

National Labor Relations Board (NLRB)

Analysis of FY 2010 Service Contract Inventories

Background: The National Labor Relations Board is an independent Federal Agency created by Congress in 1935 to administer the National Labor Relations Act, the primary law governing relations between and among unions, employees, and employers in the private sector. The statute guarantees the right of employees to organize and bargain collectively with their employers or to refrain from all such activity. Generally applying to all employers involved in interstate commerce other than airlines, railroads, agriculture, and government, the Act implements the national labor policy of assuring free choice and encouraging collective bargaining as a means of maintaining industrial peace. Through the years, Congress has amended the Act and the Board and courts have developed a body of law drawn from the statute. The NLRB consists of 51 regional, sub-regional, and resident offices, and a headquarters office.

Purpose: Pursuant to the November 5, 2010 memorandum from the Office of Federal Procurement Policy (OFPP), Federal agencies are requested to conduct an analysis of special interest functions within the FY 2010 Service Contract Inventories submitted to the Office of Management and Budget (OMB) in accordance with Section 743 of Division C of the FY 2010 Consolidated Appropriations Act, P.L. 111-117. The NLRB hereby submits its analysis and findings.

Methodology: The NLRB performed an analysis of the special interest functions by pulling information on all FY2010 service contracts over \$25,000 from FPDS-NG with the special interest Product Service Codes (PSC) noted in Table 1 of the November 4, 2010 OFPP memorandum. We decided on a sample of three (3) contracts that are representative of the NLRB service contract inventory which we believe provides an illustrative representation of the overall inventory of special interest contracts. This sample provides information about one (1) service contract from each of the three (3) PSC categories that make up the FY2010 NLRB inventory. It should be noted that the FY2010 service contract inventory indicates that one contract was coded as R497 – Personal Services Contracts. This contract was coded incorrectly by former staff and has since been corrected and identified not to be in the special interest PSC categories.

The contracts were analyzed by NLRB Contracting Officers by gathering information in cooperation with COTRs and Program Managers to determine whether the contract labor is used appropriately and efficiently and if the mix of Federal employees and contractors in the agency is effectively balanced. The analysis specifically addresses the desired outcomes in Section 743(e) of Division C of the FY 2010 Consolidated Appropriations Act, P.L. 111-117 to ensure that:

- (A) 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;
- (B) the agency is giving special management attention to functions that are closely associated with inherently governmental functions;

- (C) the agency is not using contractor employees to perform inherently governmental functions;
- (D) 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;
- (E) 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; and
- (F) There are sufficient internal agency resources to manage and oversee contracts effectively.

Observations and Findings: The NLRB inventory consists of service contracts from three (3) PSC Category codes. The codes are:

- R407 Program Evaluation Services;
- R408 Program Management/Support Services; and
- D307 Automated Information Systems Services.

R407 – The contract representing R407, obligated in the amount of \$45,940, is for the Office of the Chief Information Officer (OCIO) Advisory Services, and is the only contract listed under the R407 PSC code. A discussion with the OCIO revealed that the contract has been well-managed by the contractor and meets the scope and intent of the requirement to provide advisement information to the OCIO, and adheres to all applicable laws and regulations. The contract is not a personal services contract. The agency is not using contractor employees to perform inherently governmental functions. The advisement information provided by the contractor is typically beyond the intrinsic duties and knowledge of the government, and the OCIO has provided special management attention to ensure any functions that could be closely associated with inherently governmental functions do not surface. To ensure that the contract does not change or expand services to become inherently governmental, the OCIO is monitoring the work and systems in place. The contractor did not perform critical functions that would affect the ability of the agency to maintain control of its mission and operations. The contractor advises the OCIO, so good control is maintained by the government by managing it closely and effectively at all times.

R408 – The contract selected to represent PSC code R408 is the largest contract in the largest PSC group of special interest service contracts obligated in the amount of \$1,716,184. This contract provides NxGen implementation and support services, and is not a personal services contract. The services provided under this contract are not inherently governmental and although the performance of the contract is important, contractors were not being used 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 NLRB has given special management attention to performance of this contract, but no functions are thought to be closely associated with being inherently governmental, nor has any changed or expanded during performance to become inherently governmental. The contract is monitored closely by a COTR who understands the contract requirement

and manages it well. In addition, there have been other government employees working closely with this contract, so there are sufficient internal resources to manage and oversee the contract effectively. The contractor has performed well and adhered to all laws and regulations.

D307 – The contract selected to represent PSC code D307 is for Data Center Hosting at \$879,345. This contract was chosen as representative because it is also the only contract in this PSC category. Though there are three contracts on the inventory, they are all associated with the modifications of the initial award. These modifications were reviewed and found not to have changed or expanded during performance to become inherently governmental. The contractor has performed well, and has adhered to laws and regulations, so there are no concerns about poor performance. The contract is not a personal services contract, nor was it ever inherently governmental, and has been monitored to ensure that no employees of the contractor were performing inherently governmental tasks or responsibilities. 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 contract is monitored closely by a COTR and other program staff, so there are sufficient internal resources dedicated to oversee the contract effectively.

Summary: It has been determined that none of the service contractors within the special interest contracts have been considered to have performed poorly. The costs of the contracts analyzed were not excessively priced and did not present excessive risks to the government. The NLRB takes pride in monitoring service contracts closely with full cooperation from Contracting Officers, COTRs, and Program Staff and Managers. Based on this analysis, we believe we have a balanced mix of contractors to employees and have the resources necessary to continue monitoring contracts effectively and efficiently to reduce risks of personal or inherently governmental contracts. The NLRB is committed to identifying and addressing any new risks related to service contracts, and will meet the challenges with swift and evasive action.