

## **U.S. NUCLEAR REGULATORY COMMISSION**

### **FY 2021 SERVICE CONTRACT INVENTORY ANALYSIS**

#### **NRC RESPONSIBLE OFFICIALS**

Eleni Jernell, Director, Acquisition Management Division serving as the Senior Procurement Executive and the Head of the Contracting Activity, is the responsible official for acquisition policy, and Jennifer Golder, Chief Acquisition Officer (CAO), is the responsible party for the management of the service contract inventory and analysis process.

#### **BACKGROUND**

The Nuclear Regulatory Commission (NRC) submitted to the Office of Management and Budget (OMB) Product Service Code (PSC) DA10, entitled "IT and Telecom-Business Application/Application Development Software as a Service" as the special interest function selected to be analyzed for fiscal year 2021 (FY21).

This PSC (DA10) was selected because it was not the subject of a previous focused analysis, and it did appear in the NRC's Top 10 PSCs reported in FY21. The criterion for selecting this code is consistent with PSC selections made for prior fiscal year service contract inventory submissions to OMB. Accordingly, NRC focused its analysis of the service contract inventory on this special interest function.

#### **SCOPE OF REVIEW**

The FY21 service contract inventory was reviewed for special interest functions that required increased management attention due to possible over-reliance on contractor support for activities that may otherwise be performed by Federal employees. The special interest function selected for review is under the "D" of the Product Service Codes. Contracts within this code include support services, delivered as a service contract (SaaS or Subscription), involved with analysis, design, development, code, test, and release packaging services associated with application development projects, which could be considered closely associated with inherently governmental functions in accordance with OMB Policy Letter 11.01 entitled: "Performance of Inherently Governmental and Critical Functions."

As required by Sections 743(e)(3) and (4) of Division C of the Consolidated Appropriations Act of 2010, and Section C of the attachment to the guidance issued by OMB, a review of a representative sample (50%) of these contracts is required. In FY21, there were four contracts awarded under DA10. All four were awarded using full and open competition. The work under each of the contracts was reviewed to determine if it was performed satisfactorily, in terms of quality and timeliness of performance, and cost constraints. It was also analyzed to determine if the services should be considered for conversion to performance by NRC employees in accordance with insourcing guidelines.

## **SUMMARY**

NRC obligated approximately \$2,554,889.44 on contracts under PSC DA10 to support full and open competition/non-competition contracts for IT and Telecom-Business Application/Application Development Software as a Service. Of this total, \$1,414,394.50 was obligated on newly awarded contracts under PSC DA10. Obligations on the newly awarded contracts were approximately 55% of the total obligations for all contracts under DA10. Specifically, the four contracts that the NRC awarded in FY21 under this PSC, are as follows:

### AUGUST SCHELL ENTERPRISES, INC.

- This contract was awarded as Firm-Fixed Price. The obligated amount during FY21 was \$305,394.50

### AEGISNET INCORPORATED

- This task order was awarded as Labor Hours. The obligated amount during FY21 was \$133,000.00

### AEGISNET INCORPORATED

- This task order was awarded as Labor Hours. The obligated amount during FY21 was \$650,000.00

### AEGISNET INCORPORATED

- This task order was awarded as Labor Hours. The obligated amount during FY20 was \$326,000.00

The Contracting Officers (COs) for the awards listed above were consulted and interviewed to determine if the work under these contracts was performed properly in terms of quality and timeliness of performance and met budgetary constraints. In addition, the performance records for the awards listed above were also reviewed to ensure that the contractor has had successful performance and is providing quality and timely deliverables. According to the COs and the respective Contracting Officer's Representatives (CORs), they had no knowledge of, or information pertaining to, any negative performance matters or cost overruns for these contracts. This suggested that there were no significant performance problems or concerns. Any minor or less significant problems/concerns that were identified by the COs have been addressed by the contractor. In addition, based on the established criteria for classifying functions as inherently governmental, it was determined that the contractors were not performing inherently governmental functions.

## **ANALYSIS**

In accordance with Section 743 of Division C of the Consolidated Appropriations Act of 2010 and Appendix D of the OMB guidance, NRC analyzed the contracts in this category as follows (with NRC comments in bold type):

- (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. **No personal services contracts were identified during the analysis of this category of service contracts.**
- (ii) The agency is giving special management attention, as set forth in the Federal Acquisition Regulation (FAR) 37.114, to functions that are closely associated with inherently governmental functions. **FAR 37.114 is actively being followed during the performance of contracts awarded under this PSC DA10.**
- (iii) The agency is not using contractor employees to perform inherently governmental functions. **A review of NRC's FY21 Service Contract Inventory shows that there are no contractors being used 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 an inherently governmental function. **The contract scope is monitored by the CO to ensure that "scope creep" is not occurring, especially into inherently governmental functions through contract modifications. CORs are required to ensure that services provided and invoiced are in accordance with the scope of the contract, and that the work does not change or expand during performance to become inherently governmental.**
- (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. **There are sufficient Agency personnel in place to ensure that contractor employees are not performing critical functions to the point of affecting NRC's ability to perform its mission and operations.**
- (vi) There are sufficient internal agency resources to manage and oversee contracts effectively. **There are sufficient internal NRC resources in place to manage and oversee contracts effectively. However, the Agency continues to study ways in which to improve organizational effectiveness and contractor performance.**

## **CONCLUSION**

Based on the above analysis, the NRC has determined that it is not necessary to take any actions to convert these functions currently being performed by contractors under PSC DA10 to performance by NRC employees. Additionally, there are no planned or pending actions identified in previous inventories that require follow-up.