



U.S. COMMODITY FUTURES TRADING COMMISSION

Three Lafayette Centre
1155 21st Street, NW, Washington, DC 20581
Telephone: (202) 418-5000
Facsimile: (202) 418-5521
www.cftc.gov

**Financial Management
Branch**

February 20, 2019

CFTC Service Contract Inventory: FY2017 Analysis Report

Pursuant to Section 743 of Division C of the FY 2010 Consolidated Appropriations Act, P.L. 111-117, the Commodity Futures Trading Commission (CFTC) has completed the analysis and review of the agency Fiscal Year 2017 Service Contract Inventory to determine if the mix of Federal employees and contractors is effective or if rebalancing may be required.

As required, the agency focused the analysis on the following two (2) special interest functions that we identified to OMB by Product Service Code (PSC):

<u>PSC</u>	<u>PSC Description</u>
D302	IT and Telecom-System Development
R499	Support – Professional: Other

The analysis, review and the write-up herein reflect interviews and input from agency Contracting Officers and Contracting Officer Representatives (CORs). In conducting our analysis we carefully reviewed and considered OMB Memorandum M-09-26, dated July 29, 2009, Office of Federal Procurement Policy (OFPP) proposed policy letter "Work Reserved for Performance by Federal Government Employees" (75 Fed. Reg. 16188; March 31, 2010), the insourcing guidelines required under section 736 of the Financial Services and General Government Appropriations Act, 2009 (Public Law 111-8, division D) and all applicable internal agency guidance pertaining to this subject matter.

The analysis and review revealed that the support activities provided under the outlined special interest functions are neither inherently Governmental, nor are they personal services contracts as defined in FAR 37.104. Current safeguards in place for monitoring contractor services provide reasonable assurance that work does not become inherently governmental during contract performance.

In addition, the analysis and review revealed that the CFTC is not utilizing contractor services to perform agency critical functions in such a way that could affect the ability of the agency to maintain control of its mission and operations. Lastly, the analysis revealed that the agency is increasingly relying on contract resources to support its expanded mission as a result of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Pub.L. 111-203, H.R. 4173) which was enacted in July 2010. The agency faces a number of challenges to effectively manage and oversee contract performance to ensure we remain in compliance with all guidelines and laws regarding the subject matter.

Following is a summary of our review by PSC:

For PSC D302 - IT and Telecom-System Development, CFTC's Office of Data Technology (ODT) contractor employees are used to provide Information Technology (IT) systems development and services support based on specialized technical skills that are not performed by ODT staff; but instead, monitored by agency staff project managers. Of the funds obligated under PSC D302, over 54% of the dollars (approximately \$5.4m) were awarded under BPA CFODT-15-BP-0214. The BPA provides CFTC the ability to adjust to surges in workload required to enhance existing infrastructure requirements as it relates to security, telecommunications, and equipment that are needed as a part of the implementation of new initiatives as well as perform operations and maintenance (O&M) of the network, telecommunications and customer support center. Due to the nature of the work performed and the large percentage of dollars associated with the core infrastructure operations and maintenance task, a Contracting Officer's Representative (COR), an Alternate Contracting Officer's Representative, and three (3) Task Monitors are assigned to monitor and oversee the contractor services.

For PSC R499 - Support–Professional: Other, the Senior Procurement Executive (SPE) decided to analyze the type of services being procured to not only determine if the mix of Federal employees and contractors is effective but to ascertain if a more specific PSC Code would have been more appropriate instead of the generic code. The analysis of contractor support associated with the PSC Code R499 included expert witnesses, court transcriptions, development of content and editorial support associated with fraud prevention educational materials, ad hoc building maintenance support services and data analysis/analytic services and data standards development support. The majority of the contracts are structured as short-term, project related type services which are not conducive for hiring federal staff to perform. The other projects also provide for additional short-term support when additional analysis is required. None of the contracts associated with PSC Code R499 are performed by federal staff, but are monitored by a COR. During the analysis, it was confirmed that other available PSC Codes were more applicable for each specific contract. Prior to the analysis, the SPE issued a notice to all Contracting Officers stating PSC codes such as R499 "Other Professional Services" should only be selected when there is no other appropriate code to use. Each FPDS record has been corrected to reflect the most relevant PSC Code. In addition to ensuring an effective Federal employee to contractor mix, the SPE is committed to guaranteeing that the most descriptive PSC Code is used, thereby providing the public with accurate and complete transparency regarding the types of services CFTC procures.

All CFTC contracts are assigned a Contracting Officer's Representative (COR) responsible for tracking contractor performance via project milestones, project deliverables and/or performance standards/metrics. The COR is also responsible for managing and overseeing the various tasks within a contract, which ensures that CFTC is maintaining control of its mission and operations.

In summary, the CFTC continued to use contractor resources, in particular services provided under the special interest functions noted in our FY2017 Service Contract Inventory, to support agency staff. CFTC can provide reasonable assurance that it complies with laws and regulations governing contract resource use and is committed to undertaking the action necessary to reduce risks in delivery of contract services.

Please do not hesitate to reach out to any of the CFTC personnel listed below if you have any questions about the FY2017 Service Contract Inventory and analysis.

The following contact information is provided:

- (1) The CFTC senior agency management official accountable for the development of agency policies, procedures, and training associated with OFPP Policy Letter 11-01 and addressing the performance of inherently governmental and critical functions is Alice Macklin, Human Capital Analyst, amacklin@cftc.gov, 202-418-5860.
- (2) Mrs. Macklin is also the official responsible for ensuring appropriate internal management attention is given to the development and analysis of service contract inventories.
- (3) The CFTC individual who has been designated to serve on the working group responsible for sharing best practices and lessons learned in the use of inventories as a management tool is:
 - Kathryn Rison, Contracting Officer, krison@cftc.gov, 202-418-5419.