



## U.S. COMMODITY FUTURES TRADING COMMISSION

Three Lafayette Centre  
1155 21st Street, NW, Washington, DC 20581  
Telephone: (202) 418-5110

**TO:** Heath P. Tarbert, Chairman  
Brian D. Quintenz, Commissioner  
Rostin Behnam, Commissioner  
Dawn Stump, Commissioner  
Dan M. Berkovitz, Commissioner

**FROM:** Miguel A. Castillo, *CPA, CRMA*  
Assistant Inspector General for Auditing

**DATE:** September 11, 2019

**SUBJECT:** Evaluation: Management of Select Service Contracts Used by the Office of Data and Technology (ODT)

### Executive Summary

Our objective was to evaluate the management of select service contracts linked to the General Services Administration (GSA) Federal Supply Schedule (FSS).<sup>1</sup> GSA's FSS contracts are indefinite delivery and quantity contracts used extensively by ODT<sup>2</sup> to acquire essential information technology (IT) services.<sup>3</sup>

Prior OIG audits have noted that between FY 2011 and FY 2017, Congress annually earmarked \$35 million to \$50 million of CFTC's total appropriation for IT spending,<sup>4</sup> and that from FY 2011 through FY 2013, CFTC annually spent 63% of its IT budget on service contracts.<sup>5</sup> More recently, CFTC obligated \$33.7 million in FY 2017 and \$34.5 million in FY 2018 for service contracts, representing 67% and 72% of the total authorized budget for ODT, respectively.<sup>6</sup>

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<sup>1</sup> GSA FSS satisfy the requirements of the Competition in Contracting Act (CICA) (codified at 41 U.S.C. 253) and Federal Acquisition Regulation (FAR) Part 5, Publicizing Contract Actions.

<sup>2</sup> We identified 128 such contract actions for ODT, and examined them all (see Appx. B). GSA FSS contracts are also used extensively by CFTC to support non-ODT operations.

<sup>3</sup> An indefinite-quantity contract (FAR 16.504) provides for an indefinite quantity, within stated limits, of supplies or services during a fixed period. The Government places orders for individual requirements. Funds for the minimum amount of the contract are applied at that the time of award.

<sup>4</sup> [Audit of CFTC's Enterprise Architecture Program](#), December 18, 2017.

<sup>5</sup> [Management's Use of Information Technology Resources in Support of its Strategic Plan and Regulatory Responsibilities](#), October 1, 2014.

<sup>6</sup> Between FY 2011 and FY 2018, CFTC's Congressional appropriation increased from \$202,675,000 to \$249,000,000.

Given the temporary loss of contractors supporting IT security operations due corporate acquisition issues<sup>7</sup> and FSS contract expiration issues,<sup>8</sup> we initially focused on related service contracts with Phase One Consulting Group, Inc. (Phase One), to determine if the events resulted from a systemic contracting weakness or simply an anomalous event. Given the weakness identified in procurement communications ([Appendix A](#)) and the number of ODT FSS contract actions we identified with expiration issues (52) ([Appendix B](#)), we conclude that a systemic issue exists.<sup>9</sup> During fieldwork, OGC staff opined that certain task order options may be exercised after an FSS contract expiration. Given the possibility of differing opinions regarding the permissibility of tasked orders tied to expired FSS contracts,<sup>10</sup> we suggest that the CFTC Senior Procurement Executive (SPE) and the General Counsel formally evaluate and identify any contractual or operational risk emerging from these contract actions.

## **Recommendations**

To mitigate future service disruptions, we recommend that CFTC's SPE in collaboration with the General Counsel:

1. Evaluate the extent and impact of CFTC-wide FSS contract actions that have expiration issues in terms of both contract and operational risk.

CFTC uses the Procurement Information System for Management (PRISM) for procurement requisition processing. Our review of the PRISM user-guide revealed the system also has the capability to record and track purchase orders and contracts for procurement life-cycle management. Useful features include contract expiration and notification management. As such we also recommend that CFTC:

2. Explore the procurement life-cycle benefits offered by PRISM to automate workflow communications such as contract expiration notifications.

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<sup>7</sup> AFS purchased Phase One on August 8, 2017. See (<https://www.accenture.com/us-en/insight-phase-one-cut-over>). The underlying FSS contract (GS35-F0130U) guiding a CFTC Task Order (CFIT-10-BP-0059/2015-002) expired on December 20, 2017.

<sup>8</sup> On March 9, 2018, Phase One informed the CFTC CO of its acquisition by FSA and of the FSS contract expiration (see fn. 7). GSA did not permit a novation of the contract for AFS because the FSS contract had expired, and CFTC therefore could not renew its existing task order before expiration (June 29, 2018). Consequently, both ODT and the Procurement office swiftly identified suitable replacements. Management discovered that due to competitive labor market conditions, one replacement contractor could not secure sufficient staff to fully address its commitment to ODT.

<sup>9</sup> We did not review ODT contracts for acquisition issues.

<sup>10</sup> Government Accountability Office (GAO) and GSA interpretations appear to be in potential disagreement regarding expired FSS contracts. See, GAO opinions [AllWorld Language Consultants, Inc., Comp. Gen. Dec. B-411481](#) (Jan. 6, 2016); [GBK Partnership, LLC-Constant Associates, Inc., B-417039](#) (Jan 24, 2019); and GSA guidance [Contracting Officer Guidance - Schedule Ordering Procedures](#). We therefore recommend this be addressed at higher levels.

## **Management Response and Evaluation**

Management did not concur with recommendation 1 because, after addressing the issue at higher levels, including the General Counsel, they concluded that the referenced contract actions were proper. Nevertheless, management will assess FSS contracts to ensure there are no expiration issues. Management agreed with recommendation 2 to explore PRISM communication capabilities and also saw value in enhancing instructions to Contract Officer Representatives.

We consider management planned actions responsive to the findings and recommendations in the report. Management's response is presented in its entirety in [Appendix D](#). If you have any questions, please contact me at (202) 418-5084 or Tony Baptiste (202) 418-5115.

### **Cc:**

Jaime Klima, Chief of Staff  
Kevin S. Webb, Chief of Staff  
John Dunfee, Chief of Staff  
Daniel J. Bucsa, Chief of Staff  
Erik F. Remmler, Chief of Staff  
Anthony C. Thompson, Executive Director  
Daniel Davis, General Counsel  
John L. Rogers, Chief Information Officer  
Naeem Musa, Chief Information Security Officer  
William Roberson, Senior Procurement Executive  
Melissa Jurgens, Chief, Executive Secretariat Branch  
A. Roy Lavik, Inspector General  
Judith A. Ringle, Deputy Inspector General and Chief Counsel

## Appendix A - Communications

### Temporary Loss of Contractors Supporting Information Security

IT security operations are handled in ODT's Policy and Planning Branch (P&PB).<sup>11</sup> PP&B depends on contractors to identify security risks and perform most IT security compliance related tasks.<sup>12</sup> The contractors are managed by assigned CORs from P&PB. To acquire contract services, ODT management relies on FSS contracts to procure services from approved vendors at GSA negotiated labor rates for IT services. However, reliance on FSS requires agencies to actively monitor contract terms on both the agency task order and the FSS in order to avoid service disruptions experienced by security operations due to contract termination events. Events leading to the loss of contractor support are chronicled below and depicted in Figure 1.

- On March 9, 2018, Phase One, an FSS contractor, notified CFTC that it had been acquired by Accenture.<sup>13</sup> Accenture requested a novation to the existing Phase One contract, which GSA would not permit because Phase One's FSS contract had expired.<sup>14</sup> CFTC could not novate the FSS contract, as it was a GSA contract, not CFTC's. This circumstance prevented CFTC from exercising an additional option period on ODT's existing task order with Phase One under the FSS (set to expire June 29, 2018). Once Procurement<sup>15</sup> became aware of the situation, they launched a search for an alternate vendor for IT security services.<sup>16</sup>
- By April 11, 2018, Procurement and ODT identified STG Inc.<sup>17</sup> (STG) and directed an 8(a) award to XOR as suitable replacements for Phase One.

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<sup>11</sup> On March 9, 2018, ODT-P&PB staff consisted of four FTEs and 15 contract staff. On March 8, 2019 P&PB consisted of five FTEs, with contractor staff data not readily available due to unavailability of the CFTC staff directory. See CFTC Communication: CFTCnet Staff Directory, April 12, 2019 (<http://cftcnet/Commission/About/Communications/Pages/CFTCnet-Staff-Directory.aspx>).

<sup>12</sup> Sample of tasks performed are: network configuration management, change management, support change control board (CCB), IT security support, A&A support, and Security Impact Analyses.

<sup>13</sup> Accenture acquired Phase One in August 2017.

<sup>14</sup> CFTC contractual agreements include a clause requiring subcontractors to notify COs of an upcoming FSS contract expiration date. This did not happen here. We believe CFTC must monitor FSS expiration dates regardless.

<sup>15</sup> The CFTC procurement function (Procurement) resides within the Office of the Executive Director, Office of Financial Management. Procurement oversees contracting processes at CFTC.

<sup>16</sup> Staff maintain that, due to performance issues, a change of contractor was desired regardless; however, an orderly replacement of contractor would have better served CFTC's IT needs and probably would have avoided additional work required of procurement staff on short notice.

<sup>17</sup> SOS International acquired STG Inc. on April 11, 2018.

- Since CFTC had an existing Blanket Purchase Agreement (BPA)<sup>18</sup> with STG, the contracting officer (CO) executed a task order on May 31, 2018.<sup>19</sup>
- On June 1<sup>st</sup>, transition activities to the new contractor commenced, but by June 29<sup>th</sup>, Phase One's departure date, STG proved unable to acquire sufficient numbers<sup>20</sup> of qualified contractors from the open market or the departing firm to perform security compliance tasks. A major obstacle was that the new contract firm had lower labor rates for contractors compared to the prior contractor. Consequently, the Deputy Director for P&PB decided to delay providing security compliance services necessary to add devices to CFTC's IT network.
- On Friday June 29, 2018, the Deputy Director for P&PB informed his ODT management counterparts<sup>21</sup> and the CO that, starting the following Monday, due to immediately departing contract employees, ODT staff should expect delays in responding to network security service requests. His email generated a concern that the transition to a replacement contractor<sup>22</sup> for security services had failed. He characterized this event as a "dire situation."

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<sup>18</sup> A BPA is a simplified method of filling anticipated repetitive needs for supplies or services by establishing "charge accounts" with qualified sources of supply (see FAR Subpart 16.7 for additional coverage of agreements, <https://www.acquisition.gov/far/13.303-1>).

<sup>19</sup> Task Order 001 for Configuration Management and IT Security Support Services under BPA CFODT-15-BP-0217.

<sup>20</sup> See Appendix 6, Table 3 for STG staffing pre and post May 31, 2018.

<sup>21</sup> The three are: Deputy Director for Infrastructure and Operations Branch, Deputy Director for Systems and Services Branch, and Deputy Director for Data Management Branch.

<sup>22</sup> CFODT-15-BP-0217 executed May 31, 2018 between STG and a CFTC CO; transition activities to STG commenced June 1, 2018.



**Figure 1.** Phase 1 Timeline

Weakness in Communication

We acknowledge that ODT and Procurement are currently working effectively to address organizational needs for contract services necessary for performing ODT’s mission. In addition, we recognize that the Procurement team responded immediately to a contracting emergency, i.e., expiration of the underlying FSS; identified alternate service providers (STG Inc. and XOR); and promptly executed a replacement contract by May 31, 2018. However, in evaluating historical events, we note the potential for staff shortages with the new contractor could have been communicated by P&PB before the final day (June 29, 2018) of the Phase One contract in order to mitigate the need for rationing security services. We interviewed ODT staff attending the management meetings and found no evidence of prior dialogue on this issue prior to June 29.

As presented in Table 1, we examined the replacement contractor’s status report and noted that staff shortages were apparent as early as June 8th; one week after on-boarding the replacement contractor.

**Table 1. Replacement Contractor STG Inc. Staff Provisioning by Week**

<b>Week Ending</b>	<b>Staff-On Site</b>	<b>Inactive Staff</b>	<b>Stated Vacancy</b>	<b>Hiring In Process</b>	<b>Evidence of Staffing Shortage</b>
6/1/2018	n/a	0	0	0	Unknown
6/8/2018	n/a	2	0	0	Unknown
6/15/2018	n/a	1	0	0	Unknown
6/22/2018	n/a	0	0	0	Unknown
6/29/2018	n/a	n/a	n/a	n/a	Unknown

**Source:** Weekly Status Reports supplied by STG Inc.

In addition, we examined the Contracting Officer Representative (COR) designation memorandum for emergency or task order expiration communication procedures and found none. By including communication responsibilities, CFTC could mitigate the failure experienced and all parties affected would be better prepared for any potential disruption of service.

In addition, prudent management mandates that all parties, including COs and CORs, be aware of upcoming contract end dates for FSS contracts so that mission services are not impacted adversely. Given Procurement has deployed PRISM for procurement requisitioning, CFTC could automate contract communications and workflow. Our research of system functionality identified capabilities for monitoring contract expirations and notifications among many other contract administration features. Automating contract communications and workflow should be considered given the number of FSS contracts ODT relies on and discussed in the next section.

## **Appendix B – ODT FSS Contract Expiration Issues**

Currently, CFTC employs manual procedures for monitoring the expiration date of service contracts linked to FSS (agency-wide). At contract issuance, the Procurement team relies on the assigned CO to evaluate the accuracy<sup>23</sup> of key contract terms such as expiration dates for each FSS contract. Additionally, CFTC contractual agreements include a clause requiring subcontractors to notify COs of an upcoming FSS contract expiration date.<sup>24</sup> We believe CFTC is ultimately responsible for monitoring FSS contract expiration dates.

To identify the extent of ODT FSS contract risk based on upcoming expiration dates, we examined all active ODT FSS service contracts actions (128). We focused on whether the agency sufficiently monitored ODT contract expiration dates in order to avoid operational disruptions. For the 128 ODT FSS contract actions during FYs 2017-2018 reviewed, we found no evidence that the current manual procedure of having the CO verify key contract terms (including expiration date of each FSS contract) was not performed by a CO. However, we found 3 current ODT contract actions associated with FSS contracts that expired in 2012, and 49 ODT contract actions associated with FSS contracts that expired in 2017. Given the CFTC currently has 52 ODT contract actions that rely on expired FSS contracts, we suggest that the SPE along with the General Counsel identify any contractual or operational risk emerging from these contract actions.<sup>25</sup> For the other FSS expiration years (FY 2019-2022) identified, CFTC should take care to ensure sufficient lead time to issue new requests for quotations and select replacement contractors, as necessary.

**Table 2. Summary: ODT Contract Actions Associated with Expired FSS Contracts**

<b>FSS Expiration Year</b>	<b>Count</b>	<b>% of Total</b>
2012	<b>3</b>	<b>2%</b>
2017	<b>49</b>	<b>38%</b>
2019	2	2%
2020	38	30%
2021	18	14%

<sup>23</sup> This internal control task (PM#12) is performed by two procurement staff. A random sample of 45 contracts was tested for adherence to organizational procedures by the SPE on October 17, 2018.

<sup>24</sup> As previously noted, Phase One informed Procurement on March 9, 2018; seventy-nine days after the FSS expired. The notification occurred because Accenture Federal Services (AFS), Phase One's new owner, sought a novation.

<sup>25</sup> Government Accountability Office (GAO) and GSA interpretations appear to be in potential disagreement regarding expired FSS contracts. See, GAO opinions AllWorld Language Consultants, Inc., Comp. Gen. Dec. B-411481 (Jan. 6, 2016); GBK Partnership, LLC-Constant Associates, Inc., B-417039 (Jan 24, 2019); and GSA guidance Contracting Officer Guidance - Schedule Ordering Procedures. We therefore recommend this be addressed at higher levels.



2022	18	14%
<b>Total</b>	<b>128</b>	<b>100%</b>

**Table 3. Detail: ODT Contract Actions Associated with Expired FSS Contracts**

	<b>Contract Provider</b>	<b>CFTC File Name</b>	<b>GSA#</b>	<b>GSA Expiration Date</b>
1	Deloitte Consulting, LLP	Deloitte CFODT-12-BP-0116 ESDS-17 M016	GS-35F-0060L	10-23-12
2	Deloitte Consulting, LLP	Deloitte CFODT-12-BP-0116-ESDS-17 M014	GS-35F-0060L	10-23-12
3	Deloitte Consulting, LLP	Deloitte Consulting CFODT-12-BP-0116 ESDS17 M013	GS-35F-0060L	10-23-12
4	IBM	IBM CFODT-12-BP-0114 SYS-8 M033	GS-35F-4984H	9-30-17
5	IBM	IBM CFODT-12-BP-0114 SYS-8 M034	GS-35F-4984H	9-30-17
6	IBM	IBM CFODT-12-BP-0114 SYS-8 M035	GS-35F-4984H	9-30-17
7	IBM	IBM CFODT-12-BP-0114 SYS-8 M036	GS-35F-4984H	9-30-17
8	IBM	IBM CFODT-12-BP-0114 SYS-8 M037	GS-35F-4984H	9-30-17
9	IBM	IBM CFODT-12-BP-0114 SYS-8 M038	GS-35F-4984H	9-30-17
10	IBM	IBM CFODT-12-BP-0114 SYS-8 M039	GS-35F-4984H	9-30-17
11	IBM	IBM CFODT-12-BP-0114 SYS-8 M040	GS-35F-4984H	9-30-17
12	IBM	IBM CFODT-12-BP-0114 SYS-8 M041	GS-35F-4984H	9-30-17
13	Northrop Grumman	Northrop Grumman CFODT-12-BP-0111 (TO DS-15) M022	GS-35F-4506G	4-28-17
14	Northrop Grumman	Northrop Grumman CFODT-12-BP-0111 (TO DS-15) M025	GS-35F-4506G	4-28-17
15	Northrop Grumman	Northrop Grumman CFODT-12-BP-0111 (TO DS-15) M026	GS-35F-4506G	4-28-17
16	Northrop Grumman	Northrop Grumman CFODT-12-BP-0111 (TO DS-15) M027	GS-35F-4506G	4-28-17
17	Northrop Grumman	Northrop Grumman CFODT-12-BP-0111 (TO DS-15) P00028	GS-35F-4506G	4-28-17
18	Northrop Grumman	NORTHROP GRUMMAN CFODT-12-BP-0111 DMB-11 Mod M019	GS-35F-4506G	4-28-17
19	Northrop Grumman	NORTHROP GRUMMAN CFODT-12-BP-0111 DMB-11 Mod M021	GS-35F-4506G	4-28-17

	<b>Contract Provider</b>	<b>CFTC File Name</b>	<b>GSA#</b>	<b>GSA Expiration Date</b>
20	Northrop Grumman	NORTHROP GRUMMAN CFODT-12-BP-0111 DMB-11 Mod M022	GS-35F-4506G	4-28-17
21	Northrop Grumman	NORTHROP GRUMMAN CFODT-12-BP-0111 DMB-11 Mod M023	GS-35F-4506G	4-28-17
22	Northrop Grumman	NORTHROP GRUMMAN CFODT-12-BP-0111 DMB-11 Mod M024	GS-35F-4506G	4-28-17
23	Northrop Grumman	Northrop Grumman CFODT-12-BP-0111 ES-9B M021	GS-35F-4506G	4-28-17
24	Northrop Grumman	Northrop Grumman CFODT-12-BP-0111 ES9B M022	GS-35F-4506G	4-28-17
25	Northrop Grumman	NORTHROP GRUMMAN CFODT-12-BP-0111 ES9B Mod M018	GS-35F-4506G	4-28-17
26	Northrop Grumman	NORTHROP GRUMMAN CFODT-12-BP-0111 ES9B Mod M019	GS-35F-4506G	4-28-17
27	Northrop Grumman	NORTHROP GRUMMAN CFODT-12-BP-0111 ES9B Mod M020	GS-35F-4506G	4-28-17
28	Northrop Grumman	Northrop Grumman CFODT-12-BP-0111 PDS-12 M025	GS-35F-4506G	4-28-17
29	Northrop Grumman	NORTHROP GRUMMAN CFODT-12-BP-0111 PDS-14 Mod M023	GS-35F-4506G	4-28-17
30	Northrop Grumman	NORTHROP GRUMMAN CFODT-12-BP-0111 PDS-14 Mod M024	GS-35F-4506G	4-28-17
31	Northrop Grumman	NORTHROP GRUMMAN CFODT-12-BP-0111 PDS-14 Mod M026	GS-35F-4506G	4-28-17
32	Northrop Grumman	NORTHROP GRUMMAN CFODT-12-BP-0111 PDS-14 Mod M027	GS-35F-4506G	4-28-17
33	Northrop Grumman	NORTHROP GRUMMAN CFODT-12-BP-0111 PDS-14 Mod M028	GS-35F-4506G	4-28-17
34	Northrop Grumman	NORTHROP GRUMMAN CFODT-12-BP-0111 PDS-14 Mod M029	GS-35F-4506G	4-28-17
35	Northrop Grumman	NORTHROP GRUMMAN CFODT-12-BP-0111 SAS-13 Mod M022	GS-35F-4506G	4-28-17
36	Northrop Grumman	NORTHROP GRUMMAN CFODT-12-BP-0111 SAS-13 Mod M023	GS-35F-4506G	4-28-17
37	Northrop Grumman	NORTHROP GRUMMAN CFODT-12-BP-0111 SAS-13 Mod M024	GS-35F-4506G	4-28-17
38	Northrop Grumman	NORTHROP GRUMMAN CFODT-12-BP-0111 SAS-13 Mod M025	GS-35F-4506G	4-28-17

	<b>Contract Provider</b>	<b>CFTC File Name</b>	<b>GSA#</b>	<b>GSA Expiration Date</b>
39	Northrop Grumman	NORTHROP GRUMMAN CFODT-12-BP-0111 SAS-13 Mod M026	GS-35F-4506G	4-28-17
40	Northrop Grumman	Northrop Grumman CFODT-12-BP-0111-DMB-11 M020	GS-35F-4506G	4-28-17
41	Northrop Grumman	Northrop Grumman CFODT-12-BP-0111-DMB-11 M020	GS-35F-4506G	4-28-17
42	Northrop Grumman	NORTHROP GRUMMAN CFODT-15-DO-0146 MOD M006	GS-35F-4506G	4-28-17
43	Northrop Grumman	NORTHROP GRUMMAN CFODT-15-DO-0146 MOD M007	GS-35F-4506G	4-28-17
44	Northrop Grumman	NORTHROP GRUMMAN CFODT-15-DO-0146 MOD M008	GS-35F-4506G	4-28-17
45	Northrop Grumman	NORTHROP GRUMMAN CFODT-15-DO-0146 MOD M009	GS-35F-4506G	4-28-17
46	Northrop Grumman	NORTHROP GRUMMAN CFODT-15-DO-0233 M004	GS-35F-4506G	4-28-17
47	Northrop Grumman	NORTHROP GRUMMAN CFODT-15-DO-0233 M005	GS-35F-4506G	4-28-17
48	Northrop Grumman	NORTHROP GRUMMAN CFODT-15-DO-0233 M007	GS-35F-4506G	4-28-17
49	Northrop Grumman	NORTHROP GRUMMAN CFODT-15-DO-0233 M008	GS-35F-4506G	4-28-17
50	Northrop Grumman	NORTHROP GRUMMAN CFODT-15-DO-0238 MOD M004	GS-35F-4506G	4-28-17
51	Northrop Grumman	NORTHROP GRUMMAN CFODT-15-DO-0238 MOD M006	GS-35F-4506G	4-28-17
52	Northrop Grumman	Northrop Grumman CFODT-15-DO-0238 P005	GS-35F-4506G	4-28-17

**Source:** OFM-Procurement

## **Appendix C - Objectives, Scope And Methodology**

Our objective was to evaluate CFTC's management of select service contracts linked to the General Services Administration (GSA) Federal Supply Schedule (FSS). We initially focused on two service contracts supporting IT security operations; Phase One Consulting Group, Inc. (Phase One), and Accenture Federal Services (AFS), to determine whether a loss of security operations personnel was either a systemic contracting weakness or simply an anomalous event. Subsequently, we evaluated all FSS contracts ODT uses to determine whether a systemic weakness existed.

We acquired and evaluated a listing of all active ODT service contracts and contract actions during Fiscal Year 2017 and 2018 (provided by CFTC's Office of Financial Management Procurement group). We initially focused on contracts with Phase One and STG Inc. We did not test the CFTC's computer generated database for accuracy.

We also acquired from GSA a copy<sup>26</sup> of the related FSS contract issued in 2007. We reviewed relevant CFTC contract action items including CFTC's Blanket Purchase Agreement<sup>27</sup> issued in 2010 and CFTC-issued task orders linked to the GSA contract.<sup>28</sup> We analyzed the above documents and then interviewed all ODT staff<sup>29</sup> who participated in management of the contracts. Finally, we gathered weekly status reports prepared by the contractors and payment logs. We analyzed all of the acquired information and addressed any data discrepancies. We evaluated and included management comments in our draft. This evaluation was conducted in accordance with the Quality Standards for Inspections and Evaluations<sup>30</sup> issued by the Council of the Inspectors General on Integrity and Efficiency.

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<sup>26</sup> GSA Contract Number: GS35F0130U, period Covered by Contract: 12/20/2007 – 12/19/2017.

<sup>27</sup> CFTC-BPA No CFIT-10-BP-0059 signed 6-30-2010 with Phase One Consulting Group, Inc. specifically Task Area 4 –Provide Information Technology (IT) Security Support.

<sup>28</sup> The contractor's GSA Federal Supply Schedule contract number GS-35F-0130U.

<sup>29</sup> CORs, ODT leadership, and ODT staff who interacted with Phase One and STG Inc..

<sup>30</sup> Available at: <https://www.ignet.gov/sites/default/files/files/iestds12.pdf>.

## Appendix D - Management Response




### U.S. COMMODITY FUTURES TRADING COMMISSION

Three Lafayette Centre  
1155 21st Street, NW, Washington, DC 20581  
Telephone: (202) 418-5160  
Facsimile: (202) 418-5541  
[www.cftc.gov](http://www.cftc.gov)

### MEMORANDUM

**TO:** A. Roy Lavik, Inspector General

**FROM:** Anthony C. Thompson 

**DATE:** September 9, 2019

**SUBJECT:** Management Response to the Draft OIG Evaluation: Management of Select Service Contracts Used by the Office of Data and Technology (ODT)

The Commodity Futures Trading Commission ("CFTC" or "Commission") appreciates the opportunity to review and comment on the Management Draft of the CFTC Office of the Inspector General ("OIG") *Evaluation: Management of Select Service Contracts Used by the Office of Data and Technology (ODT)* report ("OIG report"). The following sections detail CFTC's Management Response, including general comments and a response with respect to the two recommendations provided by the OIG.

#### General Comments

Task orders awarded by CFTC against the GSA Federal Supply Schedule ("FSS") contracts comply with the Federal Acquisition Regulation ("FAR"), GSA's ordering guidance, and the terms and conditions of the respective FSS contracts. As a threshold matter, CFTC Management acknowledges that there is a difference of opinion between GAO and GSA regarding the permissibility of task orders tied to expired GSA FSS contracts. As discussed more fully below, despite this difference of opinion, CFTC Management concludes that, consistent with GSA's Contracting Officer Guidance - Schedule Ordering Procedures, it is proper for task order options to be exercised after the expiration of the parent contract if two conditions are satisfied. Specifically, (1) the task order must be awarded within the ordering period of the contract, and (2) the terms and conditions of the contract must allow for the action.

The OIG report cites to a 2016 GAO opinion, *AllWorld Language Consultants, Inc*, B-411481.3 (January 6, 2016), in which GAO held that an agency cannot exercise options for task orders under a FSS contract after the FSS contract has expired. In support of this, GAO pointed to GSA's FSS order guidance available on the GSA website at the time. That guidance indicated that "options may be exercised on GSA Schedule contract orders, provided that... The options do

not extend beyond the period of the Schedule contract, including option year periods.” However, after the AllWorld decision, GSA clarified its intent with respect to task order options being exercised after the expiration of the underlying FSS contract.

Within one month of the AllWorld decision (February 4, 2016), GSA announced that it was incorporating changes to its multiple award schedule (i.e., FSS) program to increase its value for federal and industry partners, enhance competition, and make it easier to do business within the program. One key change involved incorporating the standard FAR clause 52.216-22 (Indefinite Quantity) into FSS contracts to allow ordering activities up to 60 months after the base contract has expired. According to GSA, this change would align the FSS contracting flexibilities for task orders with other Government-wide Acquisition Contracts (“GWACs”) and Multi-Agency Contracts (“MACs”), including Alliant and OASIS. The clause incorporated by GSA in its FSS contracts includes the following:

(d) Any order issued during the effective period of this contract and not completed within that period shall be completed by the Contractor within the time specified in the order. The contract shall govern the Contractor’s and Government’s rights and obligations with respect to that order to the same extent as if the order were completed during the contract’s effective period; provided, that the Contractor shall not be required to make any deliveries under this contract after the completion of customer order, including options, 60 months following the expiration of the basic contract ordering period. (emphasis added)

Additionally, GSA amended the “Contracting Officer Guidance - Schedule Ordering Procedures” on its website to unequivocally state that task order options may be exercised after FSS contract expiration, provided that certain conditions are met, including:

- Options on orders must not be exercised beyond the ordering period of the Schedule contract, including Schedule contract option year periods, unless the Schedule contract includes clause 52.216-22 (Oct 1995), which provides in the fill-in for orders to extend up to 60 months beyond contract expiration

These changes were recognized without question by GAO earlier this year in GBK Partnership, LLC-Constant Associates, Inc., B-417039 (January 24, 2019). In this opinion, GAO argued that “unlike a task order, a BPA cannot survive the expiration of the underlying FSS contract,” citing Canon USA, Inc., B-311254.2 (June 10, 2008), 2008 CPD ¶ 113. The implication here is that GAO acknowledged GSA’s position that task order options may be exercised after a FSS contract expires, while Blanket Purchase Agreement (BPA) options issued under a FSS contract cannot.

Recommendation 1 – Evaluate the extent and impact of CFTC-wide FSS contract actions that have expiration issues in terms of both contract and operational risk.

For the reasons described above, CFTC Management concludes that it is proper for task order options to be exercised after the expiration of the parent contract, provided the task order was

awarded within the ordering period of the contract and the terms and conditions of the contract allow for the action. The FSS contracts include FAR 52.216-22, with a fill-in that allows for task order options to be exercised for up to 60 months after the respective GSA contract expires.

CFTC Management disagrees with OIG's recommendation because there are no FSS contract expiration issues at CFTC attributable to the changes GSA made to its program in February 2016. Nevertheless, CFTC Management will review the existing FSS contracts identified in the OIG report to ensure there are no expiration issues, consistent with GSA's Contracting Officer Guidance - Schedule Ordering Procedures.

Recommendation 2 – Explore the procurement life-cycle benefits offered by PRISM to automate workflow communications such as contract expiration notifications.

Since implementing PRISM in 2018, CFTC has been realizing the benefits offered by this workflow management system. While it is true PRISM tracks expiration dates, it is only capable of tracking those of CFTC's contract actions, and not external contracts such as the FSS contracts awarded by GSA. CFTC Management sees value in further leveraging the capabilities of PRISM, and agrees with the recommendation in this regard.

The Procurement Office currently enters the expiration dates for CFTC's contracts and task orders into the PRISM system. However, CFTC Management believes the capabilities of the system can be further leveraged to issue automated communications (e.g., emails) to appropriate stakeholders to alert them of upcoming expirations. The Procurement Office will examine what milestones should trigger system notifications and what those notifications should say. It is expected that the use of automated workflow communications such as expiration date notifications will enhance the efficiency and effectiveness of CFTC's procurement operations.

Conclusion

In addition to the resolutions of recommendations 1 and 2 described above, CFTC Management has identified another potential improvement to operations based on the findings in the OIG report. In Appendix A – Communications, the report suggests enhancing instructions to Contracting Officer's Representatives ("CORs") regarding their communication responsibilities, which would mitigate the potential for service disruptions. While this was not one of the formal "recommendations" in the report, CFTC Management is thankful to the OIG for its suggestion. In the present situation, CFTC Management believes that the communications in question were appropriate; nevertheless, as a best practice, the Senior Procurement Executive will include communication responsibilities as part of a larger update of CFTC's standard COR designation memorandum planned for Fiscal Year 2020.