

**U.S. Securities and Exchange Commission
FY 2016 Service Contract Inventory Analysis
February 21, 2018**



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

I. INTRODUCTION

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.

II. 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 the FY 2017 Service Contract Inventory Alert dated October 5, 2017. 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.

In accordance with 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 (List 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 the Top Ten Product Service Codes (PSC) that accounted for the agency's greatest percentage of spending (List 2).

PSC Product or Service Description – List 1 Special Interest Items

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

PSC Product or Service Description- List 2 SEC's Top Ten PSCs

D301 IT AND TELECOM- FACILITY OPERATION AND MAINTENANCE
D302 IT AND TELECOM- SYSTEMS DEVELOPMENT
D307 IT AND TELECOM- IT STRATEGY AND ARCHITECTURE
R499 SUPPORT- PROFESSIONAL: OTHER
D318 IT AND TELECOM- INTEGRATED HARDWARE/SOFTWARE/SERVICES SOLUTIONS, PREDOMINANTLY SERVICES
R408 SUPPORT- PROFESSIONAL: PROGRAM MANAGEMENT/SUPPORT
R424 SUPPORT- PROFESSIONAL: EXPERT WITNESS
R418 SUPPORT- PROFESSIONAL: LEGAL
D399 IT AND TELECOM- OTHER IT AND TELECOMMUNICATIONS
D308 IT AND TELECOM- PROGRAMMING

The analysis in this report provides a listing of the required service contracts with contract-related information as required in OMB's Office of Federal Procurement Policy's (OFPP) guidance. This analysis portion of the report is divided into four main parts:

- 1.) **Scope** – Summarizes the special interest functions and top ten functions studied, the dollars obligates to those specific Product and Service Codes (PSCs) in FY 2016, and the rationale for focusing on the identified functions.
- 2.) **Methodology** – Discusses the methodology used by the SEC to support the analysis, including selection of questionnaire participants and questions included.
- 3.) **Findings** – Summarize the findings, including a brief discussion of the extent to which the desired outcomes described in section 743(e)(2) are being met. After analyzing key factors

included in the Service Contract Inventory questionnaire, concrete conclusions are provided in order to continue setting effective priorities that align with the Agency's strategic goals.

- 4.) **Actions Taken or Planned** – Explains the steps the SEC has taken or plans to take to address any identified weaknesses or challenges.

III. SCOPE

During Fiscal Year (FY) 16, the SEC has a total of 1,816 service contract actions in all PSCs with a total obligation value of \$228,963,412.57 and these services play various roles in helping to achieve the Agency's mission/objectives. In accordance with guidelines from the OFPP, this analysis focuses on contract actions over \$25,000 for "Special Interest Function" and "SEC Top Ten Obligation Percentages" categories.

The SEC performed contract actions in seven (7) of the 15 special interest function PSCs during FY 2016. The eight (8) special interest function PSCs with no contract actions included the following codes: B505 COST BENEFIT ANALYSES, D310 IT AND TELECOM- CYBER SECURITY AND DATA BACKUP, R406 SUPPORT - PROFESSIONAL: POLICY REVIEW/DEVELOPMENT, R407 PROGRAM EVALUATION SERVICES, R409 PROGRAM REVIEW/DEVELOPMENT SERVICES, R414 SYSTEMS ENGINEERING SERVICES, R423 SUPPORT - PROFESSIONAL: INTELLIGENCE, R425 SUPPORT - PROFESSIONAL: ENGINEERING/TECHNICAL, and R497 SUPPORT - PROFESSIONAL: PERSONAL SERVICES CONTRACTS.

The SEC selected five PSC's to analyze as part of the FY 2016 Service Contract Inventory. SEC focused analysis on three (3) of the seven (7) special interest functions under which work had been performed in FY 2016 and the remaining two (2) PSCs were chosen from the SEC Top Ten Obligation Percentages. The PSC functions selected were: PSC D302- IT AND TELECOM – SYSTEMS DEVELOPMENT, PSC D307 IT AND TELECOM- PROGRAMMING, PSC D318 IT AND TELECOM- INTEGRATED HARDWARE/SOFTWARE/SERVICES SOLUTIONS, PREDOMINANTLY SERVICES, PSC R408 SUPPORT- PROFESSIONAL: PROGRAM MANAGEMENT/SUPPORT, and PSC R418 SUPPORT- PROFESSIONAL: LEGAL

In total, the five (5) PSCs assessed included 129 contract actions with a combined award value of \$84,038,477.86. This subset of contract actions represents 25 percent of the Agency's total service contract inventory and 33 percent of the obligation value. The details regarding SEC's FY16 Service Contract Inventory are listed as follows (List 3):

List 3: SEC's Service Contract Inventory Detail

-PSC D302 (IT AND TELECOM – SYSTEMS DEVELOPMENT), Obligated Amount: \$31,731,375.56, 13% (% of Total PSC Dollars Obligated), 36 (# of Contracts), 0.04% (% of Contracts for ALL PSCs)

-PSC D308 (IT AND TELECOM- PROGRAMMING), Obligated Amount: \$6,092,359.73, 2% (% of Total PSC Dollars Obligated), 5 (# of contracts), 0.01% (% of Contracts for ALL PSCs)

-PSC D318 (IT AND TELECOM- INTEGRATED HARDWARE/SOFTWARE/SERVICES SOLUTIONS, PREDOMINANTLY SERVICES), Obligated Amount: \$17,067,751.64, 7% (% of Total PSC Dollars Obligated), 21 (# of contracts), 0.04% (% of Contracts for ALL PSCs)

-PSC R408 (SUPPORT- PROFESSIONAL: PROGRAM MANAGEMENT/SUPPORT), Obligated Amount: \$15,910,430.70, 6% (% of Total PSC Dollars Obligated), 43 (# of contracts), 0.06% (% of Contracts for ALL PSCs)

-PSC R418 (SUPPORT- PROFESSIONAL: LEGAL), Obligated Amount: \$13,236,560.23, 5% (% of Total PSC Dollars Obligated), 24 (# of contracts), 0.10% (% of Contracts for ALL PSCs)

-Total: \$84,038,477.86, 33% (% of Total PSC Dollars Obligated), 129 (# of contracts), 25% (% of Contracts for ALL PSCs)

The rationale for selecting these five (5) PSCs is as follows:

1. IT AND TELECOM – SYSTEMS DEVELOPMENT - PSC D302 was selected because it is on the special interest list and a top ten obligation each year, but has not been reviewed since FY 2014. Approximately 13% (\$31,731,375.56) of the SEC's total service dollars were obligated under this PSC.
2. IT AND TELECOM- PROGRAMMING - PSC D308 was selected because it is new to the top ten biggest percentages of obligations and has not been previously reviewed. Approximately 2% (\$6,092,359.73) of the SEC's total service dollars were obligated under this PSC.
3. IT AND TELECOM- INTEGRATED HARDWARE/SOFTWARE/SERVICES SOLUTIONS, PREDOMINANTLY SERVICES - PSC D318 was selected because it is on the top ten biggest percentages of obligations and has not been reviewed since FY 2014. Approximately 7% (\$17,067,751.64) of the SEC's total service dollars were obligated under this PSC.
4. SUPPORT- PROFESSIONAL: PROGRAM MANAGEMENT/SUPPORT- PSC R408 was selected because it is on the special interest list and a top ten obligation each year, but has not been reviewed since FY 2012. PSC R408 also has potential for personal services and inherently governmental work to be performed by contractors and to cover some SEC critical functions. Approximately 6% (\$15,910,430.70) of the SEC's total service dollars were obligated under this PSC.
5. SUPPORT- PROFESSIONAL: LEGAL - PSC R418 was selected because it is on the top ten biggest percentages of obligations and has not been previously reviewed. Approximately 5% (\$13,236,560.23) of the SEC's total service dollars were obligated under this PSC.

IV. METHODOLOGY

A combination of methods and tools were utilized to collect data, including information from the Federal Procurement Data System – Next Generation (FPDS NG) and a questionnaire was distributed to Contracting Officer Representatives (CORs) that helped determine whether appropriate contract policies and procedures are in place.

A total of 129 contracts were reviewed and analyzed and this was accomplished in four steps. The Office of Acquisitions' Advancing Excellence (AE) team initially reviewed all 129 contracts falling under the selected PSCs to: identify the COR (s) for the action and to determine whether there was work performed on the action in FY16.

As a result of the initial analysis, five contract actions were omitted from further review due to: the actions not including a SOW because they were awarded to provide a minimum funding guarantee, the action was canceled, or all the work was performed and there was no activity on the contract in FY 2016 except for closeout. Next, the Statements of Work for the remaining 124 contracts in the inventory were reviewed to determine if there was any ambiguous language that might cause uncertainty as to whether inherently governmental functions were being performed. Thirdly, the analysis team distributed surveys to the Contracting Officer Representatives (CORs) that were selected as part of the FY 2016 Inventory. The survey process was conducted to determine the following: the approximate number of full time employee equivalents performing under each contract; 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 has been performing critical functions.

The questions included in the survey were specifically formatted to directly address the OMB's mandate and they are as follows:

1. Are contract personnel (CP) involved in providing legal advice or development, interpretations and application of regulations and statutes to agency employees? If so, please explain.
2. Does the CO/COR interact with the contractor? Please indicate type of interaction and the frequency.
3. Are CP performing the same or similar function(s) as agency staff or closely associated functions? If so, please explain functions performed.
4. Does the contractor attend non-work-related meetings with the COR (e.g. social functions)? If so, please explain which meetings CP attend and why.
5. Do CORs defer to contractors to answer internal office or policy and procedural questions?
6. Has the contractor's work changed over the period of performance? If so, were changes determined to be within scope of the contract?
7. Has an agency employee directly requested CP to conduct work not required in the contract?
8. Has the contractor been instructed to contact the CO in cases where they believe the work is out of scope and is there a record of these instructions?
9. As the COR, do you maintain contract files documenting actions under the contract?
10. Is the number of current CORs in the program office sufficient to oversee contract activities? If not, what changes are needed?
11. Are CP involved in the performance of critical functions in such a way that could affect the ability of the agency to maintain control of its mission and operations?
12. Does the contract spell out the procedure for submitting work products, government review, contractor revisions and government acceptance?
13. Does the contract designate a contractor POC or project manager? Explain how tasks are provided to the contractor's employee.
14. Does the contract include a QASP (Quality Assurance Surveillance Plan)?

15. Does the contractor POC request or the government provide input into hiring decisions?
16. Are CP involved in the determination of budget policy, guidance, and strategy?
17. Are CP involved as technical advisors to a source selection board/panel or participating as voting or non-voting member of a source selection board/panel?
18. Is the contractor making any policy decisions for the Agency?
19. How many Contractor Personnel are associated with this award?

VI. FINDINGS

The SEC conducted the 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.

All 129 contract actions in the five (5) PSC categories were analyzed for the qualitative portion of the analysis.

The results of the qualitative analysis, which consisted of the contract SOW reviews, revealed a total of three (3) actions that included questionable or ambiguous language and warranted further discussion with the Contracting Officer. In all instances the verbiage was vague and/or could have been construed that the government was assigning the Contractor work directly instead of going through the Contractor's PM. The AE Team worked with the SEC Office of Acquisitions' Policy team to craft language that was thought to be more suitable as sample replacement language which was provided to the Contracting Officers (COs). The Agency expects that these types of concerns will continue to decrease as many of OA's procurement actions are now reviewed, discussed at the SEC's Acquisition Roundtable, and as a result, are remedied early on in the acquisition process.

For the quantitative portion, which consisted of the survey, 123 contract actions were analyzed. Fifty-eight CORs of the 59 who received the survey responded, giving the Agency a response rate of 99 percent from the CORs. The following are some of the measurements that were extrapolated from the survey.

- 1) From the results, the Agency determined that there are no contract personnel (CP) involved in providing legal advice or development, interpretations and application of regulations and statues to agency employees
- 2) Five (5) service contracts were identified in which the COR has minimal interaction with the Contractor. Although the COR didn't feel that additional interaction was necessary for reasons

such as: the PM had daily interaction with the vendor or the trial attorneys interfaced directly with the vendor, this has been noted and further reinforcement in the area will take place.

- 3) There were 11 instances identified of Contractor personnel performing the same or similar function(s) as agency staff or closely associated functions. In total, there are 120 Contractor personnel performing same or similar function (s) as agency staff or closely associated functions. While this is not concerning in itself, the Agency is closely monitoring these actions and continues to ensure that the proper oversight is taking place on these contracts.
- 4) The Agency identified zero instances contract actions Contractor personnel attend non-work related meetings with the COR.
- 5) The Agency identified zero instances where CORs deferred to Contractors to answer internal office or policy and procedural questions.
- 6) Two instances were identified where the work performance changed. Further follow-up with the CORs revealed that the performance change was within scope of the contract for one action and in the other instance, the CO was engaged and a modification to the contract was executed.
- 7) The Agency identified zero instances where an agency employee directly requested CP to conduct work not required in the contract.
- 8) There were many instances where the COR could not recall being instructed to contact the CO in the cases where the work may be out of scope. This is an area where the Agency can benefit from greater oversight. As a means to rectify concerns like this, the Contract Management Excellence (CME) Team has an effective kick-off meeting initiative underway which will ensure proper instructions are provided going forward.
- 9) There were zero instances where the COR did not maintain a contract file.
- 10) The agency identified fourteen instances (ten respondents or 16 percent of the CORs surveyed), where the COR indicated the number of CORs in their office is not sufficient to oversee contract activities. A few of the approaches the Agency has identified to address this concern are: have the CO review workload during the COR Nomination process, and to provide additional COR Supervisor training to ensure supervisors understand the roles and responsibilities of CORs.
- 11) There was one (1) service contract, with a total of four (4) Contractor personnel, identified where critical functions are being performed; the Agency closely monitors the CP's performance to ensure that this does not affect the ability of the agency to maintain control of its mission and operations.
- 12) There were no instances where the COR responded that the contract did not spell out the procedure for submitting work products, government review, contractor revisions and government acceptance.
- 13) There were zero instances where the COR responded that the contract does not designate a contractor POC or project manager.
- 14) There were no contracts identified that failed to include QASP when applicable.
- 15) There were zero instances where the contractor POC request or the government may have provided input into hiring decisions. CORs responded that input is only given relative to ensuring that the selected individuals meet the contract requirements.
- 16) The Agency didn't identify any instances where CP was involved in the determination of budget policy, guidance, and strategy.
- 17) There were three (3) contracts identified in which CP serve on TEPs as advisors in a non-voting capacity.

- 18) There were zero contracts identified where the contractor was making any policy decisions for the Agency.
- 19) The contracts reviewed accounted for approximately 1076 full time employee equivalents.

Agency Success

From the analysis of the survey responses received as part of the FY16 Inventory, the SEC has determined that: 1) Contract labor is being used in an appropriate and effective manner and the mix of Federal employees and Contractors in the Agency are effectively balanced 2) Service contracts are highly compliant in most areas, with contracts generally entered into and performed according to applicable laws 3) Contractor employees are not being used to perform critical functions in such a way that could affect the ability of the agency to maintain control of its mission and operations 4) Overall the government possesses the expertise to perform oversight of the contractor's performance 5) Adequate controls are currently in place to ensure contractors are not performing inherently governmental functions and that contractors' performance under their contracts are satisfactory.

V. SERVICE CONTRACT REPORTING

The SEC tracked its contractors' response rate for the annual service contract reporting requirement in System for Acquisition Management (SAM). Contractors holding service contracts were required to enter their invoicing data into SAM. The AE team worked with the SEC's 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. As of the closing date to report, January 31, 2018, the SEC's compliance rate was roughly 78%. There were a few variables that influenced the Agency's service contract reporting compliance rate. One factor of influence was the SEC's decision to exempt a total of 18 contracts from the service contract reporting requirement. The Agency granted exemptions based on 1) a determination that the services under contracts did not fit within the service description outlined in FAR 37.101, 2) actions were cancelled in FY17 and there was no performance under the contract prior to the cancellation, 3) an action was closed-out prior to FY17; yet it still appeared on the list of actions that required reporting, and 4) although the contract has a service code; the preponderance of the work performed was not service related. Although exempted, three (3) of the vendors decided to report on their actions so this drove down the number of SEC exempted actions to 15.

Over the course of the service contract reporting period, there were inconsistencies in the number of actions included on the Interim reports provided by OMB on max.gov website. Many contracts did not appear on the list of those requiring reporting until December, and a few did not appear on the list until January. The delay in our contracting officers' ability to communicate this requirement to those vendors is likely responsible for the SEC's decrease in compliance compared to the 87% service contract reporting achieved during the FY2016 cycle.

VI. ACTIONS TAKEN OR PLANNED

A. Ongoing Process Improvements

The SEC is committed to continued improvements in how the Agency oversees service contracts. The Office of Acquisitions has initiatives underway aimed at ensuring that service contracts are managed effectively and that the potential for performing inherently governmental functions is avoided. In FY17, the Office of Acquisitions provided new training on contractor personnel in the workplace to the SEC's Enforcement Division, and circulated a new quick guide on the subject throughout the agency. A key focal area has been on the COR Program, particularly, ensuring that CORs are receiving proper training and are fully equipped with the knowledge needed to perform their duties effectively. In FY17, the Office of Acquisitions developed and offered targeted monthly trainings for CORs that were more Agency specific. These formal COR training classes were offered throughout the year and included such topics as: COR Refresher, Onboarding and Offboarding of Contractor Personnel, CPARS, Closeouts, RQ Packages, Simplified Acquisition Procedures: Applying to Complex Services and Commodities. These trainings are ongoing and OA plans to expand upon what's currently offered.

In FY16, eFile became the official electronic system of record for the Agency and CORs were required to start utilizing the system at the beginning of FY17, October 2016. There has been a significant push for CORs to maintain extensive/complete files in eFile. Additional emphasis has been placed on requiring CORs to include all COR files, with mandatory documentation, in the system by January 2018. Other oversight mechanisms include ensuring that COs are playing an increasingly active role in the selection of CORs. This includes actions such as: performing in-depth analysis of the number of actions the COR is currently assigned and making a sound determination that the COR possesses the right skills/abilities/experience for the COR appointment.

In FY18, as part of OA's Contract Management Excellence (CME) theme, a CME Team was established with the distinct goal of elevating the COR's role in the organization. The team consist of stakeholders from the Office of Acquisitions (Contract Specialists, Contracting Officers, Procurement Analysts, the COR Program Manager) and CORs as all of these individuals play a play a vital role in the success of the COR Program. The CME Team has identified four (4) COR building blocks: Stakeholder Education/socialization, Communications, Community/Knowledge Pool/Resources and Training as the foundational elements to build upon in order to achieve the vision of elevating the COR's role.

VII. RESPONSIBLE OFFICIAL

The SEC has designated the Director of Acquisitions, Vance Cathell, Senior Management Official as the accountable official for ensuring appropriate internal management attention is given to the development and analysis of service contract inventories. The SEC's Senior Management Official ensures that agency policies, procedures, and training associated with OFPP Policy Letter 11-01 are in place that assists with continuous improvement of the Agency compliance with compiling, reviewing, and reporting on inventories.