

U.S. Securities and Exchange Commission



FY 2012 Service Contract Inventory Analysis

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

Background

The Securities and Exchange Commission (SEC) has the 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 commission, 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, Jumpstart Our Business Startups (JOBS) Act of 2012 and other statutes.

It is the responsibility of the Commission to:

- interpret and enforce 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 4,200 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 2012 (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
D301	ADP Facility Management
D399	Other ADP Telecommunications
R408	Program Management/Support Services
R424	Expert Witness
D307	Automated Information System Services
R499	Other Professional Services
R710	Financial Services
S206	Guard Services
R799	Management: Other
R609	Administrative: Stenographic

Table 2: SEC's Top Ten PSCs

When reviewed in total, there were only five 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	42%	164	\$122,621,416
R4	Support – Professional	23%	305	\$67,529,442
R7	Support – Management	3%	51	\$19,949,982
S2	Housekeeping	4%	4	\$10,388,516
R6	Administrative	2%	1	\$5,600,000
Totals		74%	525	\$226,089,356

Table 3: SEC's Detailed Level Service Codes

On December 31, 2012, SEC notified OMB of the areas planned for analysis in the FY 2012 inventory. While selecting the PSC's for review, SEC found that 65% of services funding fell into two of the detailed level services codes; D3 Information Technology and Telecommunications (42%) and R4 Support – Professional (23%). SEC selected four special functions to analyze as part of the FY 2012 Service Contract Inventory. The functions selected were D302 ADP Systems Development Services, D307 Automated Information Systems Services, R408 Program Management/Support Services, and R499 Other Professional Services.

Analysis

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

- Since the SEC has no authority to award personal service contracts, our review confirmed no personal service contracts have been awarded;
- The commission 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 commission is not using contractor employees to perform inherently governmental functions;
- The commission 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 commission 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 commission resources to manage and oversee contracts effectively.

PSC D302 ADP Systems Development Services - \$2,602,432.53

The ADP Systems Development Services (PSC D302) function was selected for review since it is on the special interest list and had not been previously reviewed. Approximately 1% (\$2,602,432.53) of the total service dollars were obligated under this PSC. The analysis was centered on seven contracts which accounted for 100% of the dollars obligated under this PSC.

PSC D307 Automated Information System Services - \$14,046,064.13

The Automated Information System Services (PSC D307) function was selected for review due to the amount of dollars obligated under this area and that it is on the special interest list. Approximately 5% (\$14,046,064.13) of the total service dollars were obligated under this PSC. The analysis centered on 14 contracts which accounted for 99% of the dollars obligated under this PSC.

R408 Program Management/Support Services - \$36,397,320.33

The Program Management/Support Services (PSC R408) function was chosen because the type of services performed in this area had the potential to be treated as personal services and is the third highest PSC dollar value. Approximately 12% (\$36,397,320.33) of the total service dollars were obligated under this PSC. The analysis focused on 48 contracts which accounted for 97% of the dollars spent in the PSC.

PSC R499 Other Professional Services - \$11,845,804.48

The Other Professional Services (PSC R499) function was selected for review due to the amount of dollars obligated under this area and to expand the review from previous years. Approximately 4% (\$11,845,804.48) of the total service dollars were obligated under this PSC. The analysis centered on 32 contracts which accounted for 88% of the dollars obligated under this PSC.

Analysis Process

All four 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 and the special interest functions categories 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 large sample (104 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. Analysis of contracts examined provided no indication of inherently governmental functions or personal services being performed. Additionally, the FPDS review shows the IGF data is accurate. 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. Feedback from a small number of CORs referenced a burden of performing contract oversight and this is being addressed at the office level.

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.