various other contract types. While the Department's competition ranking increased since FY 2014, the total dollars spent in FY 2015 decreased from the previous year. Based on the decreased spend and budget cuts, competitive dollars decreased by 16% from FY 2014 to FY 2015. However, the number of actions awarded with competition increased from 2,500 (67.9% of all actions) in FY 2014 to 2,565 (76.6% of all actions) in FY 2015. In addition, the reported number of commercial item procedures actions increased substantially from 1,869 actions reported in FY 2014 to 2,170 actions reported in FY 2015, representing an increase of 16.1%.

The Department's acquisition workforce consistently strives for competition while being personally involved with each of the organization's acquisitions and programs. From being involved in

brainstorming sessions that help define acquisition strategies to reviewing solicitations to ensure requirements are not overly restrictive, the Department has established an organizational culture that appreciates and expects competition as a necessary component to achieve the Department's mission and fulfill its fiduciary responsibilities.

This culture is consistently reinforced by the Contract Specialists (CS) and Contracting Officers (CO) in Contracts and Acquisitions Management (CAM) and Federal Student Aid (FSA) Acquisitions. Both organizations recognize the value that competition brings to the acquisition process - dollar savings, increased quality in performance, innovative solutions, better service, and transparency of publicly-funded activities.

The remainder of this report summarizes the Department's competition efforts and outcomes, and includes plans to further expand and promote competition that is expected to lead to better prices and improved quality of delivered goods and services.

### **Competition Summary**

The following table provides a high-level summary of those contract dollars that were obligated and eligible to be competed at the Department for FY 2015 based on the data extracted from FPDS-NG. Information from FY 2014 is included for comparison purposes.

| <b>COMPETITION REPORT</b> |                                       |                               |  |                               |  |
|---------------------------|---------------------------------------|-------------------------------|--|-------------------------------|--|
| <b>FY</b>                 | <b>Competition Base<br/>(Dollars)</b> | <b>Competed<br/>(Dollars)</b> | <b>Percentage<br/>Competed<br/>(Dollars)</b> | <b>Competed<br/>(Actions)</b> | <b>Percentage<br/>Competed<br/>(Actions)</b> |
| <b>2014</b>               | \$2,925,423,473.11                    | \$2,729,380,245.12            | 93%  | 2,500                         | 67.9%  |
| <b>2015</b>               | \$2,663,008,666.78                    | \$2,294,881,316.11            | 86%  | 2,565                         | 76.6%  |

*Source: FPDS-NG Standard Competition Report (November 2015)*

Competition is the cornerstone of our acquisition system and is a critical tool for achieving the best return on investment possible for our taxpayers. It is, however, also important to strike an appropriate balance between creating a competitive contracting environment and supporting Government wide socio-economic initiatives and programs. The dollars and actions included in the competition base but awarded under the statutory authority of FAR 6.302-5 (sole source 8(a) /sole source HUBZone/ sole source Ability One/UNICOR) contributed to reduced achievement percentages from FY 2014 to FY 2015. 8(a) awards factor in to the dollars awarded non-competitively and these awards made up a large percentage of those dollars. Approximately 60% of the noncompetitive new awards in FY 2015 were 8(a) direct awards.

As indicated, the Department maintained a high percentage of competed dollars from FY 2014 to FY 2015. The change in actual competed dollars amounted to a decrease of 16%, however, as stated above, the percentage of competed actions actually increased. This demonstrates the Department's commitment to ensuring that competition is maximized even in the face of budgetary constraints.

### **Actions Taken During the Reporting Period**

Opportunities and actions taken to acquire commercial items to meet the need of the agency



As a whole, the Department increased the number of actions and dollars for which commercial item acquisition procedures were used from FY 2014 to FY 2015. Acquisition planning is central to identifying commercially available services and supplies that will satisfy the government's requirement. It is during the acquisition planning phase that the CO and CS work with their program offices to define requirements and conduct an analysis of the market to identify commercially available products and services that can satisfy the Department's requirements.

The Department, for example, makes widespread use of commercial supplies and services through the use of Federal Supply Schedules and BPAs, all of which include commercial terms and conditions. In addition, the contracting activities use the commercial item acquisition procedures in FAR Part 12 to make open market awards of commercial supplies and services.

The Department awarded three multiple-award commercial BPAs as competitive procurements that will, at a minimum, maintain a significant level of competition for the next five years or more. These new BPA awards are available for use across the entire Department of Education for the following services: (1) Technical Assistance Support Services, (2) Peer Review Support Services, and (3) Logistical Support for Conferences and Meetings. In addition, CAM's Program Contracts Group (PCG) awarded a multiple-award Indefinite Delivery/Indefinite Quantity (ID/IQ) contract for; Improving Career and Technical Education (CTE) for the Office of Career, Technical and Adult Education (OCTAE).

#### **Technical Assistance**

In the most noteworthy situation, CAM awarded a multiple-award BPA to 13 vendors, three of which are small businesses, to replace the current Education Department Technical Assistance Support Services (EDTASS) BPA with AEM Corporation. The EDTASS BPA with AEM was a single-award BPA that was competitively awarded; however, over time, the Department lost leverage to get the best pricing. Under the newly awarded multiple-award BPA for Technical Assistance Support Services, the orders will be competed among the selected vendors over the life of the BPA and the Department will retain leverage to drive best pricing for the entire period of performance.

#### **Peer Review**

In prior years, contracts for peer review support services were awarded by each program office for its peer review support requirements. The newly awarded multiple-award BPA for Peer Review Support Services is available across the entire Department and should result in increased competition and better pricing, because of the expanded coverage of this contract vehicle for all Department requirements for peer review support services.

#### **Logistical Support**

In prior years, requirements for logistical support for conferences and meetings were mostly a portion of broader focused contracts and were mostly awarded to large businesses. This multiple-award BPA for logistical support for conferences and meetings was set aside for small businesses and will result in increased small business awards. The pricing should be more competitive because of increased competition for each new requirement for logistical support.

#### **Multiple Award ID/IQ**

Lastly, PCG awarded a multiple-award ID/IQ for OCTAE for Improving CTE. This will result in replacing multiple standalone contracts where often there has been little or no competition, with a new contract vehicle that will better ensure competitive pricing for new requirements for CTE. In addition,

one of the contract holders is a small business, which may further OCTAF's performance in awarding work to small businesses.

The following chart contains data extracted from standard reports in FPDS-NG for FY 2014 and 2015. Information from FY 2014 is provided for comparison purposes.

| <b>COMMERCIAL ITEM ACQUISITIONS</b> |                                      |                                      |
|-------------------------------------|--------------------------------------|--------------------------------------|
| <b>FY</b>                           | <b>Commercial Procedures Actions</b> | <b>Commercial Procedures Dollars</b> |
| 2014                                | 1,869                                | \$1,117,902,531.32                   |
| 2015                                | 2,170                                | \$1,246,124,663.42                   |

*Source: FPDS-NG Standard Report Total Actions by PSC (November 2015)*

### **Opportunities and actions taken to achieve full and open competition in the contracting operations of the agency**

The Department is committed to maximizing full and open competition in its contracting activities. Consistent with the FAR during FY 2015, the CA's review and approval was required for all Justifications for Other than Full and Open Competition for all acquisitions over \$650,000 and not exceeding \$12.5M. Planned actions above \$12.5M but less than \$62.5M required review and approval from the Head of the Contracting Activity (HCA), and actions exceeding \$62.5M required the review and approval of the SPE.<sup>1</sup> The Department uses acquisition planning and the Contract Review Board (CRB) processes to identify any additional opportunities to promote full and open competition for each proposed contract action to encourage competition. Both contracting activities have CRBs that challenge proposed exceptions to competition and independently review excessively restrictive requirements that can limit competition or later result in follow on contracts that will require competition exceptions.

In addition to following the FAR requirements for publicizing open market contract opportunities over \$25,000 on the government-wide point of entry, FedBizOpps (FBO), the Department also posts open market business opportunities in the \$10,000 to \$25,000 range. The Department also uses the General Services Administration's online portal, eBuy, to post notices when fulfilling a need under Federal Supply Schedules. At the same time, the Department publishes a guide to "Doing Business with the U.S. Department of Education," which is a document written in conjunction with the Office of Small and Disadvantaged Business Utilization (OSDBU) that emphasizes business opportunities for small businesses, provides a forecast of available contract opportunities, and includes a link to currently available contract solicitations.

The Department has enjoyed increased competition as a result of the associated strategies that were employed, such as press releases and pre-proposal conferences. As a strategic cost-saving measure, the Department made use of teleconferences or webinars in lieu of the traditional in-person conferences. These virtual events attract interested parties that may not have expressed interest or attended similar events in the past due to not being physically located within the immediate Washington, D.C. metropolitan area, where such events were held in-person and without the use of similar technology.

<sup>1</sup> Reporting Requirement 2.1.1.5, FAR, "The SPE shall be a member of the OASD (M&A) and shall be a member of the

**Actions taken to challenge requirements that are not stated in terms of functions to be performed, performance required or essential physical characteristics**

The Department uses the CRB process to ensure requirements are properly defined in terms of the desired outcomes and are not overly restrictive to competition. In CAM the CRB reviews proposed contract actions to examine how well these further public policy goals, including performance-based acquisitions that focus on the required outcomes in terms of satisfying requirements, as opposed to the more prescriptive approach of instructing how the requirements should be satisfied.

In total, CAM maintained a high level of performance-based contracting, at 85% of eligible dollars. The main impediment limiting performance-based contracting is that many of the activities and responsibilities that the Department carries out are not appropriate for that type of contracting method. An example of contract type that would not fit a PBA-type award is a labor hour contract where the Department only pays for an amount of time toward meeting a particular goal, and therefore measuring input rather than output.

Performance-based acquisition is the preferred method for acquiring services. The Federal Acquisition Regulation (FAR) requires that, when acquiring services--including those acquired under supply contracts--agencies must use performance-based contracting methods to the maximum extent practicable, except for architect-engineer services, construction, utility services, or services that are incidental to supply purchases. The increase in the number of PBA actions shows the Department's increased use of PBA type contracts. However, the decrease in performance based acquisition dollars from FY 2014 to 2015 is due to an increase in the use of other types of contracts such as time and material contracts due to incidental service requirements.

| <b>PERFORMANCE-BASED ACQUISITION REPORT</b> |                             |                               |                    |                      |
|---|-----------------------------|-------------------------------|--------------------|----------------------|
| <b>FY</b>                                   | <b>Eligible PBA Dollars</b> | <b>% Eligible PBA Dollars</b> | <b>PBA Dollars</b> | <b>% PBA Dollars</b> |
| 2014  | \$2,801,081,974.11          | 100%                          | \$2,562,810,925.62 | 91%                  |
| 2015  | \$2,468,810,125.98          | 100%                          | \$2,092,077,583.49 | 85%                  |

*Source: FPDS-NG Standard Performance-Based Acquisition Report (November 2015)*

**Any condition or action that has the effect of unnecessarily restricting the acquisition of commercial items or competition in the contract actions of the agency**

In general, the Department had limited conditions or actions that would unnecessarily restrict the acquisition of commercial items or competition. One instance when competition is restricted in the Department's contracts includes requirements for maintenance of brand name software. In these cases, software is purchased and used across the enterprise and continued maintenance of the software required the use of brand name specifications due to the proprietary nature of the original equipment manufacturer (OEM).

**New initiatives for Future Reporting Period(s)**

New initiatives required to increase competition.

In FY 2015, the OSDBU, in collaboration with representatives from the Department's two contracting activities, planned, conducted and/or participated in numerous initiatives and activities designed to increase small business participation and utilization. Department representatives delivered information and technical assistance via a myriad of formats, such as individual and group training and staff development, one-on-one and large group sessions with small business concerns, staff development presentations for the Department's contracting staff and program officials, and a talk on presenting information, matchmaking, and exhibiting at local and regional outreach conferences. During FY 2015 the OSDBU participated in a total of 36 Small Business Outreach Events and Competition Advocate Activities; four of which focused on Women Owned Businesses, three on Veteran and Service Disabled Small Businesses, and one on HUBZone Small Businesses.

One of the highlights of the Department's outreach efforts was that it hosted a small business matchmaking event, where large business or not-for-profit loan servicers were matched with small businesses for potential subcontracting opportunities. By engaging in this activity, the Department helped increase competition through subcontracting. Later in the year, the re-competition of the debt collection contracts used innovative terms to ensure future competition in the small business set-aside pool.

Of particular note, OSDBU carried out the following key activities and initiatives in FY 2015:

- Conducted multiple pre-scheduled one-on-one outreach sessions with individual small business owners. The purpose of these sessions was to ensure small businesses had ample opportunity to engage the OSDBU team, program officials and/or contracting staff on a routine basis. At these sessions, businesses introduced themselves to Department representatives and briefed them on their capabilities. In turn, Department representatives provided strategies and information to them on how to market their capabilities to the Department.
- Participated in all procurement planning meetings, where it advocated for small business utilization and fostered increased awareness of small business program goals, requirements and initiatives.
- Marketed and broadly disseminated the FY 2015 Forecast of Contract Opportunities, which listed planned procurement opportunities and provided points of contact.
- Conducted or co-sponsored socioeconomic program-specific activities to increase awareness and understanding of small business vehicles by Department staff and to promote more substantial market research and increased utilization of qualified small, 8(a), women-owned, HUBZone and service-disabled veteran-owned small businesses (SDVOSB) to address identified contractual requirements.
- Expanded the Department's posting of Requests for Information (RFI) on FBO.
- Conducted, sponsored and/or facilitated training and consultation for contracting officials, program officials and other stakeholders regarding all aspects of the Department's small business programs.
- Promoted and supported matchmaking initiatives between the Department's prime contractors and well-qualified vendors for subcontracting opportunities.
- Participated in expositions, conferences and trade fairs to increase small business access to the Department's procurement opportunities.

In FY 2016, the Department's OSDBU and CAM will partner to host small business outreach events and provide technical assistance to current and potential new small business vendors.

In addition, Education Sciences Contracts Group (ESCG) staff held several webinars for IES/NCEE FY2015 procurements. All questions and answers were posted on FBO in order to facilitate interest in subcontracting arrangements and small business teaming arrangements by interested and eligible large and small businesses.

These webinars included the following:

- Small Business Set-aside What Works Clearinghouse (WWC) Reviews, Reporting, Dissemination, and Development (R2D2) procurement
- Parent Information and School Choice Request for Proposals (RFP)
- Academic Language Interventions RFP
- What Works Clearinghouse (WWC) Drop Out Prevention RFP
- Feasibility and Design of an Impact Evaluation of Teacher Preparation RFP
- Post High School Outcomes RFP
- Website Content Development (Small Business Set-Aside) RFP.

In January 2015, ESCG staff co-hosted and participated in a Small Business Industry Day with the National Center for Education and Regional Evaluation (NCEE), the National Center of Education Statistics (NCES), and the OSDBU. The purpose of that event was to conduct thorough market research to help create a new pool of small businesses with which the Department had not previously contracted. After receiving well over 70 capability statements and conducting two rounds of review and narrowing the pool, selected vendors were invited to attend the event.

The goal was to give these small businesses exposure to gain familiarity with the type of work that NCES and NCEE does, help develop new relationships, and more importantly provide them with the first step to be successful with respect to government contracting. Over 30 small businesses attended, several of which submitted proposals for subsequent requirements.

On August 20, 2015, an Education Statistics Support Institute Network (ESSIN) Networking Fair for the nine contractors (five small businesses and four large businesses) within the Multiple-Award, ID/IQ was held at the Department's K Street location. ESSIN Contractors were provided the opportunity to present their capabilities to the each other for possible teaming and collaborations on future requirements. Specifically, the small businesses were encouraged to leverage resources within the ESSIN Network, in order to become more competitive as a Prime contractor for actions that are not small business set-asides.

ESCG also conducted the Small Business Innovation Research (SBIR) awards, which received high levels of competition. SBIR Phase I received 193 proposals and resulted in 13 awards; SBIR Phase II received 10 proposals and resulted in 8 awards.

In FY 2015 FSA re-competed several significant mission-critical contracts. To ensure adequate competition and high quality solutions, FSA engaged in early acquisition planning with stakeholders, issued RFPs, and held industry days for all major competitions. The upfront planning and discussions with industry had quantifiable results:

- Common Origination and Disbursement (COD) acquisition competitively awarded what was previously a sole-source acquisition and achieved significant savings

- Front End Business Integration (FEBI) acquisition will competitively award several acquisitions to support FSA's student-centric business model in stages. One of the first was set-aside and awarded to a small business
- Data Challenges and Appeals (DCAS) acquisition competitively awarded a commercial-off-the-shelf (COTS) based solution to process the increasing number of appeals, as well as supporting accurate Gainful Employment (GE)
- Virtual Data Center (VDC) acquisition competitively awarded a follow-on solution that makes use of commercial cloud technology.

Lastly, in FY 2015, COs complied with the Department's Vendor Communication Plan, which requires COs to conduct a vendor survey when only one offer was received from a competitive solicitation. The intent of this requirement is to ensure that the Department understands whether there were any obstacles to competition, such as unduly restrictive or vague requirements, and what the Department could do in the future in order to ensure that competition is maximized for that particular procurement when, and if, it is re-competed.

CAM analyzed the vendor survey responses to determine whether there were discernable patterns that hindered competition, such as issues the vendor might have had with the type of supply or service, program office, acquisition strategy, etc. Based on the findings, it was determined there wasn't enough information from the surveys to indicate a pattern(s) present that prevented competition in FY 2015.

During Fiscal Year 2015, CAM conducted three vendor surveys. Two of those surveys received no response, and the third survey received the following two responses:

1. The proposed work was not in full alignment with the vendor's focus areas, and
2. While we have capabilities in the defined space and are very interested in supporting Education, we had competing priorities and could not commit resources at the appropriate time to invest in developing a winning response.

During Fiscal Year 2015, FSA conducted two vendor surveys. One of those surveys received no response, and the second survey received the following response:

1. The vendor commended the Contracting Officer and Contract Specialist, stating that the level of detail provided in their debriefing was exceptional and would help strengthen their future proposals.

The Department provided every opportunity available under current policies and procedures so that vendors could compete and submit a proposal for the particular solicitation.

The Department will continue to survey vendors on an ongoing basis and take the appropriate action to remove any barriers or obstacles as necessary that might be hindering competition when they are identified.

#### **Any barriers to the acquisition of commercial items or competition that remain**

- Pricing of some commercial services is difficult when the only approved types of contracts for these services are firm-fixed-price (FFP) or time and materials (T&M).
- Proprietary software maintenance continues to represent a barrier to competition. While competition may occur when software is being considered, maintenance of the software will remain to be something that must be acquired non-competitively.

### **Other ways in which the agency has emphasized the acquisition of commercial items and competition in areas such as acquisition training and research**

Both of the Department's contracting activities plan for and participate in the Department's Joint Acquisition Conference that is held every 18 months. The last one was held December 3 - 4, 2014. The acquisition conference addresses a variety of subjects, including the procurement of commercial items and how to maximize competition. These efforts translate into training that can be used to earn or maintain the Federal Acquisition Certifications for COs, Contracting Officer's Representatives, or Program and Project Managers. In addition, the Department carefully considers each potential topic to ensure that its acquisition workforce is getting the most beneficial information during the event and to recognize those that go above and beyond in order to maximize competition or reduce the Department's reliance on non-commercial items. The Department's next Acquisition Conference is planned for 2016.

### **New initiatives to improve the quality of planning, executing, and managing task and delivery orders**

The Department's contracting personnel continue to engage in advance acquisition planning with their Program Offices. It is the Department's policy to conduct acquisition planning in advance of the fiscal year in which contract awards are required and in concert with the budget formulation process and information technology investment management process. Acquisition planning is performed in order to promote acquisition of commercial items; to promote full and open competition; or when full and open competition is not required, pursue competition to the maximum extent practicable in consideration of the products or services to be acquired. In addition to supporting documentation, Performance Work Statements (PWS), Statements of Objectives (SOO), and evaluation criteria are reviewed by the CS, CO, Chief of the Contracting Office, and CRB (if required), to ensure the use of clearly defined government requirements and meaningful evaluation criteria that will differentiate competitors.

### **Recommendations**

#### **Recommendation regarding establishing goals and plans for increasing competition on a fiscal year basis**

The Department received an 'A' grade from the Small Business Administration (SBA) for FY 2015 because of the increased number of contracts awarded to small business. The Department will continue to strive to increase competition in the small business area by setting projects aside for small businesses. Through market research, the review of the history of a project, and taking a fresh look at the old statements of work, the Department is, and has been, able to increase small business contracting.

Furthermore, the Department continues to survey prospective vendors to understand their decision not to participate in solicitations when there is a single bid that was not supported by a justification for other than full and open competition. The Department will analyze the results of the surveys to identify barriers or common issues that vendors might be facing that would prevent them from submitting proposals for future solicitations. If a trend is uncovered, further action would be taken to alleviate any barrier to competition.

#### **Recommendation regarding establishing a system of personal and organizational accountability for competition, which may include the use of recognition and awards to motivate program managers, contracting officers, and others in authority to promote competition in acquisition**

During FY 2015, the Department emphasized a peer recognition program to promote competition. For example, when a contract was awarded to a SDVOSB or HUBZone small business, CAM issued a Certificate of Recognition to the responsible staff during staff events.



**UNITED STATES DEPARTMENT OF EDUCATION**  
*Office of the Chief Financial Officer*  
*Contracts and Acquisitions Management*

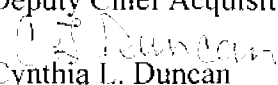
**MEMORANDUM**

DATE: June 22, 2017

TO: Tim Soltis  
Deputy Chief Financial Officer, Delegated the Authority to Perform the Duties  
and Functions of the Chief Financial Officer and Chief Acquisition Officer

and

Dr. Angela Billups  
Deputy Chief Acquisition Officer & Senior Procurement Executive

FROM:   
Cynthia L. Duncan  
Advocate for Competition

SUBJECT: Fiscal Year (FY) 2016 U.S. Department of Education Advocate for Competition  
Report

**Introduction**

The U.S. Department of Education's (Department) Advocate for Competition promotes the acquisition of commercial items, supports full and open competition, and identifies and challenges barriers to the acquisition of commercial items and full and open competition in accordance with Federal Acquisition Regulation (FAR) 6.5. The FAR requires the Advocate for Competition to prepare an annual report for the Senior Procurement Executive (SPE) and the Chief Acquisition Officer (CAO). The following satisfies the reporting requirements and serves as the FY2016 Advocate for Competition Report.

The Department continues to rank among top federal agencies in the use of competition as reported in the Federal Procurement Data System-Next Generation (FPDS-NG), ranking 19 among 66 agencies for the percentage of total dollars that were competed in FY2016. As further explained below, the Department continues to maximize the use of competition. Contracting personnel use market research to help define or refine their requirements, using a variety of competitive methods in acquiring goods and services, including the use of Federal Supply Schedules, internal indefinite delivery/indefinite quantity (IDIQ) contracts, Blanket Purchase Agreements (BPAs), and various other contract types. The total dollars spent in FY2016 decreased from the previous year. Based on the decreased spend and budget cuts, percentage of dollars competed decreased by 2% from FY2015 to FY2016. However, the percentage of actions



awarded with competition increased slightly from 76% of all actions in FY2015 to 77% of all actions in FY2016. In addition, the reported number of commercial procedures actions increased from 2,201 actions in FY2015 to 2,483 actions in FY2016. This is an increase of 12.8%.

The Department's acquisition workforce consistently strives for competition while being personally involved with each of the organization's acquisitions and programs. From participating in brainstorming sessions that help define acquisition strategies, to reviewing solicitations to ensure requirements are not overly restrictive, the Department has established an organizational culture that appreciates and expects competition as a necessary component to achieve the Department's mission and fulfill its fiduciary responsibilities.

This culture is consistently reinforced by the Contract Specialists (CS) and Contracting Officers (CO) in each of the Department's two contracting activities, Contracts and Acquisitions Management (CAM) and Federal Student Aid (FSA) Acquisitions. Both organizations recognize the value that competition brings to the acquisition process - dollar savings, increased quality in performance, innovative solutions, better service, and transparency of publicly-funded activities.

The remainder of this report summarizes the Department's competition efforts and outcomes, and includes plans to further expand and promote competition that is expected to lead to better prices and improved quality of delivered goods and services.

### **Competition Summary**

The following table provides a high-level summary of those contract dollars that were obligated and eligible to be competed at the Department for FY2016 based on the data extracted from FPDS-NG. Information from FY2015 is included for comparison purposes.

| <b>Competition Report</b> |                                       |                               |  |                          |                             |  |
|---------------------------|---------------------------------------|-------------------------------|--|--------------------------|-----------------------------|--|
| <b>FY</b>                 | <b>Competition Base<br/>(Dollars)</b> | <b>Competed<br/>(Dollars)</b> | <b>Percentage<br/>Competed<br/>(Dollars)</b> | <b>Total<br/>Actions</b> | <b>Actions<br/>Competed</b> | <b>Percentage<br/>Competed<br/>(Actions)</b> |
| <b>2015</b>               | \$2,667,731,261.06                    | \$2,294,449,015.71            | 86%  | 3,383                    | 2,584                       | 76%  |
| <b>2016</b>               | \$2,464,120,122.86                    | \$2,074,548,248.76            | 84%  | 3,329                    | 2,572                       | 77%  |

*Source: FPDS-NG Standard Competition Report (April 26, 2017)*

The Department maintained a high percentage of competed dollars from FY2015 to FY2016. Although the percentage of dollars competed during FY2016 was lower than in FY2015, it represented a higher percentage of actions that were competed than the previous year. This demonstrates the Department's commitment to ensuring that competition is maximized.

### **Actions Taken During the Reporting Period**

#### **Opportunities and actions taken to acquire commercial items to meet the needs of the agency**

The Department increased the number of actions for which commercial item acquisition procedures were used from FY2015 to FY2016. The dollars for which commercial item acquisition procedures were used increased during that same period. Acquisition planning is central to identifying commercially available services and supplies that will satisfy the government's requirement. It is during the acquisition planning phase that the CO and CS work with their principal offices to define requirements and conduct an analysis of the market to identify the commercially available products and services that can satisfy the Department's requirements.

The Department makes widespread use of Federal Supply Schedules, which are awarded under commercial procedures. Acquisition personnel also make use of acquisition flexibilities to purchase commercial supplies and services under FAR Subpart 13.5.

In FY2016, the Department solicited for a Small Business Set-Aside, Multiple-Award Blanket Purchase Agreement (BPA) for Publications, Education Analysis, and Reporting for Sample Surveys, Assessments, and Administrative Data Collections (PEARSS). This solicitation consolidated multiple requirements handled by different principal offices by streamlining the requirements and making a general determination that the general services skills needed to perform the PEARSS requirement are available in the commercial marketplace. The services were competed through the General Service Administration's (GSA) Professional Service Schedule under the Mission Oriented Business Integrated Services (MOBIS) Category 874 -1 Integrated Consulting Services. The six resultant BPAs were executed in January 2017.

Great strides are being made in the acquisition of commercial items based on reported FPDS-NG data, however, the actions, and dollars are still underrepresented and subject to variability year-to-year due to GSA's improper commercial item acquisition coding of Federal Supply Schedules. As a result, task and delivery orders awarded by the Department off the miscoded vehicles are recorded as "Commercial Item Procedures not Used." Since the field is not editable in FPDS—NG, the Department's ability to accurately report achievements in this area is limited.

| <b>COMMERCIAL ITEM ACQUISITIONS</b> |                                      |                                      |
|-------------------------------------|--------------------------------------|--------------------------------------|
| <b>FY</b>                           | <b>Commercial Procedures Actions</b> | <b>Commercial Procedures Dollars</b> |
| 2015                                | 2,201                                | \$1,255,326,319.16                   |
| 2016                                | 2,483                                | \$1,647,160,946.89                   |

*Source: FPDS-NG Standard Report of Total Actions by Product Service Code (April 26, 2017)*

## **Opportunities and actions taken to achieve full and open competition in the contracting operations of the agency**

The Department is committed to maximizing full and open competition in its contracting activities. Consistent with the FAR during FY2016, the Advocate for Competition's review and approval was required for all Justifications for Other than Full and Open Competition for all acquisitions over \$700,000 but not exceeding \$13.5M. Planned actions above \$13.5M but less than \$68M required review and approval from the Head of the Contracting Activity, and actions exceeding \$68M required the review and approval of the Senior Procurement Executive. CAM uses acquisition planning and the Contract Review Board (CRB) review processes to identify any additional opportunities to promote full and open competition for each proposed contract action, which is mirrored by FSA's CRB that reviews acquisitions for opportunities to promote competition. Both contracting activity CRBs challenge proposed exceptions to competition and independently review unduly restrictive requirements that can limit competition or later result in follow-on contracts that will require competition exceptions. If an acquisition meets the threshold requiring signatures of the Advocate for Competition, Head of the Contracting Activity, or Senior Procurement Executive, challenges may occur at these levels as well. The only approvals presented to the individual Advocates for Competition for the Department and FSA over the past year were for brand name-specific purchases of software license renewals, extensions to contracts related to delays in migrating the existing data center to the new provider, and expansions of scope to on-going studies. Notices were posted on the GSA eBuy or FedBizOpps (FBO), as appropriate. The renewals were associated with a decision to manage software usage across the enterprise, and continued ongoing technical solutions that used the software.

In addition to posting on the GSA eBuy system and FBO as appropriate, the Department publishes a guide to "Doing Business with the U.S. Department of Education." This is a document written in conjunction with the Office of Small and Disadvantaged Business Utilization (OSDBU) that emphasizes business opportunities for small businesses, provides a forecast of available contract opportunities, and includes a link to currently available contract solicitations. This guide is posted on the outward-facing Department website. Finally, the Department has emphasized the use of pre-solicitation and pre-proposal conferences via webinar and Requests for Information to maximize competition.

In FY2015 - FY2016, the Department was in the acquisition planning phase for the new cohort of Regional Educational Laboratories (RELs). The acquisition team made extraordinary outreach and market research efforts, including a thoughtful and meaningful webinar which included live responses to advance questions, draft documents with opportunities for feedback, FAQ documents, and detailed comparisons and contrasts to the previous cohort competition.<sup>1</sup> A Request for Information included questions to narrow responses to targeted capability statements, and four addenda were posted to finalize the documentation based on industry feedback. The Department also emphasized the value of teaming agreements for the nine resultant awards. These efforts led to increased competition in the overall solicitation and specifically in the Appalachia, Northeast and Mid-Atlantic regions. Twenty-two offers were

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<sup>1</sup> The webinar took place in FY2015 but was not included in the FY2015 Advocate for Competition report. The RFI was posted in FY2015, but three of the addenda were posted in FY2016. Therefore, the market research efforts continued into FY2016 and are appropriately reported here.

received and nine regional contracts were awarded (compared with 20 offers for 10 regions for the previous cohort). Six of the nine regions experienced competition, which is a higher ratio than the six out of ten regions under the previous competition.<sup>2</sup> These awards were finalized during FY2017.

In FY2016, the requirement to conduct a vendor survey when only one offer was received from a competitive solicitation remained in place. The intent of this requirement is to ensure that the Department understands whether there were any obstacles to competition, such as unduly restrictive or vague requirements, and what the Department could do in the future to ensure that competition is maximized for that particular procurement when, and if, it is re-competed. The Department will continue to survey vendors on an ongoing basis and take the appropriate action to remove any barriers or obstacles that might be hindering competition when necessary.

Finally, the Program Contracts Group within CAM hosted an Open House on March 29, 2016 for the vendors awarded BPAs in FY2015 for “Education Department Technical Assistance Support Services” (EDTASS), “Peer Review Technical Support Services,” and “Conference and Meeting Logistics and Technical Support Services.” The purpose of the Open House was for vendors to network with each other so that small and large vendors could explore possible partnering opportunities and for Department of Education Program Managers and CORs to learn more about each vendor’s core capabilities. These interactions can increase competition under the multiple-award BPAs for future orders.

The Department has enjoyed increased competition as a result of the associated strategies that were employed, such as pre-solicitation and pre-proposal conferences. As a strategic cost-saving measure, the Department made use of teleconferences or webinars in lieu of the traditional in-person conferences. These virtual events attract interested parties that may not have expressed interest or attended similar events in the past due to not being physically located within the immediate Washington, D.C. metropolitan area, where such events were held in-person and without the use of similar technology.

### **Actions taken to challenge requirements that are not stated in terms of functions to be performed, performance required or essential physical characteristics**

The Department uses the CRB process to ensure requirements are properly defined in terms of the desired outcomes and are not overly restrictive to competition. The CRB reviews proposed contract actions to examine how well the actions further public policy goals, including performance-based acquisition that focuses on the required outcomes in terms of satisfying requirements, as opposed to the more prescriptive approach of instructing how the requirements should be satisfied.

In total, the Department maintained a high level of performance-based contracting. Of the dollars eligible for performance-based contracting in FY2016, 82% was used for performance-based contracts. The main impediment limiting performance-based contracting is that many of the activities and responsibilities that the Department carries out are not appropriate for that type

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<sup>2</sup> The tenth region, Southwest, was not awarded with the current cohort because the period of performance does not match the other nine regions. Southwest will be solicited separate. Southwest was a competitive region in the initial cohort and will likely have competition when the requirement is solicited.

of contracting method. Examples include contracts awarded on a Time and Materials or Labor Hour basis. These types of contracts require higher level reviews and high risk planning to minimize their use. The Department will continue to look for opportunities to transition to Performance Based Acquisition (PBA) methods for these types of contracts.

Federal Student Aid re-competed several significant mission-critical contracts this year with results as follows:

- The unrestricted Private Collection Agency (PCA) contracts were re-competed in FY 2016 with award targeted for FY2017. The contracts are unique in that they are 100% performance-based.
- The re-compete of the servicing contracts through Phase One of the two-phase competition, was completed in FY2016 with award of the new servicing solution projected for FY2017.

In addition, FSA competitively awarded single award contract ordering vehicles for the following services: program and project management, conference support, and Website consolidation.

| <b>FY</b> | <b>Eligible PBA Dollars</b> | <b>PBA Dollars</b> | <b>% PBA Dollars</b> |
|-----------|-----------------------------|--------------------|----------------------|
| 2015      | \$2,479,012,190.51          | \$2,098,994,549.68 | 85%                  |
| 2016      | \$2,292,405,175.89          | \$1,868,591,617.04 | 82%                  |

*Source: FPDS-NG Standard Performance-Based Acquisition Report (April 26, 2017)*

**Any condition or action that has the effect of unnecessarily restricting the acquisition of commercial items or competition in the contract actions of the agency**

In general, the Department had limited conditions or actions that would unnecessarily restrict the acquisition of commercial items or competition. Obligations against previously awarded contracts to Not-for-Profit entities did continue, however, these contracts were not awarded competitively in previous fiscal years, as the result of prescriptive legislation requiring their award. Another instance where competition is restricted in the Department's contracts includes requirements for maintenance of brand name software. In these cases, software is purchased and used across the enterprise and continued maintenance of the software required the use of brand name specifications.

The Department uses competitive procedures and commercial practices even when meeting emerging urgent needs. Delays associated with protests or other contract delays may require the Department to extend performance under an existing contract.

## **Opportunities and actions taken to improve the quality of planning, executing, and managing task and delivery orders**

Acquisition personnel are business advisors to their program and principal offices. Evaluating the planned spend against requirements approved for funding, acquisition personnel are aware of planned activities and involved in the process from the identification of the requirement.

### **New initiatives for Future Reporting Period(s)**

#### **New initiatives required to increase competition and to increase the acquisition of commercial items**

The Department already maintains high rates of commercial items and competition. Although no new initiatives were implemented during FY2016, the vast majority of FSA acquisitions are already commercial. Federal Student Aid's previous initiatives to increase competition have been very successful. The remaining non-competitive actions are limited to brand name software purchases for consistency with existing technology platforms and further reduction is unlikely. In the 2<sup>nd</sup> quarter of FY2017, CAM's Advocate for Competition implemented internal policy to require the advocate's approval for the use of a single award ordering vehicle.

In FY2016, the OSDBU, in collaboration with representatives from the Department's two contracting activities, planned, conducted and/or participated in numerous initiatives and activities designed to increase small business participation and utilization. Department representatives delivered information and technical assistance via a myriad of formats such as individual and group training and staff development, one-on-one and large group sessions with small business concerns, staff development presentations for the Department's contracting staff and program officials, and a talk on presenting information, matchmaking, and exhibiting at local and regional outreach conferences. During FY2016 the OSDBU participated in a total of 30 Small Business Outreach Events and CA Activities.

Of particular note, the OSDBU carried out the following key activities and initiatives in FY2016.

- Conducted multiple pre-scheduled one-on-one outreach sessions with individual small business owners. The purpose of these sessions was to ensure small businesses had ample opportunity to engage the OSDBU team, program officials and/or contracting staff on a routine basis. At these sessions, businesses introduced themselves to Department representatives and briefed them on their capabilities. In turn, Department representatives provided strategies and information to them on how to market their capabilities to the Department.
- Participated in all procurement planning meetings, where it advocated for small business utilization and fostered increased awareness of small business program goals, requirements and initiatives.
- Marketed and broadly disseminated the FY2016 Forecast of Contract Opportunities, which listed planned procurement opportunities and provided points of contact.

- Conducted or co-sponsored socioeconomic program-specific activities to increase awareness and understanding of small business vehicles by Department staff and to promote more substantial market research and increased utilization of qualified small, 8(a), women-owned, and service-disabled veteran-owned small businesses to address identified contractual requirements.
- Conducted, sponsored and/or facilitated training and consultation for contracting officials, program officials and other stakeholders regarding all aspects of the Department's small business programs.
- Promoted and supported matchmaking initiatives between the Department's prime contractors and well-qualified vendors for subcontracting opportunities.
- Participated in expos, conferences and trade fairs to increase small business access to the Department's procurement opportunities.

In FY2017, the Department's OSDBU and both CAM and FSA plan to partner to host small business outreach events and provide technical assistance to current and potential new small business vendors.

**New initiatives to ensure requirements are stated in terms of functions to be performed, performance required, or essential physical characteristics**

Acquisition personnel continue to provide professional advice to their program and principal offices and present their requirements to the Contract Review Board for consideration of recommendations.

**Any barriers to the acquisition of commercial items or competition that remain**

Many actions from the Institute of Education Sciences are not able to be performed without allowing for cost-reimbursement contract types. Therefore, these actions are not able to conform to the requirements for commercial contracts to be awarded on a Firm-Fixed-Price (FFP) or Time and Materials (T&M) basis.

Proprietary software maintenance and licenses often result in brand name justifications and continue to represent a barrier to competition.

**Other ways in which the agency has emphasized the acquisition of commercial items and competition in areas such as acquisition training and research**

The Department continues to emphasize the use of competitive and commercial practices through the pre-planning CRB process to ensure consideration of both early in the acquisition lifecycle.

FSA's Small Business Specialist provides periodic training on issues and processes unique to small business and small business subcontracting.

CAM's Conversations with CORs promotes internal acquisition training to CORs and Project Managers throughout the Department. FY2016 sessions included topics like acquisition planning, competition, multiple-award BPAs, and ethical issues for proposal evaluation. Sessions like these will continue to be available to acquisition professionals within the Department in FY2017. In addition, the multiple-award BPAs/IDIQs are posted on SharePoint sites to allow program and principal offices throughout the Department to utilize these ordering vehicles, emphasizing the preference for multiple-award vehicles under FAR 16.5, 13.303-2(c), and 8.405-3(a)(3)(i).

The Department will begin hosting quarterly roundtable events in FY2017 intended to bring government and industry representatives together for open discussions on key issues, topics, and concerns and to foster better collaboration in the procurement process. The first roundtable event will focus on the development and procurement methods for agile software services. The second roundtable will focus on acquisition innovation. This includes innovative contracting procedures, services, and products that are or could be used by the Federal Government to improve acquisitions and delivery of goods and services to the public.

#### **New initiatives to improve the quality of planning, executing, and managing task and delivery orders**

The Department's contracting personnel continue to engage in advance acquisition planning with their program and principal offices. It is the Department's policy to conduct acquisition planning in advance of the fiscal year in which contract awards are required and in concert with the budget formulation process and information technology investment management process. Acquisition planning is performed in order to promote acquisition of commercial items; to promote full and open competition; or when full and open competition is not required, pursue competition to the maximum extent practicable in consideration of the products or services to be acquired. In addition to supporting documentation, Performance Work Statements (PWS), Statements of Objectives (SOO), and evaluation criteria are reviewed by the CS, CO, Chief of the Contracting Office, and CRB (if required), to ensure the use of clearly defined government requirements and meaningful evaluation criteria that will differentiate competitors. Finally, with the Department's high standards it has in place for executing and managing task and delivery orders, the Department will continue to push for more multiple IDIQ contracts and BPAs in the future.

#### **Recommendations**

##### **Recommendation regarding establishing goals and plans for increasing competition on a fiscal year basis**

The Department will continue to strive to increase competition in the small business area by setting projects aside for small businesses. Through market research, the review of the history of a project, and taking a fresh look at the old requirements documents, the Department is, and has been, able to increase small business contracting.

The Department's contracting activities assess their planned activities and establish goals for increasing competition; however, as stated above the competition rate is unlikely to increase appreciably over the current very high rate so the plan is to maintain the Department's outstanding performance in this area. Acquisition professionals are empowered to make decisions and held accountable for their success.



**Initiatives that ensure task and delivery orders over \$1M issued under multiple award contracts are properly planned, issued and comply with FAR 8.405-3 and 16.504**

Internal controls, Contract Review Boards, Peer reviews, and Contract Management Reviews, help ensure consistent practices that follow FAR and agency-specific rules and regulations. For example, the Department relies on the CRB review process as a primary internal control for actions over \$700,000, to ensure contracts are compliant with FAR and internal policies. The processes for the Department's Acquisition Plan (excluding FSA) ensure that actions over \$100,000 are planned and approved prior to award.

**Recommendation regarding establishing a system of personal and organizational accountability for competition, which may include the use of recognition and awards to motivate program managers, contracting officers, and others in authority to promote competition in acquisition**

The Department has no further initiatives planned other than those already in use.

CC:

James Hairfield, Director, Contracts and Acquisitions Management

Patrick Bradfield, Director, Federal Student Aid Acquisitions

Denise Roberts, Advocate for Competition, Federal Student Aid Acquisitions