



Analysis of Department of Homeland Security (DHS) FY 2013 Service Contract Inventory

Introduction

Section 743 of Division C, of the Fiscal Year (FY) 2010 Consolidated Appropriations Act, Pub. L. 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 it requires rebalancing. This report provides information from the Department of Homeland Security (DHS) to meet this requirement.

In March 2010, DHS established the Balanced Workforce Program Management Office (BW PMO)¹ within the Office of the Chief Human Capital Officer (OCHCO) to develop and implement a process designated as the Balanced Workforce Strategy (BWS). In August 2010, the BWS was created as a comprehensive and repeatable risk based approach to comply with relatively new policies, statues, regulations, and guidance issued by the President, Congress, OMB, and DHS leadership that relate to managing the total workforce – both federal employees and contractor personnel. The goal of the BWS is to:

- ensure compliance with applicable statues, 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 the department's service contracts. The current review process requires components to apply a BWS review to proposed requirements for services in select Product and Service Codes (PSCs) designated on the Special Interest Function (SIF) list. DHS focused on these special interest functions because these could potentially be closely associated with inherently governmental functions, or were critical to ensuring control of the DHS mission.

While this review criterion applies to a limited number of requirements, additional OCPO policies and procedures require component review of all service contracts to ensure full compliance with the Federal Acquisition Regulation 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.

¹ In September 2013, OCHCO renamed the BW PMO as the Office of Strategic Workforce Planning and Analysis (SWPA) and added additional, related functions. The Balanced Workforce Strategy Division within SWPA conducted this analysis.

I. Special Interest Functions Analyzed and Dollars Obligated in FY 2013

On October 9, 2014, the BWS Division, in coordination with the OCPO, provided components with a list of the base awards meeting BWS criteria for analysis during FY 2013. The list contained all of the service contracts that were awarded by components in FY 2013 and fell under the DHS SIF PSCs list, with an ultimate value equal to or above the simplified acquisition threshold (SAT) of \$150,000.²

By November 20, 2014, components were required to review the FY 2013 base award list, identify if the contracts included were analyzed under the BWS review process, and produce all of the associated BWS information related to the contract, as applicable. Components were also required to submit any additional BWS analyses completed during FY 2013 that may not have been included in the contract inventory data call. Once components submitted this information to the BWS Division for review, a two week validation phase ensured the accuracy and validity of the data submitted. The review provided in this report is based on information provided by the components. The department's special interest functions are listed in the chart below.³

| PSC | DESCRIPTION OF FUNCTION |
|--|--|
| <i>Special Studies/Analysis — Not Research & Development (R&D)</i> | |
| B505 | Special Studies/Cost Benefit Analyses |
| <i>Professional/Administrative/Management Support Services</i> | |
| R406 | Policy Review/Development Services |
| R408 | Program Management/Support Services |
| R410 | Program Evaluation/Review/Development Services |
| R413 | Specifications Development Service |
| R423 | Intelligence Services |
| R425 | Engineering and Technical Support Services |
| R497 | Personal Services Contracts |
| R499 | Other Professional Support Services |
| R699 | Other Administrative Support Services |
| R707 | Contract/Procurement/Acquisition Support |
| R799 | Other Management Support Services |
| <i>Information Technology Support Services</i> | |
| D302 | IT & Telecom Systems Development Services |
| D307 | IT & Telecom – IT Strategy and Architecture |
| D310 | IT & Telecom – Cyber Security & Data Back-up |
| D314 | IT & Telecom – System Acquisition Support |
| D399 | IT & Telecom – Other IT & Telecommunications |

Dollars Obligated in FY 2013. The total value of the contracts in the 17 SIF list PSCs analyzed using the BWS process was approximately \$2,039,668,500⁴.

² The Simplified Acquisition Threshold applies to the total contract value: base plus option years.

³ The department adopted a subset of codes previously recommended by OMB and added two additional codes for functions identified as critical.

⁴ Total value denotes base plus option years of the contract.

II. Methodology Used to Support Analysis

The department based this report on analyses generated through the automated BWS Tool, v.2, an automated decision support survey. The automated BWS Tool analysis enabled 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). The automated BWS Tool, v.2 analysis further included assessment of possible mission risk, level of contractor oversight and management needed, mitigation strategies, and cost analysis. Based on the analysis, the automated BWS Tool, v.2 provided a recommended sourcing decision—whether the work is appropriate for federal or contract performance, or a combination. For the purposes of this report, the department focused on contracts awarded or exercised in FY 2013.

III. Summary of Findings

Components analyzed 133 requirements with an ultimate value equal to or above the SAT of \$150,000. The 133 contracts underwent analysis using the automated BWS Tool, v.2. Below are the total numbers of contracts analyzed in each PSC in comparison with the total number of service contracts.

| PSC | # OF ANALYSES | # OF CONTRACTS |
|-------|---------------|----------------|
| B505 | 1 | 5 |
| D302 | 13 | 154 |
| D307 | 6 | 99 |
| D310 | 2 | 17 |
| D314 | 1 | 6 |
| D399 | 0 | 11 |
| R406 | 0 | 5 |
| R408 | 75 | 439 |
| R410 | 0 | 28 |
| R413 | 0 | 1 |
| R423 | 1 | 16 |
| R425 | 10 | 217 |
| R497 | 0 | 0 |
| R499 | 1 | 92 |
| R699 | 15 | 133 |
| R707 | 4 | 32 |
| R799 | 4 | 80 |
| Total | 133 | 1335 |

There were no analyses completed during the FY 2013 period that produced the sourcing recommendation “Must Be Performed by Federal Employees.” Of the 133 analyses completed, 7 recommendations resulted in requirements for mitigation action by components to ensure there

is appropriate governmental oversight of contracts identified as being closely associated with inherently governmental functions.

Outcomes Achieved in Accordance with Section 7439(e) (2)

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 list contracts addresses personal services and indicates that DHS is in full compliance with FAR Part 37.104, only entering into personal services contracts authorized by statute. The automated BWS Tool, v.2 determines if a contract may have inadvertently entered into the realm of personal services with the following question:

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

- 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.

BWS analysis includes items on the automated BWS Tool, v.2 to assess the extent to which a function might be closely associated with inherently governmental functions. Once identified, the component determines if federal employees should perform the function or whether contractors should perform the function with greater scrutiny or an enhanced degree of oversight to ensure the department maintained 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, none of the applicable contracts were identified as inherently governmental functions.

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 during contract performance. The automated BWS Tool, v.2 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 automated BWS Tool, v.2 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 (ICT) 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 effectively control its mission.

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

The automated BWS Tool, v.2 directly requests information from components 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.

IV. Explanation of actions taken or planned to resolve weaknesses

As outlined in the previous year's report, the department developed and fully deployed the enhanced Balanced Workforce Assessment Tool (BWAT) by January 2014. On January 7, 2014, the Undersecretary for Management (USM) issued the *BWAT Implementation and Use memorandum* announcing the implementation and mandatory use of the BWAT for all proposed requirements for services greater than or equal to \$150,000 for the total value of the services by February 1, 2014. Next year's analysis of the FY 2014 Service Contract Inventory will reflect use of the enhanced BWAT with all applicable contracts analyzed rather than a limited subset.

The BWAT builds upon existing DHS Enterprise Architecture—the SharePoint web application—to generate a more consistent and efficient analysis of proposed requirements for services and improves the overall efficiency of the analysis process while resolving a number of limitations in the automated BWS Tool, v.2:

- The BWAT centralizes and standardizes the review process for all proposed requirements for services equal to, or above the SAT across DHS. The system consolidates the manual Acquisition Alert 11-30 Written Determination Template process with the BWS process into one unified electronic system.
- The streamlined ICT and sourcing recommendations in the BWAT allow components the ability to prioritize contracts that may require increased management attention and oversight to ensure that work does not evolve into contractors performing inherently governmental functions and (in the case of critical functions) ensure that the agency does not lose control of its mission and operations.
- The BWAT facilitates an integrated approach to management of the multi-sector workforce. Enhanced functionality allows components to implement the BWAT in a manner that increases accountability between component lines of business: human capital, acquisition, finance, legal, and procurement. This includes the ability to electronically route and review analyses and the ability to upload and edit documents such as SOWs, IGCEs, and the DHS Cost Module.
- The BWAT addresses major functionality limitations in the automated BWS Tool. It allows for multi-functional analysis, improved user navigation, analysis status tracking (once electronically routed), and is Section 508 compliant.

Since deploying the BWAT, the BWS Division is monitoring component activity and compliance with the mandatory use requirement. As components continue to integrate the BWAT and BWS processes into their business processes, the BWS Division conducts audits to evaluate component BWS program implementation, use, and compliance with associated guidance. As of November 2014, the BWS Division concluded audits of two components: U.S. Immigration and Customs Enforcement and the National Protection and Programs Directorate. The BWS Division plans to complete 4-5 audits of component use of the BWS/BWAT each fiscal year.

In FY 2015, DHS will:

- Complete BWS audits of U.S. Citizenship and Immigration Services (USCIS), Federal Emergency Management Agency (FEMA), Federal Law Enforcement Training Center (FLETC) and the Office of the Chief Information Officer (OCIO).
- Finalize and disseminate BWS Guidance, Version 3.0 consolidating and unifying BWS policy and the acquisition policy regarding the DHS Acquisition Alert 11-30 - Written Determination Template in the Homeland Security Acquisition Manual.
- Complete the FY 2014 Service Contract Inventory utilizing data from the enhanced BWAT. The FY 2014 Planned Analysis document outlines the details of this report.

Utilizing the BWS has allowed DHS to make significant progress in:

- achieving the appropriate mix of federal and contractor skills, expertise, experience and other assets necessary to effectively achieve the department's mission
- ensuring that inherently governmental functions and unauthorized personal services are not performed by contractors;
- dedicating 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;
- giving 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
- integrating management and planning activities to reduce risk to the department's mission and promoting improvements in economy, efficiency, and performance.

The BWS Division will continue to work in conjunction with representatives from the Office of the Chief Procurement Officer, Office of the Chief Financial Officer, and the Office of General Counsel to update BWS policy, as necessary.

V. Responsible Officials

Policy

Steven McPeek (DHS Balanced Workforce Strategy, OCHCO)

Laura Auletta (Procurement Policy, OCPO)

Management

Jewel Butler (DHS Balanced Workforce Strategy, OCHCO)