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**U.S. Department of Justice  
Analysis of FY 2010 Service Contract Inventory**

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**March 2012**

**Department of Justice (DOJ)**  
**FY 2010 Service Contract Analysis**

**Background**

Section 743 of Division C of the FY 2010 Consolidated Appropriations Act, P.L. 111-117, requires civilian agencies to prepare an annual inventory of their service contracts and complete a meaningful analysis of its inventory. The Act further required agencies to make the inventory available to the public by December 30, 2010, and the analysis publicly available by January 30, 2012.

The inventory was to consist of all service contract actions exceeding \$25,000 that were awarded in FY 2010. Additionally, only actions funded by the agency were to be included in the agency inventory. Actions made on behalf of another agency using that agency's funding were to be excluded.

Guidelines for the development and format of the inventory were provided to agencies in the Office of Federal Procurement Policy (OFPP) Memorandum, Service Contract Inventories,<sup>1</sup> dated November 5, 2010. A key requirement in the Memorandum was for agencies to conduct a meaningful analysis of the inventory data to determine if contract labor is being used in an appropriate and effective manner. Additionally, agencies were tasked with determining if the mix of federal employees and contractors used in the functional areas, from which the service contracts covered, is effectively balanced.

Agencies were instructed to submit their inventories to OMB, in accordance with the guidance in the OFPP Memo, by December 31, 2010, and to also make public their FY 2010 inventory by January 31, 2011. The DOJ FY 2010 Service Contract Inventory was posted on the DOJ Chief Acquisition Officer Website at <http://www.justice.gov/jmd/pe/service-contract-inventory.html>.

**Purpose**

The purpose of this report is to submit the DOJ analysis of its FY 2010 Service Contract Inventory. This report summarizes:

- a) The special interest functions studied, the dollars obligated to those specific product and service codes (PSCs) in FY 2010, and the rationale for focusing on the identified functions;
- b) The methodology used by the agency to support the analysis;
- c) Agency findings; and
- d) Actions taken or planned.

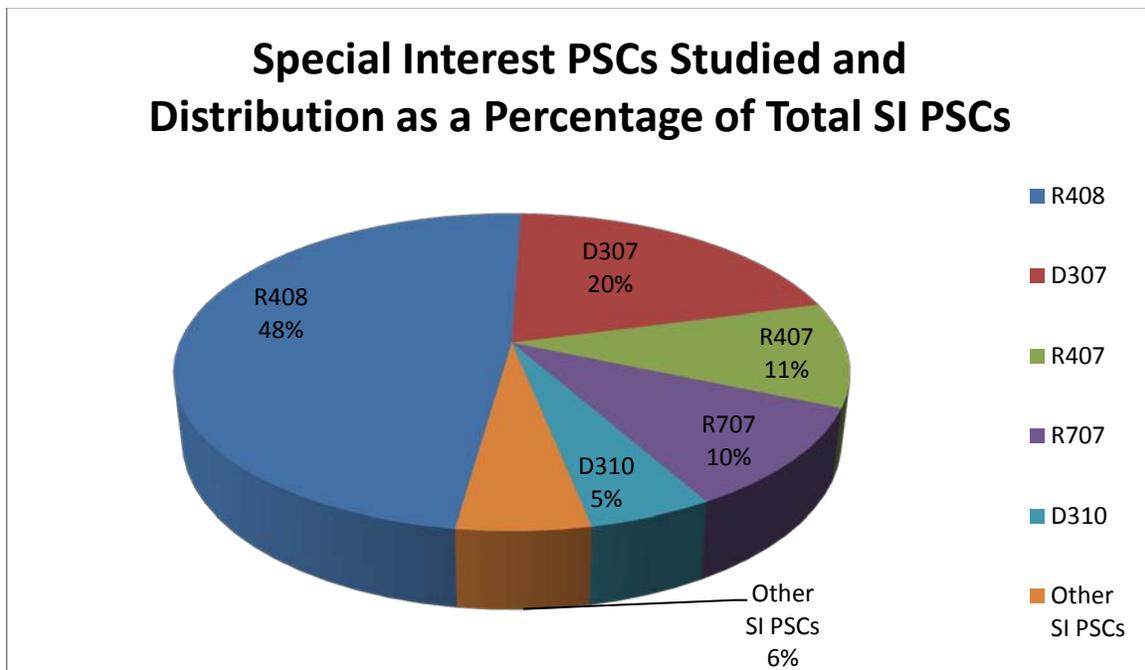
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<sup>1</sup> <http://www.whitehouse.gov/sites/default/files/omb/procurement/memo/service-contract-inventories-guidance-11052010.pdf>

## Analysis

### Special Interest Functions studied:

DOJ focused on the top five Special Interest (SI) Functions from its FY 2010 Inventory. The top five accounted for more than 94% of DOJ's FY 2010 Special Interest PSC obligations of \$190,254,628. The remaining four Special Interest PSCs or the other Special Interest PSCs, which were D314, R414, R409 and R406, accounted for less than 6% of the Department's total Special Interest PSC obligations. Each one of the other Special Interest PSCs was less than .05% of the Department's total obligations for FY 2010. The top five Special Interest PSCs included in this analysis were:



### Special Interest PSCs Studied as a Percentage of DOJ Total FY 2010 Contract Awards

<b>PSC</b>	<b>Product and Service Code Descriptions</b>	<b>FY 2010 Obligations</b>	<b>As a percentage of total FY 2010 Awards</b>
R408	PROGRAM MANAGEMENT SUPPORT SVCS	\$91,877,344	1.43%
D307	AUTOMATED INFORMATION SYSTEMS SVCS	\$38,746,876	.60%
R407	PROGRAM EVALUATION SVCS	\$20,213,162	.31%
R707	MGMT SVCS CONTRACT & PROCUREMENT SUPPORT	\$19,668,956	.31%
D310	ADP BACKUP AND SECURITY SVCS	\$9,534,611	.15%

**The methodology used by the agency to support the analysis:**

The DOJ utilized a methodology which consisted of one or more of the following interactions with procurement managers and acquisition professionals in offices that had one or more contracts awarded under each of the special interest PSCs: 1) entity level assessment questionnaires 2) initial and follow up telephonic interviews, and 3) review of relevant FY 2010 procurement related assessments. In instances where procurement managers and acquisition professionals were interviewed, the actual contract file was often accessed. A minimum of 25% of the contracts in each of the Special Interest PSC studied were selected for review starting at the highest dollar award and randomly selecting lower dollar awards. The actual count of contracts per Special Interest PSC varied from a high of approximately 97 for PSC R408 to seven for PSC R407

Appendix D of the OFPP Memorandum, Service Contract Inventories, directed agencies to include in its analyses a review of the contracts and information in the inventory for the purpose of ensuring that –

- (i) 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;
- (ii) The agency is giving special management attention, as set forth in FAR 37.114, to functions that are closely associated with inherently governmental functions;
- (iii) The agency is not using contractor employees to perform inherently governmental functions;
- (iv) 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 inherently governmental functions;
- (v) 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
- (vi) There are sufficient internal agency resources to manage and oversee contracts effectively.

**Agency findings; and Actions taken or planned:**

Following is the resulting findings and actions taken or planned for each topic presented in Appendix D of the OFPP Service Contract Inventories memo:

**Topic (i):** 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.

None of the reviewed contracts awarded under the Special Interest Functions PSCs were awarded as personal service contracts. There are limited instances when it is vital to the successful execution of the DOJ mission that the DOJ may enter into personal services contracts. Although they may appear to be government employees, individuals engaged under personal services contracts are not employees of the DOJ or any of its components. Contractors performing under personal services contracts are not engaged to replace full-time, permanent DOJ employees. They provide services as independent contractors, and no employer/employee

or agency relationship is created by the contract. The DOJ awards personal service contracts under the authority at 28 U.S.C. Section 565 (g). These contracts are being performed in accordance with applicable laws and procedures.

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

None of the reviewed contracts revealed functions being performed that are closely associated with inherently governmental functions, therefore the requirements of FAR 37.114 were not applicable. DOJ is cognizant of the fact that government wide, the line between inherently governmental functions and commercial activities that may be contracted for has been blurred and that almost 80 percent of contract obligations made by civilian agencies in FY 2010 were for services. DOJ will continue to monitor this area in an effort to minimize when necessary, or eliminate when possible awarding contracts that are closely associated with inherently governmental functions. DOJ Procurement Guidance Documents will be issued to DOJ Procurement Chiefs that specifically address maintaining a clear separation between inherently governmental functions and contractor performed services. This issue will also be addressed at future DOJ Acquisition Council meetings.

**Topic (iii):** The agency is not using contractor employees to perform inherently governmental functions.

None of the reviewed contracts awarded under the Special Interest Functions PSCs were found to have been using contractor employees to perform inherently governmental functions.

**Topic (iv):** 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 inherently governmental functions.

DOJ has a capable acquisition workforce that has been trained to implement best practices, monitoring systems, and safeguards to ensure that work being performed by contractors has not changed or expanded during performance to become inherently governmental functions. Oversight roles and responsibilities are clearly defined and the individuals responsible for monitoring are knowledgeable and properly trained. Review activities vary due to the decentralized nature of the Department's procurement operation. Each component has identified the appropriate level of management required to review contract actions. For example, some components require a review, by the management level above the contracting officer, of all contracting actions that exceed \$100,000. While they are not uniform in their application, a range of controls have been implemented at DOJ components to maintain the separation between inherently governmental functions and contractor performed services.

**Topic (v):** 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.

DOJ is a large, complex, and multifaceted organization comprised of over 40 separate components located both domestically and abroad with more than 106,000 employees performing its mission. DOJ has a long history of protecting American citizens that is reflected in the first goal of the Strategic Plan: “Prevent terrorism and promote the nation’s security.” In addition to fighting terrorism, DOJ focuses on the following five areas: violent crime, drug trafficking, civil rights, public and corporate corruption, and cyber crime. DOJ components have sufficient safeguards in place and resources to maintain control of its mission and operations in regards to its service contracts.

None of the reviewed contracts awarded under the Special Interest Functions PSCs were found to be 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

**Topic (vi):** There are sufficient internal agency resources to manage and oversee contracts effectively.

DOJ defines its acquisition workforce in accordance with the OFPP Policy Letter 05-01, *Developing and Managing the Acquisition Workforce*, dated April 15, 2005. This definition includes all Contract Specialists and Procurement Analysts (General Schedule (GS) 1102s); all Program and Project Managers assigned to exhibit 300 projects; and, all Contracting Officer’s Representatives, whether serving in that role as a collateral or full-time duty.

The DOJ acquisition function is decentralized. In FY 2010 ten DOJ procurement offices were comprised of 2,516 acquisition professionals.

<b>FY 2010 Breakout of DOJ Acquisition Professionals:</b>	
<i>Profession:</i>	<i>Count:</i>
GS 1102 Contract Specialist	537
Contracting Officer’s Representatives (COTR)	1,964
Program and Project Managers (P/PM)	15

In the past due to staffing shortages, some DOJ procurement offices hired contractors to support their procurement activities. Now, procurement offices have begun to rebuild their professional acquisition staff to reduce reliance on contractors in favor of developing DOJ in-house procurement expertise.

In FY 2009, Contract Specialists experienced an attrition rate of 7.8% versus 4.3% Department-wide. In FY 2010, 15% of Contract Specialists were eligible to retire compared to 12% of the entire DOJ workforce. DOJ does not track attrition rates and retirement eligibility for COTRs and P/PMs because they collaterally serve in those roles.

Each DOJ procurement office is responsible for the training and development of its acquisition workforce. Due to recent budget constraints some offices reported that their training budgets have been significantly reduced. All DOJ acquisition professionals continue to participate in free online courses and “low-fill” Department of Homeland Security, and Department of Treasury course offerings. DOJ procurement offices also conduct in-house training that covers basic to advanced procurement utilizing no-cost training, seminars, and round table discussions.

One of the top three priorities of the DOJ Senior Procurement Executive for 2010-2014 is to develop a skilled and experienced professional Acquisition workforce to achieve DOJ goals. DOJ experienced steady growth in the number of certified personnel since implementing the formal federal acquisition certification program in January, 2007, which resulted in approximately 60% of DOJ’s acquisition workforce obtaining federal acquisition certification. DOJ certification rates in each of the functional areas were expected to increase by 20% in FY 2010 and reach 100% by FY 2012.

In summary, the DOJ has a sufficiently trained acquisition workforce capable of effectively awarding, managing, and overseeing service contracts; and it has the infrastructure and resources to ensure contractors are not performing inherently governmental functions. DOJ plans to take actions to ensure contract labor in the special functions is used in an effective manner.