

U.S. Securities and Exchange Commission



FY 2018 Service Contract Inventory Analysis

**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 24 offices, each of which is headquartered in Washington, DC. The Commission's approximately 4,600 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.

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 2019 Service Contract Inventory Checklist dated September 25, 2019 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 (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 the 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
R410	SUPPORT - PROFESSIONAL: PROGRAM EVALUATION/REVIEW/DEVELOPMENT (COMBINES R407 & R409)
R413	SPECIFICATIONS DEVELOPMENT
R414	SYSTEMS ENGINEERING
R423	INTELLIGENCE
R425	ENGINEERING/TECHNICAL
R497	PERSONAL SERVICES CONTRACTS
R707	CONTRACT/PROCUREMENT/ACQUISITION SUPPORT
R499	SUPPORT- PROFESSIONAL: OTHER
R699	SUPPORT- ADMINISTRATIVE: OTHER
R799	SUPPORT- MANAGEMENT: OTHER

Table 1: Special Interest Items

PSC	Product or Service Description
D302	IT AND TELECOM- SYSTEMS DEVELOPMENT
D301	IT AND TELECOM- FACILITY OPERATION AND MAINTENANCE
R408	SUPPORT- PROFESSIONAL: PROGRAM MANAGEMENT/SUPPORT
D318	IT AND TELECOM- INTEGRATED HARDWARE/SOFTWARE/SERVICES SOLUTIONS, PREDOMINANTLY SERVICES
D317	IT AND TELECOM- WEB-BASED SUBSCRIPTION
R424	SUPPORT- PROFESSIONAL: EXPERT WITNESS
D307	IT AND TELECOM- IT STRATEGY AND ARCHITECTURE
D399	IT AND TELECOM- OTHER IT AND TELECOMMUNICATIONS
R499	SUPPORT- PROFESSIONAL: OTHER
D308	IT AND TELECOM- PROGRAMMING

Table 2: SEC's Top Ten PSCs

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 2018, 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.

II. SCOPE

The SEC selected four (4) PSCs for review. None of the selected PSCs were included in the FY 2017 review.

PSC	Product or Service Description	Dollars Obligated in FY 2017	Rationale for Selection
D301	IT AND TELECOM-FACILITY OPERATION AND MAINTENANCE	\$52,483,396.09	PSC selected because it is on the top ten biggest percentages of obligations and has not been reviewed since 2015.
D307	IT AND TELECOM- IT STRATEGY AND ARCHITECTURE	\$19,100,404.13	PSC selected because it is on the top ten biggest percentages of obligations and the special interest list and has not been reviewed since 2015.
R699	SUPPORT-ADMINISTRATIVE: OTHER	\$5,099,020.26	PSC selected because it has been added to the special interest list and has never been reviewed.
R799	SUPPORT-MANAGEMENT: OTHER	\$1,400,789.41	PSC selected because it has been added to the special interest list and has never been reviewed.

Table 3: SEC's Service Contract Inventory Detail

The SEC reviewed 100% of the contract actions under these PSCs awarded in FY2018, following the methodology prescribed below.

III. METHODOLOGY

There were a total of 82 contracts falling under the 4 PSCs selected for the SEC's 2018 Service Contract Inventory. These contracts were first reviewed to determine:

- If there was performance on the contract in FY18,
- If the contract had subsequently been closed out, and
- Who is the COR.

As a result of the initial analysis, 26 contracts were omitted from further review because no or very little work was performed during FY 2018. Next, the statements of work for the remaining 56 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.

Finally, the SEC selected a non-representative sample of six contracts in which work was performed during FY 2018. The contracts included in this sample were selected based on the statement of work review, to include a variety of different services including those most likely to include performance of inherently governmental functions, critical functions, closely associated functions, or otherwise require a higher degree of management and oversight. The SEC Office of Acquisitions' Advancing Excellence Team conducted meetings with the CO and CORs assigned to each of these contracts to address the questions listed below to address the OMB's mandate:

1. Inherently Governmental Functions:

- a. Are Contractor Personnel (CP) performing duties such as: providing legal advice or development, interpretations and application of regulations and statutes to agency employees, determination of budget policy, guidance, and strategy or making policy decisions for the Agency?

2. Critical Functions:

- a. Are CP performing critical functions under this contract? If so, please explain functions performed.
 - i. Are CP involved in such a way that could affect the ability of the agency to maintain control of its mission and operations?
- b. Are there specific safeguards and monitoring systems in place for those contracts under which critical functions are being performed to ensure these functions do not become inherently governmental?

3. Closely Associated Functions:

- a. Are CP performing the same or similar function(s) as agency staff or closely associated functions? If so, please explain functions performed.
- b. Are there specific safeguards and monitoring systems in place for those contracts under which closely associated functions are being performed to ensure these functions do not become inherently governmental?

4. Scope of Work:

- a. If a modification to the scope of work has taken place:
 - i. Was an in scope determination made?
 - ii. Were the changes significant enough to warrant OGC involvement or reaccomplishment of a Pre Award Service Contract Checklist?
- b. Are there specific safeguards and monitoring systems in place to ensure that work being performed by contractors has not changed or expanded to become an inherently governmental function?

5. Management and Oversight of Service Contracts:

- a. Are there sufficient resources available to you as a COR in order to effectively manage and administer service contracts?
- b. How many CP are associated with this award?

IV. FINDINGS

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

1. 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 SEC does not have the authority to enter into personal services contracts;
2. 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;
3. The agency is not using contractor employees to perform inherently governmental functions;
4. 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;
5. 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
6. There are sufficient internal agency resources to manage and oversee contracts effectively.

The statement of work reviews revealed two contracts included questionable or ambiguous language regarding performance of inherently governmental functions. Both Contracting Officers agreed to review and update the Statement of Work via a modification or when the requirement is recompeted to remove the ambiguity.

Additionally, the following findings were determined from the interviews conducted with the CO and CORs of the six contracts selected:

1. Contractor Personnel (CP) are not performing duties such as: providing legal advice or development, interpretations and application of regulations and statutes

to agency employees, determination of budget policy, guidance, and strategy or making policy decisions for the Agency.

2. CP are not performing critical functions under this contract.
3. CP are performing the same or similar function(s) as agency staff or closely associated functions on one contract- a COR stated there is some overlap between project management roles.
4. Specific safeguards and monitoring systems are in place for those contracts under which closely associated functions are being performed to ensure these functions do not become inherently governmental.
5. One contract had a modification to the scope of work, but an in scope determination was not necessary.
6. There were no changes significant enough to warrant OGC involvement or reaccomplishment of a Pre Award Service Contract Checklist.
7. There are specific safeguards and monitoring systems in place to ensure that work being performed by contractors has not changed or expanded to become an inherently governmental function. One COR cited any requests for new work are validated against the scope of the contract. A change request and change proposal process is in place that ensures that it is reviewed by the Program Manager, COR, and CO.
8. Overall there are sufficient resources available to the COR in order to effectively manage and administer service contracts.
9. There are a total of 346 full time equivalent CP associated with the 6 awards for which interviews were conducted.

Agency Success

From the analysis of the survey responses received as part of the FY18 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. The eTools 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. As of the closing date to report, January 31, 2020, the SEC's compliance rate was 75%.

VI. ACTIONS TAKEN OR PLANNED

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 function is avoided.

In continuing with the SEC's Contract Management Excellence (CME), the CME Team accomplished the following:

- OA hosted a brown bag session for CORs on working with contractor personnel back in August covering functions contractors can and can't perform, maintaining impartiality, protecting sensitive information, and interacting with contractor personnel when performing work.
- OA introduced the CO/COR Check-In, required at least annually for all Service Contracts in FY19, and is currently working to automate documentation for it going forward in order to identify trends across the agency. By automating the documentation process, the CO/COR check-in becomes much more streamlined.
- OA developed a new Independent Government Cost Estimate (IGCE) Guide to assist SEC staff in the preparation and documentation of their IGCEs, which are required for all acquisitions over \$250,000.00.

- OA had a COR Roundtable discussion about techniques for properly verifying invoices for labor hour contracts. OA provided a handout for CORs with tips on how to verify the accuracy of hours worked on invoices for Labor Hour contracts.

VII: RESPONSIBLE OFFICIAL

The SEC has designated the Director of Acquisitions, Vance Cathell, Senior Management Official, as the responsible 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 to assist with continuous improvement of the Agency's compliance with compiling, reviewing, and reporting on service contract inventories.

Vance Cathell 02/12/2020

Vance Cathell, Director OA

James P. McNamara 02/12/2020

James McNamara, Director OHR