



Memorandum from the Office of the Inspector General

December 2, 2022

Laura J. Campbell

REQUEST FOR FINAL ACTION – AUDIT 2022-17347 – CONSULTING CONTRACTS

Attached is the subject final report for your review and final action. Your written comments, which addressed your management decision and actions planned or taken, have been included in the report. Please notify us when final action is complete. In accordance with the Inspector General Act of 1978, as amended, the Office of the Inspector General is required to report to Congress semiannually regarding audits that remain unresolved after 6 months from the date of report issuance.

If you have any questions or wish to discuss our findings, please contact Maria V. Edwards, Senior Auditor, at (865) 633-7380 or Rick C. Underwood, Director, Financial and Operational Audits, at (423) 785-4824. We appreciate the courtesy and cooperation received from your staff during the audit.

David P. Wheeler
Assistant Inspector General
(Audits and Evaluations)

MVE:KDS

Attachment

cc (Attachment):

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OIG File No. 2022-17347



Office of the Inspector General

Audit Report

To the Vice President,
Supply Chain

CONSULTING CONTRACTS

Audit Team
Maria V. Edwards
Ala H. McAfee

Audit 2022-17347
December 2, 2022

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Audit 2022-17347 – Consulting Contracts

EXECUTIVE SUMMARY

Why the OIG Did This Audit

We included an audit of the Tennessee Valley Authority's (TVA) consulting contracts in our annual audit plan due to significant spendⁱ in this area as well as the conflict of interest risks associated with this type of contract. Our audit objective was to determine if proper controls are in place to identify consulting contracts at TVA and limit the risks of conflicts of interest. Our audit scope included TVA consulting contracts with expenditures during the period October 1, 2017, through February 28, 2022.

What the OIG Found

We found TVA's controls for identifying consulting contracts and limiting the risks of conflicts of interest were not operating effectively. In addition, we found the organizational conflict of interest (OCI) and Business Ethics and Compliance Requirements clauses that should be included in all TVA contracts are not consistently incorporated into consulting contracts. We also found no guidance for TVA Supply Chain personnel and suppliers that addressed (1) how to identify actual or potential OCIs or (2) how these OCIs are to be mitigated, resolved, or avoided during contract performance.

What the OIG Recommends

We made four recommendations to TVA management to strengthen controls for identifying consulting contracts at TVA and limiting and mitigating the risks of conflicts of interest associated with those contracts.

TVA Management's Comments

In response to our draft report, TVA management provided actions they plan to take to address each of our recommendations. See Appendix B for TVA management's complete response.

ⁱ Our audit identified 129 consultants that were paid approximately \$193.4 million for their services between October 1, 2017, and February 28, 2022.

BACKGROUND

The Tennessee Valley Authority (TVA) Standard Programs and Processes (SPP) 04.002, *Procurement of Products and Services*, defines a consultant as an individual or firm that provides independent advice and assistance to TVA often on management, policy, and programmatic issues. It further states the objective(s) of a consulting services engagement is generally to obtain independent advice on management, policy, and programmatic issues. Examples of consulting services include:

- Obtaining outside points of view to avoid too limited judgment on critical issues.
- Obtaining advice regarding developments in industry, university, or foundation research.
- Obtaining opinions, special knowledge, or skills of noted experts.
- Enhancing the understanding of and develop alternative solutions to complex issues.
- Developing corporate or business unit strategy.

Additionally, TVA-SPP-04.002 states the following are not considered consulting services:

- Routine information technology services unless they are an integral part of a contract for the acquisition of advisory and assistance services.
- Architectural and engineering services.
- Technical experts, used to provide plant specific or specialized technical capability.
- Research on theoretical mathematics and basic research involving medical biological, physical, social, psychological, or other phenomena.
- Technical and skills training.
- Outside recruitment services.
- Outside legal services.

Supply Chain SPP-04.101, *Review and Approval of Contract Actions*, states a consulting contract is a contract with an individual or a firm that provides advisory and assistance services to help TVA achieve maximum effectiveness or economy in operations, where TVA is primarily seeking advice, rather than having work performed. The focus of consulting services is business management advice, rather than technical expertise.

TVA's definitions and prescribed use of consultants is consistent with the Federal Acquisition Regulation (FAR), which is the primary regulation for use by all

executive agencies in their acquisition of supplies and services with appropriated funds. While TVA is a federally owned corporation and is not required to follow the FAR, TVA, as a best practice, has incorporated some of the guidance into its acquisition process for consulting contracts.

The FAR states one area where organizational conflict of interest (OCI) is more likely to occur is in contracts involving consultant or other professional services. An OCI can influence the competitive procurement process, increase cost, and delay the procurement of goods and services. According to the FAR, an OCI arises when other activities or relationships with other persons, make a person unable or potentially unable to render impartial assistance or advice to the government, or the person's objectivity in performing the contract work is or might be otherwise impaired, or a person has an unfair competitive advantage.

According to TVA Office of the General Counsel personnel, TVA reviews the Government Accountability Office bid protests, which are a challenge to the terms of a solicitation or the award of a federal contract. The bid protests serve as guidance for handling OCIs at TVA if a supplier were to allege an OCI had occurred. The Government Accountability Office categorizes OCIs into three specific types:

1. Unequal access to information – these conflicts exist when a supplier has access to nonpublic information as part of its performance of a government contract and when that information may provide the firm a competitive advantage in a later competition for a government contract.
2. Biased ground rules – these conflicts arise when a supplier, as part of its performance of a government contract, has in some sense set the ground rules for the competition for another government contract by, for example, writing or providing input into the specifications or statement of work and could skew the competition in favor of itself.
3. Impaired objectivity – these conflicts arise where a supplier's judgment and objectivity may be impaired because the supplier is able to evaluate its own work performed under another contract or make judgements or recommendations that would directly influence its own well-being.

The overarching implication of these types of OCI is the potential for infractions increase when suppliers are in a position to evaluate their own performance and/or recommend they supply additional products or services. OCIs can reduce the quality and value of services received because consultants with OCIs may have competing loyalties that could undermine the quality of their advice to TVA. Additionally, OCIs are more likely to occur in consulting contracts, which often provide a broad range of services.

In addition to the risk of OCI infractions, personal conflicts of interest are also a risk to TVA on consulting contracts. The FAR defines a personal conflict of

interest as a situation in which a covered employee¹ has a financial interest, personal activity, or relationship that could impair the employee's ability to act impartially and in the best interest of the government when performing under the contract. The FAR states personal conflicts resulting from a covered employee having a financial interest may occur from consulting relationships. According to TVA's Supplier Code of Conduct, each supplier must avoid and disclose potential personal conflicts of interest on the part of TVA employees with whom the supplier deals. TVA employees generally may not participate (by advice, decision, or otherwise) in contracts affecting the financial interests of the employee or an entity with which the employee is linked.

Internal Control

TVA's Supply Chain maintains supplier records electronically in the Maximo system. Consulting contracts are identified by commodity codes selected by TVA personnel when the purchase requisition/request for proposal for the contract is first entered in the Maximo system. Reports using the consulting commodity codes can be generated to identify a list of consultants.

The primary control identified by TVA for preventing OCIs and personal conflicts of interest are standard ethics-related provisions that are to be included in all contracts. This includes an OCI clause requiring suppliers to report potential OCIs to TVA and a Business Ethics and Compliance Requirements clause requiring suppliers to report personal conflicts of interest to the Office of the Inspector General. TVA also relies on employees to disclose personal conflicts of interest with suppliers. According to the TVA Code of Conduct, TVA employees are required to disclose actual or apparent personal conflicts of interest.

OBJECTIVE, SCOPE, AND METHODOLOGY

We included an audit of TVA's consulting contracts in our annual audit plan due to significant spend by TVA in this area as well as the conflict of interest risks associated with this type of contract. Our audit objective was to determine if proper controls are in place to identify consulting contracts at TVA and limit the risks of conflicts of interest. Our audit scope included TVA consulting contracts with expenditures during the period of October 1, 2017, through February 28, 2022. A complete discussion of our audit objective, scope, and methodology is included in the Appendix.

FINDINGS

We found TVA's controls for identifying consulting contracts and limiting the risks of conflicts of interest were not operating effectively. In addition, we found the OCI and Business Ethics and Compliance Requirements clauses that should be

¹ A covered employee is an individual who performs an acquisition function closely associated with inherently governmental functions and is (1) an employee of the contractor or (2) a subcontractor that is a self-employed individual treated as a covered employee of the contractor.

included in all TVA contracts are not consistently incorporated into consulting contracts. We also found no guidance for TVA Supply Chain personnel and suppliers that addressed (1) how to identify actual or potential OCIs or (2) how these OCIs are to be mitigated, resolved, or avoided during contract performance. The following provides a detailed discussion of our findings.

TVA CONTROLS FOR IDENTIFYING CONSULTING CONTRACTS WERE NOT OPERATING EFFECTIVELY

We found 69 percent of suppliers coded as consulting in the Maximo system were incorrectly coded because they did not meet TVA's definition of a consultant. TVA Supply Chain has designated a contracting officer who is responsible for managing consulting contracts and providing formal contractual direction to suppliers for all matters relating to the contract terms. The contracting officer provided a list of 448 suppliers that TVA identified as consultants. We reviewed the 448 consultants and determined only 137 (31 percent) met TVA's definition of a consultant.

We also reviewed a Maximo supplier payment report where the supplier's name and description of services indicated whether they might provide consulting type services to identify any additional suppliers that met TVA's definition of a consultant. We identified four additional consultants who were not coded as a consultant in the Maximo system. Of the 141 total consultants identified, 129² were paid approximately \$193.4 million for their services between October 1, 2017, and February 28, 2022³. See Table 1 for an annual breakdown of spend for consulting contracts.

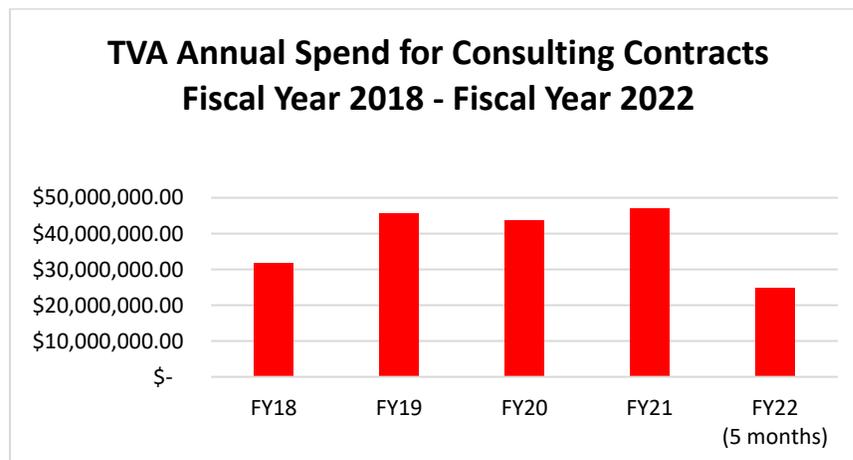


Table 1

² Although we identified 141 consultants, we noted TVA had no spend with 12 consultants during our audit period, bringing the total number of consultants with TVA spend to 129.

³ Some consultants provide mixed-use services such as routine information technology services in addition to consulting services. The annual spend includes all services provided by consultants, as the risk of an OCI is greater if a consultant is providing a wide range of services.

TVA Supply Chain relies on TVA personnel to code contracts to the correct commodity codes. However, we found no guidance on (1) what commodity codes should be used for consulting contracts based on TVA's definition of consultants and (2) the importance of properly coding consulting contracts. Due to the heightened risk with consulting contracts, TVA management should strengthen controls for properly identifying consulting contracts.

TVA CONTRACTS MISSING CONFLICT OF INTEREST PROVISIONS

We found the OCI and Business Ethics and Compliance Requirements clauses that should be included in all TVA contracts are not consistently incorporated into consulting contracts. The primary control identified by TVA personnel for preventing OCIs and personal conflicts of interest are standard ethics-related provisions that are required for all TVA contracts. According to TVA Supply Chain personnel, consulting contracts are to be handled the same as other procurement contracts.

TVA's OCI clause requires consultants to disclose when (1) a consultant is unable or potentially unable to render impartial advice or assistance to TVA, (2) the consultant's objectivity in performing work under a TVA contract is or might be otherwise impaired, or (3) the consultant has an unfair competitive advantage. TVA's Business Ethics and Compliance Requirements clause requires timely written disclosure to the Office of the Inspector General whenever the contractor has credible evidence that a principal, employee, agent, or subcontractor of the contractor has committed a violation of Federal criminal law involving a personal conflict of interest.⁴

We tested a judgmental sample of 46 consulting contracts to determine if they included the OCI clause and the Business Ethics and Compliance Requirements clause and, as shown in Table 2 below, found (1) 21 contracts did not include the OCI clause and (2) 32 contracts did not contain the Business Ethics and Compliance clause:

Contracts Missing Clauses				
Clause	Number of Contracts	% of total	Contract Value	Contract Spend During Audit Period
OCI	21	46%	\$121,137,984	\$68,919,583
Business Ethics and Compliance	32	70%	\$160,312,884	\$73,515,054

Table 2

Additionally, we found for the 25 instances when an OCI clause was included in a contract, the language used in the OCI clause was inconsistent. The Business

⁴ This clause is consistent with FAR 52.203-13. The clause also requires each vendor to have a written disclosure of a violation of Federal criminal law involving fraud, bribery, or gratuity violations found in Title 18 of the United States Code or a violation of the civil False Claims Act (31 U.S.C. §§ 3729-3733).

Ethics and Compliance clause language was consistent in the 14 instances where it was included.

The importance of including and enforcing the OCI clause in consulting contracts is demonstrated in a report from the United States House of Representatives, Committee on Oversight and Reform. The Committee released an Interim Majority Staff Report on a consulting firm's conflicts of interest on April 13, 2022. The Committee's investigation uncovered significant, years-long conflicts of interest at a consulting firm, resulting from its work for the federal government at the same time that it was advising opioid manufacturers. Documents showed that one opioid manufacturer explicitly tasked the consulting firm with providing advice on how to influence the regulatory decisions of the U.S. Food and Drug Administration, another client of the consulting firm. The Committee's investigation uncovered evidence that the consulting firm sought to use its government connections to solicit private sector business. The Committee has also obtained evidence suggesting the consulting firm sought to influence government officials to advance the interests of its private sector opioid clients.

NO GUIDANCE PROVIDED FOR ADDRESSING ORGANIZATIONAL CONFLICTS OF INTEREST

We found no guidance for TVA Supply Chain personnel or suppliers addressing OCIs. Specifically, our review of TVA-SPP-04.002 and Supply Chain SPP-04.101 found no mention of OCIs or guidance for Supply Chain personnel that address (1) how to identify actual or potential OCIs or (2) how these OCIs are to be either mitigated, resolved, or avoided during contract performance. In addition, neither of these SPPs had any guidance that provides language to use when including the OCI clause in TVA contracts.

Similarly, while TVA's Supplier Web site⁵ lists the OCI clause as a standard contract clause, there is no example of the clause provided, even though there are examples given of several other clauses routinely included in TVA contracts. In addition, the TVA Supplier Web site does not provide guidance to help TVA personnel or suppliers identify, report, and/or mitigate an OCI or discuss consequences for consultants if a potential OCI is identified and not mitigated.

If consultants are aware of the potentially severe consequences (i.e., contract termination) for failure to disclose an actual or potential OCI, they will more likely take affirmative steps to identify possible conflicts of interest and, to the best of their ability, develop mitigation plans. Mitigation plans provide reasonable assurance that consultants are independent and performing work free of biases from financial, contractual, organizational, or other interests.

During the course of our fieldwork, TVA updated the Supplier Code of Conduct on the TVA Supplier Web site to provide additional information, including

⁵ TVA's Supplier Web site provides suppliers with TVA's expectations and guidance for conducting business, including standard clauses and examples of contract language.

examples of the importance of disclosing and avoiding OCIs, which may include submitting a mitigation plan.

RECOMMENDATIONS

We recommend the Vice President, Supply Chain:

1. Correct the commodity codes for those contracts identified as improperly coded during the audit.

TVA Management's Comments – In response to our draft report, TVA management stated Supply Chain will review the list of improperly coded commodity codes identified and attempt to make corrections. See Appendix B for TVA management's complete response.

2. Develop procedures to ensure consulting commodity codes are correctly assigned to contracts in Maximo in accordance with TVA's definition of a consultant.

TVA Management's Comments – In response to our draft report, TVA management stated Supply Chain will issue a Keeping Current article to all Supply Chain Contracting Personnel instructing validation of commodity codes before purchase orders are issued. See Appendix B for TVA management's complete response.

3. Reinforce the inclusion of the OCI clause and Business Ethics and Compliance Requirements clause in consulting contracts and determine language to be used in the OCI clause.

TVA Management's Comments – In response to our draft report, TVA management stated Supply Chain will (1) seek inclusion of OCI language in the new versions of the Under \$700K terms and condition for services and materials and (2) partner with TVA Office of General Counsel to conduct OCI and Business Ethics and Compliance training to all Supply Chain Contracting Personnel. See Appendix B for TVA management's complete response.

4. Update TVA policies and procedures to clarify how to identify and mitigate OCIs.

TVA Management's Comments – In response to our draft report, TVA management stated Supply Chain will incorporate a section in the Supply Chain Buyers Guide on identifying and mitigating OCIs. See Appendix B for TVA management's complete response.

OBJECTIVE, SCOPE, AND METHODOLOGY

Our audit objective was to determine if proper controls are in place to identify consulting contracts at the Tennessee Valley Authority (TVA) and limit the risks of conflicts of interest. Our audit scope included TVA consulting contracts with spend occurring during the period of October 1, 2017, through February 28, 2022. To achieve our objective we:

- Reviewed TVA Standard Programs and Processes 04.002, *Procurement of Products and Services*, and Supply Chain Standard Programs and Processes 04.101, *Review and Approval of Contract Actions*, to identify TVA's definition of a consultant.
- Reviewed Federal Acquisition Regulation and Government Accountability Office bid protests to identify best practices applicable to TVA's administration of consulting contracts and prevention of conflicts of interest.
- Obtained additional organizational conflict of interest (OCI) guidance and best practices for identification and mitigation strategies from internet searches.
- Obtained TVA supplier guidance from TVA's SharePoint and Supplier Web site, including TVA's Supplier Code of Conduct to understand TVA's process for handling consulting contracts and OCIs.
- Obtained a listing of 448 suppliers coded as consultants from TVA Supply Chain and verified for reliability and completeness. We determined 137 suppliers met TVA's definition of a consultant. We identified an additional four consultants by reviewing a Maximo supplier payments report. From the listing of 141 consultants, we selected a judgmental sample of 46 contracts to test for inclusion of the OCI and Business Ethics and Compliance Requirements clauses. This selection was based on the top 10 consultants with the highest contract value as well as consultants with a greater risk of OCIs due to multiple contracts, standalone purchase orders, and potential duplicate consultants. Since this was a judgmental sample, the results of the sample cannot be projected to the population.
- Interviewed TVA Supply Chain personnel to (1) determine the primary controls for preventing conflicts of interest, (2) how consulting contracts are identified, and (3) request additional supporting documentation and clarification of coding of TVA consultant contracts.
- Interviewed TVA General Counsel personnel to determine how OCIs are identified and mitigated.
- Obtained an understanding of internal controls associated with consulting contracts. In planning and performing our audit, we identified the use of the correct commodity codes for consulting contracts and the inclusion of the OCI and Business Ethics and Requirements clauses in the contract as significant to the audit objective. Our primary method for testing the operating effectiveness of this control was reviewing consulting contracts to determine whether consulting commodity codes were correctly applied according to TVA's

definition of consulting and reviewing the contract for the OCI and Business Ethics and Requirements clauses. However, because our review was limited to these aspects of internal control, it may not have disclosed all internal control deficiencies that may have existed at the time of this audit. Any internal control deficiencies we found are discussed in this report.

We conducted this performance audit in accordance with generally accepted government auditing standards. Those standards require we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

November, 18, 2022

David P. Wheeler, WT 2C-K

RESPONSE TO REQUEST FOR COMMENTS AND MANAGEMENT DECISION - DRAFT
AUDIT 2022-17347 – CONSULTING CONTRACTS

Reference: Memorandum dated October 19, 2022

Supply Chain has reviewed the report and provides the following comments and management decision:

CORRECTION OF COMMODITY CODES

Supply Chain will review the list of improperly coded commodity codes identified in this Audit and attempt to make corrections. Due to system limitations, corrections to all discrepant commodity codes may not be possible.

VALIDATING COMMODITY CODES

Supply Chain will issue a Keeping Current article to all Supply Chain Contracting Personnel instructing validation of commodity codes before purchase orders are issued.

APPROPRIATE CLAUSE INCORPORATION

Supply Chain will seek inclusion of OCI language in the new versions of the Under \$700K terms and condition for services and materials. Supply Chain will partner with TVA OGC to conduct OCI and Business Ethics & Compliance training to all Supply Chain Contracting Personnel. TVA OGC has provided guidance that Clause 1718 Business Ethics and Compliance Requirement should be present in contracts greater than \$5M and Clause 1720 Organizational Conflicts of Interest should be present in contracts over \$100K or in any contract where TVA believes an OCI may arise.

IDENTIFYING AND MITIGATING OCIS

Supply Chain will incorporate a section in the Supply Chain Buyers Guide on identifying and mitigating OCIs.

CONCLUSION

TVA takes very seriously its commitment to be good stewards of resources. As such, TVA appreciates the Office of Inspector General helping us identify areas where we can improve our processes, and procedures. We are committed to a culture of continuous improvement at TVA and this is another opportunity for us to improve.

David P. Wheeler
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We would like to thank Rick Underwood, Maria Edwards, Ala McAfee and you for the professionalism and cooperation in conducting this audit. If you have any questions please contact Laura Campbell at (423) 751-2129.



Laura J. Campbell
Vice President
Supply Chain
BR 5A-C

MVE:KDS:MDW
Attachment

cc (Attachment): Concurrence Sheet
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Mary C. Corbitt, MR 3K-C
James R. Dalrymple, BR 4D-C
Samuel P. Delk, BR 5A-C
David B. Fountain, MR 5F-C
Rachel M. Johnson, WT 3A-K
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