



**U.S. Department of Justice
Analysis of FY 2011 Service Contract Inventory**

April 2013

Department of Justice (DOJ)
FY 2011 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 requires agencies to make the inventory and the analysis publicly available.

The inventory consists of all service contract actions exceeding \$25,000 that were awarded in a specific fiscal year. Additionally, only actions funded by the agency are to be included in the agency inventory. Actions made on behalf of another agency using that agency's funding are to be excluded.

Initial 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,¹ dated November 5, 2010. Those guidelines were updated December 19, 2011, available at <http://whitehouse.gov/sites/default/files/omb/procurement/memo/service-contract-inventory-guidance.pdf>.

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. The Department of Justice (DOJ) Service Contract Inventories were posted on the DOJ Chief Acquisition Officer Website at <http://www.justice.gov/jmd/pe/service-contract-inventory.html>.

Agency Mission:

DOJ enforces the law and defends the interests of the United States according to the law; ensures public safety against threats foreign and domestic; provides federal leadership in preventing and controlling crime; seeks just punishment for those guilty of unlawful behavior; and ensures fair and impartial administration of justice for all Americans. Currently DOJ has nine (9) bureaus that have missions that are closely linked to, and supportive of, the Department's core mission. Each bureau has a procurement office, which is led by a Procurement Chief. Following is a description of each DOJ bureau's mission:

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

- The **Federal Bureau of Investigation (FBI)** protects and defends the United States against terrorist and foreign intelligence threats; upholds and enforces the criminal laws of the United States; and provides leadership and criminal justice services to federal, state, municipal, and international agencies and partners;
- The **Federal Bureau of Prisons (BOP)** protects society by confining offenders in the controlled environments of prisons and community-based facilities that are safe, humane, cost-efficient, and appropriately secure, and that provide work and other self-improvement opportunities to assist offenders in becoming law-abiding citizens;
- The **United States Marshals Service (USMS)** protects the judiciary, witnesses, and court officers; detains and transports prisoners; apprehends fugitives; and manages the asset forfeiture program;
- The **Drug Enforcement Administration (DEA)** enforces the controlled substances laws and regulations of the United States (US) and brings to the criminal and civil justice system those organizations and principal members of organizations involved in the growth, manufacture, or distribution of controlled substances appearing in or destined for illicit traffic in the US; and recommends and supports non-enforcement programs aimed at reducing the availability of illicit controlled substances on domestic and international markets;
- The **Office of Justice Programs (OJP)** increases public safety and improves the fair administration of Justice across America through innovative leadership and grant programs;
- The **Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF)** is a unique law enforcement agency that protects our communities from violent criminal organizations, the illegal use and trafficking of firearms, the illegal use and storage of explosives, acts of arson and bombings, acts of terrorism, and the illegal diversion of alcohol and tobacco products;
- The **Federal Prison Industries (FPI)** employs and provides job skills training to the greatest practicable number of inmates confined within the Federal Bureau of Prisons; contributes to the safety and security of our Nation's federal correctional facilities by keeping inmates constructively occupied; provides market-quality products and services to government agencies; operates in a self-sustaining manner; and minimizes FPI's impact on private business and labor;
- The **Office of the Inspector General (OIG)** reviews the programs and personnel of the Federal Bureau of Investigation, the Drug Enforcement Administration, the Federal Bureau of Prisons, the U.S. Marshals Service, the Bureau of Alcohol, Tobacco, Firearms and Explosives, the United States Attorneys, and all other organizations in the Department to investigate violations of law and Department regulations for appropriate criminal prosecution, civil litigation, and administrative action; conducts, reports and follows up on financial audits of departmental organizations, programs, contracts, grants, and other agreements; and

- The **Justice Management Division (JMD)** provides advice to senior management officials relating to basic Department policy for budget and financial management, personnel management and training, procurement, equal employment opportunity, information processing, telecommunications, security, and all matters pertaining to organization, management, and administration. Procurement Services Staff is a component of the JMD and provides acquisition support to the Offices, Boards and Divisions (OBD). PSS primarily supports the Department's litigating components (Antitrust Division, Civil Division, Civil Rights Division, Criminal Division, Environment and Natural Resources Division, Tax Division and the U.S. Attorneys), but also provides support to other DOJ components.

Purpose:

The purpose of this report is to submit the DOJ analysis of its FY 2011 Service Contract Inventory Special Interest Functions, which were selected for study. This report summarizes:

- a) The special interest functions studied, the dollars obligated to those specific product and service codes (PSCs) in FY 2011, 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.

Analysis:

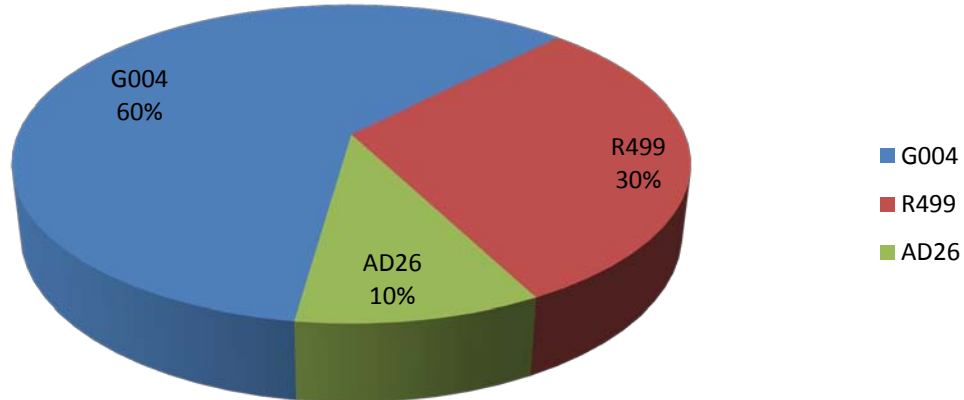
Special Interest Functions studied:

The DOJ selected the following three special interest Product or Service Code (PSC) functions from its FY 2011 Service Contract Inventory for further analysis:

PSC	Special Interest PSC Description	Total FY 2011 Dollars Obligated Per PSC
G004	SOCIAL REHABILITATION SERVICES	\$1,241,286,046
R499	OTHER PROFESSIONAL SERVICES	\$618,323,528
AD26	SERVICES (MANAGEMENT/SUPPORT)	\$203,461,898
Total:		\$,2063,071,472

These three PSCs were selected for further analysis from the FY 2011 Inventory because they were not included in the analysis of the FY 2010 Service Contract Inventory and they are the top three special interest functions listed on the FY 2011 Service Contract Inventory. They accounted for at least 57% of the DOJ service contract spend total and generated a total of 1,225 of the service contract actions reported in the Federal Procurement Data System (FPDS).

Special Interest PSCs Studied and Distribution as a Percentage of Total SI PSCs



Special Interest PSCs Studied as a Percentage of DOJ Total FY 2011 Contract Awards

PSC	Product and Service Code Descriptions	Total FY 2011 Obligations Per PSC	As a percentage of total FY 2011 Awards
G004	SOCIAL REHABILITATION SERVICES	\$1,241,286,046	18%
R499	OTHER PROFESSIONAL SERVICES	\$618,323,529	9%
AD26	SERVICES (MANAGEMENT SUPPORT)	\$203,461,898	3%

Additionally, PSC R499 Other Professional Services and AD26 Services (Management/Support) are functions where the government-wide potential for inappropriate use of high risk awards and the mix of contract labor and federal employees is a major concern.

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 2011 procurement

related assessments. In instances where procurement managers and acquisition professionals were interviewed, the actual contract file was often accessed. Additionally, FPDS reports were run to establish baseline data for FY 2011 as well as substantiate reported data. A minimum of 10% 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 total population of contracts reviewed during this analysis was 125. The actual number of contracts selected per the three special interest PSCs studied varied from 67 awards under PSC R499 (54%), 55 awards under PSC G004 (44%) and 3 awards under PSC AD26 (2%).

**Special Interest PSCs Studied as a Percentage of
DOJ Total FY 2011 Contract Actions**

PSC	Product and Service Code Descriptions	Total FY 2011 Actions Per PSC	As a percentage of total FY 2011 Actions
G004	SOCIAL REHABILITATION SERVICES	548	.49%
R499	OTHER PROFESSIONAL SERVICES	677	.40 %
AD26	SERVICES (MANAGEMENT SUPPORT)	30	.02%

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 are 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 contracts reviewed under the Special Interest Functions PSCs were personal service contracts. There are instances when the DOJ enters into personal services contracts. These contracts are used to procure such services as security guards and for the service of summons on complaints, subpoenas, and notices in lieu of services by United States marshals and deputy marshals. Individuals engaged under personal services contracts are not employees of the DOJ or any of its components. 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 is following the guidance provided by OFPP and the General Services Administration for the collection of additional data in FPDS to report whether an action is closely associated with inherently governmental functions. This activity is being monitored at the Department level and DOJ Procurement Offices are being made aware of changes made to the FPDS reporting requirement as they occur.

DOJ will continue to direct its procurement offices to maintain a clear separation between inherently governmental functions and contractor performed services. This issue has and will continue to 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 cybercrime. 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 2011 DOJ procurement offices were comprised of 2,664 acquisition professionals.

FY 2011 Breakout of DOJ Acquisition Professionals:	
<i>Profession:</i>	<i>Count:</i>
GS 1102 Contract Specialist	580
Contracting Officer’s Representatives (COTR)	1,952
Program and Project Managers (P/PM)	132

The DOJ Chief Acquisition Officer and Senior Procurement Executive strongly support the initiatives bureaus take to manage and strengthen their acquisition workforce. Each Bureau is authorized to implement the techniques best suited to meet their needs and mission.

In the past due to staffing shortages, some DOJ bureaus 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 2011, Contract Specialists experienced an attrition rate of 11.89% Department-wide. In FY 2011 four percent (4%) of DOJ Contract Specialists were eligible to retire. 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. Some of the most critical challenges experienced by DOJ in managing its acquisition workforce include:

- Limited 1102 population; and lack of qualified contracting professionals in the labor force; retention of existing acquisition workforce;
- Resource constraints, which impact the Departments ability to respond to data calls;
- Transfer of knowledge and skills from one generation of contracting professionals to the next generation;
- DOJ hiring freeze has inhibited the ability to hire qualified staff to fill critical resource gaps in mid and senior 1102 series; and customers are stretched thin which, in turn, places more demands on the 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 74% of DOJ’s acquisition workforce obtaining federal acquisition certification.

In summary, the DOJ continues to effectively award, manage, and oversee its service contracts and has the infrastructure and resources to ensure contractors are not performing inherently governmental functions. DOJ will continue to take actions to ensure contract labor in the PSC Special Functions categories of contracts is used in an effective manner.