

FY 2013 Service Contract Inventory Analysis

Office of Procurement, Consumer Financial Protection Bureau (CFPB)
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Consumer Financial
Protection Bureau

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1. Introduction

The Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 (Dodd-Frank Act) established the Consumer Financial Protection Bureau (CFPB or Bureau). The Dodd-Frank Act created the Bureau as the nation's first federal agency with a mission of focusing solely on consumer financial protection and making consumer financial markets work for American consumers, responsible businesses, and the economy as a whole. In the wake of the financial crisis of 2008-2010, the President and Congress recognized the need to address widespread failures in consumer protection and the rapid growth in irresponsible lending practices that preceded the crisis. To remedy these failures, the Dodd-Frank Act consolidated most Federal consumer financial protection authority in the Bureau. The Dodd-Frank Act charged the Bureau with, among other things:

- Ensuring that consumers have timely and understandable information to make responsible decisions about financial transactions;
- Protecting consumers from unfair, deceptive, or abusive acts and practices, and from discrimination;
- Monitoring compliance with Federal consumer financial law and taking appropriate enforcement action to address violations;
- Identifying and addressing outdated, unnecessary or unduly burdensome regulations;
- Enforcing Federal consumer financial law consistently in order to promote fair competition;
- Ensuring that markets for consumer financial products and services operate transparently and efficiently to facilitate access and innovation; and
- Conducting financial education programs.

The Bureau has continued its efforts to listen and respond to consumers and industry, to be a resource for the American consumer, and to develop into a great institution worthy of the responsibility conferred on it by Congress.

The CFPB's Office of Procurement is committed to enhancing transparency and ensuring

proper financial stewardship throughout the acquisition lifecycle. To achieve this, the Bureau's Office of Procurement prepared this report as instructed by Section 743 of Division C of the FY 2010 Consolidated Appropriations Act, Public Law (P.L.) 111-117. The goal of the report is to analyze service contract inventory to determine if the mix of Federal employees and contractors is effective.

1.1 Background

According to the Office of Management and Budget (OMB), agencies shall conduct a meaningful analysis of the data in their inventory for the purpose of determining if contract labor is being used in an appropriate and effective manner and if the mix of federal employees and contractors in the Bureau is effectively balanced. Analysis shall cover the elements called for in the Consolidated Appropriations Act, 2010, Division C, Title VII §743(e)(2) and include any agency findings, actions taken or planned by the agency to address any identified weaknesses or challenges, and a description of the methodology used by the agency to support its analysis. In carrying out these actions, agencies should review OMB Memorandum M-09-26, and Public Law 111-8, and Office of Federal Procurement Policy (OFPP) Policy Letter 11-01. Once completed, the analysis will be posted in the OMB MAX system.

1.2 Scope of Analysis

The Office of Procurement staff analyzed the Bureau's service contract inventory from FY 2013 to validate program requirements (to include appropriate contract use and effectiveness) and determine if the mix of federal employees and service contractors is balanced. The table below identifies PSCs chosen by the Office of Procurement from a selection recommended by OMB. The analysis includes all service contract awards against identified PSCs exceeding \$25,000 that CFPB funded in FY 2013.

CFPB PSCs

Product Service Code (PSC)	PSC Description	FY 2013 Obligation Dollars	Representative Contract Actions
D302	IT and Telecommunications – Systems Development	\$6,234,015	20

The Office of Procurement chose D302 because it was the Bureau's largest percentage,

approximately 6%, of total contract obligations that was also an OMB-identified special interest function. The review team conducted a full review of every contract action for the PSCs identified in the table above. Specifically, CFPB analyzed the Service Contract Code Determination (SCC) worksheets for each action. Before a procurement action for services is initiated, the relevant CFPB program office is required to submit a Service Contract Code Worksheet to the Office of Procurement and the Office of Human Capital (CHCO). The Chief Human Capital Officer must then sign off on the procurement, ensuring that the action does not involve an inherently governmental function.

According to the Office of Federal Procurement Policy (OFPP) Policy Letter 11-01, Civilian Agencies must reserve certain work for performance by Federal employees and guarantee sufficient management oversight over how contractors are used to support government operations. Furthermore, it is the responsibility of management to ensure that “as part of the acquisition planning, agencies shall confirm that the services to be procured do not include work that must be reserved for performance by Federal employees and that the agency will be able to manage the contractor consistent with its responsibility to perform all inherently governmental functions and maintain control of its mission and operations.”¹ Thus, CFPB has created the SCC worksheet for completion before every procurement action for services over \$25,000.

For the review, the Office of Procurement has reviewed the SCC worksheets for all specified actions. The total obligation amount analyzed is \$6,234,015 and represents all twenty contract actions. In FY 2013, CFPB incurred obligations for three of the OMB-identified special interest functions:

- D302 - IT & Telecommunications – Systems Development
- D307 - IT and Telecom – IT Strategy and Architecture
- R408 – Support – Professional: Program Management/Support

Product Service Code (PSC) D307 comprised less than 1% of total service contract obligations, while R408 comprised less than 3% of total FY 2013 obligations. As a result, these two PSCs were not selected for analysis.

¹“Publication of the Office of Federal Procurement Policy (OFPP) Policy Letter 11-01, Performance of Inherently Governmental and Critical Functions”, Federal Register, Monday, September 12, 2011, pg. 56238

1.3 Methodology

The Bureau's scope of analysis was assessed by a use-case evaluation approach. The analysis was aimed at determining the following areas:

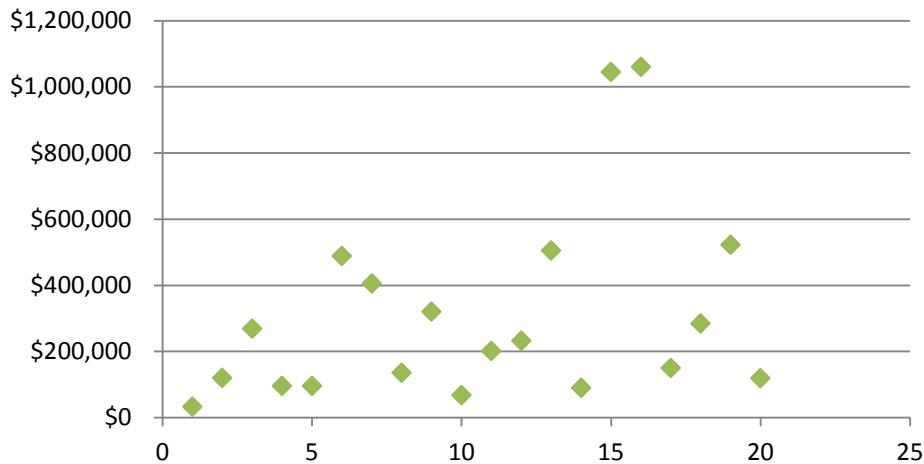
1. Gauging if services are being used appropriately for the Bureau's mission
2. Ensuring Bureau service contracts are being provided with appropriate and sufficient oversight
3. Identifying necessary improvements to the service-related acquisition practices of the Bureau

The below list details the data gathering elements collected by the review team:

- Contract files, including scopes of work
- Contract monitoring practices and mechanisms
- Service Contract Coding worksheets

The resultant twenty actions ranged in obligation value from a low of \$32,858 to a high of \$1,059,687, with an average action obligation of \$311,701. The graphic below illustrates the obligation values of PSC D302.

Action Obligations - PSC D302



The following are the twenty contract actions that encompass PSC D302 –

Vendor Name	Description of Requirement	Action Obligation
EXCELLA CONSULTING INCORPORATED	WEB DEVELOPMENT	\$32,858.40
MICROLINK, L.L.C.	WEB DEVELOPMENT SUPPORT	\$120,000.00
ROCK CREEK PUBLISHING GROUP	WEB SUPPORT SERVICES	\$269,131.63
ROCK CREEK PUBLISHING GROUP	WEB SUPPORT SERVICES	\$95,622.45
ROCK CREEK PUBLISHING GROUP	WEB SUPPORT SERVICES	\$95,498.48
ROCK CREEK PUBLISHING GROUP	WEB SUPPORT SERVICES	\$488,030.64
ROCK CREEK PUBLISHING GROUP	WEB SUPPORT SERVICES	\$404,989.20
ROCK CREEK PUBLISHING GROUP	WEB SUPPORT SERVICES	\$134,996.40
ROCK CREEK PUBLISHING GROUP	WEB SUPPORT SERVICES	\$319,500.72
ROCK CREEK PUBLISHING GROUP	WEB SUPPORT SERVICES	\$67,498.20
ROCK CREEK PUBLISHING GROUP	WEB SUPPORT SERVICES	\$201,006.96
ROCK CREEK PUBLISHING GROUP	WEB SUPPORT SERVICES	\$231,702.24
DISCOVER TECHNOLOGIES LLC	COLDFUSION AND PROGRAM MANAGEMENT SUPPORT FOR CFPB	\$504,621.20
DISCOVER TECHNOLOGIES LLC	COLDFUSION AND PROGRAM MANAGEMENT SUPPORT FOR CFPB	\$90,052.80
DISCOVER TECHNOLOGIES LLC	WEB DEVELOPMENT, DESIGN&PROGRAMMING	\$1,044,160.00
EXCELLA CONSULTING INCORPORATED	WEB DEVELOPMENT, DESIGN&PROGRAMMING	\$1,059,687.20
EXCELLA CONSULTING INCORPORATED	WEB DEVELOPMENT, DESIGN&PROGRAMMING	\$149,264.00
EXCELLA CONSULTING INCORPORATED	WEB DEVELOPMENT, DESIGN&PROGRAMMING	\$283,920.00
FORUM ONE COMMUNICATIONS CORPORATION	WEB DEVELOPMENT, DESIGN&PROGRAMMING	\$522,278.40
ROCK CREEK PUBLISHING GROUP	DATABASE ADMINISTRATION SUPPORT SERVICES	\$119,196.00

2. Summary of Findings

2.1 Analysis

In accordance with the Consolidated Appropriations Act, 2010, Division C, Title VII § 743(e), the CFPB has ensured through its analysis that:

- 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;
- The agency is giving special management attention to functions that are closely associated with inherently governmental functions;
- The agency is not using contractor employees to perform inherently governmental functions;
- 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;
- 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
- There are sufficient internal agency resources to manage and oversee contracts effectively.
- No contracts have been identified that have been poorly performed, because of excessive costs or inferior quality;

- CFPB has recognized the potential for service contract work to be performed by Federal employees. The T&I Fellows Program, which hires Fellows on two-year performance periods, will eventually allow the program office to assign relevant work to Federal employees once it is scaled up sufficiently.

2.2 PSC D302 – IT and Telecommunications – Systems Development

Product Service Code D302 was selected for review because it made up the highest percentage of CFPB service contract obligations that was also included in the OMB-identified list of special interest functions.

In FY 2013, the CFPB relied on contractor support for a range of multimedia and web development and design services. There were five vendors responsible for these services – Rock Creek Publishing Group, Discover Technologies LLC, Excella Consulting Inc., Forum One Communications Corporation, and Microlink, LLC. As the agency has shown continued growth, the demands and priorities of the Bureau have increased, especially regarding the Office of Technology and Innovation (T&I). While the review team examined each action, special focus was given to actions over \$1 million, which consisted of Blanket Purchase Agreement (BPA) calls awarded to Excella Consulting and Discover Technologies LLC.

Rock Creek Publishing Group was awarded the most actions under PSC D302, eleven out of twenty total awards. Ten of the actions were task orders under TPDCFP12C0007. This indefinite delivery, indefinite quantity (IDIQ) contract was awarded by the Bureau of the Fiscal Service on behalf of CFPB, and is used for web development, design, web programming, and other support services across a number of CFPB divisions. More specifically, tasks consist of front and back end web development, design, programming, project management, visual/graphics design, strategy, and video. Each task order was reviewed, including both the approved SCC worksheets and contract documents. Many of the task orders had relatively short periods of performance, mostly consisting of between three and six months. Additionally, weekly and monthly status reports were required from the contractor. Performance standards were established in the Quality Assurance Surveillance Plan (QASP). Finally, the CFPB personnel assigned to the orders were T&Is most experienced and longest serving Contracting Officer's Representatives (CORs) who closely monitored performance. Review of Discover Technologies LLC's BPA calls found that the oversight provided by the COR and the T&I office

was comprehensive. The contract actions were composed of contractor support for existing CFPB applications written in Cold Fusion with SQL Server as the database. Similar to the Rock Creek contract monitoring, CFPB's T&I Office assigned its most experienced CORs to the activities, while also requiring weekly status reports and meetings that required information such as significant accomplishments, hours worked, updated project plans, financial status, and any issues or risks that may impact the quality of the work or planned milestones. In addition, the COR reported the status of the contractor's performance on a monthly basis to the Office of Procurement and upper management. The COR's evaluation of the contractor's performance covered quality of service, timeliness of performance, business relationship, and cost control.

The BPA with Excella Consulting Incorporated, TPDCFPBPA130005, consisted of three calls for web development, design, and programming, specifically related to the support of CFPB's digital assets including the Bureau's public-facing website, consumerfinance.gov, and other internal software tools. All aspects of contract management were similar to the BPA calls of Discover Technologies LLC, including the same CORs, weekly/monthly status reports, QASP, and monthly performance reporting.

All other contract actions reported under PSC D302 were examined by reviewing SCC worksheets and contract documents. In each case, there were processes in place for adequate government oversight. The CFPB has continued to expand its COR workforce, and each office has at its disposal well-trained and experienced CORs. The work the CORs have performed has enabled the CFPB to ensure that no contractor is performing any inherently governmental work.

2.3 Special Interest Function Analysis

The Bureau's review team analyzed all contract actions for PSC D302. The analysis was completed using the protocols and methods outlined in Section 1.3, with special attention given to answering the five questions below.

1. Is the contractor performing a function that is "mission critical"?
2. Does the contract requirement include inherently governmental functions?
3. Does the contract requirement include unauthorized personal services either in the work statement or in contract operation?

4. In the case of work closely associated with inherently governmental functions, or non-competitive contracts, was special consideration given to using federal government employees?
5. Are sufficiently trained and experienced officials available within the Bureau to manage and oversee the contract administration function?

2.3.1 Are Contractors performing a function that is mission-critical?

CFPB continued its growth as an agency in FY 2013, and as such, many functions performed by contractors were mission critical. In the case of this analysis, all of the web design and development services provided by contractors were deemed mission-critical.

2.3.2 Do contractual requirements include inherently governmental functions?

The Bureau's contractual support requirements for web development and design did not include inherently governmental functions, and as such, there was little possibility of contractors performing inherently governmental work.

It should be noted that contractors were not authorized approvers regarding decisions to implement guidance and policies at the Bureau. The responsibility for enacting policies and procedures (to include final draft signatures) remained with the government workforce at the Bureau. In addition, the CFPB provided sufficiently trained officials that were able to oversee the contract administration function.

2.3.3 Do contractual requirements include unauthorized personal services?

The Bureau did not have any contracts or contractual requirements that included unauthorized personal services.

2.3.4 If performance is closely associated with inherently governmental functions, or in non-competitive acquisitions, was consideration given to utilizing federal employees prior to acquisition?

General consideration was given to fulfilling needs with existing government employees prior to synopsizing requirements. Due to CFPB's status as a relatively new agency, internal resources were not always available to fulfill every critical requirement. This often dictated procuring additional support resources from contractors. To guarantee compliance with OFPP Policy Letter 11-01, the Bureau has established a pre-acquisition service code determination checklist and approval worksheet. CFPB's Service Contract Coding Worksheet is required for any service contract over \$25,000, ensuring adequate review and documentation is complete to avoid any unnecessary "inherently governmental" contract work. This checklist mandates that prior to award, the requirement has been vetted and approved by both the Program Office and the Office of Human Capital personnel, certifying that both a balanced workforce approach and appropriate exercise of discretion has been provided. In addition, the checklist ensures proper staffing for oversight of closely related inherently governmental functions has been considered.

2.3.5 Are sufficiently trained and experienced officials available within the Bureau to manage and oversee contract administration functions?

The Bureau actively pursues and hires qualified and experienced employees to conduct its contract administration functions. Regarding performance related to the PSC studied in this report, the CORs, Contracting Officers (COs), and PMs involved in the twenty contract actions reviewed were sufficiently trained in effective management techniques and oversight of critical/non-critical support services. The CFPB expanded its COR workforce over the past year, ensuring that each program office has sufficiently trained employees capable of thorough and scrupulous contract administration. The CFPB currently has 142 certified CORs.

3. Business Process Improvement Opportunities

The CFPB's Office of Procurement has implemented strategies aimed at ensuring service contracts are managed effectively, and that the potential for inherently governmental work is minimized. These efforts have been categorized into two buckets:

1. Ongoing process improvements
2. Recommended process improvements

3.1 Ongoing Process Improvement

The Bureau recognizes the need to continue the forum for CORs/program managers to share not only best practices, but also items such as contract administration techniques and general questions. The Office of Procurement hosts monthly COR Roundtable Meetings aimed at maintaining and enhancing the professional development of staff and sharing ideas, values, and strategies across the COR workforce. These meetings have become a forum for discussing current topics, and have spawned individual training sessions in program offices throughout the Bureau. Training sessions include topics such as invoice review, contract administration, file maintenance, and accruals. In addition to the monthly roundtable meetings, the Office of Procurement offers formal COR training throughout the year covering topics from Source Selection, COR Refresher, Market Research, Developing a Performance Work Statement, Ethics in Federal Contracting, Inspection/Acceptance, Developing an Independent Government Cost Estimate, and Contract Changes.

Admittedly, the Bureau recognizes the staffing challenges present when standing up operations. The hiring of more internal resources has allowed the Bureau to grow the COR workforce to a current cohort of 142 certified professionals. In addition to COR development, the Office of Procurement has also established innovative, transparent, and robust internal monthly, quarterly, and annual reports that share contract information, contractor and COR-

driven reporting, obligation profiles, and objective summaries of service contractor performance for intra-agency consumption. Additional emphasis is paid to CORs' evaluation of contractor performance through an internally developed contractor performance report, which details monthly performance summary, quality of service, cost control, timeliness of performance, and business relations between the Bureau and the contractor.

3.2 Recommended Process Improvement

The recommendations below provide the Bureau with additional process improvement steps for the FY 2014 service contract inventory:

1. Continue COR awareness efforts, promoting aggressive training and encouraging COR Level II certification
2. Minimize Labor Hour and T&M agreements; maximize usage of Fixed Price agreements

4. Bureau Senior Management Officials

The senior management official accountable for the development of CFPB's policies, procedures, and training associated with OFPP Policy Letter 11-01 is the Senior Procurement Executive, David P. Gragan.

The official responsible for ensuring appropriate internal management attention is provided to the development and analysis of the service contract inventory for the Bureau is the Acting Chief Human Capital Officer, Analisa Archer.

The Chief Information Officer for CFPB is Ashwin Vasan.