



Department of Veterans Affairs

Service Contract Inventory
Analysis Report
for
Fiscal Year 2016

August 2018

Executive Summary
Department of Veterans Affairs
Service Contract Inventory
Fiscal Year 2016

The Service Contract Inventory (SCI) is 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 memoranda 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 March 31, 2018. 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 identified 481 contract actions, representing the 15 special interest functions with the largest percentages of obligations in fiscal year (FY) 2016 from the list of special interest function codes provided in the OMB memorandum.

As required by OMB, the analysis focused on determining how well VA is managing service contracts in the following six areas of interest:

- 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 2016 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.

In a continuous effort to assess effective balancing of contracted and government resources, aside from taking the below actions, VA will continue to evaluate the extent to which contract awards within these functions leverage existing Federal or Departmental enterprise contract vehicles or present future opportunities for strategic sourcing.

VA is:

- Continuously validating and updating acquisition policy and guidance to provide standardization and clarity across the agency;
- Updating its Supplement to the Federal Acquisition Regulation (FAR) to 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 in some cases 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 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
- Engaging stakeholders through the procurement policy outreach program that spans the full-spectrum of procurement and acquisition professionals within the Department of Veterans Affairs; to include 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 2016 SCI data determined 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 to 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, the analysis showed 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 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.

**Department of Veterans Affairs
Service Contract Inventory Analysis Report
Fiscal Year 2016**

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: 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 2016 Service Contract Inventory (SCI) records was 26,936; the total number of contract actions identified as special interest functions was 481.

VA's FY 2016 Service Contract Inventory and Inventory Summary are posted on its official website at: <https://www.va.gov/oal/business/pps/scalInventory.asp>. VA selected contract actions from within special interest functions, represent the 15 largest percentages of obligations for VA in FY 2016 from the descriptive list of special interest function codes provided in the OMB memorandum. VA derived a sample size of 75 contract actions which represented 16 percent 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 2016 Obligation" column represents total dollars obligated for each service code in the inventory.

| Special Interest Codes | | | | | |
|------------------------|--|----------------|-------------------|--------|-------------------|
| Code | Description | # of Contracts | \$ Value | Sample | Sample\$ |
| B504 | Special Studies/ Analysis - Chemical/Biological | 1 | \$ 66,150.00 | 1 | \$ 66,150.00 |
| D302 | IT and Telecom - Systems Development | 24 | \$ 7,879,158.22 | 6 | \$ 5,560,117.79 |
| D307 | IT and Telecom - IT Strategy and Architecture | 31 | \$ 23,702,013.42 | 7 | \$ 19,669,063.81 |
| D310 | IT and Telecom - Cyber Security and Data Backup | 14 | \$ 4,126,265.82 | 4 | \$ 3,057,487.20 |
| D314 | IT and Telecom - System Acquisition Suooort | 6 | \$ 13,223,250.85 | 2 | \$ 12,712,926.32 |
| R406 | Policy Review/Development Services | 13 | \$ 65,288,641.38 | 4 | \$ 29,847,870.66 |
| R407 | Program Evaluation Services | 0 | \$ - | 0 | \$ - |
| R408 | Program Management/Support Services | 241 | \$ 221,304,877.23 | 22 | \$ 67,704,422.99 |
| R409 | Program Review/Development Services | 3 | \$ 579,577.22 | 2 | \$ 366,577.22 |
| R413 | Specifications Development Services | 8 | \$ 7,119,59.30 | 3 | \$ 5,071,059.20 |
| R414 | Systems Engineering Services | 0 | \$ - | 0 | \$ - |
| R423 | Intelligence Services | 3 | \$ 955,119.80 | 1 | \$ 564,592.98 |
| R425 | Engineering and Technical Services | 102 | \$ 75,411,391.29 | 14 | \$ 26,199,138.49 |
| R497 | Personal Services Contracts | 26 | \$ 6,063,809.85 | 6 | \$ 3,271,377.00 |
| R707 | Management Services/Contract and Procurement Support | 9 | \$ 3,577,377.70 | 3 | \$ 2,290,507.00 |
| Total | | 481 | \$429,297,192.08 | 75 | \$ 176,381,290.66 |

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 and to validate the information that was being uploaded by contractors. For each contract identified within the sample, a

comprehensive examination of the following contract documents was performed by the contracting officer and/or the contracting officer representative: procurement requests, acquisition plans, and statements of work, performance work statements, solicitations, contracts, contract modifications, and post-award contract management records. To ensure a meaningful analysis, this office also conducted a random sampling of the documents supporting the 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.

This process consisted of reviewing and analyzing contracts and contract file information in six focus areas of interest:

- 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 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 VA is using contractor employees to perform inherently governmental functions;
- A review to ensure 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 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, VA is not to award personal services contracts.

Based on the review of file information and the survey responses received, it was determined that no VA service contracts within the sample size of 75 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 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, eleven (11) 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, and 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 analysis 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.

Upon determining that VA was not awarding contracts or task orders that included inherently governmental functions, a further review of modifications subsequent to the base awards also concluded that work performed by contractors did not change or expand during performance to include inherently governmental functions. Based on responses to the survey questions, 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 survey responses from contracting officers and requirements officials, it was determined that VA has appropriate 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, 4% 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) are 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 survey responses indicate CORs were appointed to monitor contractor performance. 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. It was noted that in these isolated cases, peer, board, and legal reviews were missing from the eCMS briefcases. Based on these findings, as part of an agency initiative to ensure 100% file compliance, the Heads of Contracting Activity (HCAs) will be made aware of these isolated discrepancies in order to take the necessary corrective action to remedy the problem.

4. Conclusion: The review and analysis of the FY 2016 SCI data concluded that VA's contracted services adhered to the key parameters set forth in OMB's six areas of assessment. The PM's analysis determined contractors were utilized in an appropriate manner and contracted services effectively supported VA's mission and operations. The analysis revealed contracts were awarded to obtain a highly technical and/or specialized skill not found within the government; and was awarded as a result of Government staffing limitations, and to fulfilled short-term service requirements.

In an ongoing effort to improve, 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 VA's acquisition community a single-source location to receive current, real, and relevant information and guidance as it pertains to procurement policy; and
- Engaging stakeholders through the procurement policy outreach program that spans the full-spectrum of procurement and acquisition professionals within the Department of Veterans Affairs; to include presentations at the VA Acquisition

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

The results of the review and analysis of the FY 2016 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 were identified;
- There was special management attention to 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.

Responsible Officials:

In accordance with the recommendation in the GAO report "Civilian Service Contract Inventories: Opportunities Exist to Improve Agency Reporting and Review Efforts," GAO-12-1007, September 2012, VA has designated Dr. Sheila P. Darrell, Director, Procurement Management and Warrant Management Service, as the official responsible for policy; and Mr. Lermon Elliott, Senior Program Analyst, as the official responsible for management of the process. The designation of officials should help ensure appropriate management attention and responsiveness.

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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