



## Analysis of Department of Homeland Security (DHS) FY 2011 Service Contract Inventory

### Introduction

Section 743 of Division C of the Fiscal Year (FY) 2010 Consolidated Appropriations Act, Public Law 111-117, requires civilian agencies to prepare an annual inventory of their service contracts and to analyze the inventory to determine if the mix of federal employees and contractors is effective or if rebalancing may be required. This report provides information from the Department of Homeland Security to meet this requirement.

In March 2010, the Department of Homeland Security (DHS or the Department) established the Balanced Workforce Program Management Office (BW PMO) within the Office of the Chief Human Capital Officer (OCHCO) to develop and implement a process, designated as the Balanced Workforce Strategy (BWS), to assess the federal and contractor workforces. The goal of the BWS is to:

- Ensure compliance with applicable statutes, regulations, and policies, through a repeatable, documented decision-making process;
- Determine the proper workforce balance for each Component activity; and
- Reduce mission risk while, as practicable, reducing or controlling costs.

In collaboration with the Office of the Chief Procurement Officer (OCPO), the Office of the Chief Financial Officer (OCFO), and the Office of the General Counsel (OGC), the BW PMO developed and vetted a three-step methodology to conduct analyses of service contracts. We issued the first version of the BWS guidance document in August 2010; in November 2011, we issued Version 2.0. The BWS guidance describes how to assess and make decisions regarding the balance and effective use of federal and contractor resources, and the guidance includes appendices with forms, tools, and instructional information to support the management of the BWS process at the Component level.

Initial BWS efforts focused on the analysis of existing service contracts by Components. In November 2011, DHS launched a pilot requiring Components to apply BWS reviews to proposed requirements for services in select product and service codes (PSCs); currently, this pilot is scheduled to run through March 2013, at which time DHS will consider broadening the scope to cover additional functions. While the BWS pilot applies to a limited number of functions, updates to OCPO policies and procedures require a separate Component review of all service contracts to ensure full compliance with the Federal Acquisition Regulations and OFPP Policy Letter 11-01, *Performance of Inherently Governmental and Critical Functions*.

This report is organized according to the categories established in OMB's December 19, 2011 Memorandum to Chief Acquisition Officers and Senior Procurement Executives on the subject of Service Contract Inventories.

## I. Special Interest Functions Analyzed and Dollars Obligated in FY 2011

**Special Interest Functions (SIF) Analyzed.** On April 12, 2012, the BW PMO provided Components with lists of their FY 2011 contracts that required BWS review prior to October 31, 2012; the lists contained Component contracts let in FY 2011 from the 17 DHS SIF PSCs, with an ultimate value above the simplified acquisition threshold of \$150,000.

By July 9, 2012, Components were asked to conduct initial analyses of their FY 2011 contract lists and to produce a report for the BW PMO outlining all contracts reviewed as part of the BWS existing contract process, all contracts reviewed as part of the requirements for services pilot (at the time those contracts came up for recompetition), and all those contracts that would require a BWS review prior to October 31, 2012.

The review provided in this report is based on contracts in SIF PSCs that Components have analyzed through both the BWS process for existing service contracts and the BWS pilot process for proposed requirements for services. The Department adopted codes previously recommended by OMB and added two codes. DHS' special interest functions are:

Description of Function	PSC
SPECIAL STUDIES/ANALYSIS – Not Research & Development (R&D)	
Special Studies/Cost Benefit Analyses	B505
PROFESSIONAL/ADMINISTRATIVE/MANAGEMENT SUPPORT SERVICES	
Policy Review/Development Services	R406
Program Management/Support Services	R408
Program Evaluation/Review/Development Services	R410
Specifications Development Service	R413
Intelligence Services	R423
Engineering and Technical Support Services	R425
Personal Services Contracts	R497
Other Professional Support Services	R499
Other Administrative Support Services	R699
Contract/Procurement/Acquisition Support	R707
Other Management Support Services	R799
INFORMATION TECHNOLOGY SUPPORT SERVICES	
IT & Telecom Systems Development Services	D302
IT & Telecom – IT Strategy and Architecture	D307
IT & Telecom – Cyber Security & Data Back-up	D310
IT & Telecom – System Acquisition Support	D314
IT & Telecom – Other IT & Telecommunications	D399

**Dollars Obligated in FY 2011.** The total amount obligated for contracts in the 17 SIF PSCs was \$4,234,788,884; the total amount obligated for the subset of contracts that have been reviewed using the BWS process is approximately \$800,115,993.

## II. Methodology Used to Support Analysis

The BWS was created as a comprehensive approach to comply with relatively new policies, statutes, regulations, and guidance issued by the President, Congress, OMB, and DHS leadership that relate to managing the total federal workforce—both federal employees and private-sector contractors.

The Department adopted the BWS in August 2010 to undertake a thorough, repeatable, risk analysis to improve its workforce planning decisions. The BWS is comprised of a set of processes that enable the Department to achieve the appropriate mix of federal employees and contractors to accomplish the Department's mission while minimizing mission risk that may result from an over-reliance on contractors. Following these processes should enable DHS to:

- Achieve the appropriate mix of federal and contractor skills, expertise, experience and other assets necessary to effectively achieve the Department's mission;
- Ensure that inherently governmental functions and unauthorized personal services are not performed by contractors;
- Dedicate an adequate number of federal employees to the performance of critical functions or functions that are closely associated with inherently governmental such that the Department can maintain control of its mission and operations;
- Give consideration to using, on a regular basis, federal employees to perform new functions and functions that are performed by contractors that could be performed by federal employees (and Special Consideration to the use of federal employees in those areas specifically identified by law); and
- Integrate management and planning activities to reduce risk to the Department's mission and promote improvements in the Department's economy, efficiency, and performance.

Information for this report is based, in large part, on analyses generated through the BWS Tool, an automated decision support survey. The analysis using the BWS Tool enables Components to categorize work as an inherently governmental function (in accordance with OFFP Policy Letter 11-01, FAR 7.5, HSAM 3007.5), personal services (in accordance with FAR 37.1), closely associated with an inherently governmental function (OFFP PL 11-01, OFPP M-09-26 memo, FAR 7.5 & 37.1, Section 736), or a critical function (OFPP PL 11-01). Other significant analytic aspects of the Tool address issues including possible mission risk, level of contractor oversight and management needed, mitigation strategies, and cost analysis. Based on a Component's responses, the BWS Tool provides a recommended sourcing decision on whether the work is appropriate for federal or contract performance, or both.

When submitting the report in December 2011, the Department focused exclusively on “in-place” contracts that had been scheduled for review through the BWS process. However, during FY 2012, application of the BWS process was expanded to include “Requirements for Services,” which encompassed anticipated contracts. Therefore, this report provides information for both in-place contracts and prospective contracts, for the identified SIF PSCs.

### III. Summary of Findings

DHS identified a total of 918 contracts in the 17 SIF PSCs, with an ultimate value above the simplified acquisition threshold of \$150,000. Components have used the BWS process to review 248 of those contracts, and they have identified the review requirements for an additional 81 contracts.<sup>1</sup>

Of the 248 contracts reviewed using the BWS process, Components identified 98 as expired, and they identified 49 as exempt from BWS analysis. The remaining 101 contracts underwent analysis using the BWS Tool, with the following numbers of contracts in each PSC analyzed:

PSC	Number of Analyses Using the BWS Tool
B505	0
D302	6
D307	20
D310	1
D314	0
D399	4
R406	0
R408	23
R410	0
R413	0
R423	0
R425	23
R497	0
R499	17
R699	6
R707	0
R799	1

<sup>1</sup>In Q2 of FY 2013, the Department will request a report on BWS implementation from Components, with specific attention to the disposition of the 589 FY 2011 contracts which have not been reported as being reviewed, as of October 31, 2012.

As evident above, there were no reviews reported for 8 PSCs: B505, D314, R406, R410, R413, R423, R497, and R707. For the remaining PSCs, R408 (Program Management Support Services) and R425 (Engineering and Technical Services) each had the most contract reviews with 23; together, codes R408 and R425 accounted for 45 percent of total BWS analyses completed.

Of the total analyses:

- 1 contract identified as “Must be federal workers;”
- 11 contracts identified as “Should be federal workers;”<sup>2</sup>
- 20 contracts identified as “Temporarily contract until feasible to hire federal workers;”
- 21 contracts identified as “Should be a combination of federal workers and contractors;”
- 48 contracts identified as “Should be contractor.”

According to these findings, 53 of the contracts (representing approximately 53 percent of the total) might require some level of workforce rebalancing in order to ensure DHS has proper control over its mission and functions. In compliance with BWS guidance, program offices that complete BWS analyses collaborate with their Component human capital, acquisition, and legal officials to evaluate their findings and determine any specific steps that should be taken to address identified risks.

#### **IV. Outcomes Achieved in Accordance with Section 743(e) (2)**

**In accordance with section 743(e) (2) of the 2011 Consolidated Appropriations Act, the Agency has ensured that:**

1. *Any personal services contract listed in the inventory has been executed, and is being performed, according to applicable laws and regulations.*

The BWS analysis of SIF contracts addresses personal services and indicates that DHS is in full compliance with FAR Part 37.104, only entering into personal services contracts that are authorized by statute. The BWS Tool requires a complete review of each contract to assess whether it may have inadvertently been used as a personal services contract, having the analyst respond to the following question:

If contracted, would this function establish an employer-employee relationship between the Federal Government and a contractor?

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<sup>2</sup>The draft OMB guidance memorandum issued in March 2010 for comment, described a category entitled “Closely Associated, Reserved.” This category was included in the original BWS Tool and resulted in “Must be federal workers.” This category is no longer included in the BWS analysis, with the publication of the final OMB Policy Letter issued on September 12, 2011. Previous analyses that used this earlier designation and resulted in “Must be federal workers” have been reassigned to “Should be federal workers.”

- Yes (which leads to a follow-up question: There are some statutory provisions that allow the Department to obtain personal services through contract, rather than through the normal process of hiring employees through civil service appointments. Do any of the following exemptions apply to the function you are analyzing?)
- No (which leads to the next question in the BWS Tool)
- I need more information on "personal services contracts." (which leads to a description of Personal Services contracts)

2. *As set forth in FAR 37.114, the agency is giving special management attention to functions that are closely associated with inherently governmental functions.*

DHS identified these special interest functions because these could be potentially closely associated with inherently governmental functions, or were critical to ensuring control of the DHS mission. BWS analysis includes items on the BWS Tool to assess the extent to which a function might be closely associated with inherently governmental functions. Once identified, the Component determines if the function should be undertaken solely by federal workers, or if greater scrutiny or an enhanced degree of oversight could be employed to ensure that the Department maintains control of its mission.

3. *The agency is not using contractor employees to perform inherently governmental functions.*

In the Department's review of the SIF contracts, one contract was identified as "Must be federal workers."

4. *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.*

DHS depends on well-trained Contracting Officer Representatives (CORs) to advise Contracting Officers that contractors do not inadvertently assume inherently governmental functions (defined as "scope creep") during contract performance. The BWS Tool includes an evaluation of the risk that the function will evolve into inherently governmental work.

5. *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.*

The BWS Tool looks at critical functions and whether the Department has sufficient internal capability to control its mission. Items on the BWS Tool's Sufficient Internal Capability Test that address this issue include:

- Relationship of the work to the Department's mission;
- Complexity of the function;
- Extent of sufficient in-house capability to perform the function;

- Impact of contractor ceasing performance; and
- Risk of function evolving into inherently governmental (i.e., restricted) work.

By responding to these items, Components can determine that contractor employees are used appropriately, enabling DHS to control its mission.

6. *There are sufficient internal agency resources to manage and oversee contracts effectively.*

Within the BWS Tool, Components are asked directly about the number of federal workers providing oversight and management of service contracts in relation to the number of contractors. In addition, Components provide information about the sufficiency of contract management through the availability of appropriately trained and experience contract administration staff. DHS uses technical subject matter experts (SMEs), in addition to CORs and Contracting Officers, to administer its complex contracts.

## **V. Explanation of actions taken or planned to resolve weaknesses**

During FY 2012, DHS took the following steps to address identified weaknesses with contract reviews:

- Developed and implemented more detailed guidance on identifying and ameliorating the potential negative impact of balanced workforce decisions on small businesses.
- Launched a pilot, using the 17 SIF PSCs, to review “requirements for new work,” thereby addressing potential workforce balance concerns prior to undertaking the contract process. This pilot has been extended until March 31, 2013.
- Solicited contract support to develop a new automated version of the BWS Tool, to ensure that the IT platform is improved to meet Component needs and the output of BWS analyses are more thoroughly documented and more easily retrieved, thereby increasing the system’s usefulness for Departmental reporting. The first iteration of the new BWS Tool is scheduled for deployment in early April 2013.
- Implemented Acquisition Alert 11-30, which requires that all contract actions undergo a full-scale, documented review based in substantial part on the requirements and questions used in the BWS analysis. This paper-based process will be subsumed into the new automated version of the BWS Tool.

In FY 2013, DHS plans to:

- Require Components to submit an annual report on FY 2012 contract activity.

- Determine if it is prudent to issue a unified guidance document that merges the BWS guidance document with acquisition policy found in DHS Acquisition Alert 11-30.
- Deploy an automated version of BWS training on the internal DHS web site, in order to provide this training to the acquisition workforce (including requirements officials) across the country.

The Department has also continued to encourage Components to use enhanced contract modifications to statements of work (e.g., limit contractor discretion, improve quality control, and strengthen contractor reporting requirements) to address risk mitigation. As Components complete the BWS Tool, they describe risk mitigation strategies to compensate for any potential loss of mission control, if they determine that they do not concur, or concur in part, with the recommendation of the BWS Tool.

Lastly, the Department continues to monitor issues raised in our FY 2010 Service Contract Inventory Analysis; most notably, DHS is tracking a TSA contract analysis that resulted in a BWS Tool recommendation of “Must be federal workers.” This contract for watch officer support to the TSA Call Center has since been highlighted by the Government Accountability Office (GAO).<sup>3</sup> During BWS analysis, TSA categorized the work as “closely associated, reserved for federal performance” (see footnote 2 above), and while TSA planned to in-source 5.5 full-time equivalent positions as a result of their analysis, in-sourcing action remains on hold pending the completion of an organizational review.

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<sup>3</sup>*Civilian Service Contract Inventories: Opportunities Exist to Improve Agency Reporting and Review Efforts.* GAO-12-1007. Washington, D.C.: September 2012.