

# **U.S. Securities and Exchange Commission**



## **FY 2017 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 23 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 2018 Service Contract Inventory Checklist dated September 7, 2018. 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).

<b>PSC</b>	<b>Product or Service Description</b>
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**

<b>PSC</b>	<b>Product or Service Description</b>
D302	IT AND TELECOM- SYSTEMS DEVELOPMENT
R408	SUPPORT- PROFESSIONAL: PROGRAM MANAGEMENT/SUPPORT

R418	SUPPORT- PROFESSIONAL: LEGAL
D318	IT AND TELECOM- INTEGRATED HARDWARE/SOFTWARE/SERVICES SOLUTIONS, PREDOMINANTLY SERVICES
R424	SUPPORT- PROFESSIONAL: EXPERT WITNESS
D307	IT AND TELECOM- IT STRATEGY AND ARCHITECTURE
R499	SUPPORT- PROFESSIONAL: OTHER
D399	IT AND TELECOM- OTHER IT AND TELECOMMUNICATIONS
D317	IT AND TELECOM- WEB-BASED SUBSCRIPTION
S206	HOUSEKEEPING- GUARD

**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 obligated to those specific Product and Service Codes (PSCs) in FY 2017, 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 three (3) PSCs for review. None of the selected PSCs were included in the FY 2016 review.

<b>PSC</b>	<b>Product or Service Description</b>	<b>Dollars Obligated in FY 2017</b>	<b>Rationale for Selection</b>
D310	IT AND TELECOM- CYBER SECURITY AND DATA BACKUP	\$835,855.75	PSC selected because it is on the special interest list and has not been reviewed since FY 2013.
D399	IT AND TELECOM- OTHER IT AND TELECOMMUNICATIONS	\$9,045,415.92	PSC selected because it is on the top ten biggest percentages of obligations and has not been reviewed since 2013.
R499	SUPPORT- PROFESSIONAL: OTHER	\$9,895,130.62	PSC selected because it is on the top ten biggest percentages of obligations and has not been reviewed since 2014.

**Table 3: SEC’s Service Contract Inventory Detail**

The SEC reviewed 100% of the contract actions under these PSCs awarded in FY2017, following the methodology prescribed below.

### **III. METHODOLOGY**

There were a total of 52 contracts falling under the 3 PSCs selected for the SEC’s 2017 Service Contract Inventory. These contracts were first reviewed to determine:

- If there was performance on the contract in FY17,
- If the contract had subsequently been closed out, and
- Who is the COR.

As a result of the initial analysis, twelve contracts were omitted from further review because no work was performed during FY 2017. Next, the statements of work for the remaining 40 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 10 contracts in which work was performed during FY 2017 and had not yet been closed out. 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;
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 that no contracts included questionable or ambiguous language regarding performance of inherently governmental functions.

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

1. Contractor Personnel (CP) are not performing duties such as: providing legal advice or development, interpretations and application of regulations and statues 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 several contracts, including performance of data analytics, IT security engineering support services, FOIA services, and exam support services.

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, including well defined roles, funneling all work assignments through the Contractor program manager, and active COR oversight.
5. If a modification to the scope of work had taken place, in scope determinations were made.
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.
8. Overall there are sufficient resources available to the COR in order to effectively manage and administer service contracts. One COR noted that there are fewer resources available for contract closeout and deobligation activities.
9. There are a total of 52 and ¼ full time equivalent CP associated with the 10 awards for which interviews were conducted.

### **Agency Success**

From the analysis of the survey responses received as part of the FY17 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. 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, 2019, the SEC's compliance rate was 82%. Despite the period to complete the service contract reporting being shortened due to the Government shutdown, this is an increase over FY17's compliance rate of 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.

A key focal area continues to be on the overall COR program, particularly ensuring CORs are receiving proper training and are fully equipped with the knowledge needed to perform their duties effectively. In FY18, the SEC provided two sessions of training to the CORs specifically regarding Service Contract Inventory. Additional COR related training was ongoing and OA plans to expand upon what's currently offered.

E-file is a SharePoint site that serves as central repository for preaward and post award contract documentation. It is OA's system of record for contracts. Contracting Officers, Contract Specialists and the CORs were required to upload pertinent contractual documents to eFile. In FY18, OA launched an initiative to ensure COR's uploaded relevant contract documentation to E-file. This included provision of an eFile checklist and follow up by OA Contracting Officers to verify documents such as invoices, Non-Disclosure Agreements, and performance concerns were uploaded. E-file creates visibility and efficiency by ensuring all contract actions are properly documented and

accessible. It also fosters communication between the CO and CORs, which is essential for all service contracts.

In FY18, as part of OA's Contract Management Excellence (CME) theme, the CME Team was established with the distinct goal of elevating the COR's role in the organization. The team consists of stakeholders from the Office of Acquisitions (Contracting Officers, Contract Specialists, Procurement Analysts, the COR Program Manager) and CORs as all of these individuals play a vital role in the success of the COR Program. The CME Team has identified four COR building blocks: Stakeholder Education/ Socialization, Communications, Community/Knowledge Pool/ Resources and Training. Some of their accomplishments include the following:

**Post Award Orientation Guidance:** The CME Team created guidance to help new and experienced contract management team members kick off contract performance with key contractor personnel to set the right expectations amongst all parties to a contract and to start off on the right foot with strong, healthy relationships, open channels for mindful communications and feedback for all parties. Post award orientations create an avenue early on to deal with issues as they arise throughout the duration of the contract.

**COR Roundtable:** The team also established a Roundtable for CORs to meet on a regular basis where CORs can bring issues, learn from one another, and develop a common understanding of best practices. The team spearheaded a customized training to the supervisors of CORs to help them better understand the roles and responsibilities of their staff members and to better support their staff in not only their work but also their development to be successful contract management leaders.

**Contract Management Tools Training:** The team also provided training and guidance to CORs on all the new contract management tools that OA developed this past year.

**COR Spotlight:** In appreciation for the work CORs do at the SEC, the team held a recognition ceremony for a number of CORs spotlighted for the work they do on behalf of the Commission.

The SEC is continuing many of these initiatives and expanding its CME focus in FY19

## **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.