

Department of Veterans Affairs

Service Contract Inventory Analysis Report

For Fiscal Year 2010

Executive Summary
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The Service Contract Inventory (SCI) analysis, as mandated by the Office of Management and Budget (OMB), Office of Federal Procurement Policy (OFPP) memorandum dated November 5, 2010, required the review of Department of Veterans Affairs (VA) service contracts coded with any of the 10 special interest functions identified by OMB and published by VA in the Federal Register in February 2011. The OMB memorandum directed agencies to undertake a meaningful analysis of the inventory data to determine whether an appropriate and effective use of contract labor existed. Agencies were also directed to determine if the mix of Federal employees and contractors was effectively balanced and to provide a report of their findings to OMB by December 30, 2011. Observations presented are based upon the review of VA selected contract actions and data elements prescribed in the OMB memorandum Section B, Development of Inventory, as submitted through the MAX system in December 2010. This report is prepared in response to the aforementioned OMB, OFPP memorandum.

In May 2011, VA's Director of Procurement Policy assembled a team to conduct the SCI analysis based upon a sample of contracts. The SCI sample of 276 contract actions represented 50 percent of the 547 service contract actions awarded in fiscal year (FY) 2010. The team reviewed and analyzed contract documentation in the electronic Contract Management System (eCMS), and responses to a VA-developed questionnaire sent to the Heads of Contracting Activities (HCA) and requirements officials. In addition, eight VA contracting sites were visited to review hard copy contract files and conduct interviews with contracting officers, contracting officer technical representatives, contract specialists, and requirements officials.

As required by OMB, the VA's analysis focused on the following areas: (1) nature of the contract (e.g., personal service, non-personal service); (2) compliance of the contract with applicable laws and regulations; (3) documentation of special management attention in accordance with Federal Acquisition Regulation (FAR) 37.114 on inherently governmental functions; and (4) review of modifications to ensure work being performed had not changed or expanded to include inherently governmental functions.

The VA analysis team determined contractors were utilized in an appropriate manner and that the contracted services effectively supported VA's mission and operations. Notwithstanding this determination, the review identified isolated instances of non-compliance with FAR and VA Acquisition Regulation (VAAR) worthy of further management review. Additionally, contracts identified for possible alternative acquisition approaches were referred to the appropriate HCA for further review.

The VA is currently undertaking procurement initiatives to remedy FAR and VAAR policy implementation and procedural concerns identified during the course of this review. Some of the initiatives include:

- Placement of procurement coordinators to assist VA's customer base in the preparation of requirements packages and to minimize acquisition lead times;
- Validating and updating acquisition policy and guidance to provide standardization and clarity;
- Continued development of a comprehensive VA Acquisition Manual which encourages contracting and requires activity teaming to improve the quality of procurements and better protect the interests of the government;
- Development of a requirements package checklist that addresses the need for a written determination from the requiring activity that contract services do not include inherently governmental functions; and
- Increased training initiatives through national and regional training symposiums.

VA's SCI analysis concluded the mix of Federal employees and contractors is effectively balanced. VA contracted services were not personal in nature, did not include inherently governmental functions, and contract modifications did not change or expand the scope of work to include inherently governmental functions. The analysis also determined that contractors' skills were being utilized in an appropriate manner and contracted services effectively supported VA's mission and operations.

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1. **Purpose:** The Department of Veterans Affairs (VA), as an agency subject to section 743 of Division C of the fiscal year (FY) 2010 Consolidated Appropriations Act, Public Law 111-117, is required to develop an inventory of the agency's service contracts.

2. **Methodology:** The VA used the Office of Management and Budget (OMB) identified service contract special interest functions, as outlined in the November 5, 2010 memorandum and published in the Federal Register in February 2011, to develop the inventory analysis sample. The total population size for the FY 2010 Service Contract Inventory (SCI) records was 27,000, and the total population size for contract actions for the identified special interest functions was 547. VA used traditional statistical analysis methodology to arrive at a sample size of 276 service contract actions. The use of statistical sampling provided the VA a 99 percent confidence level with a ± 5.5 percent margin of error. The special interest functions represented in the sample are identified in the table below. The "Total FY 2010 Obligation" column represents total dollars obligated for each service coded within the inventory.

DESCRIPTION OF FUNCTION	PRODUCT/SERVICE CODE	TOTAL FY 2010 OBLIGATION
INFORMATION TECHNOLOGY SUPPORT SERVICES		
Automated Data Processing (ADP) Systems Development Services	D302	\$69,276,162.20
Automated Information System Services	D307	\$105,324,347.08
ADP Backup and Security Services	D310	\$5,600,521.05
ADP Acquisition Support Services	D314	\$21,304,077.93
PROFESSIONAL & MANAGEMENT SERVICES		
Policy Review/Development Services	R406	\$9,652,619.44
Program Evaluation Services	R407	\$6,172,951.51
Program Management/Support Services	R408	\$68,542,219.81
Program Review/Development Services	R409	\$40,153,438.11
Personal Services Contracts	R497	\$2,382,309.41
Management Services/Contract & Procurement Support	R707	\$4,641,822.14

The sample contained 186 task orders issued under government-wide acquisition contracts (GWAC) and modifications to GWAC task orders, representing 67.4 percent of the overall sample population. In May 2011, the Director, Office of Procurement Policy, Office of Acquisition and Logistics, assembled a team to review the sample of 276 VA service contracts representing 10 special interest functions identified by OMB.

To accomplish the review, VA Heads of Contracting Activities (HCA) were asked to upload identified SCI sample contract documents into the electronic Contract Management System (eCMS) briefcases. In addition, the HCAs received a VA-developed questionnaire designed to capture information required to address the oversight of contract operations.

The questionnaires addressed: (1) nature of the contract, (2) oversight of contract operation and, (3) inherently governmental functions targeting potential respondents at the requiring activity and contracting officer (CO) level.

Two additional analysis areas were addressed through a review of contract documentation in eCMS and hard copy files. These reviews analyzed: (1) compliance with applicable laws and regulations, and (2) modifications to ensure the work being performed had not been changed or expanded to include inherently governmental functions. The VA analysis team visited eight contracting sites to review hard copy contract files and conduct interviews with acquisition workforce personnel responsible for the contracts of interest. Interviews were held with COs and contracting officers' technical representatives (COTR) where a team assessment could not be made based upon the nature of the information available in eCMS, hard copy files or responses to the questionnaire.

The contract file documents examined included procurement requests, acquisition plans, statements of work, performance work statements, contract modifications, and post-award contract management records. In order to conduct a meaningful analysis, the team also reviewed documents supporting CO decisions and documents required by the Federal Acquisition Regulation (FAR) and VA Acquisition Regulation (VAAR), such as written determinations and findings, documentation of legal review, and peer and board reviews.

The team analyzed contract and contract file information in five areas: (1) nature of the contract (e.g. personal service, non-personal service); (2) compliance of contract with applicable laws and regulations; (3) documentation of special management attention in accordance with (IAW) FAR 37.114 on inherently governmental functions; (4) review of modifications to ensure work being performed had not changed or expanded to include inherently governmental functions; and (5) oversight of contract operation (how many government oversight personnel for how many contractor support functions).

3. Analysis and Observations:

a. The Nature of the Contract, i.e., Personal Service or Non-personal Service. As defined by FAR Subpart 37.104, Personal Services Contracts, a personal services contract is characterized by the employer-employee relationship it creates between the government and the contractor's personnel. The government is normally required to obtain its employees by direct hire under competitive appointment or other procedures required by the civil service laws. Unless specifically authorized by statute, the VA is not to award personal services contracts.

Contract file data and field responses to the questionnaire indicated VA service contracts were not personal in nature. Service contracts in the sample were necessary to fill short-term service requirements, manage workloads caused by delayed or unsuccessful recruitment efforts, and acquire highly technical or specialized skills.

Though the sample included 19 contract actions coded as personal services contracts, the review found all of these actions were mis-coded. The 19 mis-coded contract actions have been addressed. The team also conducted interviews to ascertain why VA contracting personnel were using the Personal Services Contract code, R497, to identify the purchase type. These interviews revealed a lack of understanding of the applicability of this product service code. Contracting personnel were subsequently advised of the proper use of the codes.

b. Compliance of Contract with Applicable Laws and Regulations. Overall, VA contracting offices complied with applicable laws and regulations. However, there were notable examples of non-compliance. The FAR, VAAR and VA Information Letters (IL) are the primary regulations and guidance governing acquisition policies and procedures for all VA COs and acquisition officials.

The VA analysis team examined contract files to determine compliance with FAR Part 6, Competition Requirements; Part 5, Publicizing Contract Actions; Subpart 7.503, Inherently Governmental Functions; Part 8, Required Sources of Supplies and Services; Part 10, Market Research; Part 12, Acquisition of Commercial Items; Part 13, Simplified Acquisition Procedures; Part 15, Contracting by Negotiation, Subpart 16.6, Time-and-Materials, Labor-Hour, and Letter Contracts; Subpart 17.2, Options; Subpart 19.14, Service-Disabled Veteran-Owned Small Business Procurement Program; Subpart 37.104, Personal Service Contracts; and Part 42.302 Contract Administration Functions as supplemented by the VAAR.

The team observed the acquisition workforce was responsive to customer needs, but at times it appeared this responsiveness was at the expense of regulatory compliance. Some pre- and post-award documents lacked sufficient detail. In other cases, contract actions were not accurately entered into the Federal Procurement Data System (FPDS) in accordance with FAR Subpart 4.603.

c. Documentation of Special Management Attention IAW FAR 37.114 to Inherently Governmental Functions. IAW FAR Subpart 37.114 and Subpart 7.5, contractors shall not perform inherently governmental functions, defined in OMB Circular A-76 as "... an activity that is so intimately related to the public interest as to mandate performance by government personnel."

Documentation on whether contract services were inherently governmental functions was not always consistent in contracts reviewed. Despite this oversight, the team found no language in contract documents to indicate contractors were performing inherently

governmental functions. Responses to questionnaires further confirmed contract services did not contain inherently governmental functions.

d. Review of Modifications to Ensure Work Being Performed has not Changed or Expanded to Include Inherently Governmental Functions. IAW FAR Subpart 43.102, only COs acting within the scope of their authority may execute contract modifications. Government contracts contain a clause which permits the CO to make unilateral changes in designated areas, within the general scope of the contract.

None of the modifications reviewed revealed changes or expansions to the scope of work that resulted in the inclusion of inherently governmental functions. Modifications reviewed either exercised contract options, issued change orders, made changes authorized by contract clauses, or were administrative in nature.

e. Oversight of Contract Operations. VA's method of contract oversight is through the COTR who is appointed to ensure contractor compliance with the terms and conditions of the contract. Although many contract files lacked evidence of dialogue between the COs and COTRs, responses to the questionnaires indicated sufficient contract oversight for the contracts reviewed. VA will continue to look for ways to improve the overall quality of contract oversight.

4. Conclusion: The VA analysis team determined contractors were utilized in an appropriate manner and contracted services effectively supported VA's mission and operations. Notwithstanding this determination, the review identified isolated instances of non-compliance with FAR and VAAR worthy of further management review. Additionally, contracts identified for possible alternative acquisition approaches were referred to appropriate HCA for further review.

VA is currently undertaking procurement initiatives to remedy FAR and VAAR policy implementation and procedural concerns identified during the course of this review. Some of the initiatives include:

- Placement of procurement coordinators to assist the VA's customer base in the preparation of requirements packages and to minimize acquisition lead times;
- Validating and updating of acquisition policy and guidance to provide standardization and clarity;
- Development of a comprehensive VA Acquisition Manual that encourages contracting and the requiring activity team to improve the quality of procurements and better protect the interests of the government;
- Development of a requirements package checklist that addresses the need for a written determination from the requiring activity that contract services do not include inherently governmental functions; and
- Increased training initiatives through national and regional training symposiums.

VA's review and analysis of the FY 2010 SCI concluded that VA has an appropriate mix of Federal employee and contractors, and no contracts were identified that should be considered for conversion to performance by Federal employees in accordance with agency in-sourcing guidelines required under Section 736 of the Financial Services and General Government Appropriations Act, 2009 (Public Law 111-8, division D) and OMB Memorandum M-09-26.

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