



**Department of Veterans Affairs
Service Contract Inventory
Analysis Report
For Fiscal Year 2013**

Executive Summary
Department of Veterans Affairs
Service Contract Inventory
for Fiscal Year 2013

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. These memorandums 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, 2014. 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 100 contract actions, representing the 11 special interest functions with the largest percentages of obligations in fiscal year (FY) 2013 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 the VA is managing service contracts in six areas of interest. The team analyzed the following:

- 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 FY 2013 were to obtain a highly technical and/or specialized skill not found within the Government: resulted from Government staffing limitations: or were to fulfill short-term requirements

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

- Validating and updating acquisition policy and guidance to provide standardization and clarity across the agency;
- Revising its Supplement to the Federal Acquisition Regulation (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;
- Issuing of Procurement Policy Memorandums (PPMs) that provide acquisition guidance to the VA's acquisition community;
- Operating and maintaining an official VA PPS website in order to provide the VA's acquisition community a single-source location to receive current and relevant information and guidance as it pertains to procurement policy; and
- Implementing a procurement policy outreach program that spans the full-spectrum of procurement and acquisition professionals within the Department of Veterans Affairs; to include classroom presentations at the VA Acquisition Academy (VAAA), briefings to the Heads of Contracting Activity (HCAs) and presentations to Senior Procurement Council (SPC) members.

The review and analysis of the FY 2013 SCI revealed that all reviewed contracts and contract actions, adhered to the key parameters set forth in OMB's policy and procedures.

- No Personal Services Contracts identified;
- There was special management attention functions closely associated with inherently government 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 employees and contractors, and no contract requirements were identified that should be considered for conversion to performance by Federal employees in accordance with agency insourcing 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 2013 Service Contract Inventory (SCI) records was 24,761. The total number of contract actions identified as special interest functions was 320.

VA's FY 2013 Service Contract Inventory and Inventory Summary are posted on the VA's official website at: <http://www.va.gov/oal/business/pps/scalInventory.asp>. The VA selected contract actions from within special interest functions that represent the 10 largest percentages of obligations for VA in FY 2013 from the illustrative list of special interest function codes provided in the OMB memorandum. In accordance with the special interest functions identified in our Office of Federal Procurement Policy Notification, dated January 7, 2014, Product Service Code (PSC) R497- Personal Service Contract was added to our list of special interest functions for FY13. There were no contracts for the PSC R497 present in the contract population received. To ensure the remaining 10 special interest function codes were represented, VA derived a sample size of 100 contract actions which represented 32% of the total population of contract actions OMB identified as special interest functions. High dollar value contract actions were then selected for each of the selected codes to ensure acceptable representation within the sample population based on dollars obligated. The special interest functions represented in the sample are identified in the Table below. The "Total FY 2013 Obligation" column represents total dollars obligated for each service code in the inventory.

Description of Function	Product / Service Code	Total FY 2013 Obligation	Obligation Represented in Sample	% of Inventory Represented in Sample
INFORMATION TECHNOLOGY & PROFESSIONAL MANAGEMENT SERVICES				
IT and Telecommunications – Other	D399	\$1,014,815,659.18	\$36,078,615.92	35.6%
Policy Review / Development Services	R406	\$47,123,414.87	\$5,647,922.46	11.9%
Program Management / Support Services	R408	\$134,986,433.56	\$27,728,005.97	20.5%
Engineering and	R425	\$24,897,417.77	\$5,534,104.77	22.2%

Technical Services				
Management Services / Contract and Procurement Support	R707	\$8,721,796.80	\$5,224,899.60	59.9%
Program Evaluation Services	R407	\$2,440,888.46	\$2,271,920.21	93.1%
Program Review / Development Services	R409	\$4,867,087.98	\$4,841,898.78	99.5%
Support – Professional: Other	R499	\$396,456,086.48	\$105,868,278.72	26.7%
Administrative: Other	R699	\$86,429,072.99	\$24,474,593.60	28.3%
Management: Other	R799	\$159,368,924.07	\$16,821,865.45	10.5%
**Service – Professional Support Service	R497	N/A	N/A	N/A
** Not included in OMB sample size				

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 eleven (11) special interest functions identified by OMB. Included in the sample were 80 task orders issued under other agency procurement instruments. This included thirty (30) task orders under the General Services Administration (GSA) Federal Supply Schedule (FSS); two (2) task orders (these contracts are designated as examples NNG07DA218 in column P of the selected sample spreadsheet) issued under the National Aeronautics and Space Administration (NASA) Solutions for Enterprise-Wide Procurement (SEWP); and forty eight (48) were task orders issued via VA, Indefinite Delivery Contracts vehicles. The remaining twenty (20) contract actions were 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 (Attachment 1) sited in OMB memorandum dated November 5, 2010.

For each of the contract actions contained within the sample, 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 six areas of interest. 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 within the sample 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.

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.”

Within the sample, six (6) percent of contract actions contained functions that could be considered closely associated with inherently governmental functions. The contracts reviewed were for acquisition support services, program and project management support services, retro-commissioning services, and information technology (IT) and software support services. The contractors were fulfilling short-term service requirements and/or were highly technical or specialized in nature that could not be fulfilled with the current Government workforce. While these contracts included functions closely associated with inherently governmental functions, the review indicated an appropriate degree of government oversight. 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.

Following the determination that the VA was not awarding task orders or contracts that included inherently governmental functions, the team reviewed all modifications subsequent to the base awards in order to ensure work performed by contractors did

not change or expand during performance to include inherently governmental functions. 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 the review of contract files and 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.

Within the sample population, thirteen (13) percent of the contract actions contained activities performed by contractors considered to be critical functions by the Government. The contracts reviewed were for advisory and assistance services, auditing, quality assurance testing, or were related to services associated with proprietary commercial software. In these instances, the required skills and experience were highly technical or specialized in nature.

Where contractors must perform critical mission functions, VA’s requiring 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) will be 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.

For Contract actions where professional services were being provided to the Government contract file reviews and responses to data calls indicate CORs were appointed to monitor contractor performance. COR appointments were not apparent within the contract file documentation in approximately fifteen (15) percent of the contract actions contained within the sample; however, these were instances where the VA was issuing Firm Fixed Price (FFP) contracts to procure software, software licenses, or IT hardware.

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 isolated cases, peer, board, and legal reviews were missing from the eCMS briefcases. HCAs will be made aware of these isolated discrepancies in order to remedy the problem.

4. Conclusion: The review and analysis of the FY 2013 SCI concluded that VA's contracted services adhered to the key parameters set forth in OMB's six areas of assessment. The VA analysis team determined contractors were utilized in an appropriate manner and contracted services effectively supported VA's mission and operations. Analysis revealed fifty six (56) percent of the contracts were awarded to obtain a highly technical and/or specialized skill not found within the government; twenty eight (28) percent were awarded as a result of Government staffing limitations, and fifteen (15) percent fulfilled short-term service requirements.

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.
- Revising 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;
- Issuing of Procurement Policy Memorandums (PPMs) that provide acquisition guidance to the VA's acquisition community;
- Operate and maintain an official VA PPS website in order to provide the VA's acquisition community a single-source location to receive current, real, and relevant information and guidance as it pertains to procurement policy; and
- Implementing a procurement policy outreach program that spans the full-spectrum of procurement and acquisition professionals within the Department of Veterans Affairs; to include classroom presentations at the VA Acquisition

Academy (VAAA), briefings to the Heads of Contracting Activity (HCAs) and presentations to Senior Procurement Council (SPC) members.

The results of the review and analysis of the FY 2013 SCI revealed that all reviewed contracts and contract actions, adhered to the key parameters set forth in OMB's policy and procedures. The following were noted:

- No Personal Services Contracts identified;
- There was special management attention functions closely associated with inherently government 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 to the November 5, 2010 OMB Memorandum, *Service Contract Inventories*.

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;