



Department of Veterans Affairs

Service Contract Inventory Analysis Report

For Fiscal Year 2011

Executive Summary
Department of Veterans Affairs
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The Service Contract Inventory (SCI) was mandated by the Office of Management and Budget (OMB), Office of Federal Procurement Policy (OFPP) in a memorandum dated November 5, 2010, and reiterated in a SCI Memorandum, dated December 19, 2011. The memorandum required a review of Department of Veterans Affairs (VA) service contracts coded with special interest functions identified by OMB.

OMB directed agencies to undertake a meaningful analysis of the inventory data to determine whether there is an appropriate and effective use of contract labor. Agencies were also directed to determine if the mix of Federal employees and contractors is effectively balanced and to provide a report of findings to OMB by December 30, 2012. Observations presented in this report are based on a review of VA selected contract actions and data elements prescribed by OMB.

The VA Director of Procurement Policy and Warrant Management Service (PPS), Office of Acquisition and Logistics, assembled a team to conduct an analysis of service contracts based upon a sample of 100 from within the inventory. The SCI sample consisted of a sampling of 100 contract actions, represented 10 of the special interest functions from the list of special interest function codes provided in the OMB memorandum. The team reviewed and analyzed contract documentation in the VA contract management system known as the Electronic Contract Management System (eCMS) as well as responses to a VA PPS developed online data call sent to the identified contracting officers (CO).

As required by OMB, the analysis focused on determining how well VA is managing in six areas of interest. The team analyzed whether:

- Each contract in the inventory coded as a personal services contract is being performed in accordance with applicable laws and regulations;
- 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;
- The agency is using contractor employees to perform inherently governmental functions;
- The agency has specific safeguards and monitoring systems in place to ensure work being performed by contractors has not changed or expanded during performance to become an inherently governmental function;

- The agency is 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 agency resources to manage and oversee contracts effectively.

The analysis showed that contractors are utilized in an appropriate manner and that the contracted services effectively support VA's mission and operations. Analysis further showed that in keeping with Federal requirements, the primary reasons for service contract awards in fiscal year (FY) 2011 were to obtain a highly technical and/or specialized skill not found within the government or were a direct result of limitations placed on government staffing.

VA is already taking steps to remedy minor issues identified during the course of this review. These steps include:

- Establishing procurement coordinators who serve as liaisons between the VA's customer base and the procurement offices and assist in the preparation of requirements packages. This will minimize acquisition lead times;
- Validating and updating acquisition policy and guidance to provide standardization and clarity across the agency;
- Rewriting its Supplement to the FAR which will improve the quality of procurements and better protect the interests of the government;
- Developing a VA Acquisition Manual that will include procedures, guidance, and information which will define inherently governmental functions that may be unique to VA. This manual will require even more strengthening of VA oversight of contracts for functions closely associated with inherently governmental functions, and critical mission functions; and
- Issuing of a policy "Acquisition Flash" to VA's acquisition community that provides guidance, in accordance with OFPP's December 19, 2011, memorandum on contract actions "Closely Associated with Inherently Governmental Functions," "Critical Functions," or "Other Functions."

The review and analysis of the FY 2011 SCI revealed that all reviewed contracts and contract actions, adhered to the key parameters set forth in OMB's six areas of assessment:

- All contracts coded personal services contracts were performed in accordance with applicable laws and regulations;
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- there was special management attention to functions closely associated with inherently governmental functions;
- No contractors were used to perform inherently governmental functions;
- Safeguards and monitoring systems were in place to ensure contractor work did not expand to include governmental functions;
- Contractors did not perform critical functions in such ways that affected the ability of the VA to maintain control of missions and operations, and;
- There were sufficient VA internal resources to effectively manage and oversee contracts.

Finally, analysis showed the VA has an appropriate mix of Federal employee and contractors, and no contract requirements were identified that should be considered for conversion to performance by Federal employees in accordance with agency in-sourcing guidelines required under section 739 of Division D of the Consolidated Appropriations Act, 2008 (Public Law 110-161; 121 Stat. 2030) as amended by section 736 of the Financial Services and General Government Appropriations Act, 2009 (Public Law 111-8, Division D) and OMB Memorandum M-09-26, Managing the Multi-Sector Workforce.

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1. **Background:** 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 functions outlined by the Office of Management and Budget (OMB) in the November 5, 2010, memorandum and reiterated in the December 19, 2011, memorandum, to develop the inventory analysis sample. The total population size for the FY 2011 Service Contract Inventory (SCI) records was 28,435, and the total population for the contract actions of the identified special interest functions was 649.

VA's FY 2011 SCI report is posted on the VA's official website at: <http://www.va.gov/oal/business/pps/scalInventory.asp>. VA-selected contract actions were found within ten of the special interest functions from the illustrative list of special interest function codes provided in the OMB guidance. To ensure that all 10 special interest function codes were represented, VA derived a sample size of 100 contract actions. The special interest functions represented in the sample are identified in the table below. The "Total FY 2011 Obligation" column represents total dollars obligated for each service code in the inventory.

DESCRIPTION OF FUNCTION	PRODUCT/SERVICE CODE	TOTAL FY 2011 OBLIGATION
INFORMATION TECHNOLOGY SUPPORT SERVICES		
Automated Data Processing (ADP) Systems Development Services	D302	\$101,104,529.91
Automated Information System Services	D307	\$211,044,416.58
ADP Backup and Security Services	D310	\$2,717,675.89
ADP Acquisition Support Services	D314	\$20,412,157.50
PROFESSIONAL AND MANAGEMENT SERVICES		
Policy Review/Development Services	R406	\$14,277,741.70
Program Evaluation Services	R407	\$8,086,867.26
Program Management/Support Services	R408	\$112,049,718.98
Program Review/Development Services	R409	\$56,765,279.73
Personal Services Contracts	R497	\$1,973,722.18
Management Services/Contract and Procurement Support	R707	\$4,686,602.37

The Director, Office of Procurement Policy and Warrant Management Service, Office of Acquisition and Logistics, assembled a team to review the sample of 100 VA service contracts representing 10 special interest functions identified by OMB. Included in the sample were 48 task orders issued under General Services Administration (GSA) Federal Supply Schedule (FSS) contracts and modifications to GSA FSS task orders, representing 48 percent of the overall sample population. The remaining 52 percent were VA open market contracts and modifications to VA open market contracts. Contracting officers (COs) and contracting officer representatives (CORs) were asked to upload identified SCI sample contract documents into the Electronic Contract Management System (eCMS) briefcases. In addition, the COs received a VA-developed online data call designed to capture information required to address the key parameters of the analysis, as identified in Appendix D cited in OMB memorandum dated November 5, 2010, attachment 1.

The team examined the following contract file documents: procurement requests, acquisition plans, statements of work, performance work statements, solicitations, contracts, contract modifications, and post-award contract management records. To ensure a meaningful analysis, the team also reviewed documents supporting CO decisions as well as documents required by the Federal Acquisition Regulation (FAR) and VA Acquisition Regulation (VAAR), including determinations and findings, and documentation of legal, peer, and board reviews.

The team reviewed and analyzed contract and contract file information in accordance with the Office of Federal Procurement Policy required six areas. The team conducted:

- A review of each contract in the inventory that is a personal services contract to ensure it has been entered into, and is being performed, in accordance with applicable laws and regulations;
- An evaluation of whether the VA is giving special management attention, as set forth in FAR 37.114, to functions that are closely associated with inherently governmental functions;
- An analysis and review of whether the VA is using contractor employees to perform inherently governmental functions;
- A review to ensure the VA 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;
- A review to ensure the VA is not using contractor employees to perform critical functions in such a way that could affect the ability of the VA to maintain control of its mission and operations; and
- An evaluation to ensure there are sufficient internal VA resources to manage and oversee contracts effectively.

3. Analysis and Observations:

a. **“Each contract that is a personal services contract has been entered into, and is being performed, in accordance with applicable laws and regulations.”** As defined by FAR Subpart 37.104, Personal Services Contracts (PSC), a PSC 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.

The team determined from contract file data and field responses to the data call that no VA service contracts were personal in nature. Review and analysis of the data call responses and contract files for those actions within the sample found no contractors integrating into the VA’s organizational structure during the execution of their services in a manner that constitutes a PSC. The review showed that service contracts in the sample were necessary in order to obtain highly technical or specialized services not presently available within the VA workforce, to compensate for the impact to workloads from government staffing limitations, or to fulfill short-term service requirements.

The team observed that within the SCI there were 20 contract actions with Product Service Code R497, “Personal Services.” The sample population for this analysis revealed ten of these actions each of which were subsequently reviewed. The team determined that, in each case, the actions were improperly coded. As a result, the VA reviewed all 20 of the contract actions that showed a Product Service Code of R497 and determined that they did not fit the criteria for personal services. The cognizant COs were advised and the coding errors were corrected.

b. **“The agency is giving special management attention, as set forth in FAR 37.114, to functions that are closely associated with inherently Governmental functions.”** In accordance with (IAW) FAR Subpart 37.114 and Subpart 7.5, agencies must ensure that, (a) a sufficient number of qualified Government employees are assigned to oversee contractor activities ..., (b) a greater scrutiny and an appropriate enhanced degree of management oversight is exercised..., (c) all contract personnel ... identify themselves as such ... or that contractor participation is appropriately disclosed.”

Approximately five percent of contract actions in the sample population contained functions that could be considered closely associated with inherently governmental functions. However, upon close analysis, the contracts reviewed were for social workers, patient satisfaction data collection, information technology (IT) and software support services, and administrative support. While these contracts included functions closely associated with inherently governmental functions, the review indicated an appropriate degree of government oversight for all actions. Responses to the data calls and detailed analysis of contract files showed that there were sufficient numbers of

qualified Federal employees assigned to the contracts to ensure meaningful oversight of contractor performance and special management attention to the contractor's activities. The team concluded that work being performed by the contractors had not changed or expanded to include inherently governmental functions.

c. **“The agency is not using contractor employees to perform 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.”

The review did not find any instances of contractor employees performing inherently governmental functions. Government officials in the offices receiving contractor support provide the necessary managerial attention to ensure contractors are not performing inherently governmental functions. The analysis of the sample showed a correct level of understanding by VA's procurement and requirements officials as to the appropriate roles and responsibilities of contractor employees concerning inherently governmental functions.

d. **“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 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 that 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, were within scope change orders, made changes authorized by contract clauses, or were administrative in nature. Based on data call responses from contracting officers and requirements officials, the team determined that the VA has safeguards and monitoring systems in place to prevent any change or expansion of contractor work from becoming inherently governmental.

e. **“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 operation.”** The analysis of contract file documents and data call responses revealed no indication that contractor employees are being used to perform critical functions in such a way that could affect the requiring activity's ability to maintain control of its mission and operation.

Approximately four percent of the contract actions in the sample population contained activities performed by contractors that required closer scrutiny. In these instances, the team determined that organizations either lacked sufficient quantities of personnel with the appropriate skills to execute all of their requirements, or the required skills and

experience is so highly specialized as to not exist within the government. Where contractors must perform critical mission functions, VA's required activities ensure control of their missions and operations through frequent monitoring of contractor performance, placement of government employees in positions to oversee and manage the contractors, or by transitioning contractor positions into permanent government employee positions as organizational structures and budgets permit. Heads of Contracting Activity (HCAs) have been advised of the need to continue to closely monitor these contracts.

f. **“There are sufficient internal agency resources to manage and oversee contracts effectively.”** VA's primary method of contract oversight is through the COR who is appointed to ensure contractor compliance with the terms and conditions of the contract.

All reviewed contract actions had CORs appointed to monitor contractor performance. CO and requirements official responses to the data call indicated that there was sufficient contract oversight to ensure contractor compliance with the terms and conditions of the contracts.

Although there has been significant improvement in the overall quality of contract oversight throughout the past year, the VA continues to look for ways to increase the quality of oversight through proper training and awareness. Most contract files showed evidence of heightened management attention with only a few isolated instances to the contrary. The team observed that in these cases, peer, board, and legal reviews were missing from the eCMS briefcases. HCAs have been made aware of these isolated discrepancies and they are working to remedy the problem.

4. **Conclusion:** The VA analysis team determined contractors were utilized in an appropriate manner and contracted services effectively supported VA's mission and operations. An analysis of responses to the data call revealed 65 percent of the contracts were awarded to obtain a highly technical and/or specialized skill not found within the government; and an additional 17 percent of the contracts were a direct result of limitations placed on government staffing.

VA is taking steps to remedy the minor concerns identified during the course of this review. These include:

- Establishing procurement coordinators to serve as liaisons between VA's customers and the procurement offices and assist in the preparation of requirements packages. This will minimize acquisition lead times.
- Validating and updating acquisition policy and guidance to provide standardization and clarity across the agency.

- Rewriting its Supplement to the Federal Acquisition Regulation which will improve the quality of procurements and better protect the interests of the government;
- Developing a VA Acquisition Manual that will include procedures, guidance, and information that will define inherently governmental functions that may be unique to the VA. This guidance will require even greater strengthening of oversight of contracts for functions closely associated with inherently Governmental functions, and critical mission functions; and
- Issuing of a policy “Acquisition Flash” to the VA’s acquisition community that provided guidance, in accordance with, OFPP’s December 19, 2011, memorandum on contract actions “Closely Associated with Inherently Governmental Functions,” “Critical Functions,” or “Other Functions.”

The review and analysis of the FY 2011 SCI concluded that VA’s contracted services adhered to the key parameters set forth in OMB’s six areas of assessment:

- All coded PSCs were performed in accordance with applicable laws and regulations;
- There was special management attention to functions closely associated with inherently governmental functions;
- No contractors were used to perform inherently governmental functions;
- Safeguards and monitoring systems were in place to ensure contractor work did not expand to include governmental functions;
- Contractors did not perform critical functions in such ways that affected the ability of the VA to maintain control of missions and operations, and;
- There were sufficient VA internal resources to effectively manage and oversee contracts.

As a final point, VA has an appropriate mix of Federal employee and contractors, and no contract requirements were identified that should be considered for conversion to performance by Federal employees in accordance with agency in-sourcing guidelines required under section 739 of Division D of the Consolidated Appropriations Act, 2008 (Public Law 110-161; 121 Stat. 2030) as amended by Section 736 of the Financial

Services and General Government Appropriations Act, 2009 (Public Law 111-8, Division D) and OMB Memorandum M-09-26, Managing the Multi-Sector Workforce.

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Appendix D: Agency Inventory Analyses

In accordance with section 743(e), agency inventory analyses shall include a review of the contracts and information in the inventory for the purpose of ensuring that --

- (i) 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;
- (ii) The agency is giving special management attention, as set forth in FAR 37.114, to functions that are closely associated with inherently Governmental functions;
- (iii) The agency is not using contractor employees to perform inherently Governmental functions;
- (iv) 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;
- (v) 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
- (vi) There are sufficient internal agency resources to manage and oversee contracts effectively;