

U.S. Securities and Exchange Commission



FY 2014 Service Contract Inventory Analysis

February 22, 2016

**Office of Acquisitions
SEC Headquarters
Washington, DC 20549**

Background

The Securities and Exchange Commission (SEC) is a United States Agency with a mission to protect investors, maintain fair, orderly, and efficient markets, and facilitate capital formation. In addition to the Securities Exchange Act of 1934 that created the agency, the SEC enforces the Securities Act of 1933, the Trust Indenture Act of 1939, the Investment Company Act of 1940, the Investment Advisers Act of 1940, the Sarbanes–Oxley Act of 2002, the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010, and other statutes.

It is the responsibility of the Commission to:

- interpret federal securities laws;
- issue new rules and amend existing rules;
- oversee the inspection of securities firms, brokers, investment advisers, and ratings agencies;
- oversee private regulatory organizations in the securities, accounting, and auditing fields; and
- coordinate U.S. securities regulation with federal, state, and foreign authorities.

The SEC consists of five presidentially-appointed Commissioners, with staggered five-year terms. One of them is designated by the President as Chairman of the Commission — the commission’s chief executive. By law, no more than three of the Commissioners may belong to the same political party, ensuring non-partisanship. The commission’s functional responsibilities are organized into five divisions and 23 offices, each of which is headquartered in Washington, DC. The Commission's approximately 4,425 staff are located in Washington, D.C. and in 11 Regional Offices throughout the country.

The Commission convenes regularly at meetings that are open to the public and the news media unless the discussion pertains to confidential subjects, such as whether to begin an enforcement investigation.

Scope

Section 743 of Division C of the FY2010 Consolidated Appropriations Act P.L. 111-117, requires civilian agencies to prepare annual inventory of their service contracts. Inventories are required to be submitted in accordance with the Office of Management and Budget (OMB) guidance dated November 5, 2010 and December 19, 2011, and FY 2015 Service Contract Inventory Alert 9-8-15. In addition, agencies are to perform an analysis of their data in their inventories for the purpose of determining if contract labor is being used in an appropriate and effective manner and if the mix of federal employees and contractors in the agency is effectively balanced.

Per OMB guidance, agency reviews are to give priority consideration to agency use of contracted (a) professional and management services and (b) information technology support services. Review of professional and management services should include acquisition support and an appropriate sampling of policy and program management and development services. OMB identified the Special Interest Functions listed below (Table 1) for heightened management consideration. This was based on concerns of increased risk of losing control of mission and operations as identified through a review of reports issued in recent years, such as by the Government Accountability Office, the Commission on Wartime Contracting, agency Inspectors General, Congressional Committees, and the Acquisition Law Advisory Panel (also referred to as the “SARA Panel”), as well as by OMB’s own analysis. In addition, each agency is required to identify its top ten Product Service Codes (PSC) that accounted for the agency’s greatest percentage of spending (Table 2).

PSC	Product or Service Description
B505	Cost Benefit
D302	Systems Development
D307	Strategy and Architecture
D310	Cyber Security and Data Backup
D314	System Acquisition Support
R406	Policy Review/Development
R407	Program Evaluation Services
R408	Program Management/Support
R409	Program Review/Development Services
R413	Specifications Development
R414	Systems Engineering
R423	Intelligence
R425	Engineering/Technical
R497	Personal Services Contracts
R707	Contract/Procurement/Acquisition Support

Table 1: Special Interest Items

PSC	Product or Service Description
D301	Facility Operation and Maintenance
D302	Systems Development
D307	IT Strategy and Architecture
D317	Web-based Subscriptions
D318	Integrated Hardware/Software/Services Solutions
D399	Other IT and Telecommunications
R408	Program Management/Support
R424	Expert Witness
R499	Other
R710	Financial

Table 2: SEC's Top Ten PSCs

When reviewed in total, there were only three Service Codes at the detailed level that represented the SECs top ten and the special interest product service codes. They are listed as follows (Table 3):

Service Code – Detailed Level	Service Code Description	% Obligated	# of Contracts	Obligated Amount
D3	Information Technology and Telecommunications	49%	240	\$181,305,290
R4	Support – Professional	23%	368	\$80,833,792
R7	Support – Management	2%	28	\$9,800,157
Totals		74%		\$271,939,239

Table 3: SEC's Detailed Level Service Codes

On January 15, 2015, SEC notified OMB of the areas planned for analysis in the FY 2014 inventory. While selecting the PSC's for review, SEC found that 72% of services funding fell into two of the detailed level services codes; D3 Information Technology and Telecommunications (49%) and R4 Support – Professional (23%). SEC selected five PSC's to analyze as part of the FY 2014 Service Contract Inventory. SEC focused analysis on two that are on the special interest list that had not previously been reviewed, two that are regularly on the top ten obligations and special interest but not reviewed in the previous year, and one that is in the top ten obligations but not reviewed in the previous year. The functions selected were PSC D302 IT and Telecom – Systems Development, D314 System Acquisition Support, D318 IT Strategy and Architecture, R408 Program Management/Support and R499 Other Professional Support.

1. The IT and Telecom – Systems Development D302 function was selected for review because it is on the special interest list and a top ten obligation each year, but has not been reviewed since FY 2012. Approximately 13% (\$45,848,395) of the total service dollars were obligated under this PSC.
2. The System Acquisition Support D314 function was selected for review because it is on the special interest list and has not been previously reviewed. Approximately 1% (\$3,058,328) of the total service dollars was obligated under this PSC.
3. The IT Strategy and Architecture D318 function was selected for review because it is new to the top ten biggest percentages of obligations and has not been previously reviewed. Approximately 4% (\$15,284,291) of the total service dollars were obligated under this PSC.
4. The Program Management/Support R408 function was selected for review because it is on the special interest list and a top ten obligation each year, but has not been reviewed since FY 2012. PSC also has potential for personal services, inherently governmental work to be performed by contractors and cover some SEC critical functions. Approximately 8% (\$27,380,835) of the total service dollars were obligated under this PSC.
5. The Other Professional Support R499 function was selected for review because it is a top ten obligation each year and has not been reviewed since FY 2012. PSC also has potential for personal services, inherently governmental work to be performed by contractors and cover some SEC critical functions. Approximately 8% (\$28,266,681) of the total service dollars were obligated under this PSC.

Methodology

All five PSC analyses were conducted in the same manner. The analysis was accomplished in two steps. First, the team reviewed the Statement of Work for each of the 113 active contracts within the PSCs to determine if inherently governmental functions were being performed and the approximate number of full time employee equivalents. Second, the analysis team sent out surveys and set up interviews with the Contracting Officer Representatives (CORs) for all 191 contracts selected for this review. During the survey and interview process a number of contracts were omitted due to data entry error in FPDS with regards to the PSC, the COR was not available due to leaving the commission and the contract had expired prior to them leaving, or the action was cancelled or only for closeout and there was no activity on the contract in FY 2015. The total omitted was 33. The surveys and interviews were conducted to determine the following: if the contractor was performing inherently governmental functions; if there are sufficient government personnel for oversight of the contractor's performance; if the contractor is performing critical functions; and if the new SAM requirement information was disseminated to the contractors.

As part of the new SAM requirement for contractors to report service contracts, responses were tracked during the open reporting period. The team worked with the contracting officers and contract specialists to ensure contractors were reporting or to determine any reasons why contractors may not have reported their contracts. Analysis was conducted based on data gathered and disseminated by OMB.

Findings

It was determined from the review of the Statements of Work, surveys and COR interviews that the contractors were not tasked to perform inherently governmental functions or personal services. The contracts reviewed accounted for approximately 635 full time employee equivalents, as some of the contracts had significant turnover and requirement changes the number fluctuated frequently throughout the fiscal year. The analysis also determined that the government possesses the expertise to perform oversight of the contractor's performance. There was a finding that in some offices CORs felt there may not have adequate personnel to perform oversight of the contractor's performance. Many acknowledged improvement from the previous year, however due to employee turn-over, changes in job duties, workload and COR duties treated as other duties as assigned and not part of their primary job; this was still a concern. Other concerns were raised by CORs regarding consistency in the procurement process and communicating needs. There were also some findings regarding data entry errors in FPDS with regards to product and service codes.

The SEC conducted our inventory analyses in accordance with section 743(e) to ensure that:

- Each contract in the inventory that is a personal services contract has been entered into, and is being performed, in accordance with applicable laws and regulations;
- The agency is giving special management attention, as set forth in Federal Acquisition Regulation (FAR) 37.114, to functions that are closely associated with inherently governmental functions;
- The agency is not using contractor employees to perform inherently governmental functions;
- The agency has specific safeguards and monitoring systems in place to ensure that work being performed by contractors has not changed or expanded during performance to become an inherently governmental function;
- The agency is not using contractor employees to perform critical functions in such a way that could affect the ability of the agency to maintain control of its mission and operations; and
- There are sufficient internal agency resources to manage and oversee contracts effectively.

PSC D302 IT and Telecom – Systems Development - \$45,848,394.55 (13%)

The analysis was centered on 26 contracts which accounted for 100% of the dollars obligated under this PSC and 153 full time employee equivalents. The role these contracted services played were all for other functions, none were for critical functions or inherently governmental functions.

PSC D314 System Acquisition Support - \$3,058,328.40 (1%)

The analysis was centered on two contracts which accounted for 100% of the dollars obligated under this PSC and 5 full time employee equivalents. A subscription was also included in one of the two contracts accounting for the large dollar amount for so few contractor personnel. The role these contracted services played were both for other functions, none were for critical functions or inherently governmental functions.

PSC D318 IT Strategy and Architecture - \$15,284,291.25 (4%)

The analysis was centered on 22 contracts which accounted for 77% of the dollars obligated under this PSC and 29 full time employee equivalents. The role these contracted services played were all for other functions, none were for critical functions or inherently governmental functions.

PSC R408 Program Management/Support - \$27,380,835.30 (8%)

The analysis was centered on 60 contracts which accounted for 100% of the dollars obligated under this PSC and 244 full time employee equivalents. The role these contracted services played were primarily for other functions, with only six for closely associated to inherently governmental functions. The closely associated to inherently governmental functions identified were Inclusion Professional Services, Inclusion Professional and Program Management Support, IT Professional Services, Acquisition Support Services, Senior Analyst, and Datamart Administrative Services. Between these six contracts, there were approximately 13 full time employee equivalents.

PSC R499 Other Professional Support - \$28,266,680.93 (8%)

The analysis was centered on 81 contracts which accounted for more than 99% of the dollars obligated under this PSC and 204 full time employee equivalents. The role these contracted services played were primarily for other functions, with only one for closely associated to inherently governmental functions. The closely associated to inherently governmental function identified was professional consultant services to provide content management solutions for the office of financial management using Imagenow suite. On this one contract, there was approximately one full time employee equivalent.

Service Contract Reporting

Contractors holding service contracts were required to enter their invoicing data into System for Acquisition Management (SAM). This was only the second year for this requirement. The SEC, through the hard work of its contracting staff working with their contractor's was able to obtain significant compliance. The latest report from OMB dated February 3, 2016, shows our extensive efforts resulted in a 62% compliance rate.

Actions Taken or Planned

Due to the concern of inadequate personnel (too few COR's) these findings were explored further. This also arose during an audit of the COR program during the fiscal year. In the past year, additional personnel have been hired and the workload has been more evenly distributed. Also, after the audit, the number and type of contracts, as well as the complexity were reviewed to determine workload concerns. Alternate CORs were added to contracts when they were determined to be more complex or had a large number of contractor personnel. Training has been provided to supervisors to help them have a better understanding of the need to distribute COR duties throughout their departments. Based on the analysis performed it has been determined that adequate controls are currently in place to ensure contractors are not performing inherently governmental functions, contractor's performance under the contract is

satisfactory and there are adequate government personnel to perform oversight of the contractor's performance. No additional controls are found necessary to be incorporated into existing procedures.

In order to address the process and communication finding, further training has been provided and continues to be available for different aspects of the procurement process. A team was established within the Office of Acquisitions to address concerns with the COR program and they have been working to set up further discussions with CORs to better determine what can be done to improve the procurement process. This is an ongoing effort.

Training has been provided to the contracting officers and contract specialists on proper entry of information into FPDS. An additional check was conducted quarterly of roughly 250-300 contract actions. As contracts are found to have areas of concern, for instance accurate PSC, they are brought to the contracting officer for correction or clarification.

Accountable Officials

The SEC's senior commission management official who is accountable for development of agency policies, procedures, and training associated with OFPP Policy Letter 11-01 addressing the performance of inherently governmental and critical functions is Vance Cathell, Director of the Office of Acquisitions. Mr. Cathell is also the official responsible for ensuring appropriate internal management attention is given to the development and analysis of service contract inventories.