
SUBSTITUTING CONTRACTOR SERVICES FOR COURT EMPLOYEES

Introduction

The judiciary currently makes extensive use of contract services to perform its work. This includes contracts administered by the Administrative Office to support court activities at the national level and local contracts administered by individual court units. The judiciary obligated approximately \$355 million on national and local contracts in fiscal year 1995. Similar amounts will be spent in subsequent years. Use of contractors saves judiciary personnel resources and often provides a more efficient and effective way to deliver services.

This chapter discusses the nature and extent of the judiciary's current contracting activities and provides an inventory of national and local contracts; describes the structural mechanisms in place that facilitate use of contractors in lieu of judiciary employees; reports on efforts to expand current contract activities, where appropriate; and explains additional processes the judiciary has implemented to ensure that in-house employees carry out their work as efficiently as possible.

Summary

Based upon the results of a recent examination of the extent to which the judiciary now uses contractors, opportunities to realize significant additional savings appear somewhat limited. This is the result of the already considerable use of contracts in the

judiciary and the fact that some functions in the judiciary may not be appropriately performed by non-judiciary employees. For example, many clerks' office functions are generated from the clerk of court's statutory responsibility to maintain the official record in federal cases, and performance of these functions outside the judiciary raises legal and operational obstacles.

Nevertheless, the judiciary is firmly committed to ensuring that contractors are used for all activities for which it would be cost-effective and would not impede the delivery of justice. Through decentralized personnel authority and other structural mechanisms, the courts have been given the needed flexibility to use local contractors in lieu of in-house employees when appropriate. Further, the judiciary is actively pursuing the expansion of contracted activities by ensuring that all courts are aware of efficiencies that other courts may be realizing by using contractors and that they are exploring additional activities that could be outsourced.

Current Judiciary Contracting Activities

The judiciary conducted a nationwide survey of all courts to determine the nature and extent of current contracting activities and to identify opportunities for additional contract use. The survey results show that the judiciary currently makes extensive use of contracts at both the national and local levels in two broad functional areas: general administrative and program support; and provision of specialized skills, including expert and consulting services. In general, contracts are used in either area when savings can be achieved through the use of a contractor or the nature of the work is not appropriately performed by judiciary employees or is better performed by contractors.

National Contracts

The judiciary currently uses contracts at the national level to perform 22 major activities (listed on page 53). In general, contractors are used because it is more cost-effective than conducting the activities with in-house employees.

As an example of one type of contracted service, a national drug-testing contract is currently in place for the analysis of urine specimens for persons who are on pretrial release, probation, parole, and supervised release. This contract

provides an economical way to test over 720,000 specimens annually for drugs. At a per-item cost of approximately \$9, the contract covers the cost of staff, space, supplies, equipment, training, and other services. In addition, the judiciary maintains a national contract for the provision of electronic monitoring services for offenders supervised in the community. Electronic monitoring permits 24-hour surveillance that would be impractical to perform in-house. The contract for these services provides the necessary structure and control for certain offenders, providing an alternative to more costly incarceration. Nearly half the annual cost of electronic monitoring is paid by the offenders under supervision.

The judiciary also has a national contract for the provision of noticing services for bankruptcy courts, which results in substantial savings. The contractor-operated Bankruptcy Noticing Center is now processing about four million notices in bankruptcy cases each month. The consolidation of this function with a private contractor provides bankruptcy courts nationwide with significant administrative support and will result in \$11 million in savings over four years. This arrangement relies on the use of automated systems and processes. As the judiciary continues its efforts to identify and employ technological solutions to business problems, opportunities for additional cost-effective partnerships with the private sector may emerge.

As another example of a national contract, the judiciary maintains a contract for the development and administration of court interpreter examinations used to certify interpreters as qualified to interpret proceedings in federal court. The development of professional certification exams requires very specialized skills and education not generally required in the judiciary and not directly related to the judiciary's work. In addition, work related to certification of interpreters is cyclical in nature and not consistent with the development of full-time staff expertise. Thus, to fulfill the need for a certification process cost effectively, the judiciary uses contractor services.

The provision of security for federal courthouses and leased facilities housing court operations is another example of a national service contract that saves the judiciary significant resources. On the judiciary's behalf, the U.S. Marshals Service contracts with private security vendors for the services of approximately 2,600 contract security guard positions. A 1994 study conducted in conjunction with the Department of Justice showed that providing this same level of service with in-house employees rather than contractors would cost approximately \$10 million more per year.

As a final example, the judiciary contracts nationally for the provision of computer-assisted legal research services. Use of these services makes the courts'

task of conducting legal research significantly more efficient. The judiciary recently awarded a five-year contract for these services at extremely competitive rates.

Local Contracts

At the local level, courts use contractors in lieu of in-house employees to conduct 58 types of activities, listed on page 54. Through these contracts, local court units achieve savings and, in some cases, have work performed that would be impractical to conduct in-house.

As one example, many courts contract out photocopying services as a way to provide improved access to court records, while at the same time easing the courts' workload. Moreover, the judiciary does not pay for these services; the costs are borne directly by the users. Other examples of local contracts courts used to conduct their work more cost effectively include court reporting, court interpreting, automation support, training, software development and maintenance, newsletter publication services, and substance abuse and mental health treatment for offenders under supervision. Courts have been delegated the authority by the Director of the Administrative Office to enter into contracts such as these at the local level so each can be tailored to meet individual court needs.

Notable is a cost-effective contracting approach employed by one circuit where four separate probation offices combined resources to contract for a single substance abuse treatment program to service all four districts within the circuit. This arrangement saves \$300,000 annually. To encourage and reward such innovative practices, the Administrative Office recognized the drug abuse treatment specialists in these offices with the 1995 Director's Award for Administrative Excellence.

A Commitment to Continue and Expand the Use of Contractors

The judiciary is committed to ensuring that courts use contractors instead of judiciary employees when it makes good business sense and when doing so would not impede the administration of justice. This is exhibited by the structural mechanisms in place that give courts the needed flexibility to employ contractors

and the judiciary's firm commitment to explore expanded use through numerous established programs and processes.

Structural Support for Contracting

Substantial contract authority to procure goods and services on a local basis has been delegated by the Director of the Administrative Office to individual courts. Thus, court managers have the contractual authority to engage contractors to perform certain functions instead of hiring judiciary employees. Training in government contract procedures has been provided to court personnel to assist in this regard.

In addition, the judiciary has recently implemented new personnel and salary allotment systems that give court managers the flexibility to perform activities through contracts instead of court employees, where appropriate. The new Court Personnel System deployed at the end of fiscal year 1996 represents major reform in human-resource management in the judiciary. It decentralizes personnel authority to court managers and allows them to determine the composition of their work force to strike the right balance between full-time, part-time, and temporary employees and contractor services. Complementing this are the judiciary's budget decentralization policies and salary allotment system. As one of the central features, rather than receiving an annual position allocation, courts receive an annual compensation allotment based on workload requirements. Court unit executives can then decide locally how to allocate resources between in-house staff and contractor requirements. Together, these systems empower court managers to use scarce resources efficiently by promoting the utilization of contract services as an alternative to incurring long-term personnel costs.

In sum, the judiciary has implemented the necessary structural requirements to allow court managers to determine locally the most cost-effective mix between contractors and judiciary employees.

Additional Contract Opportunities

A survey the judiciary conducted on contract use produced information on the types of activities for which contractors are used in each court unit. The responses varied—services may be provided by a contractor in some court units and by in-house employees in others. Because the judiciary comprises more than 500 court units varying in size, location, requirements, and management style, this variation is expected. Not all contract services are appropriate for all

courts. For example, in some medium and large courts it can be cost-effective to obtain contract copier service, but in many smaller courts this may not be economical or feasible.

To ensure that all courts are aware of and fully consider the array of cost-effective contracting opportunities from which other courts are benefitting, several mechanisms are being used. These include the following:

- **On-site court program unit reviews.** The judiciary conducts a variety of management reviews to provide clerks' offices, probation offices, and pretrial services offices with assessments of existing operations and recommendations for improvements. Whether courts could achieve efficiencies by expanding the use of contractor services is an element of these reviews.
- **Operational and procedural manuals.** Courts receive various operational and procedural manuals to assist with the delivery of services and the performance of court work. Updates of these manuals will include, as appropriate, information on the potential benefits gained from conducting activities through contractors instead of in-house.
- **Information-sharing through an electronic bulletin board.** More efficient and effective business practices will be published on a judiciary-wide electronic bulletin board. Information on opportunities to create efficiencies through effective use of contractors will be included in these communications.
- **Newsletters and other publications.** Courts receive various newsletters, publications, and other correspondence that often feature ideas on achieving savings and efficiencies. As appropriate, efficiencies possible through the use of contractors will be included in these documents.

In addition to these efforts, the judiciary is committed to identifying new types of activities where use of contractors could be cost-beneficial. Through the court program unit reviews described above, the judiciary will explore whether any activities currently being performed in-house in all courts could be more efficiently contracted out. Promising opportunities would then be encouraged in all courts that would benefit. The identification of new contracting areas also will be explored through the Judiciary Methods Analysis Program. Discussed in more detail in the following section, the purpose of this program is to identify and promote the use of suggested better business practices, some of which could be to contract out particular functions instead of using court staff.

As a starting point for these expansion efforts, the judiciary will explore the extent to which benefits could be realized by contracting out six activities identified in the recent survey on contracting. These include file room services; court document scanning services; transportation of jurors in high-profile cases; the videotaping of testimony of minor children; and the screening and testing of applicants for positions in the judiciary.

It is important to note that, while the judiciary makes extensive use of contract services and is firmly committed to exploring opportunities for expansion, there are functions that are so closely associated with the judicial function that performance of the work by non-judiciary employees would raise serious legal and operational issues. In addition to the work performed by judicial officers, examples of such functions include providing personal law clerk and secretarial services to judges and central legal services to the courts, conducting investigations of convicted offenders and preparing presentence reports in accordance with sentencing guidelines, and supervising convicted offenders serving sentences in the community. Also, Rule 79(a) of the Federal Rules of Civil Procedure and 28 U.S.C. §156(e) require the clerk of court to maintain the docket, case files, calendars, final judgments and orders, and the official record.

Programs to Ensure Effective Work Practices

Using contractors instead of in-house employees is one effective way to realize administrative efficiencies. Numerous other efforts are underway in the judiciary in pursuit of this same goal, many of which are mentioned in Chapter 5. In particular, three judiciary programs focus on ensuring that employees work as efficiently as possible. Described briefly below, these include the Judiciary Methods Analysis Program (MAP), Maximizing Productivity, and Process Innovation. These and other efforts help courts cope with the hardship of operating at only 84 percent staffing—the level at which the courts are staffed in order to contain costs.

MAP was established to identify business practices that have the potential to result in more efficient and effective operations and to foster implementation of these practices in the courts. MAP is ongoing and shows great promise. Since

becoming operational in 1994, 319 practices have been developed by court personnel: 34 in probation, 34 in pretrial services, 48 in district, and 203 in two bankruptcy studies. A study soon will be completed for appellate courts. In addition to identifying ways for court staff to conduct their work more efficiently, determinations to expand use of contract services may be a result of this process. The program is discussed in more detail in Chapter 5.

The second program, Maximizing Productivity, provides tools for individual court units to improve work processes and thus improve productivity. This program, sponsored by the Federal Judicial Center, offers training in three powerful management strategies that have proven successful in the private sector: total quality management, team-based management, and process improvement. This is done by engaging court staff at all levels in designing better ways to get the work done. Court managers have used total quality management to reduce late disclosures of presentence investigations by 75 percent and to reduce turnaround time for prisoner petitions. A common long-term outcome of team-based management is a reduced ratio of supervisors to staff. Process improvement is responsible for eliminating unnecessary steps, clarifying procedures, and expanding the use of automation. For example, one bankruptcy court used process improvement to reduce processing time for claims assignments by 70 percent.

The third program, Process Innovation, helps court offices explore and implement new approaches to automation and work processes. The judiciary, with the assistance of contract expert consulting services, uses business process reengineering techniques to aid court unit managers in devising and implementing new processes and determining what, if any, enabling technology is required. The objective is to employ Process Innovation methodology in pilot court experiments to identify and implement significant business process improvements, and to ensure that future automation efforts address efficient business processes. For example, the judiciary was able to centralize violations processing in San Antonio, Texas. The San Antonio Central Violations Bureau studied its work flow and business processes and how technology could enhance its efficiency. Recommendations were implemented to reorganize work flow and procure document imaging technology. The results were the consolidation of two centers (Denver and San Antonio) with significant savings in personnel. Other studies are underway in the electronic processing of documents.

Conclusion

The judiciary currently makes extensive use of contracts when it is both cost-effective and beneficial. The judiciary uses contractors for many types of activities at the local and national levels, resulting in savings to the government. The judiciary's personnel, decentralized budgeting, and salary allotment systems give courts the flexibility to use contractors to perform their work in lieu of judiciary employees when cost effective.

Some potential may exist to expand the use of contract services. Through a series of established programs and processes—such as court program management reviews, MAP, and various publications—courts will be encouraged to examine additional opportunities to use contractors. This may include activities for which other courts are already using contractors, as well as new areas. In addition, the judiciary's efforts to identify and employ new technological applications may offer opportunities to increase the use of contract activities. The Bankruptcy Noticing Center is an excellent example of how the judiciary is realizing efficiencies through a combination of automated systems and contract services. As part of its ongoing economy and efficiency efforts, the judiciary will continue to examine opportunities to contract out when it would be both cost-effective and not impede the delivery of justice.

CONTRACTS CURRENTLY UTILIZED BY THE JUDICIARY

National Contracts

1. Court interpreter certification testing
2. Court interpreter certification consulting services
3. Drug testing
4. Drug testing quality assurance
5. Electronic monitoring
6. Production of computer-based training package for probation officers
7. Production and mailing of notices in bankruptcy cases (Bankruptcy Noticing Center)
8. Provision of employee assistance programs and counseling
9. Provision of employee health services

10. Computer-assisted legal research (CALR)
11. Court security officers (contract executed by the U.S. Marshals Service)
12. Training in operational support subjects such as Court Personnel System, pre-retirement, accounting and auditing, project management, program evaluation, quantitative analysis, EEO, space tracking, etc.
13. Numerous automation-related services contracts for requirements and technical support such as operation and maintenance of the Network Management Facility in support of the Data Communications Network; programming, maintenance, and enhancement of the Judiciary Employees Management System; and support and enhancement of the Central Accounting System
14. Investment and accounting of court registry funds
15. Courthouse planning and design services
16. Printing of slip opinions
17. Professional studies by the National Academy of Public Administration (NAPA) and other consultants
18. Background investigations for probation and pretrial services officers and bankruptcy and magistrate judges
19. Installation of sound systems in the courts
20. Jury Wheel National Service Center
21. Financial audits of the judiciary
22. Audits of Criminal Justice Act grants

Local Contracts

1. Court reporting services
2. Electronic court recorder operator services
3. Transcription services
4. Court interpreter services
5. Document translation services
6. Copying services
7. Training (automation, general skills, and training consultants)
8. Provision of master and qualified jury wheel services
9. Production and mailing of jury questionnaires and summonses

10. Moving of office furniture
11. Armored car pickup of cash and checks for deposit in the Federal Reserve Bank
12. Accounting and ledger services in large civil cases
13. Protective off-site storage of computer back-up tapes (including pick-up from courthouse)
14. Packing and shipping of case records to the Federal Archives and Records Center
15. Manual labor
16. Data entry
17. Software development and maintenance
18. Outgoing mail services (postage metering, bar coding, and mail handling)
19. Overnight delivery services
20. Courier services between divisional offices
21. Computer depot services for minor repair and maintenance of computers
22. Microfiche and microfilm services
23. Interior design/architecture services
24. Temporary help services
25. College work-study program services
26. Analytical studies (e.g., assessment of court's mediation program, review of the condition of dockets, CJRA, and research involving CJA payments)
27. Drug treatment
28. Publication of bi-weekly probation newsletter
29. Publication of quarterly probation journal
30. Pretrial services alternatives to detention
31. Provision of subscription services for procurement of law books
32. Locksmith services
33. Furniture maintenance, repair, and design
34. Space alteration, maintenance, and repair
35. Courtroom sound equipment maintenance and repair
36. Processing claims for "mega" bankruptcy cases
37. Teleconferencing
38. Printing services
39. Vehicle radio installation

40. Firearm maintenance and repair
41. Time stamp maintenance
42. Mail handling equipment maintenance
43. Telephone maintenance
44. General office equipment maintenance
45. Mail metering equipment maintenance
46. Recycling fax cartridge services
47. Credit check services
48. Birth/death records services
49. Communications services (pagers and beepers)
50. Cleaning services at rented locations
51. Naturalization ceremonies set-up and take-down services
52. Messenger services
53. Binding services
54. Packing and shipping of excess law books
55. Graphic art services
56. Financial audits
57. Disk duplication, printing, and mail services
58. Provision of defender services