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### **Executive Summary**

The attached report represents EPA's response to the Office of Management and Budget (OMB) memorandum on Service Contract Inventories dated November 5, 2010. In the memorandum OMB called for agencies to perform meaningful analyses of their service contracts to gain insight into how their contractors are being used to fulfill their agencies' missions.

To perform its analysis, EPA identified the contracts through a combination of the special interest product service codes (PSCs) identified by OMB and its own internal assessment of the most highly vulnerable PSCs for EPA's contracts. EPA then performed its analyses through a combination of contract reviews, questionnaires sent to EPA's contracting officers/contracting officer representatives/other relevant personnel, follow-up in-person interviews, and detailed reviews of contract deliverables, ordering documents, technical direction, and facilities. EPA also reviewed its existing relevant internal guidance and policy, prior OIG reviews, and its existing training curricula for EPA's acquisition workforce.

As a result of this analysis, EPA found one adverse finding regarding EPA's service contracts. We noted that a program office did not adhere to the internal guidance and management controls to prevent the inappropriate use of service contracts.

The attached report was coordinated through EPA's Chief Acquisition Officer, Senior Procurement Officer, and Chief Human Capital Officer.

### **Background**

On December 16, 2009, Public Law 111-117, Fiscal Year (FY) 2010 Consolidation Appropriations Act, Section 743 of Division C, required civilian agencies to prepare an annual inventory of their service contracts. The Service Contract Inventory is a tool to help the Agency gain a better understanding of how contracted services are being used to support mission and operations, and whether contractors' skills are being utilized in an appropriate manner.

The Office of Management and Budget (OMB) memorandum on Service Contract Inventories, December 19, 2011, provided guidance to agencies to prepare their inventories covering service contracting in FY 2011. OMB required executive agencies to include all service contract actions over \$25,000 that were awarded in FY 2011. EPA had to report contract actions that were funded by EPA and include actions made on their behalf by other agencies. Contract actions that EPA made on another agency's behalf with the other agency's funding were excluded from the inventory report. The FY 2011 inventory excludes data on the number of full-time equivalents and the amount invoiced as this information is not currently collected in the Federal Procurement Data System (FPDS). Therefore the Office of Federal Procurement Policy (OFPP) will continue to defer the collection of this information pending the outcome of further analysis.

OMB required agencies to submit to OFPP a planned analysis by December 30, 2011 that identified which special interest functions will be evaluated for the meaningful analysis. The submission is to provide the list of product service codes (PSCs), dollars obligated for those PSCs in FY 2011, and a brief description of the rationale for selection. Additionally, OMB required agencies to conduct a meaningful analysis of the data in their FY 2011 service contract inventories.

### **Purpose and Scope of the Meaningful Analysis**

The purpose of the meaningful analysis is for Agency managers to gain insight into how their contractors are being used to fulfill their agencies' missions. In accordance with section 743(e)(2), agencies are required to conduct meaningful analyses of their inventories for the purpose of determining if contract labor is being utilized appropriately and if the mix of federal employees and contractors is effectively balanced or if rebalancing may be required.

The meaningful analysis was performed using OMB's guidance for the development and analysis of FY 2011 Service Contract Inventory as part of human capital planning. The Office of Acquisition Management (OAM) issued surveys, researched OAM internal policies and procedures, reviewed contract files for management control documents, and conducted interviews of contracting officers (COs), contracting officers' representatives (CORs), task order project officers (TOPOs) and work assignment managers (WAMs).

### **Top 10 PSCs and Special Interest PSCs**

In the inventory report submitted to OMB on December 30, 2011, EPA identified the top 10 product service codes (PSCs) by contract obligations and included the 15 special interest PSCs that were designated by OMB. Of the 15 special interest PSCs, OAM selected to review those functional areas within OMB's designation that had the greatest potential for vulnerability based on value and type of work involved. Those PSCs are outlined in the table below:

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PSC	Description	Total Value 2011
F108	Haz Rem/Clean-up/Disp/Op	\$344,685,798.33
C211	A/E Svcs. (incl. landscaping interior)	\$228,806,901.08
R499	Other Professional Services	\$135,453,741.70
R421	Technical Assistance	\$100,919,482.17
F999	Other Environmental Assessments	\$ 87,223,127.30
B510	Study/Environmental Assessments	\$ 73,507,883.11
C214	A&E Management Engineering Svcs.	\$ 53,068,017.13
D399	Other ADP & Telecommunications Svcs.	\$ 47,729,290.02
R799	Other Management Support Services	\$ 37,818,678.48
R425	Engineering and Technical Services	\$ 47,080,162.54
D308	Program Services	\$ 38,953,530.37
AD26	Services (Management Support)	\$ 15,717,646.08
R408	Program Management/Support Services	\$ 54,222,606.51
D301	ADP Facility Management	\$ 13,980,995.85
D316	Telecommunications Network Mgmt. Svcs.	\$ 11,008,172.79

**EPA's Analysis Process**

EPA selected PSCs pursuant to OMB's guidance and the potential vulnerable nature of these services. EPA focused on contracts that had over \$1 million in obligations and contained services in advisory and assistance, information technology and management support, other vulnerable and related services, to ensure full organizational and regional coverage. EPA used the dollar value as an initial indicator of risk and selected the PSCs with the greatest obligated contract dollar values, excluding those PSCs already addressed in the FY 2010 analysis.

EPA down-selected eight PSCs for its meaningful analysis as shown the table below:

PSC	Description	Dollars Obligated
B510	Study/Environmental Assessments	\$ 73,507,883.11
R408	Program Management/Support Services	\$ 54,222,606.51
R421	Technical Assistance	\$100,919,482.17
R499	Other Professional Services	\$135,453,741.70
R799	Other Management Support Services	\$ 37,818,678.48
F999	Other Environmental Services/Study/Support	\$ 87,223,127.30
F108	Hazard Removal /Clean-up/DIS/OP	\$344,685,798.33
C211	A&E Management Engineering Services	\$228,806,901,08

EPA's analysis included a review of contracts to ensure that:

- Personal services contracts are in accordance with laws & regulations;
- Special attention is paid functions that are closely associated with inherently governmental functions;
- Contractors' employees are not performing inherently governmental functions;
- Contractors' work has not changed to become an inherently government function;

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- Contractor's employees are not performing critical functions that could affect the ability of the agency to maintain control of its mission and operations; and
- Agency has sufficient internal resources to manage and oversee contracts effectively.

EPA's methods were as follows:

- Step 1: Consolidate the data described above.
- Step 2: Crosswalk the data with EPA's contractor inventory and FPDS data.
- Step 3: Evaluate the data in accordance with Agency and Federal policy and guidance.
- Step 4: Develop criteria to identify individual contracts for in-depth review.

Based on the criteria identified and in accordance with the Consolidated Appropriations Act, EPA selected individual contracts for detailed review in the following order:

- Tier 1: Potential for inherently governmental performance by contractors;
- Tier 2: Contracts providing professional and management services or information technology services;
- Tier 3: Contracts that do *not* include professional and management services or information technology services, but were awarded on a non-competitive basis; and
- Tier 4: Contracts that do *not* include professional and management services or information technology services, but meet any one of the remaining designated criteria.

EPA narrowed the set of contracts to be reviewed to contracts valued at over \$1 million. This resulted in a total of 30 contracts for the Agency's in-depth, meaningful analysis.

To perform its analysis EPA contacted the cognizant contracting officers and contracting officer representatives to gain access to the contracts and related documents as well as to gather information via survey, in-person interviews, and reviews of task orders, invoices, deliverables, and facilities, as appropriate.

### **Methodology: Meaningful Analysis Survey**

After identifying the contracts for analysis, EPA contacted cognizant COs and CORs to review these contracts to determine the following:

- (1) Is service contract labor being used in an appropriate and effective manner?
- (2) Is the mix of federal employees and service contractors effectively balanced?
- (3) Are the service contracts being poorly performed because of excessive costs or inferior quality?
- (4) Are there any service contracts that should be considered for conversion to performance by EPA employees, and
- (5) Are there any service contracts that should be considered for conversion to an alternative approach aimed at using EPA assets more efficiently?

To conduct the analysis, EPA developed a 29-question survey (see Attachment 1). We used relevant sections of the FAR, the EPA Acquisition Regulation (EPAAR), EPA's Contracts Management Manual (CMM) as well as OMB's guidance to formulate our questions. In addition, the survey included questions from EPA's Management Effectiveness Review (MER)

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program questionnaire, a biennial review of contracts that are considered vulnerable to improper personal services. The purpose of the survey was to determine if there were any potential issues such as:

- personal services,
- contractors performing inherently governmental functions,
- contractors' work changing to include inherently governmental functions,
- contractors performing critical functions that could affect the ability of the Agency to maintain control of its mission and operations and
- whether the Agency has sufficient internal resources to manage and oversee contracts.

In July 2012, EPA distributed the surveys to the relevant contracting officers for the selected contracts. During the month of August 2012, the surveys were collected and reviewed for the aforementioned issues. We grouped the results of the surveys into four categories:

1. Full information received. No findings or workload issues.
2. Full information received. Findings or workload issues revealed.
3. Incomplete information received. Need additional information.
4. No information received due to no contract work for preceding two years.

Based upon our initial review, the survey responses fell into either category 1 or 2; none of the surveys fell into category 3. As a result, we noted 28 surveys fell into category 1, one survey fell into category 2, and one survey fell into category 4. Of the 29 surveys, we selected a sample of seven contracts to review their statement of work in order to determine whether the contractors were performing the inherently governmental functions or critical functions that could affect the program office ability to maintain its control of mission and operation. As a result of the survey review, we noted one survey disclosed issues relating a program office workload demands exceeded the staff resources available to the Agency. Thus, this contract was selected for further analysis and detail review. The results of this contract are presented in the conclusion section of our report.

In addition, we performed a compliance test on the seven contracts to verify and test the existing internal control policies and procedures. All of these contracts contained advisory and assistance services in their statement of work. The compliance test on the Agency's management controls policies was to determine whether or not the Agency's internal policies and procedures were being administered and adhered to in accordance with the CMM section 7.3 (Procurement Initiation, Vulnerable Services). We obtained the pre-award contract files to review the management control documents that were created for contract oversight and control measures. We reviewed samples of the contractors' invoices to identify work assignments or task orders that contained advisory and assistance services, information and technology (IT) services, and program management support services.

Once the work assignments or task orders were selected, we created an additional questionnaire for the one contract that fell in category 2. Also, we followed up with in-person interviews that related to the specific work being performed by the contractor (See Attachment 2). These questionnaires were distributed to the CORs and Program Offices for their responses. For local Washington DC offices, we conducted on-site interviews with the CORs, COs, and managers.

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We performed an on-site inspection of the contractors' offices and noted there were no contractor-owned computers or electronic equipment being utilized on EPA facilities. The inspection revealed, among other things, that appropriate signs were displayed to note the distinction between EPA and contractor employees.

As a result of our compliance testing of the seven sample contracts, we disclosed that one program office did not adhere to the management controls that were established for the contract. However, the management controls for the remaining six were being followed by the CORs and the program offices. Also, we noted that the existing internal policies and procedures on management controls provided oversight of service contracts and precluded the contractor from drifting into those services that are considered inherently vulnerable.

### **Existing Internal Guidance and Management Controls**

As mentioned above, EPA has significant existing internal guidance and management controls in place to prevent inappropriate use of service contracts. These include:

EPA Contracts Management Manual (CMM), Chapter 3, Section 3.2, *Agency's Relationship with Contractors*, which provides guidance pertaining to the Management Effectiveness Review (MER). The MER is a biennial review of contracts that are considered vulnerable to improper personal services involving on-site support services contracts at EPA. These types of relationships could lead to situations where contractor employees perform services for federal employees that conflict with EPA's policies, Federal Acquisition Regulations, and other pertinent procurement laws. The objectives of the MER reviews are to (a) evaluate whether any unauthorized personal services activity is occurring under EPA contracts, (b) evaluate whether conditions may exist that create potential vulnerabilities for improper relationships between EPA staff and on-site contractors; and (c) develop and implement appropriate corrective actions, if deemed necessary.

The CMM, Chapter 7, Section 7.3.5.5, *Advisory and Assistance Services and Vulnerable Services*, provides guidance that addresses management controls and oversight of service contracts. In general, advisory and assistance services (AAS) are services that support agency policy development, decision-making, management and administration, or research and development activities. For contracts that involve AAS, EPA requires the project officer to prepare a discussion of management controls and submit it to the CO for approval. After CO approval, the management controls are submitted for appropriate higher level approval.

The CMM, Chapter 3, Section 3.1, *Contracting Officer Site Visits for On-Site Contractors*, is a separate reporting requirement for COs to perform on-site visits periodically on all on-site contracts. This policy is intended to notify employees involved in contract management about the potential vulnerabilities in personal services. If weaknesses are identified, then the CO will perform an annual visit and will discuss personal services issues with CORs for individual on-site contracts annually.

Also, EPA has a new internal controls program designed to enhance the quality of the Agency's contracting function overall. OAM is implementing a Balanced Scorecard (BSC) performance measurement and performance management program (PMP) as the methodology for assessing

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the Agency's acquisition-related business functions. The PMP is intended to facilitate an EPA-wide collaborative approach to ensure that business systems effectively support EPA's mission, vision, and strategy statements, follow best business management practices, and comply with applicable statutes, regulations, and contract terms and conditions. Through the utilization of the BSC, the Agency will be better positioned to strengthen its acquisition systems and its workforce. A copy of the EPA Balanced Scorecard Performance Measurement and Management Program Guide is included as Attachment 2. See Parts 7 and 8 of the Guide for details on the BSC Assessment Plan and Reporting.

Based on the results of our analysis, we have concluded that OAM's procurement policies and procedures are comprehensive and provide assurance of effective management controls for our resources and service contractors. OAM policies are provided to prohibit improper relationships with contractors and federal employees, to prohibit contractors from performing inherently governmental functions, and to prevent unauthorized personal services. In addition, OAM's acquisition workforce training curriculum for COs, CORs, and others was reviewed and has been determined to be sufficient to address these issues.

In addition, to ensure proper orientation of all EPA personnel to the acquisition function, including the proper use of service contracts EPA has published and distributed Agency-wide the following educational brochures:

- Acquisition Guide for Executives
- Procurement Integrity
- Support Service Contracts

The principles and guidance contained in these brochures are referenced in the EPA's most recent version of Agency-wide mandatory "Ethics Training."

### **Review of OIG and OAM Reports**

Our office reviewed all of the EPA Office of Inspector General (OIG) reports that pertain to contract management, information resource management, grants and the American Recovery and Reinvestment Act. The OIG reports did not address any issues concerning Agency use of contractor employees to perform critical functions that could affect the ability of the Agency to maintain control of its mission and operations.

### **Contractor Support**

Our office did not rely on any contractor support in conducting the analysis or in the preparation of this report.

### **Conclusion: Meaningful Analysis Findings**

1. Category 1 (Full information received. No findings or workload issues): For the 28 contracts in category 1 we found that appropriate safeguards and conditions existed for all reviewed in terms of whether:
  - (1) Service contract labor is being used in an appropriate and effective manner;
  - (2) The mix of federal employees and services contractors is effectively balanced;



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- (3) Service contracts are poorly performed due to excessive costs or inferior quality;
- (4) Any service contracts should be considered for conversion to performance by EPA employees and,
- (5) Any service contracts should be considered for conversion to an alternative approach aimed at using EPA assets more efficiently.

2. Category 2 (Full information received. Findings or workload issues revealed): For the one contract in category 2, the analysis disclosed that an EPA office did not adhere to the management controls put in place in the contract. EPA contract EP-W-07-077 contained a list of tasks, initiatives, and projects that required extensive knowledge of certain federal rules, regulations, policies, processes, and procedures. Some of the tasks were written vaguely enough that they could allow for interpretation that included inherently governmental functions.

During our interview and compliance testing with the office, we informed the office that the former COR did not maintain adequate records such as the contractor's invoices and monthly reports of work. The former COR did not require the contractor to report deliverables in writing, and only required minimal documentation that was insufficient to ascertain whether the contractor performed inherently governmental work or unauthorized services. At the time of review, this contract had expired. Its period of performance ended in August 2012.

### **Recommendations and Action Items**

Based on our analysis there are no functions being performed by contractors that are recommended for in-sourcing or conversion of contract work year equivalents (CWYE) to the agency's full-time equivalents (FTEs). In addition, there are no functions that are currently performed by EPA program offices that are recommended for outsourcing.

In regards to the category 2 contracts, EPA will continue to monitor that office's management and the effectiveness of their management controls and its ability to provide oversight of service contracts. We have reviewed the follow-on contract and determined it has been revised to clarify the tasks could have been interpreted to include inherently governmental. In addition, we have determined that the current COR has met the required workforce and acquisition training requirements. Also, we will continue to monitor to ensure that the office is adhering to the prescribed contract administration policies and procedures of EPA.

EPA is always looking for ways to improve and streamline its contracting function. As part of its ongoing self-assessment and improvement, EPA is in the process of revamping its existing COR program in order to make it more comprehensive. EPA intends to create a structure similar to the model program which is highlighted by OFPP. The program will consist of four components: (1) development, (2) resources and tools, (3) incentives, (4) policies and procedures. OAM recognizes that the CORs play a critical and direct role in contract placement and management. Therefore, OAM plans to implement a strong agency COR program that prepares CORs to plan and monitor contract performance successfully.

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### Attachments:

1. Survey Questionnaire
2. Additional Survey Questionnaire
3. Balanced Scorecard Program (See Sections 7 and 8, Assessment Plan and Assessment Report)
4. EPA Support Service Contracting Guide
5. EPA Procurement Integrity Guide
6. An Acquisition Guide for Executives