



## Analysis of Department of Homeland Security (DHS) FY 2010 Service Contract Inventory

### Introduction

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 to assess the Federal and Contractor workforces to:

- Ensure compliance with applicable statutes, regulations, guidance, 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 General Counsel (OGC), the BW PMO developed and vetted a 3-step methodology to conduct analyses of service contracts. In August 2010, the first version of the Balanced Workforce Strategy (BWS) guidance document was issued; Version 2.0 was issued in November 2011.

This report is organized according to the categories established in OMB's December 19 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 2010

**Special Interest Functions Analyzed.** In October 2010, the BW PMO provided a list of contracts to components for analysis through December 31, 2011; there was specific focus on special interest functions for DHS. Due to the large volume of existing service contracts (more than 10,000 contracts or segments of contracts), the Department created a methodology for prioritizing contracts for review. In July 2010, OCPO created a list of all existing DHS service contracts to define the universe of work to be analyzed. The BW PMO, in consultation with OCPO, sorted this group of contracts by Component and prioritized each resulting list into a series of "Tiers" according to several factors (i.e., type of PSC code, dollar value, expiration date, and scope of competition). An updated list of contracts was generated using this methodology in October 2010, and Components began reviewing their Tier 1 group of contracts using the BWS in the first quarter of FY 2011.

In January 2011, Components requested that the Department modify the existing prioritization methodology; Components expressed concern about the staggering number of contracts (or segments of contracts) to be reviewed. Components also expressed support for accelerating reviews in order to complete them prior to the expiration dates of the contracts, so that timing for

any needed rebalancing could be optimal. Consequently, a new contract prioritization strategy was established in February 2011. The Reference PIID (Procurement Instrument Identification Document) Number was used to identify primary source contracts.<sup>1</sup> Then, PIID/Primary Source contracts were put in order by final expiration dates.<sup>2</sup> Components then were instructed to “cross-walk” the October 2010 list of contracts to account for each one, and indicate how it was now being scheduled for analysis.

The review provided in this report is based on the contracts that Components analyzed using both approaches. The prioritization method applied in February 2011 did not include PSC codes as a stand-alone criterion. However, a number of contracts were categorized in the Special Interest Function codes and are discussed in this report.

In May 2011, the Department provided its final Special Interest Function List to OMB to meet its requirement for conducting analyses of specified service contracts (Memorandum attached). The Department adopted a subset of the codes recommended by OMB and added two codes. DHS’ Special Interest Functions are:

R405	Operations Research and Quantitative Analysis Services
R406	Policy Review/Development Services
R407	Program Evaluation Services
R408	Program Management/Support Services
R409	Program Review/Development Services
R413	Specifications Development Services
R421	Technical Assistance
R423	Intelligence Services

**Dollars Obligated in FY 2010.** For the Special Interest Function contracts analyzed through the BWS approach, the total amount obligated was \$453,978,330.62.

## II. Methodology Used to Support Analysis

The Balanced Workforce Strategy 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 make workforce planning decisions. The Strategy is comprised of a set of processes that, repeated on a regular basis, enable the Department to achieve the appropriate mix of Federal employees and contractors to accomplish the Department’s mission while minimizing mission

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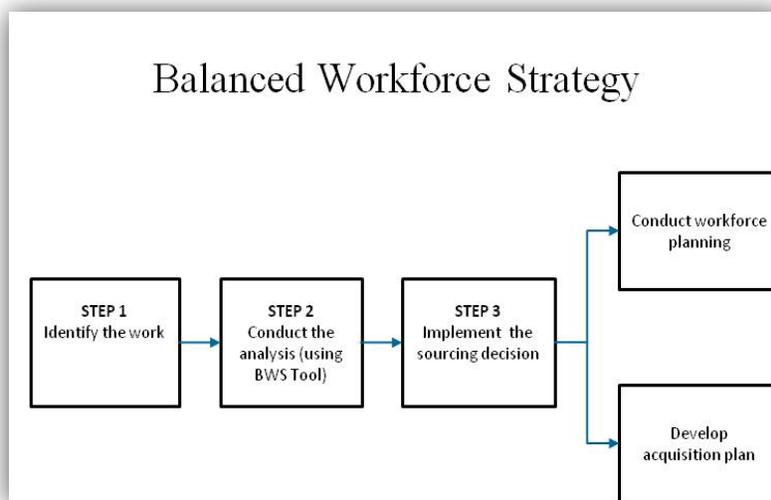
<sup>1</sup> During the Tier 1 pilot, we learned that the list of contracts contained a variety of contract vehicles, including Task Orders. This list made it challenging to analyze a “contract,” so it was recommended that the primary contract be used instead.

<sup>2</sup> Components recommended the use of the final expiration date, in order to better plan for conversion, if that was the result of the analysis.

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.

The following chart provides an overview of the BWS process.



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, among other things, 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 (OFFP Policy Letter 11-01, OFPP M-09-26 memo, FAR 7.5 & 37.1, Section 736), or a critical function (OFFP Policy Letter 11-01). Other significant analytic aspects include assessment of possible mission risk, the level of contractor oversight and management needed, mitigation strategies, and cost analysis. Based on the analysis, the BWS Tool provides a recommended sourcing decision on whether the work is appropriate for federal or contract performance, or both.

### III. Summary of Findings

By the close of FY 2011, DHS components had completed 212 BWS contract analyses of the FY 2010 Service Contract Inventory using the BWS Tool. Of this number, 53 analyses were completed for Special Interest Function codes; of the 53 SIF contracts, 28 were approved at the Department and 25 were pending approval at the Component or the Department. (This represents 25 percent of the total number of 212 contracts analyzed.)

Of the total number of completed reviews, there were no reviews for 3 PSC codes: R405 (Operations Research and Quantitative Analysis Services), R413 (Specifications Development Services), and R421 (Technical Assistance).

For the remaining Special Interest Function codes, 408 (Program Management/Support Services) had the most contract reviews with 45 (84 percent) of the total.

Of the total analyses:

- 2 contracts identified as “Must be federal workers;”<sup>3</sup>
- 13 contracts identified as “Should be federal workers;
- 20 contracts identified as “Temporarily contract until feasible to hire federal workers;”
- 14 contracts identified as “Should be a combination of federal workers and contractors;”
- 4 contracts identified as “Should be contractor.”

These contracts (or segments of contracts) were analyzed using the BWS Tool. Using the recommendation from the BWS Tool, Component Working Groups determined whether to concur with the recommendation, concur in part, or disagree with the recommendation. In cases where a Component concurred in part or disagreed, the Component described specific risk mitigation strategies to ensure the Component was able to maintain control of its mission.

These findings described for the Special Interest Function codes were consistent with what would be expected. Given the nature of these specific PSCs, it is not surprising that the majority (49 contracts, or 92 percent) of Special Interest Function contracts undergoing review would require some level of workforce rebalancing in order to augment internal core capability so DHS could ensure control over its mission.

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

**In accordance with section 743(e)(2) of the 2010 Consolidated Appropriations Act, the Agency has ensured that:**

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<sup>3</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, but is no longer included in the BWS Analysis, with the publication of the final OMB Policy Letter issued on September 12, 2011. The Policy Letter does not include this category for Closely Associated work.

*1. 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.*

The BWS analysis of Special Interest Function contracts addresses personal services and ensures 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?

- 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. The agency is giving special management attention, as set forth in FAR 37.114, to functions that are closely associated with inherently governmental functions.*

DHS identified these special interest functions because these could be potentially closely associated, 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. Thirteen contracts were assessed to be closely associated. Once identified, Components could determine 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 maintained control of its mission.

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

In DHS's review of the Special Interest Function contracts, one contract was found to have work that could be considered "inherently governmental." That contract involved 5.5 contractor work year equivalents and is in process of being transition to federal workers. A second contract, which is still pending, was also found to include inherently governmental work but this contract has not yet been awarded.

*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 COTRs to ensure that “scope creep” does not occur during the performance of a contract. Our analysis includes an evaluation of the risk that the function will evolve into inherently governmental work. We identified four contracts with relatively high level of risk for scope creep, i.e., on a scale of 1-10, the work scored 6-10. Also, DHS is planning to institute ongoing reviews and additional internal controls in accordance with OFPP Policy Letter 11-01 to ensure that the level of oversight and management is adequate to prevent work evolving 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 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.*

On 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 COTRs and contract staff.

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

Step 3 of the Balanced Workforce Strategy addresses how to implement changes to contracts, increase or strengthen federal oversight, or have current or new Federal workers assume responsibilities in order to ensure a balanced workforce. For contracts reviews that have been completed and approved by the Department, and include rebalancing changes, Components are moving forward with implementation. On a quarterly basis, the Department collects information on the specific changes planned for the upcoming quarter, and requests monthly updates from Components to track progress between quarters.

The Department has also encouraged Components to use enhanced contract oversight and 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 are able to 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.