

U.S. Securities and Exchange Commission



FY 2011 Service Contract Inventory Analysis

December 13, 2012

**Office of Acquisition
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 agency's chief executive. By law, no more than three of the Commissioners may belong to the same political party, ensuring non-partisanship. The agency's functional responsibilities are organized into five Divisions and 19 Offices, each of which is headquartered in Washington, DC. The Commission's approximately 3,500 staff are located in Washington 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.

Introduction

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 were required to be submitted in accordance with the Office of Management and Budget (OMB) issued guidance dated November 5, 2010 and update guidance dated December 19, 2011. 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 was required to identify their top ten Product Service Codes (PSC) that accounted for the agency’s greatest percentage of spending in FY 2011 (Table 2).

PSC	Product or Service Description
D302	ADP Systems Development Services
D307	Automated Information Systems Services
D310	ADP Backup and Security Services
D314	ADP System Acquisition Support Services
R408	Program Management/Support Services
R413	Specifications Development Service
R414	Systems Engineering Services
R421	Technical Assistance (Added 8/15/2011)
R423	Intelligence Services
R425	Engineering and Technical Services
R497	Personal Services Contracts
R707	Management Services/Contract & Procurement Support

Table 1: Special Interest Items

PSC	Product or Service Description
D399	Other ADP Telecommunications
R408	Program Management/Support Services
D301	ADP Facility Management
D307	Automated Information System Services
R499	Other Professional Services
R424	Expert Witness
D316	Telecommunication Network Management Services
R710	Financial Services
S206	Guard Services
D302	ADP System Development Services

Table 2: SEC's Top Ten PSCs

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

Service Code – Detailed Level	Service Code Description	% Obligated	# of Contracts	Obligated Amount
D3	Information Technology and Telecommunications	46%	149	\$90,999,113.87
R4	Support – Professional	25%	162	\$47,822,712.57
R7	Support – Management	4%	16	\$8,792,778.67
S2	Housekeeping	3%	2	\$6,273,275.60
Totals		78%	329	\$153,887,880.71

Table 3: SEC's Detailed Level Service Codes

On August 9, 2012, SEC notified OMB of the areas planned for analysis in the FY 2011 inventory. While selecting the PSC's for review, SEC found that 71% of services funding fell into two of the detailed level services codes; D3 Information Technology and Telecommunications (46%) and R4 Support – Professional (25%). SEC selected three special functions to analyze as part of the FY 2011 Service Contract Inventory. SEC focused analysis on the three PSC's where the agency obligated the most funds, of which one is from the OMB Special Interest Functions. The functions selected were PSC D399 Other ADP Telecommunications, R408 Program Management/Support Services, and D301 ADP Facility Management.

Analysis

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

- Each contract in the inventory that is a non-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 D399 Other ADP Telecommunications - \$42,973,462.92

The Other ADP Telecommunications (PSC D399) function was selected for review due to the large amount of dollars obligated under this area. Approximately 22% (\$42,973,462.92) of the total service dollars were obligated under this PSC. The analysis was centered on ten contracts which accounted for 60% of the dollars obligated under this PSC.

R408 Program Management/Support Services - \$25,113,475.55

This function was chosen because the type of services performed in this area had the potential to be treated as personal services and is the second highest PSC dollar value. Approximately 13% (\$25,113,475.55) of the total service dollars were obligated under this PSC. The analysis focused on twelve contracts which accounted for 66% of the dollars spent in the PSC.

PSC D301 ADP Facility Management - \$20,337,416.12

The ADP Facility Management (PSC D301) function was selected for review due to the amount of dollars obligated under this area. Approximately 11% (\$20,337,416.12) of the total service dollars were obligated under this PSC. The analysis centered on ten contracts which accounted for 90% of the dollars obligated under this PSC.

Analysis Process

All three 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 top ten dollar value contracts to determine if inherently governmental functions were being performed. It was determined from the review of the statements of work that the contractors were not tasked to perform inherently governmental functions. Second, the analysis team surveyed and interviewed the Contracting Officer Representatives (CORs) for a random sample (25 contracts) of the contracts being reviewed. 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; and if the contractor is performing critical functions. The analysis determined that the government possesses the expertise and adequate personnel to perform oversight of the contractor's performance. It was also determined that the contractor was not performing inherently governmental functions or personal services. Based on the analysis performed it has been determined that adequate controls are in place and no additional controls need to be incorporated into existing procedures.

Conclusion

In the reviews accomplished SEC has determined that the contractors are not performing inherently governmental functions and there are adequate government personnel to perform oversight of the contractor's performance.

SEC has several controls in place to ensure contractors are not performing inherently governmental functions and contractor's performance under the contract is adequate.

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