

White Paper: Service Contract Inventory Reporting Requirement – A Time for Change!

Introduction: The Smart Contracting Working Group within PSC’s Acquisition and Business Policy Council (ABPC) was formed to look for opportunities to improve the federal procurement system that would benefit both government and industry. Commonsense policies and consistently applied procedures for how and when the government acquires services can greatly enhance the effectiveness and efficiency of the federal acquisition system. In many areas, improvements to government business and buying policy—whether through statute, regulations, or agency guidance—will lead to positive outcomes that far exceed the magnitude of the changes themselves.

Rationale for Change: The regulatory bodies of our U.S. government have imposed ever-increasing reporting requirements on federal contractors seemingly without regard for the benefits to taxpayers and costs incurred in order for compliance to be achieved. While the White House, Congress and many agencies may look at a reporting requirement through the singular lens of meeting their own need for information, they apparently do not take into consideration the broad swath of mandatory reporting required by other agencies—or even within a single agency. Reporting of various information is said to be in the best interest of contractor “transparency” and ensuring compliance. While we agree with that goal, the reality is that many reporting requirements are duplicative, the information already exists within the government, or the information obtained is not being utilized. We seek a balance where the information desired is reasonable, valuable, useful, and beneficial to the served public, thereby achieving a return on the investment of resources required to obtain and report it. Reducing redundant reporting requirements, standardizing reporting processes, and leveraging existing information would enable more cost effective data collection. Each reporting request costs time and money to comply with, costs that are ultimately borne by the government via increased contractor labor rates and the expenditure of additional government man hours and resources. Furthermore, the government-unique reporting requirements are a non-value-added burden that will do little more than deter new commercial item providers from entering the federal market.

Background: Section 743 of Division C of the Consolidated Appropriations Act of 2010 (Pub. L. 111–117) required executive agencies covered by the Federal Activities Inventory Reform (FAIR) Act (Pub. L. 105–270), except DoD, to submit to the Office of Management and Budget (OMB) annually an inventory of activities performed by service contractors. DoD was exempted from this reporting requirement because 10 U.S.C. 2462 and 10 U.S.C. 2330a(c) already requires DoD to develop an annual service contract inventory.

In the House Report 111–366, it was acknowledged that, in connection with Section 743, **“(i)n the absence of complete and reliable information on the extent of their reliance on service contractors, federal agencies are not well-equipped to determine whether they have the right balance of contractor and in-house resources needed to accomplish their missions. This Section requires agencies to review the contents of the inventory and report on actions taken.”** The apparent reason for levying this requirement was to direct each covered executive agency to conduct a service contract inventory identifying contractor full-time equivalents and report on “actions taken to consider and convert functions from contractor to federal employee performance.”

It is now evident that, since 2010, federal agencies have not made progress in establishing internal processes or systems to accumulate or evaluate the data that would enable them to fulfill their reporting obligations, particularly for fixed price contracts in which a contractor headcount is irrelevant.

Rather, the responsibility was arbitrarily shifted to federal contractors and also makes them responsible for collecting and reporting the data on themselves and their subcontractors.

In order to meet the requirements of this law, the federal government implemented FAR clauses 52.204-14 and 52.204-15 making federal service contractors responsible for reporting on their direct labor hours and amounts they invoiced. Subsequent to accumulating the reported information, the head of each executive agency is then to submit to the Office of Management and Budget a report summarizing the actions taken to consider and convert functions from contractor to federal employee performance. The report was to be included as an attachment to the next annual inventory and made publicly available. Some executive agencies have provided a plan for analysis or a planned analysis. However, we believe this demonstrates that the resources expended meeting this mandatory reporting have been spent and continue to be spent by contractors with little or no benefit to the agencies or the public.

The reporting requirements ignore the fact that federal agencies, particularly DoD, capture annual data on their aggregate amount spent on services contracts as well as detailed data about subcategories of services contract spending. PSC contends that this data is far more useful for agency planning than contractor personnel headcounts. Furthermore, referring again to the government's desire to achieve the right balance of contractor and in-house resources needed to accomplish their missions, the intent of this reporting was to provide the government information giving them an actual inventory of activities performed by service contractors. Since contractors are required only to report dollars and the number of full time equivalents, there is no context for staff type, job or skill type, qualification or the like. In other words, it is unclear how the user agency would know whether the reported information was for an administrative position or for a highly experienced, seasoned professional, therefore presumably leaving the user(s) of this information unable to determine whether or not they are meeting the intended goals of the requirement.

The December 31, 2013 Federal Register stated the federal government's determination that "two hours is the estimated time to report per contract, one hour to calculate the data and one hour to enter the data at www.sam.gov." In our view, this is severely understated. This estimate does not take into consideration the initial investments in a contractor's staff, system(s), or any recurring costs for system/process maintenance and updates. For subcontracts containing the relevant FAR clauses, subcontractors must report their information directly to their prime contractors. Prime contractors must accumulate, validate, and report the summarized data (e.g. prime plus subcontractors) directly to the government database. This requirement places additional compliance burdens on contractors and subcontractors, and the cost of gathering the information is far greater than current government estimates because the hours and costs associated with compliance are compounded throughout the covered supply chain.

For example, a mid-size company could spend in excess of 100 man hours just for understanding the requirement, disseminating information to appropriate staff, setting up and adjusting a process, updating and testing systems, and developing and documenting an ongoing procedure for reporting. Ultimately, there would be ongoing effort to collect, check and maintain prime contractor and subcontractor data, followed by actual reporting and potential follow-up communication with Contracting Officers. In 2014 comments to the Department of Defense on DoD's review of statutory and regulatory requirements and the accompanying compliance burden for industry, members of the Council of Defense and Space Industry Associations (CODSIA), which PSC co-chairs, estimated the cost

per company to comply with this requirement at between \$10,000-\$20,000 per year.¹ This estimate will likely increase as the change in thresholds for firm fixed price contracts grandfathers those into the required reporting realm, as well. For very large contractors with multiple prime contracts, these costs are likely to be even higher. Conversely, the costs for smaller primes, while less in absolute terms, could be much more difficult for such companies to bear. While not required to report directly to the government, subcontractors must report to their primes, and incur costs in doing so that are ultimately passed up through the supply chain to primes and government customers. Taken in aggregate, eliminating or streamlining this requirement could result in significant cost savings for both industry and government when multiplied across contractors.

Proposed solution(s): Based on ineffective outcomes to date and the lack of any perceptible value for the agencies or the public, we recommend that Congress repeal the mandate for service contract inventories for both DoD and the civilian agencies and that the FAR Council subsequently repeal the FAR contract clauses at FAR 52.204-14 and FAR 52.204-15. Since detailed information is already reported by the federal government through various other means (e.g. contract deliverable cost/hour reports and invoices), the federal agencies are capable of conducting analyses and making total workforce management decisions using information already available or by improving/updating their own internal systems, tools, technologies and techniques. Doing so should result in savings in the millions of dollars and liberate additional contractor and government resources to focus on what matters most—achieving the missions of the federal government and serving the taxpayer.

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¹ Available at:

https://www.pscouncil.org/PolicyIssues/AcquisitionPolicy/AcquisitionPolicyIssues/CODSIA_Comments_on_DPAP_Review_of_Statutory_and_Regulatory_Impacts.aspx