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PROGRAM REVIEW AND INVESTIGATIONS COMMITTEE

Personal Service Contracting In Kentucky

Research Report No. 442

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Kentucky Legislative Research Commission

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Personal Service Contracting In Kentucky

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Abstract

Personal service contracts are governmental contracts with private vendors to provide professional services. There are no formal guidelines to indicate which services can be provided under these contracts. Hundreds of personal service contracts are active, and hundreds of millions of dollars have been spent each year. Most contracts and payments appeared to follow designated procedures, but some deficiencies were found in classifying a contract as a personal service or other contract type, justifying a contract, evaluating vendor proposals, timely entering and filing a contract, updating balances on a contract, using the statutory invoice form, soliciting vendors on price contracts, monitoring and evaluating vendor performance, and tracing contract renewals in the accounting system. Estimates of future spending on contracts were unreliable, and amounts reported as spent were incomplete.

Foreword

Program Review staff thank the officials and staff of the Finance and Administration Cabinet, Cabinet for Health and Family Services, Department of Education, and Transportation Cabinet for their extensive cooperation in this performance audit. The Administrative Office of the Courts and Auditor of Public Accounts provided additional information.

At the Legislative Research Commission, Kim Eisner, Becky Brooker, and Charles Booker of the Government Contract Review Committee staff answered questions, provided information, and joined Program Review staff at meetings with the Finance and Administration Cabinet. Stuart Weatherford and Katherine Halloran of the Budget Review staff provided invaluable assistance in understanding the accounting system and extracting and interpreting data from it. Scott Rowe and Becky King of the Office of Computing and Information Technology extracted information from the Government Contract Review staff database of contracts.

Staff also thank attorneys Larry C. Ethridge and Steve Smith, who provided archival copies of the American Bar Association's Model Procurement Code.

Bobby Sherman
Director

Legislative Research Commission
Frankfort, Kentucky
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Summary

A personal service contract (PSC) is an agreement between a state agency and a private entity to provide services requiring professional skill or professional judgment. It is one of several kinds of contracts; another, the memorandum of agreement, is a contract between a state agency and another governmental body or nonprofit organization. Often, public entities provide professional services under memoranda of agreement.

The Kentucky Model Procurement Code (KRS Chapter 45A) stipulates that contracts, including PSCs, should be solicited through a competitive process whenever feasible. It names the secretary of the Finance and Administration Cabinet (FAC) as the chief purchasing officer of the commonwealth. It also establishes the Government Contract Review Committee (GCRC) within the Legislative Research Commission to oversee personal service contracts, memoranda of agreement, and tax incentive agreements.

This study examined PSCs that were awarded by agencies under the purview of the Finance and Administration Cabinet and that were for standard professional services. This study's scope excluded certain agencies and excluded personal service contracts that were for architectural and engineering services.

All appropriated funds pass through eMARS, the statewide electronic accounting system. The system also contains electronic procurement documents like requests for proposals, proposal evaluations, contracts and amendments, payments, and vendor performance evaluations.

At the end of fiscal year 2013, there were 684 PSCs open within the scope of the study. Spending on PSCs between the Department for Medicaid Services and University Health Care (Passport) dwarfed other PSC spending. The Passport contract amounts are shown separately in the PSC statistics and were typically approximately $800 million per year. Between FY 2010 and FY 2013, the amount shown as spent on PSCs other than Passport ranged from $200 million (FY 2011) to $209 million (FY 2010). However, the amounts reported are incomplete, with over $54 million unrecorded in eMARS each of the last 2 fiscal years.

GCRC holds monthly meetings to review new contracts and amendments and to determine whether or not to approve them. From FY 2010 to FY 2013, GCRC voted to disapprove six PSCs from agencies within the scope of this study. Of those, three were overridden and one was completed and closed prior to disapproval. The remaining two were canceled by the agency after disapproval.

Most contracts appear to have been correctly designated as personal service contracts or other kinds of contracts, but there have been some arguable exceptions that could be significant. The portion of noncompetitive PSCs appears to have increased since 2001. The statutes do not provide a means of resolving disagreements about the classification of contracts.

Recommendation 2.1
The General Assembly may wish to consider clarifying whether contracts with governmental bodies and political subdivisions of other states or with out-of-state nonprofits should be memoranda of agreement or personal service contracts.

Recommendation 2.2
The General Assembly may wish to consider defining *professional skill* and *professional judgment* as they apply to personal service contracts.

Recommendation 2.3
The Finance and Administration Cabinet and other contracting agencies should determine whether a contract is a personal service contract and whether it should be pursued competitively based solely on statutory criteria. When such a classification would violate a policy of the Government Contract Review Committee, the contracting agency should seek an exemption from the committee.

Some PSCs are "price contracts," which means no specific work is assigned at the time the contract is awarded. Rather, the agency contacts the vendor when there is a need for the kind of service agreed to. Often, price contracts are with a single vendor, but some are with several vendors at the same time. Sometimes vendors may be added to and removed from multivendor price contracts.

Recommendation 2.4
The Finance and Administration Cabinet should implement a formal policy requiring personal service price contracts to which vendors may be added during the course of the contract to be advertised continuously so that potential vendors are aware of the ongoing opportunity and may submit proposals. The cabinet should require agencies to ensure that the vendor lists on such contracts are kept up-to-date.

Most personal service contracts appear to have been awarded following designated procedures. There have been some deficiencies in the process of evaluating vendor proposals and documenting the proposals and evaluations, both in eMARS and in the hard-copy files.

Recommendation 2.5
The Finance and Administration Cabinet should ensure that agencies use evaluation committees of two or more people, with possible exceptions; that each evaluator explain in writing why each proposal received its score on each of the solicitation criteria; that the scores for each proposal, evaluator, and criterion be recorded on the evaluation document in the statewide accounting system; that the detailed scoring explanation be attached to the system's evaluation document; and that a determination and findings document that summarizes and finalizes the evaluation process be attached to the system's contract document.

Entering a PSC in eMARS and submitting it to FAC for approval ensures that it is filed in a timely manner with the Government Contract Review Committee. Some personal service contracts have not been entered in a timely manner, so they also were not filed timely with the committee.

Recommendation 2.6

The Finance and Administration Cabinet should take the following actions to ensure that all personal service contracts are entered into the statewide accounting system and filed timely with the Government Contract Review Committee:

- **Promulgate a policy that clearly requires all personal service contracts and amendments to be entered in the system.**
- **Periodically remind all agencies that all personal service contracts must be entered in the system.**
- **Require all agencies to implement management controls to ensure that all personal service contracts are entered timely in the system and that all required approvals have been made prior to the beginning of work.**
- **If feasible, modify the system to create a periodic automatic notification to the agency contact person about pending contracts that have not been finalized in the system and an automatic notification when a contract is about to expire, or require each agency to develop its own method of tracking finalizations and expirations.**

GCRC requires a Proof of Necessity form to accompany all PSCs. Agencies often fail to provide thorough explanations of scope of work, contract monitoring plans, and reasons for contracting on the form.

Recommendation 2.7

The Finance and Administration Cabinet should encourage agencies to fill out the work description and monitoring activities in greater detail in the Proof of Necessity section of personal service contracts and include a detailed justification demonstrating that the agency carried out a meaningful comparison of in-house solutions with contracting for services.

The current FAC procedure for filing PSCs also files all contract amendments with GCRC. However, the statutes governing review of contracts do not clearly require all contract amendments to be filed with and reviewed by the committee.

Recommendation 2.8

In order to ensure continued filing of all personal service contract amendments for review by the Government Contract Review Committee, the General Assembly may wish to consider making that requirement explicit.

Using data from the statewide accounting system, it is not possible to predict the amounts that will be spent on personal service contracts. The amounts shown as actually spent are also incomplete, but it appears the accounting has improved over the past few years. Most payments on personal service contracts appear to have been made properly, but there were some deficiencies in updating balances on the correct contract and frequent failures to record the invoiced service dates. There have been hundreds of millions of dollars spent but not shown on contract balances. The Impact Plus program, for example, spent $34.7 million in FY 2013 that was not shown on the contract balance. In addition, some PSCs have exceeded their spending limits without following the proper amendment process.

Recommendation 3.1
The Finance and Administration Cabinet should promulgate policies that describe the proper methods of creating, reviewing, and approving transactions so that they correctly update the contract balances in the statewide accounting system; that require all agencies to have internal controls to ensure that these methods are followed; and that require contract amendments to be used to increase funds on a contract prior to exceeding its limits. As soon as feasible, the cabinet and its software vendor should discuss ways to modify the system so that it can correctly maintain contract balances under all payment scenarios, and the cabinet should make the case that the vendor should enhance its underlying software, not just the Kentucky version.

For most personal service price contracts, there is no documentation in eMARS describing the specific work assignments that agencies negotiate with vendors. The duration, cost, location, and other necessary information are kept only in agency hard-copy files. Multivendor price contracts vary in the location, accuracy, and contents of their vendor lists. They also displayed deficiencies in providing fair notice when there is ongoing recruitment of vendors and validating that the vendors paid were the vendors on the contract.

Recommendation 3.2
The Finance and Administration Cabinet should promulgate policies that require agencies to add commodity lines to personal service price contracts in the statewide accounting system for all work assignments and to attach copies of the signed agreements that describe the assignments' scope, time frame, location, total cost, and other details. The cabinet should ensure that its solution is satisfactory to the Government Contract Review Committee.

Recommendation 3.3
The Finance and Administration Cabinet should promulgate policies for multivendor personal service contracts that standardize the location and contents of vendor lists. These lists should at least contain the vendor code for each vendor. The cabinet should require the vendor lists to be updated as soon as feasible after a vendor is added or removed and should establish management controls centrally or at the agencies to ensure each vendor paid on such a contract was a party to the contract and was the one that submitted the invoice.

A statutory invoice form has been used inconsistently and has not always included required information. It was not clear that all agencies were aware that PSC vendors paid through the state payroll system should submit statutory invoices for their time and expenses. It also appeared that invoiced service dates were not being entered properly on the payments for validation against the contract dates. Agencies generally did not perceive the benefits of requiring the statutory invoice form.

Recommendation 3.4
The Finance and Administration Cabinet should direct all agencies to ensure that all personal service contract vendors paid through the state payroll system, including those working full time, submit the statutory invoice form for the services they provide and for expenses they incur.

Recommendation 3.5
The Finance and Administration Cabinet should promulgate a policy to require agencies to pay only invoices for services performed during valid dates under the personal service contract, to reject invoices that do not include valid dates for each matter being billed, and to enter the service dates exactly as they appear on the invoices. As soon as feasible, the cabinet should modify the statewide accounting system so that invoiced service dates are required on all payment lines that refer to a contract, that the dates must fall within the corresponding contract term, and that the invoiced dates are initially blank and must be entered manually.

Recommendation 3.6
The Finance and Administration Cabinet should ensure that agencies require vendors to use the statutory form when submitting invoices and that they reject invoices that do not include all the required information.

Recommendation 3.7
The Government Contract Review Committee may wish to consider revising the invoice form within statutory limits after receiving additional feedback from a variety of agencies.

Most of the agencies reviewed did not thoroughly monitor or evaluate vendor performance during or after the contract term. Documents in the statewide accounting system strongly suggest that monitoring and evaluation are seldom performed in a formal manner and that past performance is seldom considered in future solicitations.

Recommendation 3.8
When feasible, the Finance and Administration Cabinet should require agencies to provide a written evaluation of the quality of a vendor's work periodically during the course of a contract and after the contract is complete. The cabinet should consider whether the statewide accounting system's performance evaluation documents could be used. The cabinet should provide guidance for including past vendor performance as a criterion for scoring proposals to future solicitations.

Currently, the statutes do not define the term *price contract*. FAC officials stated that they no longer use the term, but it appears numerous times in the statutes related to PSCs.

Recommendation 4.1
The General Assembly may wish to consider defining the term *price contract* as used in the Model Procurement Code.

Under current procedures, the statewide accounting system cannot automatically connect contracts with their renewals or other continuation contracts. This is a serious impediment to obtaining a clear contract history.

Recommendation 4.2
Considering a "renewal" to be any contract that in effect is a continuation of the work being done by a vendor on an existing contract, whether by exercising a renewal option, by competitive exemption, or by any other method, the Finance and Administration Cabinet should establish a reliable automated mechanism in the statewide accounting system to trace all personal service contract procurement documents from the solicitation, or from the original contract if there was no solicitation, through all renewals and vice versa. The cabinet should ensure that its solution is satisfactory to the Government Contract Review Committee.

Some agencies use customized software packages or Microsoft Excel workbooks outside eMARS to keep track of document approvals, amounts, modifications, and payments. Using external systems for tracking purposes raises the question of whether eMARS has these functions or could be enhanced to perform them. Having all information about approvals, modifications, renewals, monitoring, and payments in one system is preferable to having parallel systems with no interoperability.

Recommendation 4.3
If feasible, the Finance and Administration Cabinet should enhance eMARS to allow draft documents to be updated during the approval process without requiring all approvals to be redone. The cabinet should consider surveying agencies to determine any other beneficial eMARS functionality that might exist or be built to facilitate tracking contract payments and budgeted funds.

Chapter 1

Overview

At its December 13, 2012, meeting, the Program Review and Investigations Committee voted to conduct a study of personal service contracts (PSC). Program Review staff carried out a performance audit of selected aspects of the PSC process at selected agencies. Appendix A describes how the study was conducted.

A personal service contract (PSC) is an agreement between an agency and a private entity to perform services requiring professional skill or judgment.

A personal service contract

> means an agreement whereby an individual, firm, partnership, or corporation is to perform certain services requiring professional skill or professional judgment for a specified period of time at a price agreed upon (KRS 45A.690(g)).

The procurement life cycle in its broad sense refers to everything from the decision to purchase to the termination of the agreement.

This report uses *procurement* in its broad sense, referring to everything related to obtaining goods and services, from the decision to purchase to the termination of the purchase agreement. The procurement life cycle includes soliciting vendors that may be interested, awarding a contract to fulfill the need, making payments and monitoring the performance of the contractor, and closing out the contract when the work or the contract time period is over. Other activities include amending contracts, renewing contracts, and evaluating vendor performance.

The Kentucky Model Procurement Code in KRS Chapter 45A requires contracts to be competitive when feasible. It describes the roles of the secretary of the Finance and Administration Cabinet (FAC) and the Government Contract Review Committee (GCRC).

The Kentucky Model Procurement Code (KRS Chapter 45A) stipulates that contracts, including PSCs, should be solicited through a competitive process whenever feasible. It names the secretary of the Finance and Administration Cabinet (FAC) as the chief purchasing officer of the commonwealth. It also establishes the Government Contract Review Committee (GCRC) within the Legislative Research Commission to oversee PSCs and certain other agreements.

Most state government agencies solicit and award PSCs through and with the approval of FAC's Office of Procurement Services. Some conduct their own solicitations and administer their own contracts. A few entities, such as the state retirement systems, are exempt from the Model Procurement Code and operate without oversight from the cabinet or GCRC. Appendix B lists the procurement status of agencies.

This study focused primarily on the Finance and Administration Cabinet, the Cabinet for Health and Family Services, the Department of Education, and the Transportation Cabinet.

This study focused primarily on the Finance and Administration Cabinet itself and three other executive branch agencies that had large numbers or dollar amounts of PSCs: the Cabinet for Health and Family Services, the Department of Education, and the Transportation Cabinet. Program Review staff also looked at some PSCs awarded by other agencies that fall under the purview of FAC.

Statewide Accounting System

All appropriated funds pass through eMARS, the statewide electronic accounting system. The system also contains electronic procurement documents. Some entities receive their state fund allocations from eMARS but use their own accounting systems.

All appropriated funds pass through eMARS, the statewide electronic accounting system. The eMARS system also contains electronic procurement documents like requests for proposals, proposal evaluations, contracts and amendments, payments, and vendor performance evaluations.

Although all appropriated funds pass through eMARS, some entities do not use eMARS for their procurements or accounting.[a] For example, state universities receive their state fund allocation through eMARS but use their own accounting systems to keep records of how the funds are used. They conduct their own procurement processes and keep no procurement documents in eMARS. They submit contracts to GCRC using paper forms.

Types Of Personal Service Contracts

Government contracts exist as a means for state agencies to obtain goods, services, and construction necessary for government functions. Personal service contracts are a means to obtain necessary professional services that state employees are not available to perform, while providing for legislative oversight. This section describes several ways that PSCs are used.

Memoranda Of Agreement And Professional Services

Memoranda of agreement (MOA) are contracts between a state agency and another public entity or nonprofit and are subject to GCRC oversight. Many involve professional services but are not considered PSCs because the other party is not a private entity.

The term *memorandum of agreement* (MOA) in common legal usage refers to a less formal agreement than a typical contract. However, under the Model Procurement Code, *MOA* has a special meaning. Most contracts between a state agency and another public

[a] KRS 45.305 stipulates a "unified and integrated system of accounts," but FAC officials did not interpret it to mean that all agencies had to use eMARS as their accounting system. Rather, FAC ensures that any other accounting system is compatible with eMARS and substantially equivalent to it.

entity or nonprofit to carry out a governmental function are MOAs and are subject to GCRC oversight.[b]

Many MOAs involve an agency receiving professional services from another agency or a nonprofit entity. However, these agreements are not considered personal service contracts because PSCs are defined as agreements between state agencies and private entities.

Personal Service Contracts In eMARS

Because eMARS treats different kinds of contract documents differently, PSCs comprise two types of electronic documents in the system.

The most common PSC document in eMARS is the PON2, a form of purchase order with a special Proof of Necessity section for GCRC. The other PSC document is a master agreement and is used for PSCs for architectural and engineering services.

The most common PSC document is designated as PON2, which is a variation of the purchase order type of document. A major difference between purchase orders and PON2 documents is that PON2s include a special section, the Proof of Necessity, that contains information required by GCRC to demonstrate that the PSC was justified.

The other type of PSC document is called a master agreement. Master agreements are used for many types of goods and services, but master agreements for personal services are used only for certain architectural, engineering, and engineering-related (A&E) contracts that are awarded by the Finance and Administration Cabinet.

The contract procurement type in eMARS indicates whether it is a regular PSC (type 17) or for architectural and engineering services (type 3).

Another key element of eMARS documents is the procurement type. The procurement types relevant to PSCs are 3 (A&E PSCs) and 17 (PSCs). Table 1.1 shows how the document types and procurement types overlap.

[b] A nonprofit must qualify under 26 USC sec. 501(c)(3) in order to be party to an MOA.

Table 1.1
Personal Service Contract Document Types And Related Procurement Types

Procurement Type	Master Agreement Documents	PON2 Documents
3—A&E PSC	A&E contracts awarded by FAC that do not completely specify the work (per KRS 45A.837)	• A&E contracts to a single vendor that completely specify the work • A&E contracts to a single vendor awarded by the Transportation Cabinet that do not completely specify the work (per KRS 45A.838)
17—PSC	N/A	Regular personal service contracts

Note: A&E = Architectural and Engineering; PSC = personal service contract; FAC = Finance and Administration Cabinet.
Source: Program Review staff analyses of eMARS data and compilation of information from agencies.

The scope of this study was regular PSCs—those using PON2 documents and procurement type 17.

The scope of this study was regular personal service contracts—those using PON2 documents and procurement type 17. Program Review staff examined some A&E PON2 documents but did not conduct a full review. Program Review staff did not examine A&E master agreement documents.

Standard Professional Services

Most PSCs are for specified services on an ongoing basis, not to continue beyond the current biennium. The estimated cost is placed on the contract in eMARS. PSC vendors may be paid through the payroll system. Others are independent contractors or companies with employees who are responsible for their own taxes.

Most PSCs are contracts for specified professional services to be performed on an ongoing basis for a period of time not to exceed 2 years and not to continue beyond the end of the current biennium. The amount to be spent on the contract is estimated and placed on the contract document in eMARS.

Many PSC vendors are individuals. Some are paid through the state payroll system. They may be paid by payroll if the Internal Revenue Service would consider them employees because of the nature of the work and the relationship with the agency; if they have to be enrolled in a benefit for legal reasons, such as retired teachers; or if they negotiated benefits as part of their contracts. According to the Personnel Cabinet, 186 individuals on PSCs were paid through the payroll system as of September 13, 2013, of whom 158 had federal income tax withheld, 175 had state income tax withheld, and 5 received state benefits. All of them had FICA (Federal Insurance Contributions Act) tax withheld.[1]

Other PSC vendors are independent contractors, professional firms, or businesses, some with their own employees. All these vendors are responsible for paying their own taxes and benefits.

Personal Service Price Contracts

A personal services price contract has no particular work assignment. It specifies a type of work and may include a rate that will be charged when work is assigned. There is no guarantee of work on a price contract.

As defined in KRS 45A.690(1)(g), PSCs include "all price contracts for personal services." The Model Code, however, does not define the term *price contract*. Based on staff's review of statutes and discussion with FAC officials, *price contract* is defined for this report as

> a contract for which there is no particular work assignment given at the time the contract is executed. The contract specifies the general type of work and may include hourly or other rates at which services will be charged when work is assigned.

The work described in a standard PSC has been called "work certain," whereas a price contract does not guarantee any work. Price contracts are often used in anticipation of a need for legal services, appraisals, real estate title work, audits, architectural, engineering, and other professional services that are episodic but likely to be needed. An example of a description from a price contract is:

> Receipt of this contract shall not be construed as authorization to begin work. A work order will be issued at the district level. The scope of work assignment and the hours it will take to complete may be negotiated. The contract holder may turn down the assignment with no adverse consequences. There is no guarantee of work for this contract.[2]

Price contracts may be made between an agency and a single vendor or multiple vendors. Sometimes, more than one agency will use a price contract.

Price contracts usually are between one vendor and one agency. In some cases, an agency will award a separate price contract to each of several vendors for the same type of work or will include multiple vendors on a single price contract. Although they are awarded by a single agency, some price contracts are used by more than one agency.

It was not possible to use the information in eMARS to estimate how many single-vendor personal service price contracts there were. Program Review staff were able to estimate the number of multivendor contracts by counting those that had special vendor codes.[c] From FY 2010 to FY 2013, there were 51 multivendor contracts using those vendor codes, but there might have been others using different vendor codes. Staff also estimated that there were at least 85 price contracts used by more than one agency; of these, at least 6 were also multivendor contracts.

[c] The vendor codes were the generic multivendor code "ZZMISCPROC" and the Impact Plus multivendor code "VC0000015889."

Assignment of work on a price contract may involve selection of a vendor and negotiation of the start and end dates, scope of work, and expected cost. The records of these activities are kept only in the agency's files.

The assignment of work may include negotiation of the start and end dates, scope of work, and expected cost. When there is more than one vendor with a price contract for the same type of work, the agency may use various methods to select a vendor for an assignment. Sometimes vendors are considered in rotation and sometimes by geographic location or other criteria. The documentation of the work assignment is kept in the agency's files and does not appear in the accounting system.

Revenue-Generating Contracts

Some PSCs generate revenue, and the vendors usually retain a portion. There are no payments recorded for these contracts.

Some PSCs are contracts for services that generate revenue. For example, a contract might be for legal services in a lawsuit to recover damages or for collection of past due amounts owed to the state. The vendor typically deducts a percentage or a flat fee as payment before remitting the revenue. Therefore, revenue-generating contracts usually do not show any payments in the accounting system.

Budget-Neutral Contracts

Vendors on a few PSCs provide services to an outside entity at that entity's expense. They have no impact on the state budget.

A few PSCs are set up in order to represent a contract between a state agency and a vendor to provide services to an outside entity at that entity's expense. The services might be for the benefit of the state agency or for the benefit of the outside entity. The contracts might or might not route funds through the accounting system, but they have no impact on the state budget; they neither generate state revenues nor expend state funds.

An example is a "contract with Hunden Strategic Partners to assist in the evaluation of applicants seeking incentives under the Kentucky Tourism Development Act."[3] The description of projected cost stated,

> All fees … are paid by the applicant. The Kentucky Tourism, Arts and Heritage Cabinet, or the Commonwealth of Kentucky, will not be responsible for any costs. The funds are charged to the developer and are transferred to the Kentucky Tourism, Arts and Heritage Cabinet to act as a pass through per the Kentucky Tourism Development Act.[4]

Another example is a group of contracts between the Kentucky Department of Education and vendors to conduct hearings for local school districts. For these contracts, no funds flow through the accounting system. The vendor bills the local district, and the district pays the vendor directly.

Reimbursement Contracts

There is at least one series of contracts for the purpose of reimbursing expenses.

There is at least one series of contracts for the purpose of reimbursing expenses. The Kentucky Nurse Aide Training program uses Medicaid funds to reimburse nursing homes that pay for training for their nurse aides. Nursing homes submit reimbursement requests that also bind them to the contract: "Submittal of a MAP-576 form shall be acceptance and confirmation of compliance with the terms of this contract."[5] The nursing homes provide no direct services in exchange for the reimbursement.

Statistics

It was not possible to develop a meaningful estimate of the amounts agencies expect to spend on PSCs. This report does show the amounts reported as spent, but there were some expenditures not reported on the contracts. The information covers agencies that were within the scope of this study.

The eMARS records were generally reliable in showing which contracts were designated as PSCs. However, it was not possible to develop meaningful information about the anticipated cost of PSCs—that is, the amounts the agencies expected to spend before completing a contract.

The eMARS records showed the amounts spent on PSCs, but those amounts did not fully reflect what was actually spent because some expenditures were made but not recorded on the contracts. The expenditures presented here, therefore, are somewhat lower than the full expenditures.

The information presented here is for agencies that were within the scope of this study. Other agencies account for a significant number of personal service contracts and dollars that are not included here.

Numbers Of Contracts And Individuals

Data from eMARS showed 2,463 PSCs in the study scope awarded in fiscal years 2010 to 2013, and 702 open at the end of FY 2013.

According to data extracted from eMARS by Program Review staff, 2,463 regular PSCs within this study's scope were awarded from FY 2010 to FY 2013. As of the end of FY 2013, 702 regular PSCs were open.[d] Table 1.2 shows the number of such contracts that were awarded by each cabinet.

[d] *Open* means the contract service end date was June 30, 2013, or later and the contract closed date was not set prior to that date.

Table 1.2
Regular Personal Service Contracts In eMARS By Cabinet
FY 2010 To FY 2013

Cabinet	Awarded FY 2010 To FY 2013	Open As Of June 30, 2013
Economic Development	47	11
Education and Workforce Development	427	105
Energy and Environment	90	21
Finance and Administration	67	24
General Government	259	75
Health and Family Services	477	130
Justice and Public Safety	343	91
Labor	40	5
Personnel	45	11
Postsecondary Education	55	12
Public Protection	193	75
Tourism, Arts and Heritage	82	14
Transportation	338	128
Total	2,463	702

Note: *Open* means the contract service end date was June 30, 2013, or later and the contract closed date was not set prior to that date. Only agencies in the study scope are included. Assignment of contracts to a cabinet was done using the eMARS department code and its current cabinet assignment. If a department was moved to a different cabinet during this period, its contracts would be counted in its current cabinet.
Source: Compilation of data extracted from eMARS by Program Review staff.

FAC issues reports on the number of full-time equivalent individuals working on contracts on an ongoing basis. The information on these reports is incomplete because FAC excluded certain professional services.

KRS 61.392(2) requires the Finance and Administration Cabinet to report quarterly on the number of full-time equivalent individuals working for at least 90 days on a contract. The report does not distinguish between professional and nonprofessional services. Program Review staff were able to extract the numbers associated with PSCs, but the information is incomplete because the cabinet instructed agencies to exclude certain professional services such as audit services and facility operations.[6] Table 1.3 summarizes the numbers by cabinet.

**Table 1.3
Full-Time Equivalent Individuals Working On Personal Service Contracts By Cabinet
As Reported By The Finance And Administration Cabinet
FY 2010 To FY 2013**

Cabinet	FY 2010	FY 2011	FY 2012	FY 2013
Economic Development	5	11	12	3
Education and Workforce Development	29	22	23	12
Energy and Environment	2	2	1	2
Finance and Administration	1	<1	<1	<1
General Government	16	11	12	5
Health and Family Services	698	520	672	596
Justice and Public Safety	30	14	32	46
Labor	0	0	0	0
Personnel	0	0	0	0
Postsecondary Education	1	0	0	0
Public Protection	19	21	19	20
Tourism, Arts, and Heritage	8	2	4	2
Transportation	3	22	1	2
Total	811	625	776	688

Note: Numbers are as of the end of each fiscal year, rounded to the nearest whole number. Only agencies in the study scope are included. Numbers are limited to those requested by the Finance and Administration Cabinet and do not include all individuals working under personal service contracts.
Source: Program Review staff compilation of data provided by the Finance and Administration Cabinet.

Amounts Shown As Spent On Personal Service Contracts

Staff compiled the amounts shown as spent on all PSCs in the scope of the study. Payments on the Passport Medicaid managed care contract were not properly recorded in some fiscal years; the correct totals far exceeded all other PSCs combined.

Program Review staff compiled the amounts recorded as spent on regular personal service contracts from FY 2010 to FY 2013. The amounts included the University Health Care (Passport) Medicaid managed care contract for Jefferson and surrounding counties. By itself, that contract exceeded the amount spent on all other PSCs each year; in all but 1 year it accounted for more than three-fourths of all PSC spending.

The table shows the corrected Passport expenditures, but there were other significant unrecorded expenditures, over $54 million per year in fiscal years 2012 and 2013.

Table 1.4 shows Passport and all other PSCs separately. The Passport figures for FY 2010 and FY 2011 were reported incorrectly in eMARS, but the correct amounts are shown in the table. All other contracts only show the amounts as they were recorded in eMARS, but other significant unrecorded payments were made. For example, Chapter 3 describes how $57 million and $54 million in unrecorded payments were made in fiscal years 2012 and 2013. Looking at regular PSCs other than Passport, the amount recorded as spent fell after FY 2010 but increased each year after FY 2011.

Table 1.4
Amounts Shown As Spent On Regular Personal Service Contracts
All Contracts And Passport
FY 2010 To FY 2013

	FY 2010	FY 2011	FY 2012	FY 2013
PSCs except Passport*	$210,271,000	$201,388,000	$203,765,000	$204,370,000
Passport**	788,847,000	802,372,000	794,639,000	414,129,000
Total	$999,118,000	$1,003,760,000	$998,405,000	$618,499,000

Note: Amounts are rounded to the nearest $1,000. Only agencies in the study scope are included.
*These amounts are the amounts recorded in eMARS as spent on the contracts. There were significant amounts, up to $57 million per fiscal year, spent on contracts but not attributed to them.
**These amounts include additional spending that was not recorded in eMARS. During FY 2010, $66 million was recorded in eMARS for Passport. During FY 2011, $735 million was recorded. The remaining years were correctly recorded in eMARS. The Passport contract in FY 2013 was for only one-half year.
Sources: Compilation of data extracted from eMARS by Program Review staff; additional Passport amounts provided by the Department for Medicaid Services.

Among cabinets, the Cabinet for Health and Family Services expended the most on PSCs each year even without the Passport contract.

Table 1.5 shows the amounts recorded as spent by each cabinet on regular PSCs from FY 2010 to FY 2013. In most cases, the cabinet using the contract was also the cabinet awarding the contract, so the table is roughly comparable to Table 1.2. Again, the Passport contract is shown separately. Even without the Passport contract, the Cabinet for Health and Family Services expended the most on PSCs each year. Most of the Education and Workforce Cabinet's expenditures were by the Department of Education. As with Table 1.4, up to $57 million in PSC expenditures per fiscal year were not recorded on contracts.

Table 1.5
Amounts Shown As Spent On Regular Personal Service Contracts
By Cabinet Using The Services
FY 2010 To FY 2013

Cabinet	FY 2010	FY 2011	FY 2012	FY 2013
Economic Development	$10,925,000	$12,303,000	$11,815,000	$1,124,000
Education and Workforce Development	18,730,000	25,276,000	24,941,000	20,035,000
Energy and Environment	1,343,000	1,391,000	1,200,000	2,170,000
Finance and Administration	770,000	329,000	959,000	539,000
General Government	3,821,000	3,126,000	3,009,000	3,377,000
Health and Family Services Less Passport	123,262,000	103,352,000	110,310,000	97,900,000
Passport*	788,847,000	802,372,000	794,639,000	414,129,000
Justice and Public Safety	5,541,000	6,125,000	5,576,000	31,632,000
Labor	352,000	395,000	316,000	390,000
Personnel	21,961,000	22,841,000	23,014,000	21,477,000
Postsecondary Education	5,505,000	5,138,000	4,850,000	6,728,000
Public Protection	7,070,000	7,461,000	7,234,000	7,523,000
Tourism, Arts, and Heritage	1,774,000	1,557,000	1,299,000	1,326,000
Transportation	9,218,000	12,094,000	9,240,000	10,149,000
Total With Passport	$999,118,000	$1,003,760,000	$998,405,000	$618,499,000
Total Less Passport	$210,271,000	$201,388,000	$203,765,000	$204,370,000

Note: Amounts are rounded to the nearest $1,000. Except for Passport, these amounts are the amounts recorded in eMARS as spent on the contracts. There were significant amounts, up to $57 million per fiscal year, spent on contracts but not attributed to them; these were primarily in the Cabinet for Health and Family Services. Only agencies in the study scope are included.
*These amounts include additional spending that was not recorded in eMARS. During FY 2010, $66 million was recorded in eMARS for Passport. During FY 2011, $735 million was recorded. The remaining years were correctly recorded in eMARS. The Passport contract in FY 2013 was for only half a year.
Sources: Compilation of data extracted from eMARS by Program Review staff; additional Passport amounts provided by the Department for Medicaid Services.

Statutory And Regulatory Framework

The rules agencies follow when contracting for services are in statutes, regulations, and official FAC policies. The cabinet also provides nonbinding guidance.

The rules agencies follow when contracting for services are in statutes, regulations, and official FAC policies. The cabinet also provides nonbinding guidance in the form of training and procedure manuals. Appendix C summarizes the statutes and regulations that apply to personal service contracts.

KRS Chapter 45A directs that it be construed to promote its underlying purposes, including fair and equitable treatment, economy through competition, and quality and integrity in the procurement system. Sections 45A.690 to 45A.725 cover PSCs and GCRC.

The primary statute that governs state contracting is KRS Chapter 45A, the Model Procurement Code. In the code, the General Assembly directed that it "be liberally construed and applied to promote its underlying purposes and policies," among which were

> (e) To insure the fair and equitable treatment of all persons who deal with the procurement system of the Commonwealth;
> (f) To provide increased economy in state procurement activities by fostering effective competition; and
> (g) To provide safeguards for the maintenance of a procurement system of quality and integrity (KRS 45A.010(2)).

The sections that apply to personal service contracting and the Government Contract Review Committee are KRS 45A.690 to 45A.725 and 45A.800 to 45A.838. The latter group of sections defines the procedures for A&E personal service contracts.

Procurement Life Cycle

Agencies vary in how they implement the steps of the procurement life cycle, but this section describes the process in general terms. Appendix D contains a detailed outline of the process from the decision to contract through the review of the award by GCRC.

Decision To Contract

Agency program staff first identify a need for professional services, then work with budget staff to determine feasibility.

The need to contract for professional services is determined by program staff at various agency levels. Steps toward justifying a contract vary among agencies; however, program staff and agency budget staff together determine whether it is necessary and feasible to obtain services through a PSC. Budget staff consider the likely cost of all the contracts within the agency as well as other budget requirements.

Justifying The Procurement Decision

Procurements over $1,000 and less than $10,000 require approval of agency heads. Those $10,000 or more, and those that require a competitive exemption, require FAC approval.

In January 2008, Executive Order 2008-011 put into effect methods to reduce costs. Under the order, FAC implemented a review process for all PSCs over $1,000; agencies may initiate PSCs up to $1,000 without this review.

For PSCs over $1,000, agencies under FAC's purview must fill out an EO1 form in eMARS that describes and justifies the proposed procurement. The EO1 serves as a requisition: the preliminary request to obtain services through a contract as well as for a competitive exemption if applicable. For contracts of $10,000 or more or those requiring a competitive exemption, it is a request for approval from the Finance and Administration Cabinet. EO1s under $10,000 require approval of the agency heads.

Determining The Method Of Procurement

FAC expects agencies to try to obtain services from public entities or nonprofits through memoranda of agreement before turning to the private sector.

The next decision is whether the service can be provided by a state agency, university, or nonprofit. Although there is no explicit guidance in the statutes, FAC expects agencies to attempt to obtain services from public entities before deciding to contract with the private sector. According to FAC officials, one reason is to keep state funds within other publicly funded or supported entities.

Most PSCs are awarded through requests for proposals (RFPs). Some are awarded under competitive exemptions called sole source and not feasible to bid, which require prior approval from FAC.

KRS 45A.695 describes the process by which requests for proposals (RFPs) are used to solicit proposals for PSCs. Most PSCs are awarded using the RFP method.

However, KRS 45A.690(2) stipulates that the PSC requirements do not dispense with other requirements necessary to make the contract valid. As a result, FAC recognizes two other methods of procuring professional services: sole source and not feasible to bid. Both methods operate within the general rules for noncompetitive negotiation defined in KRS 45A.095.

“Sole source is a situation in which there is only one (1) known capable supplier of a commodity or service, occasioned by the unique nature of the requirement, the supplier, or market conditions” (KRS 45A.095(1)). Not feasible to bid is not explicitly defined in statute, but FAC considers case-by-case requests for this exemption to the RFP process if the nature of the service or situation makes it infeasible to use a solicitation.

When an agency wants to award a PSC without competition, it must justify its decision on the EO1 form, and the decision must be approved by FAC, even for PSCs less than $10,000.

A final method that is seldom used is an emergency procurement. When an emergency has been determined to exist, FAC may obtain services directly under KRS 45A.095(4) and 45A.695(8).

Developing The Request For Proposals

For solicitations, agency program staff, policy analysts, legal staff, and others draft an RFP. It must state how the proposals will be scored and must include standard terms and conditions.

Assuming that a solicitation were chosen, the agency would draft an RFP. The RFP must describe the services required, explain what each proposal should contain, and explain how the proposals will be scored (KRS 45A.695(3) and 45A.085). Scoring is done for both technical and cost factors; the number of points available for each factor depends on the agency's assessment of its importance.

An RFP must also contain language meeting standard legal terms and conditions. FAC has terms and conditions boilerplates that agencies may download from the eProcurement website. The terms and conditions are attached to the RFP document in eMARS once they have been modified to fit any specific needs.

Depending on the size of the agency, an internal policy analyst is usually responsible for the writing of the RFP along with program staff. Legal staff may assist with the scope of work and other terms and conditions.

Each agency determines who reviews and approves the RFP before it is submitted to FAC for final approval.

Once the RFP has been drafted, it is reviewed by agency officials according to the agency's internal procedures. At the agencies Program Review staff observed, there are internal tracking systems to ensure that everyone who needs to review and approve the RFP does so. After all internal approvals are obtained, the final draft RFP is submitted in eMARS for FAC approval.

FAC staff from the Office of Procurement Services review the RFP for compliance with various requirements. If it fails to comply, the RFP is rejected, and the agency may revise it. If it does comply fully, FAC staff approve it in eMARS, and it becomes a final RFP.

Soliciting And Evaluating Proposals

Final RFPs are posted on the Kentucky Vendor Self Service website. The issuing agency may list vendors to receive automatic notification. Vendors also receive automatic notification by registering interest in certain types of work.

When an RFP is approved as final in eMARS, it automatically is posted on the Kentucky Vendor Self Service (VSS) website. Upon posting, it becomes available for any visiting vendor to see. In addition, two forms of active notification occur.

With the RFP, the agency may provide a list of vendors that are known to be able to provide the service being sought. When an RFP is posted on VSS, the system notifies those vendors by email.

VSS also attempts to connect vendors with RFPs of interest based on a classification of goods and services. Kentucky uses the Commodity/Services Code structure of NIGP: The Institute for

Public Procurement. When the RFP is entered in eMARS, the agency can specify one or more commodity codes to describe the kinds of service being sought. When vendors register on VSS, they list the commodity codes that represent their services. When an RFP is posted on VSS, the system notifies all the vendors who expressed interest in any commodity code that was listed on the RFP.

Timely proposals are given scores according to the criteria in the RFP. One or more people may score each proposal.

Proposals received prior to the closing date and time are reviewed by the agency and given a score according to the evaluation criteria listed in the RFP. Sometimes a single person scores the proposals, and sometimes two or more people score each proposal.

Awarding The Contract

Agencies start negotiating with the vendor having the highest score. If an agreement is reached, a contract is entered in eMARS, printed, signed, and submitted for FAC approval. If no agreement can be reached with any vendor, the agency may cancel or restart the procurement.

Negotiations are held with the vendor receiving the highest score, and if a satisfactory agreement is reached, the contract is awarded to that vendor. If no agreement can be reached, the agency may negotiate with the next highest scoring vendor. When no agreement can be reached, the agency may cancel the procurement or issue another RFP.

There are eMARS documents for entering the proposals and the results of the evaluations. When the contract is awarded, the agency fills in a PON2 contract document in eMARS, prints the document, obtains the necessary signatures, and submits the electronic document for FAC approval. The contract is not final until it has obtained any needed signatures from FAC officials and has received all necessary approvals in eMARS.

Government Contract Review Committee

GCRC oversees PSCs, MOAs, and tax incentive agreements at its monthly meetings. Work on a PSC may not begin until it is filed with the committee with a Proof of Necessity form. PSCs in eMARS are automatically filed nightly after they receive final approval from FAC.

The Government Contract Review Committee oversees personal service contracts, memoranda of agreement, and tax incentive agreements. The committee holds monthly meetings to review new contracts and amendments and to determine whether or not to approve them. To expedite the process, the committee has established several policies indicating requirements that it expects PSCs to meet. Appendix E contains a list of GCRC policies.

Work on a PSC, except in emergency circumstances, may not begin until it is filed with the committee (KRS 45A.695(1)). Filing consists of providing a copy of the PSC and a completed Proof of Necessity form. The form was established by the committee and included as part of the PON2 document in eMARS. FAC verifies that this information is completed before approving the contract. Some elements of the Proof of Necessity form are

- work to be performed,
- justification for contracting for the service,
- planned performance monitoring,
- contract cost,
- basis for payment (hourly, daily, other),
- sources of funds, and
- justification for the selected vendor.

Each night, a software program run by the Legislative Research Commission's information technology office reads contract information from the eMARS data warehouse and places it in the GCRC database. The program retrieves information about all approved PON2 documents. This includes PSCs, MOAs and grants, and tax incentive agreements. When a new or amended PSC receives final approval in eMARS, it should appear in the committee's database the next day and is considered filed with the committee.

If GCRC disapproves a PSC, any subsequent work must not be paid unless the executive branch overrides the disapproval. From FY 2010 to FY 2013, GCRC disapproved six PSCs within the scope of this study; three were overridden, one was completed and closed prior to disapproval, and two were canceled.

Committee Disapprovals. Although work may proceed upon filing, the committee may later decide to disapprove a PSC. No payment may be made for work undertaken after GCRC disapproval, unless the appropriate executive branch official overrides the disapproval (KRS 45A.695(7)). Payment is allowed for services rendered prior to disapproval (KRS 45A.705(6)(b)).

From FY 2010 to FY 2013, GCRC voted to disapprove six PSCs from agencies within the scope of this study. Of those, three were overridden and one was completed and closed prior to disapproval. The remaining two were canceled by the agency after disapproval.

The statute grants certain PSC exceptions and permits GCRC to exempt contracts from review. Smaller PSCs are not subject to routine review if filed timely.

Excepted And Exempted Contracts. The GCRC statute specifically excepts certain types of professional service contracts from the definition of a PSC, and the statute permits the committee to exempt other contracts that it does not wish to review (KRS 45A.690(1)(g)). The committee has granted some exemptions of this type. For excepted and exempted contracts, FAC has instructed agencies to use PO2 contract documents in eMARS so that they will not be filed with the committee; the nightly software program does not extract these PO2 contracts.

PSCs with estimated expenditure of no more than $10,000 in a fiscal year, and personal service price contracts with estimated expenditure of no more than $50,000 in a fiscal year, are excepted from routine committee review as long as they are reported to the committee within 30 days of their effective dates (KRS 45A.700(1) and 45A.700(2)). Because the statute requires them to be filed with the committee, they are created in eMARS on PON2 documents. As a result, they are filed with the committee the night after they have final approval in eMARS.

GCRC has granted exemptions from routine review and also exemptions from specific committee policies.

GCRC sometimes grants other levels of exemption from routine review for specific contracts or groups of contracts. The committee has granted some exemptions that require reporting with the discretion to review; it has granted other exemptions from specific committee policies such as compensation rate limits.

Amending Contracts

PSC amendments range from technical changes to adjustments of amounts, time frames, and scope of work. Major changes in the scope of work require a new contract. GCRC usually does not review amendments for technical changes.

There are numerous reasons that PSCs are amended. Some are modifications for technical changes within eMARS such as those that affect the accounting of funds but have no effect on the terms of the contract. Other amendments affect the terms of the contract such as an increase or decrease in the amount of the contract, adjustments to the time frame, or changes in the scope of work. Major changes to the scope of work may not be made by amendment but require a new contract (FAP 111-11-00).

Amendments that have no effect on contract terms generally do not require written acknowledgment and signatures of the parties. These amendments typically are not reviewed by GCRC.

According to FAC policy FAP 111-43-00(5), changes to the terms of the contract are processed in the same manner as the original contract and so require the signatures of all parties and FAC approval. These amendments typically are reviewed by GCRC.

Invoices

Payments on PSCs are made in response to invoices. After August 2010, invoices were required to be on a GCRC form and include specific information.

After the contract is awarded and the vendor begins work, the vendor submits invoices every 90 days or according to the terms of the contract (KRS 45A.695(10)(b)). The contract terms might specify a different time period or submission after certain milestones. An invoice indicates the services provided, the dates that the services were provided, and the cost of the services; it also includes any expenses to be reimbursed.

Until 2010, there were no standard requirements for what should appear on a PSC invoice. HB 387, enacted in the 2010 Regular Session, added statutory requirements for PSC invoices and directed GCRC to establish a form on which all invoices should be submitted. The GCRC invoice form was adopted on August 10, 2010. Appendix F describes the invoice requirements and includes the invoice form.

Payments

Payment of invoices is usually made through the eMARS Payment Request for Commodity (PRC) document, which should deduct the payment from the contract balance. Payments should always indicate the dates of service, which should fall within the contract term.

After the agency receives an invoice, it must create a payment in eMARS. Usually, an agency uses a Payment Request for Commodity (PRC) document for these payments. A PRC contains information on when the services were rendered, how much should be paid to the vendor, and what accounts the payment should come from. All eMARS payments made for services rendered under a PSC should include a reference to the PON2 contract document so that the payment amount is deducted from the contract balance.

Payments should indicate the range of dates during which the invoiced services were provided. The range of dates also should be within the term of the contract. Agencies should not request or pay for services before or after the term of the contract.

Agencies designate their own personnel to approve payments. After approval, funds are disbursed when the indicated payment date arrives.

The Finance and Administration Cabinet has no role in approving normal payments made by other agencies. Each agency designates one person or more to approve its own contract payments in eMARS. Once a payment is approved in eMARS, the system will process the PRC and, when the indicated payment date arrives, produce either a check or an electronic funds transfer to the vendor.

Agencies submit invoice information to the payroll system for PSC vendors paid in that way. The payroll system automatically sends a PRC document to eMARS to adjust the contract balance.

For PSC vendors who are paid through the state payroll system, the cost of services is submitted to that system. Agency staff are responsible for setting up vendors in the payroll system and entering the cost of services from invoices for each pay period. The payroll system pays the vendor after the appropriate deductions for taxes and benefits and then automatically sends a PRC to eMARS that causes the contract balance to be reduced by the gross payment amount. Any expense reimbursements for these vendors are paid from invoices through a PRC and not through the normal employee expense voucher process.

Monitoring Payments Against Budget

The contract amount is a cap on payments. If an agency needs to spend more, it must amend the contract and add funds.

The contract amount in eMARS is a cap on contract expenditures. For most contracts, it represents the maximum that the agency expects to spend on the contract. An agency might spend much less than that amount, or it might spend more. When an agency needs to spend more than the contract amount and has funds available to do so, it requests a contract amendment to increase the amount. These amendments must be approved by FAC, and they are filed with GCRC.

Most agencies use a flexible fund allocation process to keep all contracts funded within the overall agency budget.

Only the Transportation Cabinet formally sets aside, or encumbers, funds in eMARS to cover expenses for some of its contracts. At other agencies, the total amount of all contracts might exceed their available funds, but agencies expect many contracts to remain below their maximums in order to stay within budget. These agencies use various tracking systems outside eMARS to ensure there are enough funds to cover all their contracts over the course of the fiscal year.

Monitoring Vendor Performance

Vendor performance monitoring during a contract is encouraged but not required. The degree of monitoring varies.

There is no general requirement that performance be monitored in a formal manner. The only statutory requirement for monitoring of vendor performance is for privatization contracts (KRS 45A.551(3)(f)). The GCRC Proof of Necessity form requires that the agency explain how vendor performance will be supervised and monitored, but this only implies that monitoring is encouraged. The Performance Evaluation (PE) document in eMARS is capable of recording performance monitoring information on a periodic basis, but it appears not to be used for that purpose.

Some agencies, notably the Department for Medicaid Services, conduct routine periodic formal monitoring of PSCs, but some do not. Agencies that formally monitor vendor performance create their own internal documents to record the information.

Evaluating Vendor Performance

After a contract ends, vendor performance is rarely evaluated using the eMARS evaluation feature. An unfavorable evaluation could influence future awards or could result in vendor suspension. There were no suspended vendors as of September 2013.

When used at the end of a contract, the eMARS PE document accepts data for overall vendor performance and indicates whether the agency recommends the vendor for future contracts. However, the PE document is almost never used for PSCs. From FY 2010 to FY 2013, there were four PE forms in eMARS for regular personal service contracts. Of the four forms, three recommended the vendor for future contracts.

An unfavorable PE document does not automatically disqualify a vendor from future contracts. Rather, the agency must ask FAC, which makes the final decision, to disqualify the vendor. As of September 2013, FAC officials reported there were no suspended vendors.

Closing Out Contracts

Work on a contract should cease on or before its end date, and subsequent payments may be made for work during the contract term but not yet invoiced. Contracts may be closed out before their end dates.

Personal service contracts include service end dates. A contract officially expires on its end date, and work should cease at that time; subsequent payments may only be made for services provided during the contract term but not yet invoiced. Sometimes a contract may be closed out before its expiration date. In most cases, this is accomplished by an amendment that removes funds from the contract or by payments that use all the available funds. Another way to close a contract is to mark a payment as the final payment.

Renewing Contracts

Renewal options may be exercised if they appeared in the RFP. FAC recommends a total limit of 6 years, including the original contract term.

According to FAC officials, a contract awarded from an RFP must comply with the renewal provisions in the RFP.[7] If the RFP has no renewal clause, the contract may not be renewed. FAC recommends no more than two 2-year optional renewal periods so that a contract may proceed for at most 6 years before it should be reopened for solicitation. However, there does not appear to be a statutory or regulatory limit on the number of renewal periods that may be specified in an RFP.

If all renewal options have been used, or no renewal options were given, a new contract for the same services may be requested through an exemption.

After all of a contract's renewal options have been exercised, or if there were no renewal options, an agency may request another contract that effectively continues the current contract. If approved by FAC, the new contract would be awarded under a sole source or not feasible to bid exemption. Such contracts may extend no more than 2 years, but the agency may request a further contract as needed.

Whether by renewal or exemption, the contract receives a new contract number in eMARS for the new term.

Major Conclusions

This report has 10 major conclusions.

This report has 10 major conclusions.

- Most contracts appear to have been correctly designated as personal service contracts or other kinds of contracts, but there have been some arguable exceptions that could be significant. The portion of noncompetitive PSCs appears to have increased since 2001. Statutes do not provide a means of resolving disagreements about the classification of contracts.
- Most personal service contracts appear to have been awarded following designated procedures. There have been some

deficiencies in the process of evaluating vendor proposals and documenting the proposals and evaluations, both in the statewide accounting system and in the hard-copy files.

- Agencies often fail to provide thorough explanations of scope of work, contract monitoring plans, and reasons for contracting on the Proof of Necessity form, which would demonstrate that agencies had properly considered the costs and benefits of contracting and had clear plans for the contracts.
- Some personal service contracts have not been entered in the statewide accounting system in a timely manner, so they also were not filed timely with the Government Contract Review Committee.
- Using data from the statewide accounting system, it is not possible to predict the amounts that will be spent on personal service contracts. The amounts shown as actually spent are also incomplete, but it appears the accounting has improved over the past few years.
- Most payments on personal service contracts appear to have been made properly, but there were some deficiencies in updating balances on the correct contract and frequent failures to record the invoiced service dates. There have been hundreds of millions of dollars spent but not shown on contract balances. Some contracts have exceeded their spending limits without following the proper amendment process.
- The statutory invoice form has been used inconsistently and has not always included required information. Agencies generally did not perceive the benefits of requiring the form.
- Personal service price contracts displayed deficiencies in providing fair notice when there is ongoing recruitment of vendors, identifying the vendors on the contract, demonstrating how work assignments were made, tracking work assignments, and validating that the vendors paid were the vendors on the contract.
- Most of the agencies reviewed did not thoroughly monitor or evaluate vendor performance during or after the contract term. The scarcity of evaluation documents in the statewide accounting system strongly suggests that monitoring and evaluation are rarely performed in a formal manner and that past performance is seldom considered in future solicitations.
- Under current procedures, the statewide accounting system cannot automatically connect contracts with their renewals or other continuation contracts. This is a serious impediment to obtaining a clear contract history.

Chapter 2

Contract Decision, Solicitation, And Award

Deciding The Type Of Contract

Determining Whether To Use A Memorandum Of Agreement

Agencies should consider an MOA with another state agency, university, or nonprofit before soliciting a PSC.

Officials of the Finance and Administration Cabinet stated that whenever an agency considers contracting for services, it should first consider whether the services could be obtained through another state agency, university, or nonprofit organization. If so, the agency should attempt to negotiate an MOA and not solicit a PSC. The explanation was that it was preferable to keep state dollars within state agencies or nonprofits. An agency could request permission to solicit from the private sector if it were unable to negotiate a satisfactory MOA.

On some occasions, a public entity may respond to a request for proposals. If the public entity were to win, according to FAC, the agency should award the contract as a PSC. In all other situations, contracts with public entities are MOAs or MOA exceptions.

Given these reasons for preferring an MOA with a public institution, Program Review staff questioned whether contracts with out-of-state agencies and universities should be considered MOAs. For example, there is an MOA with the New Hampshire Department of Environmental Services, and one with a program at the State University of New York at Albany. These were awarded without a competitive procurement.

FAC has interpreted the wording of the MOA definition in statute to apply to out-of-state entities. However, another interpretation seems reasonable based on the wording of KRS 45A.690(1)(d),

> "Memorandum of agreement" means any [agreement, contract,] or similar device … between a state agency and any other governmental body or political subdivision of the Commonwealth or entity qualified as nonprofit….

FAC applies the definition of MOA to out-of-state entities. An alternate definition suggests that failure to procure for services through a Kentucky public entity should result in a PSC.

The phrase "of the Commonwealth" in this sentence appears to limit the definition to Kentucky governmental bodies or political subdivisions. As such, a procurement for services that could not be supplied by a Kentucky public entity would have to be conducted through the PSC process.

The inclusion of nonprofits complicates the question. Some out-of-state public entities, especially universities, are §501(c)(3) nonprofits, and agreements with them would be MOAs under the current definition.

The use of noncompetitive MOAs for out-of-state agreements might result in higher costs than would be achieved through competitive procurements as PSCs.

The use of noncompetitive MOAs for out-of-state agreements might result in higher costs than would be achieved through competitive procurements as PSCs. Further, MOAs and PSCs have different thresholds for review by GCRC. PSCs face a stricter threshold of $10,000 rather than the MOA threshold of $50,000. It is possible that an agency could use the difference to avoid GCRC review.

One agency expressed concern that it would not be able to contract with certain out-of-state public entities if a competitive procurement were required. However, if the circumstances properly justified a sole source or not feasible to bid exemption, the agency should be able to award a PSC instead of an MOA.

Recommendation 2.1

Recommendation 2.1

The General Assembly may wish to consider clarifying whether contracts with governmental bodies and political subdivisions of other states or with out-of-state nonprofits should be memoranda of agreement or personal service contracts.

Determining Whether The Service Is Professional

Currently, there is no definition in the Model Procurement Code for the terms *professional*, *professional skill*, or *professional judgment*. Determination is made on a case-by-case basis.

The Model Procurement Code does not define the terms *professional*, *professional skill*, or *professional judgment*. FAC officials stated that there were no specific criteria for determining whether a service required professional skill or professional judgment such that it should be procured through a PSC. Rather, the determination is made on a case-by-case basis. This is similar to the situation reported in the 2001 LRC report on personal service contracting, which recommended that the cabinet develop criteria and a list of professional services.[8]

A possible meaning of professional could be taken from the federal definition at 29 USC 152:

> (12) The term "professional employee" means—
>
> (a) any employee engaged in work
>
> (i) predominantly intellectual and varied in character as opposed to routine mental, manual, mechanical, or physical work;

(ii) involving the consistent exercise of discretion and judgment in its performance;
(iii) of such a character that the output produced or the result accomplished cannot be standardized in relation to a given period of time;
(iv) requiring knowledge of an advanced type in a field of science or learning customarily acquired by a prolonged course of specialized intellectual instruction and study in an institution of higher learning or a hospital, as distinguished from a general academic education or from an apprenticeship or from training in the performance of routine mental, manual, or physical processes; or

anyone who has completed the requisite coursework and is in supervised training to become a professional employee.

Officials at the Cabinet for Health and Family Services used a rule of thumb that if a vendor made decisions on behalf of the agency or advised the agency, that constituted a professional service. This was contrasted with carrying out a task according to specific guidelines without exercising judgment or discretion.

Recommendation 2.2

Recommendation 2.2

The General Assembly may wish to consider defining *professional skill* and *professional judgment* as they apply to personal service contracts.

Other Decision Factors

Multiyear contracts cannot be extended beyond the biennium. Nearly all contracts are limited to 2 years.

Multiyear Contracts. KRS 45A.145 states that with certain limited exceptions "multiyear contracts for supplies and services may be entered into for periods not extending beyond the end of the biennium in which the contract was made" and that funding may not be guaranteed beyond the first year. This effectively limits the term of almost all contracts to 2 years.[a]

GCRC will not consider contracts that do not conclude within the biennium in which they were made.

GCRC has a multiyear contract policy that may be more stringent than the statute. The committee will not consider for approval personal service contracts that do not conclude within the biennium in which they were made. On a few occasions, agencies have been granted exemptions to the GCRC policy.

[a] The statute permits the General Assembly to exempt multiyear contracts through appropriations bills. KRS 45A.023 creates an additional exception for three specific agencies if the contracts are funded entirely by federal grants.

Officials of the Finance and Administration Cabinet asserted that it is often beneficial to the Commonwealth to offer binding contract terms longer than 2 years. Vendors might offer better terms in exchange for a longer commitment.

Several contracts, not just PSCs, extend beyond the biennium. These contracts acknowledge the biennium and that the contract may be canceled if funding is not available.

In fact, there are several contracts, not just PSCs, for terms of 3 years or more. Some of these contracts contain a clause that specifically acknowledges the biennium and states that the contract will be canceled if funding is not available. Others refer to 200 KAR 5:312, which contains a similar provision. In both situations, the vendor would be obligated to abide by the terms of the agreement as long as funding remained available. In order to be valid, a PSC with such terms would require an exemption from the GCRC policy.

Contracts may include optional renewal provisions if the parties agree and funding is available.

Another method consistent with the statute is optional renewal. Many solicitations and resulting contracts include optional renewal provisions that permit the contract to be extended for a period of time after the initial biennium if the parties agree and if funding is available. However, the optional nature of the renewals makes it less appealing for a vendor to commit to a lower price or other beneficial terms.

Medicaid managed care contracts were awarded as PSCs from at least FY 1998 through FY 2013. Current managed care contracts awarded in FY 2012 are styled as master agreements so that the state could achieve better terms with three-year contracts.

Decisions To Procure As Other Contract Types. The University Health Care (Passport) Medicaid managed care contracts from at least FY 1998 to FY 2013 were awarded as personal service contracts. The current Medicaid managed care contracts were awarded in FY 2012 as master agreements for standard services. A letter from FAC to GCRC asserted that it was important to style the new agreements as master agreements because the state could achieve better terms with three-year contracts, and the committee had a policy limiting PSCs to 2 years.[9]

According to FAC, managed care contracts are administrative, not professional, services and need not have been considered PSCs.

Another reason offered by FAC officials was that managed care contracts are by nature administrative, not professional, services.[10] Using that reasoning, Passport need not have been considered a PSC.

The statute does not appear to make the PSC definition optional.

However, there are challenges to both justifications. For the former, the statute does not appear to make the PSC definition optional. Under this interpretation, if a contract were to fall within the PSC definition, it must be executed as a PSC, regardless of other considerations such as the length of the contract.

For the latter, the wording of the PSC definition in statute could be read to create a presumption that Medicaid managed care contracts should be considered PSCs. One of the exceptions to the PSC definition states that:

> Agreements with … providers of direct Medicaid health care to individuals **except for any health maintenance organization or other entity primarily responsible for administration of any program or system of Medicaid managed health care services** established by law or by agreement with the Cabinet for Health and Family Services … are not PSCs [emphasis added] (KRS 45A.690(1)(g)2).

One interpretation is that the statute explicitly requires Medicaid managed care contracts to be PSCs.

One interpretation is that Medicaid managed care agreements are PSCs because their explicit mention as an exception to an exception implies their inclusion. This is historically consistent with the designation of the Passport contract as a PSC because the bolded language was added in 1998.

Another interpretation is that Medicaid managed care agreements are not covered by the exception and so must be considered separately to see whether they fit the definition of a PSC. This seems implausible.

Another interpretation is that Medicaid managed care agreements are not covered by the exception and so must be considered separately to see whether they fit the definition of a PSC; if administrative services of this nature were not considered professional, then managed care contracts would not fit the definition. This seems implausible because of the legislative history and because it seems unlikely that the General Assembly would mention managed care organization contracts explicitly if it did not expect them to be PSCs.

Another example of a questionable determination is also from Medicaid. This contract raises the question of what mix of professional and nonprofessional services would cause a contract to be considered a PSC.

In FY 2009, Medicaid awarded a program integrity contract as a PSC. In FY 2011, a similar contract was awarded as a master agreement for computer equipment or software. Arguably, many of the staff and services included were professional in nature.

In FY 2009, Medicaid awarded a program integrity contract to Health Care Excel as a PSC. In FY 2011, a similar contract was awarded to Ingenix as a master agreement for computer equipment or software. The Cabinet for Health and Family Services explained that the contract was related more to information technology than professional services. However, the request for proposals, which was incorporated into the contract, listed many services, most of which were definitely or arguably professional in nature, including:

- conducting site and desk audits of provider records;
- reviewing the state Medicaid plan, regulations, and policy;
- developing and establishing a provider prepayment review plan;
- recouping overpayments and scheduling and assisting with dispute resolution meetings;

- assessing the agency's protocols and procedures; and
- educating, training, and mentoring Medicaid staff.

In addition, the vendor was required to provide full-time personnel that included a registered nurse and an auditor and to make available a physician, dentist, and pharmacist for consultation eight hours per month. These are professional staff.

Impact Plus and the Kentucky Nurse Aide Training Program might not be PSCs because the statute excludes agreements with direct Medicaid providers.

Decisions To Procure As A Personal Service Contract. Impact Plus is a Medicaid-funded program that has used personal service contracts between the Department for Behavioral Health, Developmental and Intellectual Disabilities and direct care providers. There is an argument that Impact Plus contracts should not be PSCs under KRS 45A.690(1)(g)2. The statutory exception states that agreements with "providers of direct Medicaid health care to individuals" are not considered PSCs. Impact Plus providers, though technically subcontractors of the department, clearly provide direct health care and receive payment from funds transferred from Medicaid.

The Kentucky Nurse Aide Training program presents a similar issue. This is a program that encourages nursing homes to train nurse aides by offering reimbursement for the training costs. The Department for Medicaid Services awarded the contracts and provides funds for this program, but the nursing homes are not being paid for providing direct Medicaid services. Still, it is arguable that they are being reimbursed by Medicaid because they are Medicaid providers, and so they might be excluded under the exception above.

A stricter interpretation says that the exception should not apply to either contract because a provider should file claims with Medicaid and be reimbursed directly by Medicaid, not through another agency. Both interpretations should be seriously considered.

The proportion of noncompetitive PSCs appears to have increased since 2001.

Sole Source And Not Feasible To Bid. Despite the statutory mandate to procure services though competitive means whenever possible, a significant number of PSCs were obtained through a competitive exemption. Of the 2,378 contracts awarded from FY 2010 to FY 2013, 605 were listed in eMARS as sole source or not feasible to bid. This represents over one-fourth of all contract awards in the period. These contracts probably were not renewals of competitive contracts; the renewals specifically reviewed by Program Review staff did not have competitive exemptions. Some of them probably were continuations of contracts that originally had competitive exemptions or of competitive contracts that had run out of renewal options.

The 2001 LRC report on personal service contracting found 17 percent of the sampled contracts had a competitive exemption.[11] It recommended greater scrutiny of requests for those exemptions. In 2013, Finance and Administration Cabinet officials stated that all requests for competitive exemptions were reviewed by the FAC secretary and the executive director of the Office of Procurement Services.[12] However, it seems that the portion of noncompetitive PSCs has increased. As part of its oversight of contracting, the cabinet should require agencies to demonstrate convincingly that a contract cannot be opened to competition or that competition would not result in the best value to the Commonwealth.

In summary, there can be disagreements about what contracts should be PSCs and whether they should be procured competitively.

In summary, there can be disagreements about which contracts should be PSCs and whether they should be procured competitively. To the extent that the statute is clear, it should be followed. FAC could exercise its regulatory authority to clarify the decision process within the statutory framework.

Recommendation 2.3

Recommendation 2.3

The Finance and Administration Cabinet and other contracting agencies should determine whether a contract is a personal service contract and whether it should be pursued competitively based solely on statutory criteria. When such a classification would violate a policy of the Government Contract Review Committee, the contracting agency should seek an exemption from the committee.

Solicitation For Multivendor Price Contracts

Multivendor personal service price contracts usually result from competitive procurements. However, agencies routinely add vendors during the course of a multivendor contract.

Multivendor personal service price contracts usually result from a competitive procurement. Several vendors are usually selected to be parties to a price contract, sometimes all the vendors who met the solicitation requirements. However, agencies routinely add vendors during the course of a multivendor contract. This raises two primary issues: vendor awareness of a business opportunity and reliability of the vendor list in eMARS.

Advertising And Availability

The two primary issues for multivendor price contracts are vendor awareness of a business opportunity and reliability of the vendor list in eMARS.

The Model Procurement Code expresses the preference that opportunities to contract with the state should be publicized and available to all interested vendors, but the RFPs for personal service price contracts typically close shortly after they are issued.

Multivendor contracts might be considered similar to "immediate fill" employee positions.

Multivendor contracts might be considered similar to "immediate fill" employee positions. The Personnel Cabinet describes these as having

> consistent or critical need for employees in these roles. The Immediate Fill classes are advertised continuously, and applicants are free to apply (submit) to them at any time so that the hiring agencies that use these titles always have an ample applicant pool from which to choose. When an agency does have a vacancy for one of these classes, the list of eligible candidates is sent to the agency without advertising the vacancy for the customary 10-day period.[13]

In a similar manner, FAC officials recommended that agencies post the RFP on a continuing basis on their web sites and explain how a vendor could respond at any time. Doing so would ensure the opportunity was advertised publicly and provide a way for all potential vendors to participate.[14]

Vendor Lists In eMARS

Usually, a document listing the active vendors is attached to the PON2 document in eMARS. There are a few multivendor contracts whose vendors are listed on the PON2 document as subvendors. According to FAC and the agencies, there is no benefit to having the vendors in the subvendor section except for greater visibility. In neither case are the vendors listed when the eMARS PON2 is assembled and printed.

When a vendor is added or removed from a price contract, the agency should modify the contract in eMARS and update the list. Agencies should ensure that contract versions always show the list of vendors who were qualified during the period covered by that version.

Recommendation 2.4

Recommendation 2.4

The Finance and Administration Cabinet should implement a formal policy requiring personal service price contracts to which vendors may be added during the course of the contract to be advertised continuously so that potential vendors are aware of the ongoing opportunity and may submit proposals. The cabinet should require agencies to ensure that the vendor lists on such contracts are kept up to date.

Evaluation Of Proposals

Evaluation is the process following the receipt of all responsive proposals on a solicitation. According to KRS 45A.025, every award should be documented by a written determination and findings.

Evaluation is the process following the receipt of all responsive proposals on a solicitation. The result of the evaluation of proposals is usually a contract award. According to statute, every award should be documented by a written determination and findings (KRS 45A.025). Although there is no requirement that the determination and findings be present in eMARS, Program Review staff looked for it on each evaluation examined.

Evaluation Documents

Evaluations in eMARS include three separate documents: the SRW, the EVT, and the EV.

Evaluations in eMARS include three separate documents: the SRW, the EVT, and the EV. These are a record of each proposal, each individual evaluator's scores, and the overall evaluation results.

Solicitation Response Wizard (SRW) Document. The SRW document allows information about each responsive vendor to be entered in eMARS and associated with the relevant RFP. SRW documents do not contain the actual proposals, but include the RFP reference, vendor name, ID number, contact information, and brief summaries of how the vendor proposal responded on each of the technical and cost criteria from the RFP. The SRW is used primarily to supply information to the EV document.

Evaluator (EVT) Document. The EVT document is designed to be used with evaluation committees. It would permit individual evaluators to submit scores and comments to the EV document for each responsive proposal; however, in FY 2013, there were only 19 EVTs in eMARS, and Program Review staff did not find any EVTs related to personal service contract solicitations. According to FAC, EVTs are not necessary in the eMARS workflow.[15] Additionally, an agency's program staff participate in the evaluation of proposals but usually do not have access to eMARS, so evaluator scores cannot be loaded individually via EVTs. An argument could be made that the buyer should be responsible for collecting and entering into eMARS each evaluators' scores, scoring documents, and comments. This could be done on the EV document.

Evaluation (EV) Document. The EV document consolidates information from the RFP and SRWs to create an evaluation with a tabulation of scores according to the criteria from the RFP.[b] Awards are generated from the EV document.

Program Review staff determined that the EV is frequently used as a shell document to create an award document (PON2). Therefore, the EV itself frequently contains little useful information. Hard copy evaluation files at various agencies were often extensive and sophisticated, but the eMARS equivalent was left incomplete.

Evaluation Process Examples

Proposals meeting all the RFP requirements and submitted within the deadline should be evaluated. Most agencies have in-house evaluation forms or no standard forms at all.

Proposals meeting all the RFP requirements and submitted within the deadline are considered responsive and should be evaluated. There is no standard evaluation form used by all agencies. Most agencies have in-house forms or no standard forms at all. In the latter case, some agencies will provide a one-time use evaluation sheet, whereas others will compile handwritten notes from each evaluator.

Program Review staff included agency examples of the evaluation process. These illustrate the variety of documentation methods and associated issues.

For one evaluation examined at the Department of Education, Program Review staff found that the hard copy evaluation file contained all vendor proposals, committee evaluations, and a comprehensive determination and findings. The eMARS EV contained only the relevant SRWs and criteria scores. There was no indication of whether or not the evaluation was conducted by committee, and the determination and findings was absent on both EV and PON2.

Program Review staff examined evaluations at the Cabinet for Health and Family Services' Office of the Secretary. For the one described here, the hard copy evaluation file contained committee score sheets, an evaluation summary structured as a narrative, and a formalized determination and findings. Program Review staff were unable to locate any of these documents in eMARS. The EV document was left in draft form and never approved. It did not show the scoring criteria or scores for the vendors. The determination and findings was not attached to the EV or the PON2.

For one evaluation examined at the Finance and Administration Cabinet's Office of the Secretary, the RFP received only one proposal. Program Review staff were unable to determine whether the evaluation was carried out by a committee or by an individual. The scoring sheet in the hard copy file consisted of four basic

[b] The EV would also incorporate information from EVT documents if they were used.

evaluation criteria and corresponding scores. The method of scoring, contextual evidence and evaluator comments were absent. The EV document in eMARS did not provide clarification of the scoring process. The determination and findings was not attached to the EV or PON2.

Another evaluation from FAC contained scores based on a significant critical narrative devoted to each responsive proposal and represented an example of a more comprehensive evaluation. There were only two criteria, relevant experience and organizational capability, but the hard copy determination and findings summarized each response and provided clear explanations of the scoring process and reasons behind each score. In eMARS, however, the associated EV document was left in draft form and never approved. It did not contain any of the scoring information found in the hard copy solicitation file. A copy of the determination and findings was attached to the PON2.

An example of a more standardized process can be seen in an evaluation from the Department for Behavioral Health, Developmental and Intellectual Disabilities. The hard copy solicitation file contained a document marked as determination and findings and included the score sheet, the evaluation summary, and all the related solicitation document numbers (RFP, SRW, EV, and three resulting PON2s). For each responsive proposal, scores and concise summaries were provided for each criterion. Additionally, the eMARS EV document contained the determination and findings as an attachment and included a full scoring tabulation. The determination and findings was not attached to the PON2 documents.

Staff examined 67 hard copy solicitation files determined to be competitively bid contracts and found 41 evaluations conducted by committee, 5 by a single evaluator, and 21 that had no information about who conducted the evaluation.

Program Review staff considered the varying state of evaluation documents to be problematic overall. Using a consistent and well-documented evaluation procedure helps ensure and provides evidence of thorough and fair evaluations. Agencies tend to use internal forms for evaluation and sometimes use handwritten notes. Evaluation committees are not used exclusively, with some contracts having only one evaluator. Program Review staff were unable to determine the number of evaluators for several contracts in either eMARS or the hard copy solicitation file. Staff examined 67 hard copy solicitation files determined to be competitively bid contracts and found 41 evaluations conducted by committee, 5 by a single evaluator, and 21 that had no information about who conducted the evaluation. Where the evaluators were not known, there were either no detailed evaluation documents or evaluation documents with no clear indication of who conducted the evaluation. The inability to determine the number of evaluators on nearly a third of sampled contracts illustrates a lack of standardization and uniformity in the documentation of the evaluation process. It also shows the inherent problem of managing and storing large files of print documents over a period of years.

The document referred to as determination and findings often appears as a distinct item in the hard copy solicitation file, clearly marked as such. In other instances the winning proposal can clearly be inferred from a comprehensive score sheet.

The document referred to as determination and findings often appears as a distinct item in the hard copy solicitation file, clearly marked as such. In other instances the winning proposal can clearly be inferred from a comprehensive score sheet. Program Review staff found that score sheets can appear in a variety of types. For some contracts, score sheets could only be found in the solicitation file, while for others the sheets might be in both eMARS and the solicitation file. However, one evaluation included the response scores in eMARS but did not appear to include the originals in the hard copy solicitation file. This last situation appears to be rare based on the sample of contracts reviewed.

Evaluation Process Findings

Evaluation criteria need to be carefully designed to avoid the risk of failing to select the proposal representing the best value. FAC states that evaluation criteria "should be clearly linked to desirable outcomes" and "use clear and concise language to avoid confusion."

Agencies define their own criteria for evaluating solicitation proposals. Criteria need to be carefully designed to avoid the risk of failing to select the proposal representing the best value. Criteria that are too vague compel evaluators to assess vendor responses in subjective terms and might result in a selection that is difficult to document and defend. Criteria such as "organizational capability" and "experience" do not describe in enough detail what the evaluator should focus on when reviewing a proposal. FAC states that evaluation criteria "should be clearly linked to desirable outcomes" and "use clear and concise language to avoid confusion."[16]

Program Review staff found examples of fuller, more descriptive criteria that provide better guidance during the evaluation process. The evaluation criteria for one RFP contained the language:

> Prior relevant and acceptable experience of firm or key personnel that will be involved in providing the contract services, particularly with respect to prior successful work with state governmental agencies.

A simple elaboration such as this directs the evaluator to focus on looking at key personnel and whether they have demonstrated previous experience working with state governments in the relevant work situation.

Evaluation by single party versus committee introduces the risk of intentional or unintentional bias. FAC states in FAP-111-57-00 that evaluation of vendor proposals should be carried out by committee.

Evaluation by single party versus committee introduces the risk of intentional or unintentional bias. Having two or more evaluators provides a less subjective assessment of responsive proposals, reducing bias and increasing the critical examination of proposal components. For this reason, FAC states in FAP-111-57-00 that evaluation of vendor proposals should be carried out by committee: "The requesting agency shall nominate a technical evaluation committee, and if applicable, a cost evaluation committee for the project…" (§3.f).

Failure to document the evaluation process beyond the scoring of proposals raises the risk of inadequate evidence to justify an award and of violating statutory requirements.

Failure to document the evaluation process beyond the scoring of proposals raises the risk of inadequate evidence to justify an award and of violating statutory requirements. Score sheets, including technical and cost proposal scores, do not constitute a determination and findings.[17] Determination and findings is defined by FAC as:

> a written justification of the reasons for making the award to the selected vendor. All determinations of the qualification rankings of offerors based on evaluation factors set forth in the request for proposals shall be made in writing.[18]

The potential exists for eMARS to alleviate some of the organizational issues in the evaluation process.

Because the life cycle of many contracts spans several years over multiple renewals, organizing all hard copy documents related to that contract is a major undertaking. The potential exists for eMARS to alleviate some of these issues. For example, using the EVT document for committee evaluations would automatically account for all evaluators associated with a contract. Proper use of solicitation and evaluation documents in eMARS is important to improve the quality and availability of documentation of how an award was made. In order to make the best use of eMARS, the documents should be filled out fully, approved, and properly linked to each other in the system; an electronic copy of the hard copy scoring sheets should be attached to the EV; and the determination and findings should be attached to the PON2. FAC indicated some recognition of this in FAP 111-43-00 that requires the PON2 to be created from the EV (§1.d).

Recommendation 2.5

Recommendation 2.5

The Finance and Administration Cabinet should ensure that agencies use evaluation committees of two or more people, with possible exceptions; that each evaluator explain in writing why each proposal received its score on each of the solicitation criteria; that the scores for each proposal, evaluator, and criterion be recorded on the evaluation document in the statewide accounting system; that the detailed scoring explanation be attached to the system's evaluation document; and that a determination and findings document that summarizes and finalizes the evaluation process be attached to the system's contract document.

Contract Award

Including Language For Expenses

There appears to be inconsistency in the use of contract language related to expenses.

There appears to be inconsistency in the use of contract language related to expenses. The FAC boilerplate for both RFPs and PSCs says that expenses may be paid only if they are specifically authorized elsewhere in the contract. One contract that properly authorized expenses using this boilerplate language was a financial consulting contract in the Personnel Cabinet. It included specific commodity lines describing travel expense reimbursements.[19]

Some contracts have neglected to include an explicit authorization of payment of expenses either in the terms and conditions or in the commodity lines.

Some contracts have neglected to include an explicit authorization of payment of expenses either in the terms and conditions or in the commodity lines. Technically, no travel or other expenses should be paid on a PSC that uses just the boilerplate language. An example of such a contract was for the executive director of the Office of Commercialization and Innovation. The Cabinet for Economic Development confirmed that the director's travel expenses were paid, but the contract had no provision for those expenses.[20,21]

Ensuring Contract Entry and Approval

Several contracts were not entered into eMARS at all or were entered but not approved. This illustrates a weakness in management controls at the agencies.

There are several examples of contracts that either were not entered into eMARS at all or were entered but not approved. In these cases, work began prior to FAC approval and GCRC filing. For most of them, the situation involved a clerical error; when it was discovered, the agency informed FAC and requested a retroactive start date exemption. This illustrates a weakness in management controls at the agencies—management should routinely verify that a contract has received FAC approvals and been filed with GCRC prior to the beginning of work.

The PSCs not present in eMARS were discovered only coincidentally. There is no way to know whether there are other PSCs executed and in force that are not in eMARS.

Finance And Administration Cabinet Legal Contract. A contract for legal services was effective July 1, 2010, but was not approved in eMARS until March 19, 2012, meaning it was filed with GCRC 627 days late. The explanation given for a retroactive start date was that an earlier contract had inadvertently expired without being renewed because the project had been reassigned when an employee left, and the new employee unknowingly allowed the earlier contract to lapse.

Finance And Administration Cabinet Actuarial Contract. This contract for actuarial services was not approved in eMARS until after work had begun because of a clerical error. The document had a start date of November 1 but was not approved until December 17 and, therefore, not filed with GCRC until 46 days after the start date. According to the letter requesting a retroactive start date, the final paperwork for the PSC was completed but was filed away before it was entered into eMARS for approval. Presumably, the paper contract had been signed by both parties, and work began on the assumption that the electronic process had proceeded as expected.

Department Of Workers' Claims Medical Fee Contract. This contract was a continuation of an earlier contract. It was effective July 1, 2010, but not entered into eMARS until December 29 (181 days late). Its retroactive start date request letter stated that the request was "due to this agency's failure to process a request for an extension in a timely manner."

Fish And Wildlife Commissioner's Contract. In the 2010 Regular Session, the General Assembly enacted SB 64, which created the requirement that the commissioner of the Department of Fish and Wildlife work on a defined employment contract not to exceed 4 years. The amendment to KRS 150.061 was effective July 15, 2010. The commission drafted and partially executed a contract with the commissioner on June 11, 2010. The contract was not approved by FAC because the four-year term of the contract violated the GCRC policy that PSCs may not extend beyond the current biennium, so the contract was never filed with the committee. However, the problem could have been remedied by awarding a contract with a two-year term and a two-year renewal.

Under KRS 150.061, the commissioner was not permitted to work without a contract. Because the contract should have been a PSC, KRS 45A.695(1) would not permit the commissioner to work until it was filed with GCRC. The language of the contract itself stated that it was not valid until approved by FAC and submitted to LRC. Therefore, it is arguable that the commissioner worked from July 15, 2010, until May 2, 2013, without a contract.

A revised contract with that start date was approved by FAC in eMARS and filed with GCRC. Because the 2010 contract was not valid, it is conceivable that the department could have written the new contract with a start date of July 15, 2010, and filed a retroactive start date request in order to validate the previous work done without a valid contract. However, that was not done.

GCRC placed the contract on its June 2013 agenda and deferred consideration at its June, July, and August meetings. The commissioner submitted his resignation before the September meeting took place. During that time, the commissioner continued to work and to be paid. However, none of the payments was charged against the contract.

An official of the Tourism, Arts and Heritage Cabinet explained that it was not considered good practice to pay an employment contract prior to GCRC approval, even though work may begin as soon as a contract is filed, and payments may be made for services provided prior to disapproval by the committee. However, it seems technically incorrect to pay for these services outside the contract.

Community Based Services Private Child Care Contracts. The Department for Community Based Services (DCBS) has contracts with private child caring entities to provide a package of services including the recruitment and training of foster parents, case management, and psychotherapeutic and other support services. The private entities receive a fixed reimbursement from DCBS when foster children are placed with them. The reimbursement is greater than that amount provided to the department’s own foster families, because the private entity has contracted to manage the cases and provide support services, relieving the state of those tasks.[22] Medicaid funds are used to pay for some of the services.

The contracts are not entered into eMARS but are maintained in the agency’s files. DCBS asserted that these contracts were not

PSCs because they fell under two statutory exceptions: foster care parents and Medicaid providers, both under KRS 45A.690(1)(g)2. The agency explained that because the federal government permitted its foster care funds to be used, these private services could be considered to constitute federally recognized foster care. The agency also explained that the use of Medicaid funds for part of the reimbursement could be considered to deem the entities as Medicaid providers.

It is possible to interpret the statute differently. It could be argued that private child caring entities are not "foster care parents" as stated in the statute but rather are private companies or nonprofits that employ foster care parents and provide a complete package of foster care services. In addition, it could be argued that the entities do not submit claims directly to Medicaid and do not receive direct Medicaid reimbursement; rather, the Medicaid funds flow indirectly and generally through DCBS and not for specific services.

Because the contracts are not in eMARS, they are not automatically filed with GCRC. Committee staff confirmed that they were not filed manually. If the contracts are not PSCs, then they need not be filed with GCRC under the statute. The only question would be whether they should be entered in eMARS.

However, examination of one of the contracts showed that it was written using the same boilerplate provisions and terms as a PSC. The language of §3.00 is problematic because it states that the contract is not effective and binding until it is filed with GCRC. Regardless of whether or not these are considered personal service contracts, the fact that they have not satisfied this condition means that they are arguably unenforceable. Agency officials reported that the language had been added inadvertently and would be removed.

Policy Limitation

FAC policies do not clearly require all PSCs and amendments to be entered in eMARS.

Although several FAC policies, including the policy that applies to MOAs, require contracts to be entered into eMARS, the PSC policy does not clearly state that all PSCs and amendments must be entered. Rather, it states that an agency "shall award a contract electronically from a bid evaluation in the state's procurement system" (FAP 111-43-00 ¶1.d). It implies but does not clearly state that all contract documents should be in electronic form in the system. Rather than stating that all amendments to a contract should be made in the system, it states that "if any changes are made… along the electronic route," new signatures are required (FAP 111-43-00 ¶1.d). Further, it does not provide for contracts awarded under a competitive exemption, which do not have bid evaluations in the system; and the other relevant policy does not have such a requirement (FAP 111-10-00).

Recommendation 2.6

Recommendation 2.6

The Finance and Administration Cabinet should take the following actions to ensure that all personal service contracts are entered into the statewide accounting system and filed timely with the Government Contract Review Committee:

- **Promulgate a policy that clearly requires all personal service contracts and amendments to be entered in the system.**
- **Periodically remind all agencies that all personal service contracts must be entered in the system.**
- **Require all agencies to implement management controls to ensure that all personal service contracts are entered timely in the system and that all required approvals have been made prior to the beginning of work.**
- **If feasible, modify the system to create a periodic automatic notification to the agency contact person about pending contracts that have not been finalized in the system and an automatic notification when a contract is about to expire, or require each agency to develop its own method of tracking finalizations and expirations.**

Proof Of Necessity

The Proof of Necessity (PON) section of the PON2 document in eMARS contains five subsections that focus on type of work, cost, and justification for the contract. It was intended to replicate the GCRC Proof of Necessity form that accompanies paper contracts.

The Proof of Necessity (PON) section of the PON2 document in eMARS contains five subsections that focus on type of work, cost, and justification for the contract. The PON section in eMARS was intended to replicate the GCRC Proof of Necessity form that accompanies paper contracts.[c] The Government Contract Review Committee requires that all PSCs have completed PON sections or forms. Providing GCRC staff a complete overview of the contract and its justification, vendor, history, and projected cost is the intended function of the form.

The primary difference between the eMARS section and the GCRC form is that the PON instructions are not clearly visible. The eMARS user has to click on a help button for each separate

[c] Appendix E includes a copy of the GCRC Proof of Necessity form.

item on the form to see the instructions. It seems unlikely that users frequently review the instructions.

The primary difference between the PON in eMARS and the GCRC form is that the eMARS PON instructions are not clearly visible. Responses in the PON section appear to vary widely in their level of detail, particularly in the general information and justification subsections.

Responses in the PON section appear to vary widely in their level of detail, particularly in the general information and justification subsections. Program Review staff found contracts with detailed descriptions of work, as illustrated here:

> To provide the following actuarial services :
> A. Perform an actuarial analysis of the redesigned Benefit package of the Medicaid program to develop customized covered service packages for up to 35 specific Medicaid categories of aid or groups. Analysis would include the use of co-payments and other incentives which would vary by aid category. The Actuarial analysis should also include a study of the cost effectiveness of purchasing similar benefit packages in the private market or through group coverage available to individual Medicaid members; B. Perform rate setting analysis and actuarial certification of rates for the Kentucky Health Care Partnership Program (1115 Waiver); C. Perform Budget modeling and forecasting; D. Provide other Medicaid program analysis related to Medicaid modernization efforts to support program management decision making; and E. Provide reports and recommendations based on analysis to assist DMS in achieving its objectives.[23]

Conversely, some contracts sampled by Program Review staff included only meager descriptions of work, as shown here:

> The EPA requires states to control and limit the emission of nitrogen oxides (NOx). As a result, Kentucky has promulgated administrative regulations to satisfy the EPA's Clean Air Interstate Rule.[24]

In this example the contextual details for work are tenuous. The reason that the work must be performed is established, but the type of work, estimated duration, and reports to be prepared are absent.

The instructions for filling out planned performance monitoring in eMARS are consistent with the GCRC form instructions.

For planned performance monitoring activities, the eMARS instructions state:

> Provide the name, title, office, location and telephone number of the responsible person that will be monitoring the activities.
>
> Describe the monitoring activities, both programmatic and fiscal, which will be performed including the manner in

> which monitoring needs will be addressed in the contract to facilitate this activity.

This is consistent with the GCRC PON form instructions.

Program Review staff found that most of the sampled contracts did not identify satisfactory performance monitoring activities.

However, Program Review staff found that most of the sampled contracts did not identify satisfactory performance monitoring activities. For example, one PSC indicated that "the Office of Legal Services will monitor programmatic and fiscal activities."[25] This was typical of the descriptions found among the examined contracts.

The eMARS instructions for the Justification for Outside Provider in the Justification subsection are consistent with the guidance on the GCRC form.

The eMARS instructions for the Justification for Outside Provider in the Justification subsection state:

> The following questions should be addressed at a minimum: What in-house method(s) were considered and why were potential in-house method(s) rejected? Is the part of such nature that: it should be done independently of the agency to avoid a conflict of interest; it requires unique or special expertise/qualifications; and/or legal or other special circumstances require use of an outside provider? If services are needed on a continuing basis, describe efforts made to secure services through regular state employment channels? Will agency personnel provide staff support services to the contractor?

This is consistent with the guidance on the GCRC form.

The justification given in eMARS is typically vague and uninformative.

However, the justification given in eMARS is typically vague and uninformative. Consideration of in-house methods is rarely described in the justification. Elaboration regarding current staff qualifications is also rarely given, or the reason that staff cannot be hired to perform the work. Here are a few examples of inadequate justifications.

- After extensive review of the required skills, it has been determined that the Office of Information Technology does not have staff available with the skill set to perform these services.
- State agency personnel do not possess the technical knowledge nor training to perform actuarial services.
- The Department does not currently employ staff who are qualified and able to perform these services.

Where staff were not available, there was no justification for not creating and filling a new position or training existing staff. A temporary need might be acceptable, but very few justifications expressed a temporary need.

Where staff were not available, there was no justification for not creating and filling a new position or training existing staff. A temporary need might be acceptable, but very few justifications expressed a temporary need. Occasionally a valid conflict of interest or statutory requirement was invoked. Two examples of more acceptable justifications were

- These … positions are hard to recruit, therefore, the Department elected to go through the Cabinet's competitive bidding process.
- [The agency] does not have available staff to provide extensive services needed by these districts …. Contract personnel for the Eastern and Western Kentucky will free current staff from considerable travel from Frankfort, saving time and money.

The latter examples touched on more substantive issues, such as the inability to recruit employees given the state pay rates and the possibility of saving money by having personnel located outside Frankfort. They would improve from more explicit statements of how the relative costs and benefits were compared and what the savings would have been. Ideally, agencies should carry out an effective cost-benefit review to verify that contracting is the best value solution and should present the factors considered and the results of the review.

Recommendation 2.7

Recommendation 2.7

The Finance and Administration Cabinet should encourage agencies to fill out the work description and monitoring activities in greater detail in the Proof of Necessity section of personal service contracts and include a detailed justification demonstrating that the agency carried out a meaningful comparison of in-house solutions with contracting for services.

Government Contract Review Committee

Automated Filing With The Committee

GCRC and FAC staff noted that at least one PSC failed to appear in the data extracted from eMARS into the GCRC database. Since that time, FAC staff have ensured that all documents have been properly filed.

GCRC and FAC staff noted that at least one PSC failed to appear in the data extracted from eMARS into the GCRC database. The specific example was a Medicaid contract for actuarial services that should have been filed on September 16, 2010. There was no known explanation for the omission. No other examples were available. FAC staff reported that since that time, they have cross checked the GCRC monthly agenda lists against a separate FAC list of approved documents to ensure that all have been properly filed. The current system appears to be filing PSCs reliably with the committee.

The GCRC includes contract Types 3 and 23 on its agenda that are not generated on the FAC approval list.

The FAC list is generated using a query that lists all the PON2 documents that were approved during the month with procurement types 9, 13, and 17 (grants, MOAs, and regular PSCs). However, it does not list types 3 (PON2 A&E PSCs) or 23 (tax incentive agreements). FAC should be aware that the committee includes both of these procurement types on its agenda.

Filing Of Amendments

The statutes concerning how FAC files new PSCs and amendments with GCRC are open to interpretation.

Under the current procedures, FAC files all new PSCs and amendments with GCRC, regardless of the amount. However, it is possible to interpret the statutes in a different way.

KRS 45A.700(3) states that if a PSC under $10,000 is amended such that the total exceeds $10,000, the amended contract should be considered for routine GCRC review. KRS 45A.700(4) creates the same requirement for personal service price contracts that are amended to cross the $50,000 threshold.

There is evidence to suggest that all amendments are required to undergo GCRC review.

The statutes that apply to GCRC mention contract amendments in only one other place, specifying that if a contract is disapproved, it may be canceled but payment may be made for services rendered under the "contract or amendment" (KRS 45A.705(6)(b)).

It might be argued that "personal service contract" includes amendments by implication, and that the latter section is evidence for their inclusion.

However, there is wording in the statute that could imply an intention that GCRC should review a contract only once: whenever it exceeds the $10,000 or $50,000 threshold, either initially or when amended.

On the other hand, it might be argued that the wording of the statute implies an intention that GCRC should review a contract only once: whenever it exceeds the $10,000 or $50,000 threshold, either initially or when amended. This interpretation implies that other amendments are not subject to filing or review, and that the mention of amendments in KRS 45A.705(6)(b) was simply to recognize that certain qualifying amendments would be reviewed.

All new PSCs must be filed with GCRC and are subject to routine review if they are for $10,000 or more, as are new personal service price contracts for $50,000 or more. It seems reasonable that similar standards should apply to amendments: that all amendments should be filed with the committee and that all amendments that increase the amount of a PSC by some amount should be subject to routine review regardless of the previous value of the contract. Although the current FAC procedures produce this result, it might be preferable for the statute to unambiguously require it.

Recommendation 2.8

Recommendation 2.8

In order to ensure continued filing of all personal service contract amendments for review by the Government Contract Review Committee, the General Assembly may wish to consider making that requirement explicit.

Accounting For Personal Service Contracts

The information available in eMARS about the amount of money spent on PSCs is not fully reliable.

The information available in eMARS about the amount of money spent on PSCs is not fully reliable. This section describes some of the issues related to how much is likely to be spent on PSCs in the future and how much was spent on them in the past.

Estimation Of Contract Costs

Most agencies appear to adopt a flexible approach to budgeting that permits funds to be moved from one project or contract to another in order to balance expenditures.

Because it is not always possible to estimate contract costs closely, budget staff have to make a best guess whether there will be enough funds for a new contract, knowing that some contracts will exceed their estimates and others will have funds left over. Most agencies appear to adopt a flexible approach to budgeting that permits funds to be moved from one project or contract to another in order to balance expenditures.

The Transportation Cabinet appears to be the only agency that encumbers funds for some of its contracts.[d] Encumbering means a contract's funds are strictly tied to budgeted funds. Calculating how much to encumber for a specific project is ultimately dependent on how much funding is made available in the overall budget. If an agency is working with narrow budgetary margins and cannot confidently estimate project costs, then encumbering is not likely to be viable.

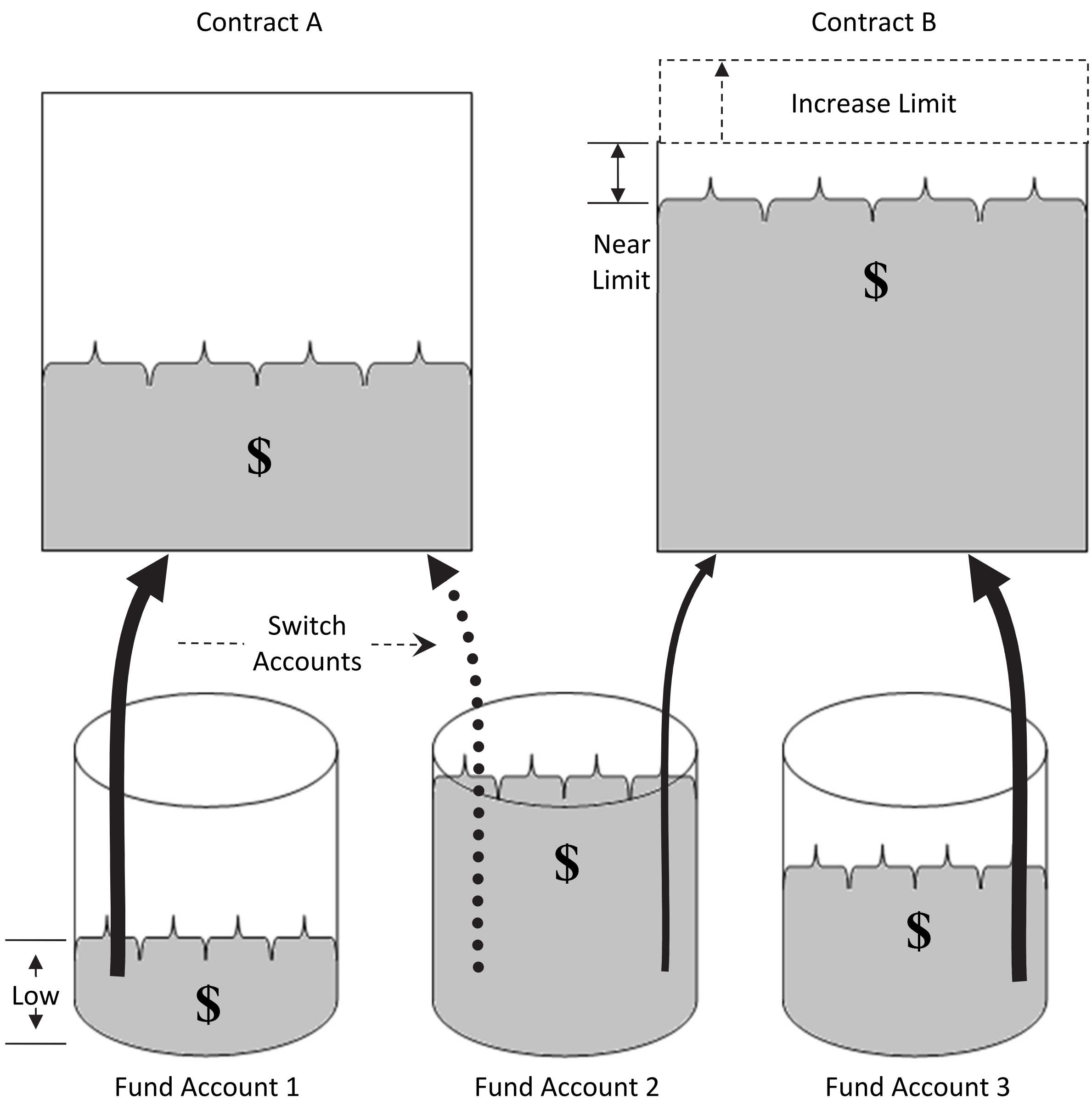
Contracts are not strictly tied to fund accounts, and changes might be needed as a fiscal year progresses.

Without encumbered funding, contracts are not strictly tied to fund accounts. Agencies initially set up contracts to be paid from one or more accounts, but other contracts and other agency expenses may also be paid from those accounts. As the fiscal year progresses, funds may run low in some accounts, so agencies may switch to

[d] Data from eMARS showed that the Transportation Cabinet was the only agency with liquidated—that is, released—funds on its contracts. Funds are formally liquidated only when encumbered.

other accounts. As an example, Figure 2.A shows two contracts that draw funds from three accounts. When Account 1 runs low, the agency may switch Contract A to draw funds from Account 2, which also supplies some of the funds for Contract B.

Figure 2.A
Relationship Between Contracts And Fund Accounts



Source: Program Review staff compilation.

If contract costs look like they will exceed the initial estimate, the agency must amend the contract to increase the spending limit in a timely manner. If the spending limit is reached, eMARS will not permit payments to be made. In Figure 2.A, Contract B would be amended to ensure future payments could be made.

The amounts shown on PSCs often are not reliable as an estimate of the total cost. The total for one set of contracts was five times the amount the agency expected to spend.

Therefore, it can be difficult for agencies to predict their total contract costs and which fund accounts will pay for them, so the amounts shown on PSCs often are not reliable as an estimate of the total cost. A significant example is the set of facility staffing contracts from the Department for Behavioral Health, Developmental and Intellectual Disabilities, which together showed twice the actual amount the department expected to spend—$105 million versus no more than $52.5 million.[26] Although these contracts were later canceled, the difference represented a large portion of the state's PSC expenditures for the biennium. On the paperwork for a similar set of contracts, the department stated "Estimated need (number of hours) has been spread to all five contracts. Only approximately 1/5 of this contract authority will be used."[27]

FAC officials mentioned that agencies might overestimate contract costs in order to avoid having to amend the contracts more often than once per quarter.

FAC officials mentioned that another reason agencies might overestimate contract costs was to avoid having to amend the contracts more often than once per quarter.[28] More frequent amendments would violate the GCRC policy not to consider amendments made within 90 days of the last committee action, if the amendment was solely to increase funding.

The amounts in eMARS for many contracts, as shown above, are overestimated. There are some contracts whose amounts are underestimated, but most of those contract amounts are amended as the contract funds are used up. In most cases, overestimated amounts are not removed even when the contract is closed.

Program Review staff concluded that it is not possible to produce a reliable estimate of the likely spending on personal service contracts based solely on the amounts listed in eMARS.

Program Review staff concluded that it is not possible to produce a reliable estimate of the likely spending on personal service contracts based solely on the amounts listed in eMARS. If the historical amounts spent on PSCs were shown to be reliable, then it might be possible to calculate a factor by which to adjust future estimates. Program Review staff were unable to do so because the amounts recorded as spent have not been shown to be reliable.

Calculation Of Contract Spending

There are significant expenditures that not only are absent from the contract balances but also are invisible in the accounting journal.

The amounts shown in eMARS as spent on contracts are not entirely correct. There are significant expenditures that not only are absent from the contract balances but also are invisible in the accounting journal. In addition to the large unrecorded payments mentioned in Chapter 1 for the Passport Medicaid contract, there were two other contracts that together caused the statewide PSC spending total to be understated by over 25 percent. Chapter 3 describes the reasons in detail.

There is a total lack of information about revenue-generating PSCs. In almost all these contracts, the vendor deducts the fee before remitting the remainder of the revenue.

An additional problem with determining costs is the lack of information about revenue-generating PSCs. Revenue-generating contracts typically result in net funds for the Commonwealth. Most of them award the vendor a contingency fee proportional to the amount of revenue received. These include legal contracts for pursuing lawsuits to recover overpayments or damages, collection contracts for overpayments, and disposal of unclaimed property. In almost all these contracts, the vendor deducts the fee before remitting the remainder of the revenue. There is no record on the eMARS contract documents of the amounts received and, more importantly, no record of the amounts retained by the vendor.

Program Review staff urge FAC to develop a means to calculate the income and cost associated with revenue-generating contracts and, thereby, to manage their effectiveness.

Although Program Review staff make no recommendation on revenue-generating contracts, they urge FAC to develop a means to calculate the income and cost associated with these contracts and, thereby, to manage their effectiveness.

Chapter 3

Payments And Contract Administration

Program Review staff discovered several issues related to the administration phase of PSCs. The administration phase of a contract begins after a contract has been awarded to a vendor and sent to GCRC for approval. This phase includes payment for services, monitoring of vendor activities, and evaluation of vendor performance. Most discovered issues are related to vendor payments and range from unrecorded payments to incorrect service dates. The near absence of monitoring documentation and performance evaluations prevented a thorough analysis of these areas.

Overview Of The Payment Process

A contract's commodity lines indicate the division of funds for the contract. A contract's accounting lines indicates the source of the contract's funds.

Some of the following issues refer to a contract's commodity lines. A commodity line is a division of the funds available on a contract. A contract is required to have at least one commodity line but commodity lines are not required to be used in a specific manner. Each commodity line has a description of how the funds will be spent but the description can be as thorough as the user wishes. A commodity line may represent all the funds available on a contract or it may represent spending for a specific aspect of the contract. Program Review staff found commodity lines for different fiscal years, tasks, types of vendor staff, types of charges (service or expense), and combinations of these categories.

Once all funds on a commodity line have been used or a payment has been marked as Final, the line closes and payments may no longer be made against the commodity line. Lines may also be closed by decreasing the commodity line amount. This might be done if a user did not mark the last payment as Final.[29] Once all commodity lines are closed, the contract is closed.

Each commodity line has one or more accounting lines that indicate fund accounts for that line. When a payment is made, the funds are taken from those accounts. Accounting line use is illustrated in Figure 2.A, with the arrows representing the accounting lines used by a contract. The two lines for Fund Account 2 represent how different contracts may have accounting lines connected to the same source. The different sizes of the accounting line connecting Fund Account 2 and Contract B show that contracts may draw different amounts from multiple accounts. The dotted accounting line represents a change in accounting lines. Funding sources may be exhausted before a contract is complete. The accounting line for a commodity line can be changed to provide additional funds.[a]

PRCs are the most common type of payments. They typically subtract funds from the contract and the contract's source of funds by referencing the contract.

There are multiple methods of payment in eMARS. The most common payment method for PSCs is the Payment Request for Commodity (PRC) document. This document deducts payment amounts from the contract and contains information about the service, the payment amount, the vendor, and the accounting method. The connection between a PRC and a contract is made through the commodity lines. The PRC will have a commodity line for each type of service or expense that appears on the vendor's invoice. Each PRC commodity line should match one of the contract's commodity lines. When there is a match, the payment amount is deducted from the contract balance. PRCs are held until their due dates and processed at night to produce either checks or electronic funds transfers (EFTs).[30]

Alternatively, payments can be made without referencing a contract. These payments are called nonreferencing payments. Nonreferencing payments disburse funds to vendors but do not reduce the contract balance. If a user attempts to search for all payments related to a contract, nonreferencing payments will not appear in the list.

A PRC can be created without deducting the payment from a contract, but if the payment exceeds $1,000 it requires an EO1 form approved by FAC and an affidavit from the vendor.[31] This procedure is not defined in policy but appears in an eMARS training manual.

Two alternative payment documents are discussed in this chapter. General Accounting Expenditure (GAX) documents do not deduct payment amounts from a contract and do not include commodity-line information. GAXs are meant to pay "allowable authorities such as reimbursements, utilities, postage and agency specific authorities."[32] GAX usage is restricted to agencies with the proper authority; their authority must be shown in the "cited authority" field.[33] All agencies currently have been granted authority to make GAX payments.[34]

[a] The agency may change the accounting lines on the contract, and subsequent payments will be paid using a different mix of fund accounts.

Manual Disbursements allow for an immediate disbursal of funds. They can be set to not subtract funds from a contract while subtracting funds from the source of funds.

Manual Disbursement (MD) documents allow a user to generate a payment immediately for a vendor and can be made without deducting payment amounts from a contract. MDs for checks are sent to FAC Statewide Accounting and the Department of Treasury for approval and are printed on-demand.[35] MDs that create EFTs bypass FAC and are approved by Treasury. MDs thus avoid the usual processing time.

Vendor invoices are documents provided by vendors to describe services provided and the expected compensation for these services. These documents are used to create payments to the vendor and serve as records of the transaction. Vendor invoices were examined for multiple issues, many related to KRS 45A.695(10). This statute specifies procedures for PSC invoices and what must appear on them. These requirements were effective after the invoice form was established at the August 10, 2010 meeting of GCRC.[36] However, much of the required information is typical of invoices and should have appeared on them before that date.

Nonreferencing Payments

A PRC can be set up to not reference its contract. A nonreferencing PRC subtracts funds from the source of funds but not the contract.

The reference section of a payment's commodity line must be filled out in order to deduct a payment's amount from a contract's commodity line. A PRC commodity line without a reference will not subtract funds from the contract; if none of the PRC's lines have reference information, users will not be able to see which contract is related to the payment. Payments that do not reference any contract represent unrecorded disbursements that are significantly difficult to track. The 2001 LRC report on personal service contracting recommended that "System modifications should be made to eliminate or minimize the use of contract payments that do not tie back to specific contracts."[37] The current study reached the same conclusion.

Certain PSCs, such as budget-neutral contracts, are created with nominal amounts, and nonreferencing payments that do not affect the contract balances are used. These contracts usually have nominal contract amounts of 1cent or $1. This is the correct procedure because the contracts are not paid with budgeted funds.

Summary Of Findings On Nonreferencing Payments

Program Review staff could not determine how many payments and other transactions failed to properly update PSC balances. The examples given here were found coincidentally or through a labor-intensive payment review process or, in the case of Passport, because the vendor was unique and all normal payments should have had a reference to a contract.

Nonreferencing transactions hide the true cost of contracts. Depending on the type of transaction, agencies will appear to spend less or more than their actual expenditures. These payments make contract spending limits ineffective and prevent outside audits from correctly determining the costs of contracts.

The use of nonreferencing payments and adjustment transactions represents a high risk behavior. Nonreferencing transactions do not show up in contract balances and hide the true costs of contracts. As a result, contracts with nonreferencing payments will appear to use fewer funds and agencies will appear to spend less; agencies will be able to spend more than their contract limits. In other cases, contracts will appear to use more funds and agencies will appear to spend more. Depending on other internal controls, the agency might unexpectedly find itself unable to make payments on the contract.

Internal agency records should be able to identify the true amounts spent, but audits using the statewide accounting system's contract balances will be incorrect.[b] The lack of an audit trail also provides an opportunity for fraudulent or unnecessary payments. Each nonreferencing payment type still requires approval, but the approver might not be familiar enough with a contract to determine whether the expenditure is reasonable.

In order to ensure proper contract accounting and oversight, all contracts should show the correct and up-to-date contract amounts, and the payments should reference the contracts. Finance and Administration Policy 111-45-00(6) requires any payment made on a contract entered in eMARS to reference the contract. Additionally, an eMARS training manual states that nonreferencing PRCs above $1,000 must have an approved EO1 and an affidavit signed by the vendor. If eMARS could enforce these procedures by requiring FAC approval for nonreferencing payments, they would be easier to track and control.

There are some types of payments in eMARS that do not update contract balances. These violate the basic principle that the contract balances should accurately represent amounts spent both for accounting purposes and to prevent overspending. Making the contract balances properly reflect these payments will probably require changes to eMARS. Regardless of the technical barriers, correct contract balances seem so fundamental to an accounting system that the software vendor, CGI, should make these changes

[b]As an example, the Cabinet for Health and Family Services provided internal records documenting payments for several contracts, but eMARS did not show the payments for the contracts.

in its base product rather than as enhancements for Kentucky's use only.[c]

Recommendation 3.1

Recommendation 3.1

The Finance and Administration Cabinet should promulgate policies that describe the proper methods of creating, reviewing, and approving transactions so that they correctly update the contract balances in the statewide accounting system; that require all agencies to have internal controls to ensure that these methods are followed; and that require contract amendments to be used to increase funds on a contract prior to exceeding its limits. As soon as feasible, the cabinet and its software vendor should discuss ways to modify the system so that it can correctly maintain contract balances under all payment scenarios, and the cabinet should make the case that the vendor should enhance its underlying software, not just the Kentucky version.

Normal Nonreferencing Payments

Here are some examples of nonreferencing payments.

One nonreferencing payment was a $2,882.50 payment for legal services. The payment stated it was for legal services but gave no information about the actual services provided. Program Review staff found the vendor had only one state contract, which was also for legal services for the same agency. That legal contract was referenced by 15 payments, and the total of those payments equaled the amount on the contract. Agency staff confirmed the payment was for services on the legal contract. A clerical error prevented the payment from referencing the contract, and costs were understated by $2.882.50.[38]

A significant example is the series of University Health Care (Passport) contracts, for which multiple nonreferencing payments were used. The Passport contracts were a series of contracts, starting in FY 1998, to provide health services to Medicaid-eligible recipients. Program Review staff looked at eMARS information

[c] FAC officials pointed out that eMARS is based on a generic product; most enhancements to eMARS are special requests for Kentucky's use only, and the vendor charges Kentucky to implement them initially and again with each upgrade of the basic product.

and information supplied by Medicaid for FY 2008 to FY 2012.[d] Table 3.1 shows the results of this review.

Table 3.1
University Health Care Contract Expenditures By Fiscal Year
FY 2007 To FY 2012
(In Millions Of Dollars)

Fiscal Year	Contract Amount	Payments Shown On Contract	Actual Payments	Overrun
2007	$595	None	$624	$29
2008	649	None	669	20
2009	714	None	743	29
2010	793	66	789	-4
2011	800	735	802	2
2012	800	795	795	-5
Total	$4,351	$1,595	$4,421	$70

Note: Numbers are rounded to the nearest million.
Source: Department for Medicaid Services.

Nonreferencing payments caused the Auditor of Public Accounts to understate the FY 2011 expenditures of the University Health Care contract. The contract exceeded its FY 2011 limit by $2 million, but this was not reported.

In general, no one looking at the eMARS contract balances would have known the correct amount paid in fiscal years 2008 to 2011. For example, the Auditor of Public Accounts reported the FY 2011 expenditures incorrectly by using the eMARS balance.[39] The Medicaid MD documents for electronic fund transfers should have been approved by FAC Statewide Accounting and the State Treasurer. Program Review staff verified that the FY 2011 MD was so approved. It appears that these reviews did not ensure that payments for contracts were identified and attributed to the contracts.

The overruns in these years were largely symbolic because, as the Department for Medicaid Services explained, the Passport contract amounts were estimates that might need to increase as the number of Medicaid recipients increased. However, the proper procedure would have been to track the payments against the contract and amend the contract before the payments exceeded it. The department stated that the Auditor informed the department that it should follow this procedure, and it has done so since FY 2012.

[d] Some payments from Medicaid to Passport were made by GAX documents. These were transfers of overpayments previously made by Passport to health care providers and recovered by the Medicaid claim and recovery process. These payments were not part of the contract, and this was a proper use of GAX payments. Information about payments for FY 2007 was lost in the conversion from MARS to eMARS.

However, it could be important on other contracts to track payments more carefully so that the expected cost is not exceeded. That is one reason all payments toward contract expenses should reference the contract. The other is so that audits can be done accurately.

Other Nonreferencing Transactions

Although not a payment, a cash expenditure correction displayed a similar issue because of an apparent error in entering a contract reference. Four of the six commodity lines on the correction document correctly referenced a PSC. Two other commodity lines summing to negative $112,875.90 referenced a contract that does not exist. This appears to be a typographical error, and it appears that costs of almost $113,000 were not correctly deducted from the contract balance, so the total cost of the contract was overstated.

Nonreferencing Check Writer Payments

The Check Writer is a check writing process that allows agencies to pay thousands of vendors with the same accounting template. These payments do not reference contracts.

The Check Writer is an eMARS check writing process developed to disburse checks and EFT payments for agencies that pay multiple vendors with the same account distribution. This process allows government entities to submit files that contain payments to thousands of vendors but only a few accounting lines. All payments in a file must use the same distribution of account funds. Unlike typical payments, Check Writer files may be processed at any point in the day.[40] Program Review staff discovered these payments do not reference the vendors' contract, so that the contract balances do not accurately represent the costs of the two PSCs known to use the Check Writer.

The First Steps and Impact Plus contracts used the Check Writer to process payments. The two contracts caused statewide PSC spending to be understated by over 25 percent.

The two Check Writer PSCs have large contract amounts but no referencing payments. They are important because their expenditures are large enough to affect the statewide PSC spending total significantly. Table 3.2 shows the unrecorded funds spent by these two programs. These contracts drew down budgeted funds and represented appropriations that needed to be accounted for as personal service contracting costs. These two contracts alone caused the statewide PSC spending total to be understated by over 25 percent.

Table 3.2
Unrecorded Funds Expended By First Steps And Impact Plus
FY 2012 And FY 2013
(In Millions Of Dollars)

Program	FY 2012	FY 2013
First Steps	$20	$19
Impact Plus	37	35
Total	$57	$54

Note: Numbers have been rounded to the nearest million. Expenditures for the Department for Behavioral Health, Developmental and Intellectual Disabilities and Department for Community Based Services components of Impact Plus were combined to create the amounts.
Source: Program Review staff calculations based on data provided by the Cabinet for Health and Family Services.

Forcing Check Writer payments to reference contracts would require a software solution. Currently, agency staff may manually enter special PRC payments for every Check Writer file to reference the contracts.

There may be practical difficulties to building a software solution that causes Check Writer payments to reference contracts. However, the Finance and Administration Cabinet has already recognized its importance by implementing an interface between the state payroll system and eMARS in order to account for PSC payments made via payroll. In the meantime, a manual solution is to require agencies to enter a special PRC payment document for every Check Writer file submitted.[e]

Memo Payments

Memo payments refer to a contract but do not update the contract balances. These payments produce a check or EFT despite not affecting the contract.

Memo payments refer to contracts but do not update the contract balances. Except for the memo line type, memo payments are identical to referencing payments. The payment will take funds from an accounting line and create a check or EFT. These payments may be made on closed commodity lines. If a user searches for payments connected to a contract, a memo payment will appear in the list as if it was a referencing payment. The memo payment's inability to update the contract balance undermines the validity of the referencing amount.

In a review of selected discrepancies, Program Review staff discovered four memo payments connected to three contracts, but there are likely to be more such payments. Memo payment amounts ranged from $21,000 to $80,470 and totaled approximately $210,000. Two of the payments used Final commodity lines and memo accounting lines, closing the accounting lines while not recording the amount of the payment on

[e] A PRC can reduce a contract balance by having commodity lines with positive dollars that reference the contract and otherwise identical commodity lines with negative dollars that do not reference the contract but create a net $0 payment.

the contract. Agency staff confirmed two memo payments were used because payments needed to be made on a lapsed commodity line.[41,42] A lapsed commodity line is one that was closed prior to the end of the fiscal year, and its funds were removed during the fiscal-year-end processing. Invoices that are received after the corresponding commodity line has lapsed must be paid using a memo payment.

Memo payments are another way that the contract balances are not reliable indicators of the amount spent.

The use of memo payments is another way that contract balances do not accurately represent the funds spent on contracts.

Budget Overruns

PRC payments may have a mix of referencing and nonreferencing commodity lines. This mix may lead to overrun issues. Overruns may occur when the amounts on dispersed payments are greater than the amounts recorded. All commodity lines contribute to the total payment. Commodity lines with references will record their amounts against the contract balance, but the lines without references will not be recorded. If the nonreferencing commodity line is for a positive amount, it will cause the resulting payment to expend more funds than the amount recorded on the contract balance.

In order to process a nonreferencing payment, eMARS requires that it cite a valid authorization. If a user submits a nonreferencing payment without a justifying cited authority, the system will indicate an error and prevent processing. However, eMARS only checks references on the first commodity line. Based on testing by Program Review staff, entering a reference on the first commodity lines allows the other commodity lines to go without a reference and not generate an error.

Impact Plus used the Check Writer and disbursed nonreferencing payments, exceeding its contract amount by $10.2 million for FY 2012.

The Impact Plus program used nonreferencing payments and overran its allotted amount. The agency chose to pay using the eMARS Check Writer system rather than entering payments manually. The Check Writer generates payment records in eMARS, but the payments do not reference the contract, so the contracts show no expenditures. According to agency numbers, the Impact Plus contract was overspent by $10.2 million or 27.7 percent in FY 2012. In FY 2013, the contract was overspent by approximately $323,000 or 0.9 percent. If referencing payments had been made, eMARS would have required a contract amendment to adjust the amount upward.

Here are some examples of overrun payments because of positive nonreferencing commodity lines.

Program Review staff discovered two contracts with overrun payments due to nonreferencing commodity lines. Additional overrun payments may exist. The process used to find the payments was largely manual and involved examining payments in eMARS one at a time. As a result, only a few months' worth of payments were targeted and examined. If Program Review staff were to expand the process outside these few months, it is likely that payments with similar issues would be found.

One payment was for the provision of medical personnel. One of the commodity lines did not reference the contract and was for $5,635.99. The resulting payment was $5,635.99 higher than the amount deducted from the contract's balance. Another was a payment for traffic forecasting. Its sole commodity line left the department code off its referencing information, causing $21,039.48 to be sent to the vendor but not deducted from the contract's balance. This payment was corrected 21 days later; the correction stated the nonreferencing payment had been because of a glitch in eMARS that did not copy the correct information.

Payment understatements from Check Writer payments and nonreferencing positive commodity lines are high risk issues that cause contracts to understate their costs. Potentially, an agency may find a contract still has funds available, but the source of funds has been depleted.

Understatement of expenditures due to Check Writer payments and nonreferencing positive commodity lines present a high level of risk. These payments understate contract costs and allow contracts to exceed their allocated amount without requiring a modification for the contract. A basic risk involves agencies' making payment decisions while the actual contract expenditures have been understated. The agency will have fewer funds than what is indicated in eMARS and may find it is unable to close a payment because of a lack of funds in an account. Delaying a payment while funds were shifted might delay the provision of services or damage the reputation of the agency. It also presents an opportunity for fraudulent payments. If an eMARS user were to collude with a vendor, the user could theoretically write checks on an active contract, and the only record would appear on the PRC. Combining legitimate commodity lines with fraudulent nonreferencing commodity lines would make the act difficult to detect. Contracts that typically do not use all allotted budget funds would be a primary target for this activity.

Funding Understatement

When a payment has a commodity line with a negative amount, the payment sent to the vendor will be less than the amount invoiced, and those funds should be added back to the contract. If the payment line does not reference the contract, the contract balance will not change, and it will appear that the contract has less money left than it should. If the contract records that all the funds on a contract have been used, the agency will be unable to make any additional payments until funds have been added to the contract. Payments like these might cause delays and temporary confusion when the contract indicates it is closed but funds are still available.

Here are some examples of funding understatement because of negative nonreferencing commodity lines.

Program Review staff were able to find two examples of payments having nonreferencing commodity lines that resulted in understatement of funds. Other payments may have caused an underestimation of funds. A manual review of a few months' worth of payments was used to find underestimated funds, and an expanded search could identify additional payments with similar issues.

One payment to a systems integrator attempted to record a credit applied to the agency's account by the vendor. The agency had overpaid on a previous charge and received $4,725.61 in credit. On the invoice, the agency was charged a total of $73,473.60. The PRC recorded the full charge on a referencing commodity line and the credit on a nonreferencing commodity line. This PRC resulted in a net payment of $68,747.99 to the vendor but a payment of $73,473.60 was recorded on the contract. The available contract funds were understated by $4,725.61.

Another payment, for drug and alcohol testing, had a similar issue. One of the commodity lines indicated the agency received a credit from the vendor. The negative line did not reference the contract and was not applied against it. This caused the correct amount to be sent to the vendor, but it did not record the credit on the contract. The available contract funds were understated by $115.

Understatement of funds because of nonreferencing negative payment lines creates efficiency risks for the Commonwealth but does not provide an opportunity for abuse. When nonreferencing commodity lines are used, agencies are unable to correctly determine how much funding should still be allocated to the contract. The agency will be able to determine how much funding is still available in the budget accounts, however. If the agency does not use all of the funds associated with the contract, the only problem is the inaccurate recording of information. It will make the agency appear to have spent more funds on the contract than it actually disbursed. If a contract commodity line appears to have used all its funds, then the error will create efficiency issues. If the agency wishes to continue work, it will need to submit a $0 payment to adjust funds. The modification could potentially delay payment and possibly delay work on the contract if it were not submitted in advance.

Work Assignments And Price Contracts

In a price contract, vendors negotiate competitively to provide a kind of service. After the selection of one or more vendors, the agency approaches a vendor when it needs a specific service in that field.

Personal service price contracts are agreements in which a vendor has been approved for a type of service but not for a specific work assignment. A typical price contract will consist of an agreement to offer a service during a specified period. The vendor usually commits to a schedule of costs, often hourly fees and expenses for different service categories or different types of professional staff. In most cases, this agreement is obtained through a competitive solicitation and negotiation process.

In some cases, multiple vendors may be approved for work on the contract. In other cases, there may be more than one price contract for the same type of service. An example of a multivendor PSC was a contract for multiple physicians to review patient and hospital charts obtained in investigations by the Kentucky Board of Medical Licensure. The Description of Work to be Performed for this contract states "The Board never knows when a complaint will be received or what specialty will be needed."[43]

With price contracts, work is not competitively negotiated and the details of assignments are not visible to outside entities. A previous Program Review report identified issues with the same type of contract.

With price contracts, the amount of work is not competitively negotiated, and the details of the work assignments are not visible in eMARS. These characteristics create risk that the Commonwealth will pay more than otherwise necessary for the work. This is a particular concern when the work is done without direct agency oversight and the agency receives an invoice without any direct evidence of the necessity of the hours or other expenses. Similar issues have been identified in the past with so-called prequalified master agreements. These master agreements used the same method of contracting to perform professional services on an as-needed basis. A 2001 LRC report concluded "The use of pre-qualified master agreements may make it difficult for the [Government Contract Review] Committee to determine which contracts are being awarded work, and in what amount."[44,f]

[f] Currently, architectural and engineering personal service price contracts are awarded by FAC on master agreements. Such agreements in eMARS require a "delivery order" document in order to assign work. The delivery order has information similar to a PON2 commodity line, but it also fails to include some of the details of the work assignment. If these contracts were within the scope of this study, Program Review staff would recommend that letter agreements be attached to them also.

Recommendation 3.2

Recommendation 3.2

The Finance and Administration Cabinet should promulgate policies that require agencies to add commodity lines to personal service price contracts in the statewide accounting system for all work assignments and to attach copies of the signed agreements that describe the assignments' scope, time frame, location, total cost, and other details. The cabinet should ensure that its solution is satisfactory to the Government Contract Review Committee.

Vendors selected for price contracts are not committed to accept work assignments. When the agency needs a service, it will negotiate with a vendor on the details of that specific service.

A price contract does not commit a vendor to accept any work assignment the agency requests. When the agency needs to a related service, the agency negotiates with the vendor to provide it. If there are multiple vendors on one price contract or multiple price contracts for the same service, the agency must first pick a vendor to negotiate with. Sometimes this is done by soliciting specific proposals, sometimes on a rotating basis, sometimes geographically, sometimes considering different skill sets, and sometimes for other reasons.

Negotiated work tasks are established in an agreement, which is often called a "letter agreement."

Most of the time, the agency will not know in advance how much the requested service will cost because the amount of time to complete it is unknown. In the course of negotiations, the agency and vendor will establish the detailed scope of work, location, start and end dates, and estimated cost. The two parties will execute an agreement, often called a "letter agreement," laying out these terms.

Letter agreements do not appear in eMARS. PSCs usually do not contain information about work assignments. Payments are the only records of work assignments and tend to have few details.

Letter agreements are kept in an agency's files but are not entered in eMARS. On most personal service price contracts, there is no information about the work assignments—no description, no start and end dates, no total costs, and no record of which vendor was used on multivendor contracts. Only after a payment is made is there any record that work was assigned, and the payment contains virtually none of the information from the letter agreement.

The letter agreement process could be considered a noncompetitive procurement because no other vendors are involved and records are not publicly posted.

The negotiation process culminating in a letter agreement could be considered a form of noncompetitive procurement. The agency depends on the vendor and its own experience to determine whether the proposed schedule and total cost are reasonable. In addition, the results of the process are hidden in the sense that the only record is kept at the agency's office.

There are examples of personal service price contracts on which each work assignment is set up as a separate commodity line. This makes the process more cumbersome because the agency must submit a contract amendment in eMARS to add the line. However, a major benefit is that the commodity line shows the time frame of the assignment, so eMARS can ensure that only payments for that period are processed. Additional benefits are that a summary of information about work assignments is visible to FAC, to GCRC, and to auditors. The commodity lines still fail to include a full description of the work assignment and do not show which vendor was used on multivendor contracts. For these reasons, a copy of the letter agreement should be attached to the contract in eMARS.

Payments On Multivendor Price Contracts

Creating payments on contracts with multiple vendors is potentially risky. Vendor lists may lack vendor codes and other information. The lists are sometimes out of date.

The vendor code on a payment determines who is paid. Payments on multivendor contracts represent a potential high risk because users must look up and manually enter vendor information. On a single-vendor contract, the vendor information section contains the vendor's name, vendor code, and other payment information. Payments based on single-vendor contracts automatically copy the vendor's information into the payment, but multivendor contracts require the user to manually enter the information into the payment document. On a multivendor contract, the vendor code is a generic code that does not identify a vendor. The vendors' names and remittance information may be found in different locations, most often on an attached vendor list, sometimes in the contract's subvendor section, or occasionally in contract comments. The subvendor section contains the code for each vendor, and the user must copy it to the payment. However, vendor lists and comments attached to the contract have no information requirements and may require the user to look up the correct vendor code elsewhere. The lack of standards for vendor lists and the manual entry of vendor codes on payments create an opportunity for users to enter incorrect information for the vendor.

Agencies should update vendor lists to represent vendors added to or removed from a contract. Some agencies indicated updating the vendor list whenever a vendor was added or removed would not be practical because of the frequency of list changes. Each vendor list change would require a contract amendment, which they said might violate the GCRC's 90-day limit on amendments. It may be more practical for vendor lists to be updated on a regular basis, such as once every quarter. However, it is also desirable that the contract information in eMARS match the contract paperwork.

Recommendation 3.3

Recommendation 3.3

The Finance and Administration Cabinet should promulgate policies for multivendor personal service contracts that standardize the location and contents of vendor lists. These lists should at least contain the vendor code for each vendor. The cabinet should require the vendor lists to be updated as soon as feasible after a vendor is added or removed and should establish management controls centrally or at the agencies to ensure each vendor paid on such a contract was a party to the contract and was the one that submitted the invoice.

Multivendor contracts present the risk of paying the wrong vendor on a contract or a vendor who is not a party to the contract at all.

Multivendor contracts present additional opportunities for risk beyond those found with single vendor contracts. Payments must specify which vendor is being paid for a service. On a standard PSC, the vendor's information is found in the vendor section of the PON2 contract document and is automatically copied to payments made from the PON2. On multivendor PON2s, the vendor section uses a generic code that does not identify any specific vendor. The generic code will be copied to payments and must be manually replaced. FAC requires the agency to include a list of vendors on the PON2 but does not require the list to appear in a specific area or contain specific information.[45] During their review of multivendor contracts, Program Review staff commonly found these lists as attachments on PON2s. On a small number of contracts, they were listed in the subvendor section of the PON2. The subvendor section has more direct visibility in eMARS, but neither location provides a reliable way to link the vendor to a payment. On at least one contract, a vendor was listed in a contract comment, which is not readily visible; it is unlikely that anyone other than the agency's contract staff would be aware of such a comment.

The absence of vendor information standards raises the possibility of paying the wrong vendor on the contract or a vendor who was not a party to the contract at all. The difficulty will depend on the amount of information included in the vendor list. If vendor codes are not included in this list, the user will have to look up the vendor's eMARS code. If multiple vendors have similar information, it would be possible for the user to mistakenly enter the wrong vendor on the payment. There are also issues with agencies' changing vendors assigned to a contract after it has been initially approved. If the vendor list is not updated upon the removal or addition of vendors, then it might appear that the wrong vendors are being paid when the payments are legitimate.

Here are some examples of payments made to vendors not on a contract's list of approved vendors.

While reviewing multivendor contracts in eMARS, Program Review staff discovered several instances in which vendors on payments could not be found on the vendor list attached to the contract. Among the 56 multivendor contracts reviewed, 12 contracts showed 270 payments to 81 vendors not on an attached vendor list. These payments totaled almost $498,000.

The majority of examined payments made to these unlisted vendors were on two contracts from the Department for Behavioral Health, Developmental and Intellectual Disabilities to provide "emergency and/or outside medical services used by the state-owned and -operated Psychiatric Hospitals, Nursing Facilities and Intermediate Care Facilities."[46,47] The two contracts accounted for 240 payments for approximately $469,000. While the 68 unlisted vendors paid by the two contracts seem to be related to medical services, they were not included on the list of vendors attached to the contracts.

The number of unlisted vendors paid by the remaining ten contracts varied between one and three. The number of payments to unlisted vendors varied between one and eleven. The largest amount spent on unlisted vendors within this group was $11,427. Although the total amount of discovered payments is not large, these payments demonstrate the possibility of paying vendors who are not actually parties to a contract.

The use of miscellaneous vendor codes on some multivendor contracts presents another issue. Program Review staff were able to identify two ways in which agencies were able to make payments to vendors while not using the vendor's code and providing few details about the vendor.

As seen on one payment, a user is able to use the "ZZMISCOTHR" code in place of a vendor code. Testing by Program Review staff found this code is allowable on payments after completing fields for a vendor name, address, and taxpayer ID. The miscellaneous code allows the user to pay a vendor who does not have an eMARS vendor code or without attributing the payment to an existing eMARS vendor code.

Another payment demonstrated that a vendor could be listed as "Multiple Provider" by using the vendor code ZZMISCPROC. The payment was sent to a vendor by including the vendor's information under the payee section of the payment's header. Typically, the vendor's information is entered into the vendor section, and this information is used for payment purposes. The payee section is an optional section similar to the vendor section. Entering information here overrides the payment information in the vendor section. Using the payee section allows a pay disbursal to be sent to the payee while the service provision is attributed to the vendor in the vendor section. By using a normal vendor code on the payee section and the ZZMISCPROC code on the vendor section, it is more difficult to determine which vendor performed the service and which vendor was paid for the service.

Invoices For Payroll Personal Service Contracts

Some vendors are paid through the state payroll system. These vendors work like a state employee. From a management perspective, these employees may not need to submit an invoice.

Some PSC vendors are paid via the state payroll system. These vendors work like a typical state employee but are required to submit invoices instead of timesheets or similar documents. It seems reasonable that a PSC vendor working full time for an agency as if filling a position could be presumed to operate under typical management controls for employees. If so, it might be unnecessary from a management control perspective for those vendors to submit invoices for their time as long as they are submitting time sheets or similar documents. However, in order to comply with the existing statute, agencies should require invoices on the statutory form.

Recommendation 3.4

Recommendation 3.4

The Finance and Administration Cabinet should direct all agencies to ensure that all personal service contract vendors paid through the state payroll system, including those working full time, submit the statutory invoice form for the services they provide and for expenses they incur.

There is some inconsistency in the submission of invoices for work and expenses done under PSCs when the vendor is paid through the state payroll system. KRS 45A.695(10)(a), effective in August 2010, states,

> No payment shall be made on any personal service contract unless the individual, firm, partnership, or corporation awarded the personal service contract submits its invoice for payment on a form established by the [Government Contract Review] committee.

Another issue is whether expense payments to a vendor are accounted for on the contract balance in eMARS. The initial contract amount, called "actual amount" in eMARS, should be the agency's best estimate of all contract expenditures. In the case of vendors on payroll, that would include salary, benefits, and expenses. Payments for expenses should be made in a manner that reduces the contract's fund balance.

Here are some examples of contractors paid through the state payroll system.

An example of both issues is the contract for the executive director of the Office of Commercialization and Innovation. The Cabinet for Economic Development confirmed that the director was paid a regular salary and benefits and submitted time sheets but did not submit invoices because his work was routinely visible and known to the cabinet. The cabinet also confirmed that the director's travel expenses were paid through state travel vouchers, not invoiced or paid against the contract. As a result, eMARS recorded no expense payments against the contract. The cabinet informed Program Review staff that the contract was being closed out.[48]

The State Fair Board President is another PSC vendor paid through payroll. The contract showed both payroll and expense payments in eMARS. The Tourism, Arts and Heritage Cabinet reported that the president did not submit invoices for his services but would submit invoices in the future. The cabinet confirmed that he did submit invoices for his expenses.[49] Expenses were charged to this contract in eMARS.

Service Dates

Service dates on invoices and in eMARS provide an indication of when services were provided. Program Review staff found payments indicating services were provided outside the authorized date range for those services and payments with incorrect date ranges for services. An automatic completion function in eMARS allows for incorrect service dates to be recorded without alerting the user. The way service dates are entered and validated, along with invoices that do not contain service dates at all, create the risk of incorrectly paying for services that were not performed under the contract. Strict attention to the service dates would help reduce errors and potential fraud. Requiring vendors to provide the exact service dates puts them on notice that they might need to provide documentation if audited.

Recommendation 3.5

Recommendation 3.5

The Finance and Administration Cabinet should promulgate a policy to require agencies to pay only invoices for services performed during valid dates under the personal service contract, to reject invoices that do not include valid dates for each matter being billed, and to enter the service dates exactly as they appear on the invoices. As soon as feasible, the cabinet should modify the statewide accounting system so that invoiced service dates are required on all payment lines that refer to a contract, that the dates must fall within the corresponding contract term, and that the invoiced dates are initially blank and must be entered manually.

When a payment's service dates are entered in eMARS, the system checks to see if the dates fall within the range allowed on the contract. If not, an error prevents processing.

The statutory invoice and eMARS both provide fields to indicate when services charged on the invoice started and ended. When a payment is entered in eMARS, the system checks to determine if the invoiced service dates are appropriate for the contract. Testing by Program Review staff suggests that eMARS will generate an error and require either new dates or an override if the service dates provided do not fall within the service dates on the PON2.

Two payments with service dates outside their allowable ranges were discovered.

Program Review staff did discover payments with service dates outside the ranges on the referenced contract's commodity line. At least two payments indicated services were provided during a time not covered by the referenced contracts' date range. One payment was made in FY2012 and one was made in FY2013. In both cases, no error messages or override messages appeared in eMARS. These payments were made on a contract with the "item" type of commodity lines. Finance and Administration Cabinet staff said the item line type is used to ensure correct hourly rates are paid; these commodity lines require quantities and unit prices instead of service dates.[50] Testing by Program Review staff indicates service dates on payment commodity lines with the item line type are not compared against the referenced contract's service dates.

If a user does not enter service dates into a payment, eMARS will set the service dates to the current date. The user receives no warning and the payment can be processed if the dates fall within the allowable range.

The dates on PRC payments have an automatic completion feature. Submitting a manual PRC with these fields blank or generating a PRC from a PON2 will cause eMARS to fill in the current date for both fields. A payment will almost never be created on the day the service was rendered, so the automatic date is almost always incorrect. However, if the incorrect date falls within the contract's service dates, eMARS will accept it as valid. Payments created after the contract's end date might be for valid past services, but eMARS will reject the automatic date, which might confuse the user.

Ten payments with automatically completed service dates were found. None of these dates matched the actual service dates. Vendors did not provide service dates for some payments because they did not believe it was a service provided over a timeline.

In order to test whether the service dates entered on payments matched those on invoices, Program Review staff identified ten FAC payments with service start and end dates that appeared to have been automatically entered. Program Review staff examined the invoices for these payments and found the invoices' service start and end dates did not match the dates in eMARS. Some invoices used "N/A" for both dates. FAC staff said service dates had not been entered for these invoices because the vendor wrote a review of documents instead of providing a service over a period of time.[51] For these invoices, the vendor should have entered the dates when the vendor wrote the review.

In a review of invoices, Program Review staff discovered 108 payments, 20.1 percent of invoices reviewed, without an indication of service dates.

In a review of payments and invoices, Program Review staff found 108 payments, 20.1 percent, with invoices that did not provide an indication of service dates. Ten of these payments only provided a work end date and six responded with "This is a fixed price contract." The latter response is inappropriate because the services must be provided within the time frame of the contract regardless of the payment method.

Use Of The Statutory Invoice Form

The statutory form was adopted on August 10, 2010. According to KRS 45A.695(10), an invoice must arrive on the form or it is not supposed to be paid.

As stated in KRS 45A.695(10)(a), vendors may only be paid for a service if their invoice arrives on a form established by GCRC. The official form was adopted at the August 10, 2010, committee meeting.[52] Invoices that do not include the form or provide all needed information are technically invalid payments. Any invoices that do not submit complete information may prevent agency staff from properly analyzing whether the vendor has completed the contracted task.

Summary Of Findings On The Statutory Invoice Form

Nearly 30 percent of sampled invoices did not use the GCRC form.

Program Review staff reviewed invoices to determine whether invoices were submitted on the statutory form. More than 70 percent of payments were submitted on the statutory form, though compliance varies among the sampled agencies. The number of invoices on statutory forms has increased somewhat over time.

Most payments did not provide the statutorily required information: the names, titles, work hours, hourly cost, and total cost of vendor staff.

The statutory form requires vendors to provide information about the staff working on the contracted task. The required information describes the type and costs of vendor employees contributing towards the service. Few vendors provided this information, and the number of vendors providing the cost information did not significantly change after the form was implemented. The number of vendors providing descriptive information has increased somewhat.

Program Review staff sought agency feedback to gauge the impact of the statutory form. Most stated the form did not improve information quality or payment creation.

Program Review staff sought informal feedback from the seven agencies reviewed in this study on the impact and value of the statutory form. The feedback was generally negative. Individual questions were found to be helpful but most respondents stated that the form did not improve the quality of information submitted or assist with the creation of payments.

Recommendation 3.6

Recommendation 3.6

The Finance and Administration Cabinet should ensure that agencies require vendors to use the statutory form when submitting invoices and that they reject invoices that do not include all the required information.

Recommendation 3.7

Recommendation 3.7

The Government Contract Review Committee may wish to consider revising the invoice form within statutory limits after receiving additional feedback from a variety of agencies.

Vendors' Use Of The Statutory Invoice Form

For the sample contracts, Program Review staff checked whether invoices arrived on the statutory form. The sole criterion was whether the statutory form was used regardless of the quality or amount of information on the form.

Most payments analyzed, 71.7 percent, used the statutory form. The percentage of vendors using the form increased from FY 2011 to FY 2013.

The sampled list of payments contained 407 invoices submitted after the August 10, 2010, adoption of the statutory form. The Kentucky Transportation Cabinet sample excluded Architecture and Engineering contracts. As shown in Table 3.3, more than 70 percent of invoices were submitted on the form, meaning nearly 30 percent did not. From FY 2011 to FY 2013, the percentage of invoices arriving on the statutory form increased from 64 percent to nearly 75 percent.

Table 3.3
Percentage Of Sample Invoices Using Statutory Form By Agency
FY 2011 To FY 2013

Agency	Total Payments	Payments On Form	Percentage Of Payments On Form
Cabinet for Health and Family Services	215	126	58.6%
Finance and Administration Cabinet	28	18	64.3
Kentucky Department of Education	54	43	79.6
Transportation Cabinet	110	105	95.5
Total	407	292	71.7%

Note: The FY 2013 amounts include some invoices that were dated for FY 2014. These invoices were examined at the start of FY 2014 and likely represent services provided during FY 2013. Invoices submitted before August 10, 2010, are excluded from this analysis; 407 invoices were examined.
Source: Program Review staff compilation of randomly selected payments and their invoices.

There is a relatively low amount of risk associated with this issue. Technically, the invoices that did not arrive on the correct form should not have been paid. A potential issue is a lack of information on these invoices. A universal form should potentially mean that all vendors provide a specified amount of information on all invoices. Without the statutory form as a guide, there would be no clear evidence that invoices provided all required information.

Vendor Staff And Cost Information On Invoices

Vendors are statutorily required to provide the name, title, work hours, hourly cost, and total cost of vendor staff working on a contract.

KRS 45A.695(10)(d)(4) requires invoices to include the name and title of each individual who worked on each task and the amount of time the individual worked. When Program Review staff examined the sample of PSC payments, they reviewed each invoice to determine whether the information was included, not necessarily all in one place.

KRS 45A.695(10)(d)(7) requires invoices to include the hourly rate for each individual working on a service matter and the total charge for each individual. When Program Review staff examined a randomly selected set of invoices, they reviewed the invoices to see if the hourly rates and total charges for individual employees were present. The information did not need to be within the same section of the invoice.

As shown in Table 3.4, compliance with vendor staff information requirements has increased but is still low. After the GCRC form was adopted on August 10, 2010, only 23 percent of sampled invoices included the name, title, and work hours of vendor staff. Only 26 percent provided hourly cost and total cost for vendor staff.

Table 3.4
Sampled Invoices With Required Information
Before And After Adoption Of Statutory Invoice
FY 2007 To FY 2013

Information in Invoice	Before Adoption	After Adoption	FY 2011	FY 2012	FY 2013
Names, hours, and titles	16.4%	23.1%	18.0%	25.9%	23.8%
Hourly and total charges	27.3	25.8	21.3	25.9	27.7
Invoices reviewed	128	407	89	116	202

Note: The "Before Adoption" figures include invoices submitted during FY 2011 but before August 10, 2010. The FY 2013 figures include invoices that were dated for FY 2014. These invoices were examined at the start of FY 2014 and likely represent services provided during FY 2013. In all, 535 payments and their invoices were examined.
Source: Program Review staff compilation of randomly selected payments and their invoices.

Most invoices lacked one or more types of vendor staff information. Since August 10, 2010, only 94 invoices, 23.1 percent, provided name, title, and time worked. For invoices that provided some but not all of the information, the work titles were the most commonly omitted, with 384 invoices, 71.8 percent, lacking titles. For the 205 invoices without any of this information, multiple reasons were given for not including information. For 79 Transportation Cabinet payments, there were references to attached documents that were not included with invoices given to Program Review staff. Other reasons given for not providing the vendor staff information included that such information was not applicable, it was a fixed price contract, the contract included the information, and the proposal included the information.

Lack of staffing details presents a moderate level of risk. When providing services, the quality of work may be dependent on the skills of the individual assigned to the task. When invoices lack this information, there is no evidence that services were provided by the individuals expected to work on the service for specified amounts of time.

Most invoices did not provide vendor staff cost information: 313 invoices, 58.5 percent, did not include the hourly rates or total charges for each employee, and 71 Transportation Cabinet payments referred to attached files that were not included with the payments. Other reasons for not including the pay rate information included that it was "Not applicable," the project was a lump sum contract, the prices were based on deliverables, the contract included the information, and the proposal included the information.

Inadequate hourly and total charges present a minor risk to the Commonwealth. A primary use of this information is to ensure that agencies are receiving services at the agreed rate. The information might also permit verification of the invoiced totals, and it could be used with the staff title to help estimate the skill or experience of the vendor staff working on the contract. The primary issue occurs when the hourly charge, total charge, and work hours are all missing. At that point, agencies can no longer tell how much effort is being put into the contract or determine how the charges are being calculated.

Statutory Invoice Form Feedback

Agencies found different questions to be helpful but there was little consensus on which questions were helpful.

One agency found the form's questions on work products and reimbursed disbursements to be useful, but the agency had already required similar information from vendors. Two agencies reported that the first page of the form was useful for confirming contract-specific information, with one stating the final payment question was useful to ensure contracts are closed. An agency staff member found questions on service descriptions, service dates, vendor staff information and work time, correspondence, and work products to be helpful. However, the same person said vendors had difficulty answering these questions.

Agencies suggested some questions should be combined to reduce duplication or removed because answers rarely changed. Some respondents said the entire form duplicated information already collected by the agencies.

When asked about parts of the form that were not useful, one agency's staff suggested that several questions considered duplicative be combined. These questions ask vendors to describe services provided and staff involvement in the provision of services. Another agency's staff stated that several questions were not needed because the answers changed too rarely or the information was already available. These questions ask for the vendor's tax ID number, length of the contract, when invoices are submitted, and the hourly rate and total charge of vendor staff. A different agency's staff said questions on the vendor's tax ID, date of most recent invoice, hourly rate and total charge of vendor staff, and reimbursed expenses were not necessary. Two other agencies' staff members said the entire form duplicated information already collected by the agencies. A third agency's staff said the back page duplicated available information and the form confuses vendors when items like hourly rates do not apply to a PSC.

Two agencies suggested the form should include a line for the invoice number. One agency's staff hypothesized that the vendor's proprietary invoice would not be needed if the invoice number were available on the statutory form. When reviewing a sample of invoices, Program Review staff found vendors typically submitted the statutory invoice and a proprietary invoice. The other said that including the invoice number would reduce the possibility of an invoice's being paid twice. A third agency suggested the form should be closer to a traditional vendor invoice format, with a breakdown of monthly charges based on deliverables.

Several agencies reported vendors seemed to dislike the form; sometimes being confused or sometimes forgetting to submit the statutory form, delaying payment.

Staff at five agencies reported vendors viewed it as an inconvenience or additional work. One agency's staff mentioned their appraisers have been confused when completing the form because they do not understand how some questions pertain to their work. Two agencies' respondents noted that vendors will occasionally neglect or forget to send the form, delaying payments for services. This delay makes it appear as if the agency is not paying bills on time. One agency indicated the form increased processing time because vendors believe some questions are not applicable to their contract. This agency has also experienced delayed payments because of incomplete forms.

Most agencies could not identify any ways the form had improved the information submitted on invoices, but one agency indicated the form provided more consistency across invoices. Most respondents also found the form had not been helpful for creating PSC payments. One agency's staff found the form was a slight improvement because vendors previously forgot to include the contract number on their invoices. Another agency's staff said the form had been helpful in creating PSC payments but did not explain how.

Monitoring And Evaluation Of Vendors

Program Review staff were generally unable to find documentation of monitoring practices by agencies. Medicaid was the only agency to submit monitoring forms that evaluated the progress of the vendor's performance.

Program Review staff considered monitoring to be any documentation and evaluation of vendor performance towards meeting the contract. Program Review staff were generally unable to find documentation of monitoring and could only verify the monitoring procedures of the Department for Medicaid Services. Agencies expressed some confusion over what constituted monitoring procedures.

Evaluation documents appear to be rarely used and only when vendors have demonstrated negative performance. Agencies cannot see other agencies' evaluations.

Program Review staff considered performance evaluation to be any overall evaluation of a vendor's performance after the completion of a contract. It appears evaluation documents are rarely used and typically represent negative behavior. Agencies are permitted to see only their own evaluation documents and only have information on vendors they have selected in the past.[53] The current use of performance evaluations does not consider positive performance by vendors and prevents the sharing of knowledge between agencies.

Recommendation 3.8

Recommendation 3.8

When feasible, the Finance and Administration Cabinet should require agencies to provide a written evaluation of the quality of a vendor's work periodically during the course of a contract and after the contract is complete. The cabinet should consider whether the statewide accounting system's performance evaluation documents could be used. The cabinet should provide guidance for including past vendor performance as a criterion for scoring proposals to future solicitations.

Monitoring and evaluation will vary based on the type of work done by the vendor and the type of results expected by the agency. Optimally, the agency staff would have used the performance evaluation document in eMARS to record monitoring or evaluation information, but Program Review staff considered any type of document to be viable. Program Review staff discussed monitoring and evaluation practices with agencies and requested that any related documents be provided to staff when they reviewed the randomly selected contracts.

The eMARS performance evaluation document does not appear to have ever been used for monitoring.

Few monitoring practices were documented by the selected agencies. The eMARS performance evaluation document appears never to have been used for this purpose. Staff requested examples of monitoring documents from each of the agencies in the sample but only received documents from the Department for Medicaid Services. The other agencies were able to provide a description of the processes used but no documentation.

Without documentation, there is no proof that monitoring activities have happened. A lack of documentation also prevents the agencies from reviewing how the contract has progressed over time.

There appeared to be some confusion among agency staff over the concept of monitoring.

Misunderstandings about monitoring practices may constitute an issue. The Proof of Necessity form for contracts includes a Planned Performance Monitoring Activities section, but it does not describe what kind of information should be provided. The eMARS help screen only suggests providing "programmatic and fiscal" activities for monitoring. There also appeared to be some confusion over what constituted monitoring. Department of Education staff were initially unsure about what Program Review staff were considering as monitoring but then were able to describe their process of working closely with vendors to maintain first-hand knowledge of quality of the service. When Program Review staff examined the Transportation Cabinet's highway services payments, evaluation documents were rarely found and not presented as monitoring documents. Within the files provided by the Cabinet for Health and Family Services, several documents had titles that included "monitoring" but were records of which individuals had approved contracts. Other agencies indicated that individual units were in charge of contracts after a vendor was chosen. These units may have their own interpretation of monitoring documents.

Some services are difficult to evaluate, and monitoring documentation might not be expected for these services. For example, agencies that contract with auditors to review their financial statements do not have the expertise or opportunity to monitor the work as it proceeds.[54] If a service is difficult to evaluate while it is in progress, the agency might not benefit from attempting to monitor the service.

The lack of records for performance monitoring creates a possible risk that vendors will not provide an optimal level or quality of services. If agencies do not maintain records or simply do not monitor vendors, it is difficult to determine the quality of services provided by a vendor and whether a vendor is meeting its obligations

Only seven PSC performance evaluations exist in eMARS. Some agencies only evaluate poor performance. In any case, the results of evaluations are not available to other agencies.

The Vendor Performance Evaluation document in eMARS contains evaluations of vendor performance on contracts. A review of the performance evaluation documents found that only seven were for PSCs. The agencies interviewed by Program Review staff indicated that performance evaluation is rare in practice. The Department of Education only uses evaluations when performance is poor.[55] At the Transportation Cabinet, performance evaluations are typically used when vendor performance is poor, though some cabinet agencies also use internal evaluation forms.[56] The evaluations of the Department for Behavioral Health, Developmental and Intellectual Disabilities are left entirely to the divisions and facilities using their own forms.[57] The Office of Policy and Budget at the Cabinet for Health and Family Services requested contract documents from cabinet agencies but Program Review staff were unable to find any evaluation documents. Cabinet staff told Program Review staff that evaluation documents were most likely not used if they were not included in the files.[58]

The lack of records for monitoring and evaluation creates risks related to the provision of services and the selection of vendors. The lack of records for performance monitoring creates a possible risk that vendors will not provide an optimal level or quality of services. If agencies do not maintain records or simply do not monitor vendors, it is difficult to determine the quality of services provided by a vendor and whether a vendor is meeting its obligations

There are two sources of risk associated with the current use of performance evaluations. An agency might select a vendor that performed poorly for another agency, or the agency might not select a vendor that proved to be reliable on a previous contract. The first risk is primarily concerned with the limited sharing of performance evaluation. If an agency discovered that a vendor was not reliable, the agency would likely document the issue, but other agencies would not know about that report.

The other issue arises because performance evaluations are generally used for poor performance. Performance evaluations could theoretically be used to document the strengths and abilities of vendors. If thorough evaluations were routinely available, future proposal evaluators would have a better sense of whether the vendor was particularly suited to a specific kind of task.

Multiple agencies use past performance of vendors when awarding contracts. Agencies may only see their own eMARS evaluation documents, preventing them from using the experiences of other agencies.

Some agencies indicated that past performance is used to evaluate vendors on contract applications. Education's RFP template indicates that past performance may be considered when awarding contracts, and vendors with a record of poor performance over the previous year may be found ineligible for the award.[59] The Division of Purchases staff at the Transportation Cabinet indicated that right of way RFPs include previous performance criteria, and the cabinet's legal RFPs may sometimes consider past performance.[60] The Cabinet for Health and Family Services indicated that standardized RFP language includes "Past Vendor Performance may be considered in the award of this Contract. Vendors with a record of poor performance in the last 12 months may be found nonresponsive and ineligible for award."[61] Agencies are permitted to see only their own evaluation documents and only have information on vendors they have selected in the past.[62] More prevalent use and sharing of performance evaluations might assist agencies in selecting vendors for personal service contracts.

Chapter 4

Technical Findings

Definition Of Price Contracts

The statutes use *price contract* to mean a type of personal service contract, but the term is not defined.

The Model Procurement Code uses the term *price contract* both as a type of personal service contract and in other sections of the code, but that term is not defined. Program Review staff attempted to understand the term from the statutory context and developed a definition given in Chapter 1.

Finance and Administration Cabinet officials reported that they no longer use the term but rather speak of *master agreements* for contracts with no fixed work assignment. However, a master agreement is also a specific type of document in eMARS, and that document cannot be used for PSCs that need to be filed with the Government Contract Review Committee. Therefore, it does not seem that *master agreement* should be the blanket term used.

Recommendation 4.1

Recommendation 4.1

The General Assembly may wish to consider defining the term *price contract* as used in the Model Procurement Code.

Renewals

Contract renewals permit work to continue beyond the initial contract. FAC officials encourage agencies to limit contracts with renewals to a total of 6 years.

Contract renewals allow work to continue uninterrupted for a specified period extending beyond the initial contract term. The RFP specifies the number of renewals for a contract based upon how long the agency anticipates the work might take and associated budgetary restrictions. There is no statutory or regulatory limit on the number of renewals permitted, but FAC officials stated that they encourage agencies to limit the total length of a contract, including renewals, to 6 years.[63] Agencies must seek FAC approval for a competitive exemption for each renewal.

Although a renewal is essentially the same contract, eMARS requires a new contract number, making it difficult to track the life cycle of a contract.

The procedure for entering renewals in eMARS is inconsistent with the procurement life cycle. A renewed contract, while it requires new signatures, remains the same contract except for the extension of time and, typically, the addition of funds for the new period. In the current system, once a contract is renewed it receives a new PON2 identification number, creating what appears to be a new contract in eMARS and in agency procurement files. Tracking the life cycle of a renewed contract becomes difficult both in eMARS and in the procurement file.

Searching eMARS for the life cycle of a contract with renewals usually results in incomplete information. Tracing forward from an RFP usually shows only the original PON2. The renewals are not visible. Tracing backward from a renewal PON2 usually does not show any prior documents. There are a few contracts for which the agency created the subsequent renewal documents from the original solicitation documents. In those cases, tracing forward from the RFP shows all the contract renewals, and tracing backward from a renewal PON2 shows the original RFP but not the earlier PON2s.

FAC implemented a requirement that agencies cite the original solicitation documents, but it does not support automated inquiries, and renewals remain untraceable from the original contracts. In most cases, extensive manual review is necessary, and that does not guarantee that all related contracts will be found.

In order to provide some information to connect contracts in a series of renewals, FAC has implemented a requirement that agencies enter information into the Proof of Necessity section stating that a contract is a renewal and listing the identifiers of the original solicitation documents and the original contract. However, this procedure is subject to typographical errors and might be overlooked. It also does not support an automated inquiry to find all the documents in a procurement life cycle. Anyone wanting to trace the procurement must bring up the individual documents manually in eMARS and examine them. Finally, there remains no way to tell by looking at the initial contract document whether there was a renewal or what the PON2 identifier of the renewal was.

The failure of eMARS to maintain reliable bidirectional links between contract renewal documents makes it difficult to identify renewals in the system and to list all the documents that constitute the life cycle of the procurement. In most cases, extensive manual review is necessary, and there is no assurance that all of a contract's renewals will be found with a manual search in eMARS.

Some other methods might be available to identify renewals. A few contracts were renewed through contract modifications.

The Proof of Necessity section of the PON2 form includes an indication of whether the contract is a new contract, an amendment, or a renewal. However, agencies have not been marking renewals in this way. Out of 2,463 new PSCs in the study scope awarded in fiscal years 2010 to 2013, none were flagged as renewals. Almost all renewal contracts that were examined were marked as new in this section.

Some alternative methods have been used. In a few cases, an agency created a new contract with the same number except that

"-1" was added. As of August 2013, there were only 20 such PSC numbers in eMARS. Although this does not provide an easy way to automate searching the contract chain, it does offer the possibility of using eMARS search tools and database queries to find different versions of a contract. The procedure is cumbersome, however, because the agency must ask FAC to suspend the automatic numbering feature of eMARS temporarily while the agency enters the new PON2, then FAC must reactivate the feature.

Program Review staff found several examples of renewals that were created as contract modifications in eMARS. The agency notes indicated that the modification was to exercise a renewal option; the action extended the time period and added funding. These modifications were filed automatically with GCRC and appeared in the committee's amendment list with a note stating they were renewals and showing the funding increase.

The eMARS PON2 document includes fields in the header's Reference subsection that might be usable to link renewals together. These fields are labeled "Replaces Award" and "Replaced By Award," and they appear to accept PON2 identification codes. However, there did not appear to be a way to enter information into these fields.

The inability to trace a contract life cycle in its entirety makes auditing and oversight difficult and reduces transparency. Even those renewals that list the RFP identification number in the Proof of Necessity section might be mistaken for distinct contracts, and the entries are subject to typographical errors. In terms of performance monitoring, history of work, and budgetary tracking, all the documents in the procurement life cycle should be fully connected in eMARS.

Noncompetitive Renewals

Noncompetitive contract awards are used to effect renewals for contracts that have no renewal options. There is no indication in eMARS that these contracts are connected.

When a contract is awarded without a solicitation, it receives a sole source or not feasible to bid exemption. Because there is no RFP, there are no renewal options. However, there are many instances of PSCs for which agencies award successive noncompetitive contracts to the same vendor for the same scope of work. These contracts are not technically renewals and also require FAC approval for a competitive exemption, but they usually result in continuous work by the vendor on the same terms for an extended period of time.

Because these are not considered renewals, there is no indication in eMARS that the contracts are connected. There might be a notation in an attached document, but such documents are not readily visible and are not part of the automated tracing capability of eMARS. This lack of transparency severely limits auditing and oversight and raises the risk that a series of such contracts could continue for extended periods without appropriate justification.

Recommendation 4.2

Recommendation 4.2

Considering a "renewal" to be any contract that in effect is a continuation of the work being done by a vendor on an existing contract, whether by exercising a renewal option, by competitive exemption, or by any other method, the Finance and Administration Cabinet should establish a reliable automated mechanism in the statewide accounting system to trace all personal service contract procurement documents from the solicitation, or from the original contract if there was no solicitation, through all renewals and vice versa. The cabinet should ensure that its solution is satisfactory to the Government Contract Review Committee.

External Tracking Systems

Some agencies use customized software packages or Microsoft Excel workbooks outside eMARS to track document approvals, amounts, modifications, and payments. This section discusses examples and their implications.

Some agencies use customized software packages or Microsoft Excel workbooks outside eMARS to keep track of document approvals, amounts, modifications, and payments. This section discusses some examples and their implications.

Examples Of External Systems

The Department of Education procured a custom system built on the Microsoft SharePoint product to track the internal approval of draft solicitation and award documents: RFPs and PON2s. The system is called the Financial Routing System. Once the document is created in draft form in eMARS, it is then printed and scanned into the routing system to obtain the needed approvals. After the approvals have been made, the eMARS document is updated with any changes, and the agency approves the document in eMARS so that it can proceed to FAC for final approvals.[64]

The Cabinet for Health and Family Services has a custom system built by its own staff. The procedure at the cabinet is similar to the Department of Education's system except that the documents are routed on paper. The RFP or PON2 is entered in draft form in eMARS and then printed. The routing system generates a routing sheet, and a designated staff person sends the packet in turn to each reviewer, who returns it to the staff person for the next reviewer. The staff person records the approvals in the system as they occur so that the status and location of the document are always up to date. After the last internal approval, the draft document in eMARS is updated, signatures of the parties are obtained, and the eMARS document is approved and submitted to FAC.[65]

All the agencies that Program Review staff visited used some kind of external method of tracking contract payments and balances. The most frequent method was a Microsoft Excel workbook.

Summary Of Issues Related To External Systems

A reason for approving drafts outside eMARS is that the system's approval workflow requires approval to start over every time a document is rejected. If agencies wanted to use eMARS, they would have to give system access to more staff.

Agency and FAC officials agreed that a major reason for using external systems for draft document approval was that the eMARS approval workflow requires a rejected document to return to the first approver and be reviewed by everyone in the chain again. It is fairly common for draft documents to be rejected and revised multiple times, thus making the repeated flow through all approval levels burdensome. External systems circumvent this issue by allowing the necessary alterations and corrections to be made at each approval level without having to repeat unnecessary levels that were previously cleared.

Another reason is that agencies limit eMARS access to a few employees. Most internal approvers do not currently have access to eMARS. It should be possible to give restricted eMARS access to the approvers as needed.

Using external systems for tracking purposes raises the question whether eMARS has these functions or could be enhanced to perform them, possibly providing a more efficient way of meeting agencies' needs. External tracking systems also present a long-term risk in efficiency and reporting. Having all information about approvals, modifications, renewals, monitoring, and payments in one system is preferable to having parallel systems with no interoperability.

Recommendation 4.3

Recommendation 4.3

If feasible, the Finance and Administration Cabinet should enhance eMARS to allow draft documents to be updated during the approval process without requiring all approvals to be redone. The cabinet should consider surveying agencies to

determine any other beneficial eMARS functionality that might exist or be built to facilitate tracking contract payments and budgeted funds.

Appendix A

How This Study Was Conducted

Information Sources

Officials and staff of the Finance and Administration Cabinet (FAC) and other agencies were interviewed in order to clarify policies and procedures and to obtain answers to questions about specific contracts.

The statewide accounting system, eMARS, was used extensively to obtain information. The infoAdvantage reporting tool was used to obtain most statistical information. For some inquiries, the eMARS data warehouse was accessed directly using the Oracle database interface.

Hard-copy procurement documents outside eMARS were examined to obtain more detailed information on how contracts were awarded, monitored, and paid.

Scope Of The Study

This study generally did not examine contracts that were outside the direct control of FAC, such as other constitutional officers, the judicial branch, and agencies whose contracts were statutorily not under the control of FAC or the governor. Appendix B lists the agencies that were included in the scope of the study.

This study considered primarily contracts that were listed in eMARS as standard personal service contracts (procurement type 17). Although architectural and engineering service contracts (type 3) are technically PSCs, they follow different statutory rules and procedures; Program Review staff examined some such PSCs but did not systematically review them.

The statute that defines PSCs creates one significant gray area. KRS 45A.690(1)(g)7 excludes contracts that GCRC "deems inappropriate for consideration." Such contracts might otherwise meet the criteria for services requiring professional skill or judgment and might not fall into any of the specific exceptions. FAC instructed agencies to use PO2 documents with procurement type 14 to award contracts falling under this and other GCRC exceptions. PO2 documents with procurement type 14 were also used for a similar statutory exception for MOAs (KRS 45A.690(1)(d)11). This study did not consider contracts of type 14. However, staff did examine some such contracts to determine whether they should have been classified as PSCs.

The study focused primarily on PSCs that had starting dates in FY 2010 through FY 2013. Occasionally, earlier and later contracts were reviewed for specific reasons.

This study examined some contracts from otherwise excluded agencies for comparison with those of agencies in the scope of the study.

Selection Of Agencies For More Detailed Review

Agencies selected for more detailed review were among those with the largest numbers of PSCs or largest dollar amounts spent on PSCs. The following were selected, listed with their eMARS department codes.

- Within the Cabinet for Health and Family Services:
  - Office of the Secretary (721)
  - Department for Medicaid Services (746, 748)
  - Department for Behavioral Health, Developmental and Intellectual Disabilities (729)
- Within the Finance and Administration Cabinet:
  - Office of the Secretary (750)
  - Office of the Controller (758)
- Kentucky Department of Education (540)
- Within the Transportation Cabinet:
  - Office of the Secretary (605)
  - Department of Administrative Services (610)
  - Department of Aviation (615)
  - Department of Highways (625)

Selection Of Contracts For More Detailed Review

Initial Reviews

Staff initially reviewed contracts that were found by querying eMARS for characteristics such as total cost. The decision to review the Medicaid University Health Care (Passport) managed care contracts was made in this way.

Agency-Based Reviews

After target agencies were selected, Program Review staff requested the agencies provide examples of certain kinds of contracts.

Later, Program Review staff randomly selected contracts for each agency based on the following table. The fiscal year used was the budget fiscal year listed on the most recent version of the contract document.

Table A.1
Number Of Contracts Selected By Fiscal Year

Budget Fiscal Year	Number Of PON2s Selected	Number Of FAC PON2s Selected
2009	0	1
2010	1	2
2011	2	3
2012	3	4
2013	4	5
Total	10	15

If an agency did not have the desired number of contracts in a fiscal year, staff selected all contracts from that year and proceeded to increase the number selected in other years, starting with more recent years, until the desired number was satisfied. If an agency did not have 10 contracts in the 5-year period, staff reviewed all the contracts from that period; at staff's discretion, contracts from FY 2014 were included to complete the sample.

Some agencies indicated that contract folders had been archived. Staff requested and reviewed the archived information.

Some agencies were grouped for the purpose of the random sample:

- Finance and Administration 750 and 758 (randomly distributed)
- KYTC 605, 610, and 615 (randomly selected one of only two from 615, selected the most recent 2 of 19 from 610, and randomly selected the remainder from 605)
- DMS 746 and 748 (all 10 were randomly selected from 746; the only 748 contracts were Passport, which were targeted separately for examination of payments)

If any of the selected contracts was a renewal of an earlier contract, the earlier contract or contracts and their payments were also reviewed.

Targeted Reviews

Staff identified kinds of contracts that were of special interest because of heightened risk of error, fraud, or control weaknesses. Other contracts were brought to staff's attention by FAC or other agencies. When lists of such contracts were obtained, staff selected some for further review. These were not randomly selected but were usually a result of spot checks that led to indications of further interest.

Calculation Of Amounts Reported As Spent

Because the contract balances in eMARS were not considered fully reliable, and because multiple departments paid for services on some price contracts, staff used transactions from the eMARS accounting journal to identify amounts that were spent on PSCs by agencies within the scope of the study. The data were extracted using the Oracle interface to the eMARS data warehouse and were manipulated using Microsoft Excel.

Appendix B

State Agencies

Agencies Within The Study Scope

This section lists agencies that were considered within the scope of the study. If an agency would have been in scope but had no contracts in eMARS, it is not listed. The study scope included only agencies that were within the executive branch using eMARS and under the purview of the Finance and Administration Cabinet.

Economic Development

Department for Business Development
Department for Existing Business Development
Department for New Business Development
Department of Financial Incentives
Economic Development—Office of the Secretary

Education and Workforce Development

Commission on Deaf and Hard of Hearing
Department for Libraries and Archives
Department for Workforce Investment
Department of Education
Education Cabinet—Office of the Secretary
Education Professional Standards Board
Kentucky Commission on Proprietary Education
Kentucky Educational Television
Kentucky Environmental Education Council

Energy and Environment

Department for Energy Development and Independence
Department for Environmental Protection
Department for Natural Resources
Energy and Environment Cabinet—Office of the Secretary
Kentucky Public Service Commission
Kentucky State Nature Preserves Commission

Finance and Administration

Commonwealth Office of Technology
Department of Revenue
Facilities and Support Services

Finance—Office of the Secretary
Office of the Controller

General Government

Agricultural Development Board
Board of Accountancy
Board of Alcohol and Drug Abuse Counselors
Board of Auctioneers
Board of Certification for Marriage and Family Therapists
Board of Chiropractic Examiners
Board of Dentistry
Board of Embalmers and Funeral Home Directors
Board of Examiners and Registration of Architects
Board of Examiners of Psychologists
Board of Examiners of Social Work
Board of Hairdressers and Cosmetologists
Board of Licensure for Professional Engineers and Land Surveyors
Board of Medical Licensure
Board of Nursing
Board of Ophthalmic Dispensers
Board of Optometric Examiners
Board of Pharmacy
Board of Physical Therapy
Board of Professional Counselors
Board of Registration for Professional Geologists
Board of Speech Pathology and Audiology
Board of Veterinary Examiners
Department for Local Government
Department of Military Affairs
Department of Veterans Affairs
Executive Branch Ethics Commission
Governor's Office
Kentucky Board of Licensure for Massage Therapy
Kentucky Infrastructure Authority
Kentucky River Authority
Office of Energy Policy
Office of Homeland Security
Personnel Board
Real Estate Appraisers Board
Real Estate Commission
School Facilities Construction Commission
State Board for Proprietary Education

Health and Family Services

Commission for Children with Special Health Care Needs
Department for Aging and Independent Living
Department for Behavioral Health, Developmental and Intellectual Disabilities
Department for Community Based Services
Department for Disability Determination Services
Department for Family Resource Centers and Volunteer Services
Department for Income Support
Department for Medicaid Services
Department for Public Health
Governor's Office of Wellness and Physical Activity
Health and Family Services—Office of the Secretary
Medicaid Services Benefits
Office of Health Policy
Office of Inspector General
Office of the Kentucky Health Benefit Exchange

Justice and Public Safety

Department for Public Advocacy
Department of Corrections
Department of Criminal Justice Training
Department of Juvenile Justice
Department of Kentucky Vehicle Enforcement
Justice—Office of the Secretary
Kentucky State Police

Labor

Department of Workers' Claims
Department of Workplace Standards
Kentucky Occupational Safety and Health Review Commission
Labor—Office of the Secretary
Workers Compensation Funding Commission

Personnel

Department for Personnel Administration
Personnel—Office of the Secretary

Postsecondary Education

Council on Postsecondary Education

Public Protection

Board of Claims and Crime Victims' Compensation
Board of Tax Appeals
Department for Environmental Protection
Department for Natural Resources
Department of Alcoholic Beverage Control
Department of Housing, Buildings and Construction
Department of Insurance
Department of Labor
Department of Public Protection
Horse Racing Commission
Public Protection—Office of the Secretary

Tourism, Arts, and Heritage

Department of Travel
Kentucky Artisans Center at Berea
Kentucky Arts Council
Kentucky Department of Fish and Wildlife Resources
Kentucky Department of Parks
Kentucky Historical Society
Kentucky Horse Park
Kentucky State Fair Board
Tourism—Office of the Secretary

Transportation

Department of Administrative Services
Department of Aviation
Department of Highways
Office of Legal Services
Office of Personnel Management
Transportation—Office of the Secretary

Agencies Outside The Study Scope

This section lists significant agencies that were outside the study scope. Some of these agencies enter their contract documents in eMARS, but others use their own procurement systems.

Auditor of Public Accounts
Department of Agriculture
Judicial Branch
Kentucky Community and Technical College System
Kentucky Employers Mutual Insurance Authority

Kentucky Higher Education Assistance Authority
Kentucky Higher Education Student Loan Corporation
Kentucky Housing Corporation
Kentucky Retirement Systems
Kentucky Teachers Retirement System
Legislative Branch
Office of the Attorney General
Secretary of State
State Treasurer
State universities
Unified Prosecutorial System

Appendix C

Statutes And Regulations Related To Personal Service Contracts

Applicability To The Judicial Branch

An official of the Administrative Office of the Courts asserted that the Supreme Court in *Ex Parte Auditor of Public Accounts*, 609 S.W.2d 682, 685 (Ky. 1980), strongly and clearly stated that the judicial branch is not subject to imposition of any laws or regulations by the other branches regarding the expenditure of the judiciary's funds. The official stated that the applicability of the Government Contract Review statutes to the judiciary has not been tested in court, but the judiciary acknowledges its "responsibilities to be accountable and transparent to the public and the legislature" in this regard and so operates as if the statutes applied to the judiciary by filing its personal service contracts with the committee. If the committee were to disapprove one of its contracts, the chief justice, not the Finance and Administration Cabinet secretary, would be the official presumed responsible to decide whether to override the disapproval.[66]

Statutes

KRS Chapter 14A

14A.9-010	Requirement that a foreign [out-of-state] entity must obtain a certificate of authority from, or file a statement of foreign qualification with, the Secretary of State before being awarded a state contract.

KRS Chapter 42

42.024	The Office of Material and Procurement Services is responsible for purchasing functions under KRS Chapter 45A.

KRS Chapter 45

45.251	All expenditures must be reflected in the unified and integrated system of accounts.
45.305	There shall be a unified and integrated system of accounts for the state.

KRS Chapter 45A

45A.010	Purposes and policies of the chapter
45A.015	Unless stated otherwise, all principles of law supplement this chapter and an obligation of good faith is imposed on every contract.

45A.020	The code shall apply to every expenditure of public funds and disposal of state property, exceptions excluded.
45A.022	The code applies to all insurance contracts, exceptions excluded.
45A.023	Federally funded projects may be multiyear contracts and exceed the biennium. All these contracts must include the "funding out provision."
45A.025	All determinations must be made in writing and kept in the official contract file.
45A.030	Definitions for the code.
45A.035	Secretary to adopt regulations; a list of subjects that the regulations should govern is included.
45A.040	The secretary of FAC shall provide for the distribution procurement activities among the various bureaus within the cabinet.
45A.045	FAC shall serve as the central procurement and contracting agency of the commonwealth. The powers of FAC are listed in this statute.
45A.050	All rights, powers, duties, and authority relating to procurement are transferred to the secretary of FAC, exceptions excluded. Duties of FAC are included in this statute.
45A.055	FAC shall publish purchasing regulations in accordance with its policies and procedures.
45A.060	The secretary of FAC shall maintain a close and cooperative relationship with the using agencies of the commonwealth.
45A.065	The secretary of FAC may appoint advisory councils to provide assistance. The secretary may also establish a procurement institute for the purpose of disseminating information and training.
45A.067	The commonwealth shall not contract unless the person contracting to supply goods or services registers with the Department of Revenue. This does not apply to those who do not make sales in Kentucky.
45A.070	Definitions for KRS 45A.070 to 45A.180.
45A.075	Methods of awarding state contracts.
45A.080	Procedures for competitive sealed bidding.
45A.085	Procedures for competitive negotiation.
45A.090	Procedures for negotiation after a sealed bidding where all bids exceed the available funds.
45A.095	Procedures for noncompetitive negotiations.
45A.100	Procedures for small purchases.
45A.105	A solicitation may be canceled or all bids rejected if it is within the best interest of the commonwealth and approved by purchasing officer.
45A.110	A written determination of responsibility of a bidder shall be made after the bidder provides the secretary of FAC with a sworn statement that the bidder has not knowingly violated any provision of the campaign finance laws.
45A.115	The secretary of FAC may provide for prequalification of suppliers as responsible prospective contractors for particular types of supplies, services, and construction.
45A.120	Pricing and cost information for contracts, as well as the procedure for modification of contract amount when required. There are exceptions to this statute.
45A.130	The circumstances under which a cost reimbursement contract may be made and the procedures pertaining to cost reimbursement contracts.

45A.135	Subject to the limitations of KRS 45A.125 and 45A.130, any type of contract which will promote the best interests of the commonwealth may be used.
45A.140	No contract type shall be used unless it has been determined that the proposed contractor's accounting system meets specifications outlined here.
45A.145	Multiyear contracts may be entered into for a period that does not exceed the biennium, unless provided in the appropriations statute. Payment for further fiscal years is subject to fund availability.
45A.150	FAC may inspect the audit and inspect the place of business of contractors and subcontractors.
45A.200	Contract adjustment and termination clauses.
45A.210	Authorization of FAC to issue regulations concerning modification and termination of contracts.
45A.470	Preference should be given to products made by the Department of Corrections, Division of Prison Industries. Second preference should be given to products made by the Kentucky Industries for the Blind Inc. or to any other nonprofit.
45A.480	All contractors shall comply with worker's compensation insurance and unemployment insurance laws.
45A.494	Resident bidders to be given preference by public agencies.
45A.520	Requirement that agencies purchase material with a minimum recycled content and that these minimums be set in regulations by FAC.
45A.525	Recycled material content provisions apply to every person entering into a contract with a state agency for building, repairing, demolishing, or any other improvements to public real property.
45A.660	FAC may waive any requirements in this code when purchases are made from a federal or state government or agency.
45A.690	Definitions for KRS 45A.690 to 45A.725.
45A.695	Procedures for personal service contracts.
45A.700	Certain personal service contracts in aggregate amounts of $10,000 or less are exempt from routine review, as well as memoranda of agreement and price contracts of $50,000 or less.
45A.705	Rules and duties of the Government Contract Review Committee.
45A.725	The GCRC may establish policies and procedures relating to the matter and form of notification and documentation to accompany personal service contracts, tax incentive agreements, and memoranda of agreements.
45A.800	Definitions for KRS 45A.800 to 45A.835, 45A.195, 45A.440, and 45A.695.
45A.803	The process in KRS 45A.800 to 45A.835 shall be followed when the Transportation Cabinet provides engineering or related services for a federal highway project.
45A.810	Selection committees for architectural services and engineering or engineering-related services.
45A.815	Requirements of procuring agency for selection committees.
45A.825	Procedures for architectural, engineering, and engineering-related contracts.
45A.827	Criterion to break tie vote of the selection committee.
45A.830	Copies of proposed contracts shall be made available to the selection committee; the members shall certify that there was no known violation of the procurement process. The certificates shall be filed with the GCRC.

45A.835	Persons who are prohibited from serving in a pool or on a selection committee.
45A.836	Eligibility of entities selected under KRS 45A.810 to act as offerors in certain circumstances.
45A.837	Procedures for price contracts for architectural, engineering, or engineering-related services.
45A.838	Establishment and operation of pool of firms to provide professional contract services. The Transportation Cabinet shall promulgate regulations for pools.
45A.860	Certification of circumstances that may or may not constitute a violation of statutes.
45A.863	Antinepotism provisions.
45A.867	Emergency procedures.
45A.879	Administrative regulations shall be promulgated to carry out KRS 45A.840 to 45A.879.

KRS Chapter 56

56.491	FAC must approve certain projects before any action is taken to contract.

KRS Chapter 61

61.392	Requirement that cabinets report the number of employees working under contract.
61.515	Provides that the Kentucky Retirement Systems is excluded from KRS Chapter 45A.

KRS Chapter 65

65.314	Requires that all government bodies must adopt the procurement code and policies.

KRS Chapter 150

150.061	Fish and Wildlife Commissioner employment contract.

KRS Chapter 161

161.340	Exempts the Kentucky Teachers' Retirement System from KRS Chapter 45A.

KRS Chapter 162

162.075	Compliance with KRS Chapter 45A is not required if the contract is with the federal government.

KRS Chapter 164A

164A.575	KRS Chapter 45A may apply when institutions are purchasing or contracting for certain items.
164A.590	Procedure for institutions to contract for architectural and engineering services.
164A.600	The procedures and limitations in KRS Chapter 45A apply to governing boards and are limited to the scope designated by the General Assembly.

KRS Chapter 353

353.774	KRS Chapter 45A does not apply to contracts made by the Kentucky Gas Pipeline Authority.

KRS Chapter 362

362.1-951	An out-of-state limited liability partnership shall file a statement of foreign qualification before transacting business.

Regulations

Title 1 Legislative Research Commission, Chapter 2

2:010	The Government Contract Review Committee procedures, membership, and maintenance of records.

Title 200 Finance and Administration Cabinet, Chapter 5

5:021	Incorporates the FAC Policy and Procedures Manual (2006) into regulations.
5:076	Discusses small and minority business set asides; certain projects may be set aside for small and minority businesses if they meet the qualifications within the regulation.
5:080	All sponsorships must be posted for 7 days and must be evaluated on the basis of best value; it must be clear that a sponsorship is not an endorsement.
5:302	Delegation of Authority; states the secretary of FAC may delegate purchasing authority to an agency that submits proof of competency in the area. If an agency exceeds the small purchase limit, FAC may delegate and set limits.
5:305	Contracts cannot be awarded to one who fails or refuses to give a performance bond; a contractor may be declared defiant and forfeit bond if in breach; the FAC manual contains the terms and conditions for bonds.
5:306	The process and requirements for competitive sealed bidding, including the process for clarification of bids, disqualification of bids, and mistakes in bids.
5:307	The process and requirements for competitively negotiated contracts.
5:309	The process for noncompetitive negotiations, including a list of contract types that may be awarded by noncompetitive negotiation.

5:310	Multiple contracts from one solicitation may be awarded if need is determined before the solicitation begins. The contracts awarded can be for the entire contract requirements or just part.
5:311	FAC or the purchasing agency may place clauses in a contract for changes and modifications; increases in quantity may not be more than 10 percent on contracts with fixed quantities.
5:312	The process and terms of default and termination including funding out and termination for convenience.
5:313	The Division of Material and Procurement Services and the Division of Contracting and Administration shall adopt general conditions for bidding and may adopt special conditions. The conditions are applicable to all solicitations issued by the divisions and any delegated agency.
5:314	All state contracts must contain the language contained in this regulation on disclosure of financial records and information.
5:315	Process for disciplinary action for failure to perform the contract.
5:317	Details for cost reimbursement and cost principles.
5:325	All agencies requesting purchase of wood products shall give consideration to the use of Kentucky-made wood products and "brand name or equal" shall only be used if necessary.
5:330	All purchases of goods, supplies, equipment, materials, and printing shall comply with the minimum recycled content amounts contained within this regulation except as provided in KRS 45A.510.
5:340	The evaluation process for privatization requests.
5:350	The process for guaranteed energy savings performance contracting and required terms.
5:365	Alternative project delivery methods for capital construction projects and the process for this alternative method.
5:375	The process for multistep competitive sealed bidding.
5:380	The deadline for submission of written protests and what should be contained within written protests.
5:390	The procedure for ensuring compliance with that statutory requirement that all persons contracting with the commonwealth register with the Department of Revenue for tax purposes.
5:400	The procedure by which reciprocal preference is given to Kentucky bidders.
5:410	Requirements for preference given to qualified bidders.

Title 600 Transportation Cabinet, Chapter 6

6:010	Definitions for Title 600 Chapter 6 regulations.
6:020	Transportation Cabinet employee responsibilities when establishing the need for, negotiation of, or contracting for engineering services.
6:030	Establishes federal requirements to be followed by the Transportation Cabinet relating to contracts for engineering or engineering-related services.
6:040	The prequalification process for firms for engineering and engineering-related services.

6:050	The procedures for public notice for contracting for engineering or engineering-related services.
6:060	The procedures for establishing and operating an engineering and engineering-related services selection committee.
6:065	Utilizing a pool of firms for engineering and engineering-related services.
6:070	Methods and procedures to be used by the Transportation Cabinet when contracting for engineering or engineering-related services.
6:080	Methodologies to be used for audits and review of financial records relating to engineering and engineering-related services.

Finance And Administration Cabinet Policies And Procedures

Section I: Office of Material and Procurement Services

FAP 110-10-00	General definitions, conditions, and instructions for solicitations and contracts.
FAP 111-08-00	Purchases that are exempt from competitive sealed bidding by law.
FAP 111-09-00	Purchases that are exempt from competitive sealed bidding because it is not practicable or feasible.
FAP 111-10-00	Purchases exempt from competitive sealed bidding because there is only one capable supplier.
FAP 111-11-00	Procedures for modifications of solicitations and contracts.
FAP 111-25-00	Procedure for closing fiscal year purchases.
FAP 111-27-00	Performance bond requirements for vendors.
FAP 111-28-00	Retention of procurement documents in agency filing system.
FAP 111-34-00	Policies and procedures for awarding contracts and rejecting bids.
FAP 111-35-00	Procedure for competitive sealed bidding.
FAP 111-37-00	Definition and explanation of contract types.
FAP 111-39-00	Conditions and procedures for emergency purchases.
FAP 111-41-00	Specifications for delivery and receiving.
FAP 111-42-00	Process and procedure for vendor complaints.
FAP 111-43-00	Procedures for Personal Service Contracts.
FAP 111-44-00	Procedures for Memorandum of Agreement.
FAP 111-45-00	Documents authorizing payments.
FAP 111-51-00	Administration of a contract.
FAP 111-57-00	Policy and procedure for competitive negotiations.

Section II: Division of Statewide Accounting Services

FAP 120-07-00	Procedures for fiscal year closing.
FAP 120-22-00	Serving or appointing an agency employee as security officer with responsibilities to designate authorized electronic signature to FAC.

Section III: Department for Facilities and Support Services

FAP 220-05-00	Bidding instructions for construction solicitations.
FAP 220-06-00	Competitive bidding exceptions for construction and building maintenance in accordance with statute.
FAP 220-11-00	Emergency procedures for contracts relating to construction.
FAP 220-12-00	Competitive sealed bidding solicitation process.
FAP 220-13-00	Awarding construction and construction-related contracts.
FAP 220-14-00	Procedure for solicitation for architectural and engineering or engineering-related contracts including process for prequalification.
FAP 220-17-00	Procedure for competitive negotiations.

Appendix D

Solicitation And Award Process

The Finance and Administration Cabinet provided the following summary of the steps for soliciting and awarding a personal service contract.

Personal Service Contract Review Process

1. Agency identifies the need and secures agency approvals to proceed.
2. In-house staff available?
    a) If yes, proceed to step 3.
    b) If no, proceed to step 4.
3. Services performed in-house. Stop
4. Sole source or not practical or feasible to bid?
    a) If no, proceeds to step 11.
    b) If yes, proceed to step 5.
5. Agency prepares EO1/LOI, requesting exemption and submits to FAC OPS Person Service Contract Administrator in emars.
6. Document reviewed in emars by the Secretary designee, OPS Executive Director.
7. Approved?
    a) If yes, proceed to step 13.
    b) If no, proceed to step 9.
8. Reject to agency for action.
9. If approved agency creates EO1/LOI, then submit in emars and for agency approval and Finance approval if over $10,000.
10. Agency develops Request for Proposal in emars and submits to FAC OPS for review and posting to VSS for a minimum of 7 days.
11. Agency receives and evaluates responses.
12. Agency creates SRW and EV documents.
13. Agency prepares PON2, Personal Service Contract.
14. Agency secures Vendor Signature.
15. Agency secures Legal Approval and Signature.
16. Agency secures Management Approval and Signature.
17. Finance approval required?
    a) If yes, go to step 20.
    b) If no, go to step 25.
18. Agency submits contract and supporting documents to PSC Contract Administrator.

19. PSC's are reviewed by OPS to ensure that the using agency follows all policies, procedures and statutes that govern personal service contracts; that the PSC has been created correctly in the eMARS system and check the need for the following:

    Header:

    - a) Document Name
    - b) Document Description
    - c) Procurement Type
    - d) Cited Authority
    - e) Contract Amount
    - f) Default Form

    Vendor:

    - a) Vendor Name
    - b) Vendor Address

    Commodity:

    - a) Commodity Lines
    - b) Extended Description
    - c) Dates
    - d) Commodity Code

    Proof of Necessity:

    1) General Information:
        - a) Type of Award
        - b) Description of Work to be Performed
        - c) Planned Performance Monitoring Activities
    2) Source of Funds:
        - a) Total Amount of Contract
        - b) Funding Source (Federal, General, Agency Capitol Construction, Other) If Other, look at Contact Cost Information's If other, explanation is required.
    3) Contract Cost Information:
        - a) Detailed Description of Cost
        - b) Basis for Payment
    4) Justification:
        - a) Name/Address of Other Providers Considered
        - b) Basis for Selection
        - c) Justification for Outside Provider
    5) Contact Information:
        - a) Contact Name and Phone Number

    Check to make sure the correct documents are attached to the header and each document is completed correctly, i.e. PON2, Affidavit, EO1.

20. Once the review by OPS/PSC Contract Administrator has been completed and the PSC shown to be in compliance, it is approved and routed to the Finance and Administration Cabinet, Office of

the General Counsel (Finance Legal) for review and approval. If the PSC is not in compliance, it is rejected back to the submitter with instructions for correction.

21. Finance Legal reviews the PSC for accuracy and stator compliance. If the PSC is shown to be in compliance, it is routed to the Finance Secretary's worklist for review and approval. If the PSC is not in compliance, it is rejected back to the submitter with instructions for correction.

22. Is PSC for Legal Services?
    If yes, go to 24.
    If no, go to 23.

23. Upon review and approval by the Finance Secretary designee the contract routes to the Governor's Office of Legal Services for approval and issuance an Executive Order.

24. Is the Personal Service Contract less than $10,000?
    If yes, go to step 25.
    If no, go to step 26.

25. Upon review and approval by the Finance Secretary designee, or the Governor's office of Legal Services (for legal services), the PSC is routed to the Legislative Research Commission (LRC) Government Contract Review Committee (GCRC) for informational purposes pursuant to KRS45A.700(1).

26. Upon Review and approval by Finance Secretary designee, or the Governor's Office of Legal Services (for legal services), the PSC is routed to the Legislative Research Commission (LRC) Government Contract Review Committee (GCRC) to await consideration pursuant to KRS45A.705(4) for final review.

27. The LRC Government Contract Review Committee (GCRC) meets monthly to review all PSC's filed during the previous month.

28. Approved?
    If no, go to step 29.
    If yes, go to step 32.

29. If the GCRC does not approve the PSC, the agency may request an override from the FAC Secretary within 10 days of the date of disapproval.

30. Override?
    If no, go to step 31.
    If yes, go to step 32.

31. If the agency does not request an override, or the FAC Secretary does not approve an override, the agency must cancel the contract.

32. If an override is issued, the contract moves forward.

Appendix E

Government Contract Review Committee Policies And Forms

The Government Contract Review Committee, pursuant to KRS 45A.690 to 45A.725, reviews all personal service contracts and price contracts where a contractor is performing a service for a state agency. The committee also reviews all agreements between state agencies and other governmental bodies. The committee is tasked with reviewing these contracts for need and appropriateness, as well as determining whether the contract can be performed by state personnel.

This appendix displays the policies of the Government Contract Review Committee, followed by two committee documents used by agencies when submitting contracts for review. A third document, the personal service contract invoice required by statute, appears in Appendix F.

Hourly Rates V. Travel Expenses Policy

Policy Statement #98-1

It shall be a policy of the Government Contract Review Committee of the Legislative Research Commission:

1. Allow for payment for actual time spent in behalf of the State, including travel time, at a recommended hourly rate or specified acceptable fee.

2. If the hourly rate is paid for travel time, travel expenses shall not be allowed, except for overnight lodging when at the convenience of the agency.

3. If the hourly rate is not paid for travel time, travel expenses shall be allowed in accordance with state travel regulations.

Personal Service Contract Amendment Policy

Adopted June 13, 2000

Policy Statement #00-6

It shall be a policy of the Government Contract Review Committee of the Legislative Research Commission that no personal service contract amendment coming before the committee for review shall be in order any sooner than ninety (90) days after a committee action on the contract, unless the amendment is supported by a detailed explanation, addressed to the committee, citing specific valid and justifiable reasons for amendment of the contract. The failure of a contracting body to accurately estimate the total amount of a contract or proposed contract shall not constitute the sole reason for amending a government contract.

Legal Services: Duties And Maximum Rate Schedule

Amended January 8, 2002

Policy Statement 99-1

It shall be the policy of the Government Contract Review Committee of the Legislative Research Commission to consider for approval, only those personal service contracts for legal services that conform to the following description and maximum rate schedule:

Private Attorneys And Law Firms

Duties. Under general supervision, provides professional legal services on a designated case or specific legal matter as a private attorney; principle, partner, or associate within a law firm; or serves as hearing officer, legal counselor, or legal representative for a state agency.

Maximum Rate Schedule.

Partner	Not to exceed $125/hour
Associate	Not to exceed $100/hour
Appellate Case	Not to exceed $125/hour and not to exceed $20,000/case without prior approval

Fees paid by an agency shall not exceed the committee's maximum rate schedule, unless required by the complexity of litigation or title examination, or uniqueness of the subject matter, in which case, prior justification must be presented to the committee.

Private Attorneys And Law Firms (Title Opinion)

Duties. Under general supervision, provides professional legal title examination services on certain parcels of land in various counties throughout the Commonwealth of Kentucky which the Commonwealth desires to acquire for the maintenance or construction of public improvements, roads, or roadways.

Maximum Rate Schedule.

Surface Title Opinion	Not to exceed $170/title
Mineral Title Opinion	Not to exceed $500/title, plus the appropriate hourly rate for Attorneys or Paralegals, not to exceed $500, unless required by the complexity of title examination, in which case, prior justification must be presented to the committee.
Updates	Not to exceed $40/update

Fees paid by an agency shall not exceed the committee's maximum rate schedule, unless required by the complexity of litigation or title examination, or uniqueness of the subject matter, in which case, prior justification must be presented to the committee.

Paralegals

Duties. By virtue of special training and under direct supervision, provides aid and legal assistance to a private attorney; principle, partner, or associate within a law firm; legal counselor; hearing officer; or legal representative of a state agency.

Maximum Fee. Not to exceed $40/hour

High Rate Areas

(1) As used in this policy:
   (a) "Attorney" means an attorney-at-law, whether in private practice, as a member of a law firm, or as member of an association of attorneys;
   (b) "High Rate Area" means those geographic areas recognized by the secretary of the Finance and Administration Cabinet as high rate areas by promulgation of an administrative regulation; and
   (c) An attorney shall be considered to have a "principal place of business" located in Kentucky, if the attorney has a place of business in Kentucky and declares a business nexus in Kentucky for Kentucky income tax purposes.

(2) Attorneys with a principal place of business located in Kentucky shall be given a preference over attorneys with a principal place of business located outside Kentucky when selecting attorneys for legal services. State agencies shall submit to the committee, along with each contract with an out of state attorney, a list of other attorneys and law firms considered for the needed service and evidence that reasonable efforts were made to obtain legal services from an attorney with a principal place of business in Kentucky.

(3) The Government Contract Review Committee may approve higher hourly rates for legal services provided in high rate areas, or for legal services provided by attorneys located in high rate areas.

Appraisal Services: Duties And Maximum Rate Schedule

Adopted March 9, 1999

Proposed Policy Statement 99-2

It shall be the policy of the Government Contract Review Committee of the Legislative Research Commission to consider for approval, only those personal service contracts for appraisal services that conform to the following description and maximum rate schedule:

Real Estate Appraisers

Duties. Under general supervision, provides professional real estate appraisal services to an agency of the Commonwealth of Kentucky on specified real estate appraisal assignments for state land acquisition purposes as a real estate appraiser.

***Maximum Rate Schedule:**

Real Estate Appraiser	Not to exceed $560 per day

Resource Appraisers

Duties. Under general supervision, provides professional resource and mineral appraisal reports to an agency of the Commonwealth of Kentucky on specified real estate appraisal assignments which the Commonwealth desires to acquire for the maintenance or construction of public improvements, roads, or roadways or for state land acquisition purposes.

***Maximum Rate Schedule:**

Resource Appraiser	Not to exceed $600 per day, unless required by the complexity of the appraisal, in which case, prior justification must be presented to the committee.

*This maximum rate schedule should be utilized in negotiating for both actual appraisal services and for court appearances.

Auctioneer Services: Duties And Maximum Rate Schedule

Adopted April 13, 1999

****Policy Statement 99-3****

It shall be the policy of the Government Contract Review Committee of the Legislative Research Commission to consider for approval, only those personal service contracts and price contracts for auctioneer services that conform to the following description and maximum rate schedule:

Auctioneers

Duties. Under general direction, is responsible for the public auction of surplus real and/or personal property no longer useful to the Commonwealth of Kentucky as designated by the individual state agencies.

Maximum Rate Schedule:

A. Real Property

Disposition of Real Property	Dollar value	Maximum Rate
(1st)	$50,000.00	6%
(Next)	$50,000.00	5%
(Next)	$100,000.00	4%
(Over)	$200,000.00	3%

B. Personal Property

Disposition of Personal Property	Dollar value	Maximum Rate
(1st)	$10,000.00	10%
(Next)	$15,000.00	5%
(Next)	$25,000.00	4%
(Over)	$50,000.00	3%

Alternative Maximum Rate Schedule:

Real Property And Personal Property. Not to exceed $800/event for auctioneer services, unless required by the complexity of auction, in which case, prior justification must be presented to the committee.

Multiyear Government Contracts

Revised March 8, 2001

Policy Statement 99-4

It shall be the policy of the Government Contract Review Committee of the Legislative Research Commission to consider for approval, only those personal service contracts, price contracts for personal services, memoranda of agreement, memoranda of understanding, program administration contracts, interlocal agreements (to which the Commonwealth is a party), privatization contracts, or similar devices and instruments under the jurisdiction of the committee that are entered into and concluded prior to the end of the biennium in which the contract or agreement was made.

Auditing Services: Duties And Maximum Rate Schedule

Adopted August 10, 1999

Policy Statement 99-5

It shall be the policy of the Government Contract Review Committee of the Legislative Research Commission to consider for approval, only those personal service contracts for auditing services that conform to the following description and maximum rate schedule:

Private Auditors and Auditing Firms

Duties. Under general supervision, provides independent professional auditing of accounts, financial transactions, and spending of a state agency in accordance with generally accepted auditing principals and standards as a private auditor or as a principle, partner, manager, or staff within an auditing firm.

***Maximum Rate Schedule.**

Principle or Partner	Not to exceed $125/hour
Senior Auditor or Manager	Not to exceed $100/hour
Junior Auditor or Staff Auditor	Not to exceed $75/hour

*Fees paid by an agency shall not exceed the committee's maximum rate schedule, unless required by the complexity or uniqueness of the audit, in which case, prior justification must be presented to the committee.

Proof Of Necessity (PON) Form

Government Contract Review Committee
Legislative Research Commission

Contract Number: ___________________________

____________________________________ ____________________________________
Agency **Division, Branch, etc.**

TYPE OF CONTRACT:
_____ New _____ Renewal (Re-negotiation) or _____ Extension for Time Only

NOTE: All questions *must* be answered fully. If space provided is insufficient, additional pages should be attached referencing the specifically numbered item. Questions regarding this form should be directed to the Bureau/Staff Office Contract Officer.

1. Name & Address of Contractor:

2. Effective Period of Contract:

Starting Date: ___________________________

Ending Date: ___________________________

3. Explain, with specificity, the work to be performed. (Include: Description of project; types(s) of service to be delivered; reports or products to be prepared; reason for duration of contact; etc.):

4. a. Does an identified or anticipated reason now exist which would indicate a need to renew the contract for the succeeding fiscal year? ____________________________________
If yes, explain: ____
____

b. Will the contract provide for cancellation by the Department upon a maximum of 30 days or less written notice to the contractor? ____________________________________

5. <u>FINANCIAL AND CONTRACT COST DATA:</u>

a. Total Projected Cost of Contract: $__________

Source of Funds: Federal: $___________ State: $__________ Local/Other: $__________

b. If contract is supported by federal funds, indicate: Grant/project title; grant I.D. number; and CFDA number: ____
____

c. If contract is supported by state funds, indicate source(s) and amounts(s) (e.g., General Fund, Trust and Agency, Other): ____
____

d. Was the contract cost included in the original Budget Request? YES NO If no, explain:
____

e. Describe, in detail, how the projected cost of the contract was derived (attach proposed budget when applicable):

f. Basis for Payment: • Hourly: $_____________ per hour • Per Diem $________ per day

• Fee for Service: $_______per service • Other - Explain: ___________

g. Method of Payment: • Straight Disbursement ______ • Inter-Account ______

h. Frequency of Payment:
• Monthly _____ • Quarterly _____ • Upon Completion _____

• Other ________ Explain: ____

i. Social Security Number (if individual) or IRS I.D. Number (if firm or corporate entity) of proposed contractor: __________________________________

NOTE: If professional employment contract with firm or corporate entity, attach a complete list of names and social security numbers of all officers, as well as all employees performing work directly related to the contractor. If individual, attach name and social security number.

j. If an individual, will the terms of contract require that the contractor be considered an "employee" of this Department for FICA purposes? ________

6. JUSTIFICATION FOR CONTRACTING WITH AN OUTSIDE PROVIDER TO PERFORM THE SERVICE.
The following questions should be addressed at a minimum:
What in-house method(s) were considered and why were potential in-house method(s) rejected? Is the part of such nature that: it should be done independently of the agency to avoid a conflict of interest; it requires unique or special expertise/qualifications; and/or legal or other special circumstances require use of an outside provider? If services are needed on a continuing basis, describe efforts made to secure services through regular state employment channels? Will agency personnel provide staff support services to the contractor?

7. Name and address of other provider(s) considered to perform the service:

8. Basis for selection of the proposed contractor (explain process used in making decision, i.e., solicitation of proposals, bids, references, and evaluation criteria applied):

9. PLANNED SUPERVISION AND MONITORING OF THE CONTRACTOR'S PERFORMANCE:

a. Name and Title of Responsible Person:
Office and Location:
Telephone Number:

b. Describe the monitoring activities, both programmatic and fiscal, which will be performed including the manner in which monitoring needs will be addressed in the contract to facilitate this activity:

10. SIGNATURES:

PREPARED BY:____________________________ DATE:___________________

RECOMMENDED BY: _____________________ DATE:___________________

Title:_______________________________

APPROVED BY:____________________________ DATE:___________________
Commissioner/Secretary

Contracts With Foreign (Out-Of-State) Corporations

This memorandum was originally sent on LRC letterhead.

Memorandum:

To: Agencies and Entities Filing Contracts with the Government Contract Review Committee

From: Kim M. Eisner, Committee Staff Administrator
Government Contract Review Committee

Re: Contracts with Foreign (out-of-state) Corporations

Date: June 18, 2010

The Government Contract Review Committee has directed committee staff to inform all agencies and entities filing contracts with the committee that it will not consider any contract between an agency and an out-of-state corporate contractor that is not properly registered with the Kentucky Secretary of State or, if appropriate, the Department of Revenue. Foreign Corporations are required to register with the Secretary of State pursuant to KRS 271B.15-010. That statute states "[a] foreign corporation…shall not transact business in this state until it obtains a certificate of authority from the Secretary of State." The requirements for registration with the Department of Revenue are found at KRS 45A.067.

Up to this point, contracts between agencies and unregistered foreign corporations have been deferred by the committee until such time as the corporate contractor complies with the registration requirements. The committee has indicated that agencies are subject to having their contracts disapproved if their foreign corporate contractors fail to comply after several months of the committee deferrals.

The effect of a deferral means no payments may be made on a contract until such time as the contract is reviewed by the committee. If a contract is disapproved, the contract is cancelled unless the Secretary of the Finance Cabinet overrides the committee's decision.

Agencies and entities are responsible for alerting committee staff of changes to a foreign corporation's registration status. Please direct any questions regarding registration requirements to the Office of the Secretary of State or the Department of Revenue.

Appendix F

Statutory Personal Service Contract Invoice Form

Invoicing Requirements

Until 2010, there were no standard requirements for what should appear on a personal service contract invoice. HB 387, enacted in the 2010 Regular Session, added statutory requirements for personal service contract invoices and directed GCRC to establish a form on which all invoices should be submitted.

KRS 45A.695(10) describes the invoicing requirements:

(10) (a) No payment shall be made on any personal service contract unless the individual, firm, partnership, or corporation awarded the personal service contract submits its invoice for payment on a form established by the committee.

(b) Invoices shall be submitted every ninety (90) days, unless the personal service contract specifies a different submission time period.

(c) Separate invoices shall be submitted for each distinct matter covered by the personal service contract, and shall be signed by the individual responsible for that matter.

(d) Each invoice shall contain the following information:

1. A description of the matter covered by the invoice;
2. The date each service was performed;
3. A full description of each service;
4. The name and title of each individual who worked on the matter, and the time the individual spent on the matter;
5. The subject matter and recipient of any correspondence;
6. A full description of any work product produced, designating the way in which the work product is associated with the matter being invoiced;
7. The hourly rate for each individual working on the matter, and the total charge for that individual for each matter invoiced;
8. An itemized list of all disbursements to be reimbursed by the state for each matter invoiced;
9. The total charge for each matter;
10. The combined total for services and disbursements for the billing period;
11. The tax identification number of the entity awarded the personal service contract; and
12. An indication on each invoice of whether or not the invoice is final.

(e) The issuance of an invoice to the Commonwealth constitutes an affirmation by the individual, firm, partnership, or corporation awarded the personal service contract that the invoice truly and accurately represents work actually performed and expenses actually incurred.

(f) The head of the contracting body shall approve the invoice, indicating that the charges in the invoice reflect the value of the work performed, and all recorded costs and disbursements were reasonably and necessarily incurred in connection with the matter invoiced.

Government Contract Review Committee Invoice Form

The form was adopted on August 10, 2010. It is shown on the next two pages.

PERSONAL SERVICE CONTRACT INVOICE FORM
GOVERNMENT CONTRACT REVIEW COMMITTEE
LEGISLATIVE RESEARCH COMMISSION

Pursuant to KRS 45A.695, **no payment shall be made on any personal service contract** unless the individual, firm, partnership, or corporation awarded the personal service contract submits its invoice for payment on a form established by the committee.

Invoices shall be submitted every ninety (90) days, unless the personal service contract specifies a different submission time period.

Separate invoices shall be submitted for each distinct matter covered by the personal service contract, and shall be signed by the individual responsible for that matter

The issuance of an invoice to the Commonwealth constitutes an affirmation by the individual, firm, partnership, or corporation awarded the personal service contract that the invoice truly and accurately represents work actually performed, and the expenses actually incurred.

The head of the contracting body shall approve the invoice, indicating that the charges in the invoice reflect the value of the work performed, and all recorded costs and disbursements were reasonably and necessarily incurred in connection with the matter invoiced.

NOTE: All questions must be answered fully. If the space provided is insufficient, additional pages should be attached referencing the specifically numbered item. Any questions regarding the invoice requirements should be directed to the contracting agency.

Contract Number:______________________ Date of Invoice:________________

______________________________________ ___________________________________

Contracting Body **Division, Branch, etc.**

1. Name & Address of Contractor:

2. Contractor's Tax I.D. Number:_______________

3. Effective Period of Contract:
Starting Date: _____________
Ending Date: _____________

4. Combined Total Amount Charged in this Invoice for Services and Reimburseable Disbursements:___________________

5. Dates of Service Covered under this invoice:
Starting Date:_____________
Ending Date: _____________

6. Is this the FINAL invoice for services performed under this contract:
_____ Yes ______ No

7. Date of most recent invoice submitted prior to this invoice:_________________

8. How often is the contractor required to submit invoices under the terms of the personal service contract:

9. Provide a description of the matter covered by this invoice:

10. Provide a full description of each service provided, including the date each service was performed, the name and title of each individual who worked on the matter, and the time the individual spent on the matter:

11. Provide the hourly rate for each individual working on the matter and the total charge for that individual for each matter involved:

12. Provide the subject matter and recipient of any correspondence:

13. Provide a full description of any work product produced, designating the way in which the work product is associated with the matter being invoiced. (Attorneys Billing for Legal Services: If you contend that any information is subject to privilege, please identify the privileged item, and provide sufficient information to evaluate the claim of privilege):

14. Provide an itemized list of all disbursements to be reimbursed by the state for each matter invoiced and the total charge for that matter:

SIGNATURES:

Contractor:____________________________ Date:_______________

Title:__________________________________

Contracting Body

Approved by:__________________________ Date:_______________

Title:_________________________________

Endnotes

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[3] eMARS document PON2,850,1200003716, Proof of Necessity, General Information, Description of Work To Be Performed.
[4]eMARS document PON2,850,1200003716, Proof of Necessity, Contract Cost Information, Detailed Description of Projected Cost.
[5] eMARS document PON2,746,1200001393, attached terms and conditions titled “Terms – KNAT Reimbursement FY13-14.xml,” P. 9 [pages not numbered].
[6] Lori H. Flanery, secretary. Finance and Administration Cabinet. Memorandum to Cabinet Secretaries and Agency Heads. “Reporting Contract Workers – KRS 61.392 (formerly HB387).” July 5, 2013.
[7] Donald Speer, executive dir., Office of Procurement Services, et al. Finance and Administration Cabinet. Interview. Sept. 19, 2013.
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[9] Donald Speer, executive director. Office of Procurement Services, Finance and Administration Cabinet. Letter to Senator Vernie McGaha and Representative Dennis Horlander. July 27, 2011.
[10] Donald Speer, executive director. Office of Procurement Services, Finance and Administration Cabinet, et al. Interview. Sept. 16, 2013.
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[12] Donald Speer, executive director. Office of Procurement Services, Finance and Administration Cabinet.. “Finance and Administration Cabinet Responses To LRC.” March 11, 2013. P. 10.
[13] Kentucky. Personnel Cabinet. “Immediate Fill Job Advertisements.” No date. Web. Oct. 9, 2013.
[14] Donald Speer, executive director. Office of Procurement Services, Finance and Administration Cabinet. Email to Van Knowles. Sept. 20, 2012.
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[17] Ibid. P. 55.
[18] Ibid. P. 58.
[19] eMARS document PON2, 790, 1200003204, 2. “Final_PON2_790_1200003204_2_PO_CNTRCT_MOD_FORM_1BS.PDF.” Aug. 15, 2012. Attached document.
[20] Holland Spade, chief of staff. Economic Development Cabinet. Email to Van Knowles. Sept. 23, 2013.
[21] eMARS document PON2,635,1200003445,1. “Final_PON2_635_1200003445_1_PO_CNTRCT_FORM.PDF.” June 28, 2012. Attached document.
[22] Kentucky. Legislative Research Commission. *Kentucky’s Foster Care System Is Improving, but Challenges Remain*. Frankfort: LRC, 2006. Web. Oct. 9, 2013. P. 175.
[23] eMARS document PON2, 746, 11*695,1 Proof of Necessity, General Information, Description of Work to be Performed.
[24] eMARS document PON2, 758, 10*4108,1 Proof of Necessity, General Information, Description of Work to be Performed.
[25] eMARS document PON2, 736, 1100002074,1 Proof of Necessity, General Information, Planned Performance Monitoring Activities.
[26] Kentucky. Cabinet for Health and Family Services. “CHFS 2013-09-12 Responses 9 30 2013revised.docx.”
[27] eMARS document. EO1,729,10000009424,1. For Agency Use, Extended Description.
[28] Donald Speer, executive director. Office of Procurement Services, Finance and Administration Cabinet, et al. Interview. Sept. 16, 2013.
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[30] Kentucky. Finance and Administration Cabinet. Customer Resource Center. *eMARS 1320 Accounts Payable*. Frankfort: CRC. Aug. 2010. Web. Sept. 30, 2013. P. 111.
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[40] Kentucky. Finance and Administration Cabinet. Customer Resource Center. *eMARS 1003 Decentralized Check Writer*. Frankfort: CRC. Aug. 2010. Web. April 4, 2006. Pp. 5-6.
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[47] eMARS document. PON2 729, 1200001868. Proof of Necessity. General Information. Description of Work to be Performed.
[48] Holland Spade, chief of staff. Economic Development Cabinet. Email to Van Knowles. Sept. 23, 2013.
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[50]Joan Graham, deputy director. Office of Procurement Services, Finance and Administration Cabinet. Email to William Spears. Oct. 21, 2013.
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[54] Jason Hamilton. Kentucky Turnpike Authority, Finance and Administration Cabinet. Interview. Aug. 8, 2013.
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[56] Tom Stratton, buyer. Division of Purchases, Kentucky Transportation Cabinet, et al. Interview. May 29, 2013.
[57] Tabitha Burkhart-Wilson, psychological program administrator. Dept. for Behavioral Health, Development and Intellectual Disabilities, et al. Interview. May 6, 2013.
[58] Jackie Watkins, assistant director. Office of Policy and Budget, Cabinet for Health and Family Services. Interview. Aug. 28, 2013.
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