



## U.S. COMMODITY FUTURES TRADING COMMISSION

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### Commodity Futures Trading Commission Report of FY 2010 Service Contract Inventory Analysis

Pursuant to the Office of Federal Procurement Policy (OFPP), Office of Management and Budget (OMB) memorandum "Service Contract Inventory", dated November 5, 2010; the Commodity Futures Trading Commission (CFTC) completed an analysis and review of the agency Fiscal Year 2010 Service Contract Inventory. As required, the agency focused the analysis on the following three (3) special interest functions that we identified to OMB by Product Service Code (PSC):

<u>PSC</u>	<u>PSC Description</u>
D302	ADP SYSTEMS DEVELOPMENT SERVICES
D307	AUTOMATED INFORMATION SYSTEM SVCS
R499	OTHER PROFESSIONAL SERVICES

The analysis, review and the write – up herein were completed and prepared in consultation with the agency's Chief Information Officer and the Director of Human Resources and reflect interviews and input from agency Contracting Officers and Contracting Officer Representatives (CORs). In conducting our analysis we carefully reviewed and considered OMB Memorandum M-09-26, dated July 29, 2009, Office of Federal Procurement Policy (OFPP) proposed policy letter "Work Reserved for Performance by Federal Government Employees" (75 Fed. Reg. 16188; March 31, 2010), the insourcing guidelines required under section 736 of the Financial Services and General Government Appropriations Act, 2009 (Public Law 111-8, division D) and all applicable internal agency guidance pertaining to this subject matter.

The analysis and review revealed that the support activities provided under the outlined special interest functions are neither inherently Governmental, nor are they personal services contracts as defined in FAR 37.104. Further, the current safeguards in place for monitoring contractor services provide reasonable assurance that work will not become inherently governmental during contract performance.

In addition, the analysis and review revealed that the CFTC is not utilizing contractor services to perform agency critical functions in such a way that could affect the ability of the agency to maintain control of its mission and operations. Lastly, the analysis revealed that the agency is increasingly relying on contract resources to support its expanded mission. The agency faces a number of challenges to effectively manage and oversee contract performance to ensure we remain in compliance with all guidelines and laws regarding the subject matter. Although the agency has a cadre of experienced CORs, they are not sufficient in number and do not have the capacity effectively manage and oversee more contract activity.

Following is a summary of our review by PSC:

#### R499 OTHER PROFESSIONAL SERVICES

The CFTC has utilized contract services under PSC code R499 to meet operating Human Resources needs related to the staffing of 119 vacancies on a tight deadline. These high processing volumes were necessary to fill positions supporting new agency mission requirements and rule making deadlines set by the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010. This contractor usage has also helped bridge the gap in time between the increase in agency recruitment activity and procurement by CFTC of an off-the-shelf automated hiring support system that will allow permanent agency employees to handle similar staffing volumes without additional support. Contractor work was supervised by agency employees to assure adherence to the statutory Merit System Principles. Since these contract services supplemented rather than replaced agency employees in these functional areas, this contract did not put the agency at risk of ongoing reliance on contractors for this crucial function. Their usage represented the optimal way to handle the surge in workload related to hiring goals and the results support the decision to use this alternative, since CFTC did in fact meet the goals of its priority hiring program and now has the flexibility to meet U.S. Office of Personnel Management mandates to automate these staffing functions without displacing permanent employees.

The CFTC has also utilized PSC R499 to support the Office of Data Technology (ODT) with Information Technology (IT) requirements. Specifically, the office utilizes the services provided under this PSC code for consulting support for IT governance development (Capital Planning and Investment Control, IT Strategic Planning, Enterprise Architecture, and information security continuous monitoring). ODT has utilized contract support to update or enhance IT strategies and policies to meet all of the requirements under Dodd-Frank and the Consumer Protection Act, as well as address governance issues as they relate to new initiatives. The contract support is used on short-term, as needed basis.

#### D302 ADP SYSTEMS DEVELOPMENT SERVICES

#### D307 AUTOMATED INFORMATION SYSTEM SVCS

The CFTC has utilized contract services under PSC D302 and D307 to supplement CFTC agency staff in the systems development and systems services areas. Specifically, the services utilized under PSC D302 are for the development and support of: the agency's public website; financial industry enforcement (Investigation, litigation, general law, and proceedings); internal intranet; and market and financial risk surveillance). As a result of our analysis, it was concluded that the agency needs to do a more in-depth review on its increasing reliance on a contract workforce to perform financial industry enforcement.

The CFTC has utilized contract services under PSC D307 for infrastructure (network, telecommunications, server systems, and storage) and customer service support as well as service to support subscription email delivery for the agency public website.

For both PSCs D302 and D307, ODT contractor employees are used to provide IT systems development and services support based on specialized technical skills that are not performed by ODT staff, but instead, monitored by ODT staff project managers. ODT has utilized contract services to enhance existing systems and develop new systems to meet required deadlines as a result of Dodd-Frank initiatives. In order to complement the development of new systems and handle the surge of workload that exists as a result of new initiatives, contract support is also used to enhance existing infrastructure requirements as it relates to security, telecommunications, and equipment that's needed as a part of the implementation of new initiatives. ODT project managers track contractor performances via project milestones, project reviews and performance monitoring. All contract support is assigned an ODT project manager to manage and oversee various tasks within a contract, which ensures that ODT is maintaining control of missions and operations. However, our analysis has determined that as the scope and breadth of ODT projects continues to evolve and expand, there is risk that current controls may degrade without more formal governance, increased staffing, and more training. CFTC is committed to undertaking the actions necessary to reduce risks in delivery of Information Technology contract services.

In summary, the CFTC expanded its use of contractor resources, in particular services provided under the special interest functions noted in our FY2010 Service Contract Inventory to support agency staff in the Human Resources area as well as the Information Technology area. CFTC can provide reasonable assurance that it complies with laws and regulations governing contract resource use, however some potential risk areas were identified while performing this analysis. The CFTC is committed to reducing these risks over the next year. It plans to closely monitor the ratio of contractor resources to its Government workforce to ensure balance. It is also committed toward taking steps to address identified risks related to contract performance.

This report has been approved by: Senior Procurement Executive





