Background

Section 743 of Division C of the FY 2010 Consolidated Appropriations Act, P.L. 111-117, requires civilian agencies subject to the Federal Activities Inventory Reform Act of 1998 (Public Law 105-270; 31 U.S.C. 501) to prepare an annual inventory of their service contracts. The Office of Management and Budget (OMB), Office of Federal Procurement Policy (OFPP), issued a memorandum to Chief Acquisition Officers and Senior Procurement Executives on October 17, 2016, to provide revised guidance to Federal agencies on preparing their Fiscal Year (FY) 2016 Service Contract Inventories.

OMB’s Memorandum tasked agencies with conducting a meaningful analysis of the data in their inventories for purposes of determining whether contract labor is being used in an appropriate and effective manner, and if the mix of Federal employees and contractors in the agency is effectively balanced. Additionally, OMB changed the reporting threshold from $25,000 to $150,000. During FY 2016, the Federal Maritime Commission (FMC) awarded only one contract over $150,000. The Commission’s review is summarized below.

Methodology

As prescribed in the memorandum, OMB advised that agencies give priority consideration to Special Interest Functions (SIFs), which are those that require increased management attention due to heightened risk of workforce imbalance. OMB’s team reviewed the Product Service Codes (PSCs) and SIFs representing the highest dollar volume PSCs included in the Federal Procurement Data System – Next Generation (FPDS-NG). The following PSC is being reported to OMB as an FMC SIF:

<table>
<thead>
<tr>
<th>PSC</th>
<th>PSC Description</th>
<th>Number of Contracts FY 2016 for PSC</th>
<th>Total Contracting Dollars FY 2016 for PSC</th>
</tr>
</thead>
<tbody>
<tr>
<td>D313</td>
<td>IT and Telecom Computer Aided Design/Computer Manufacturing</td>
<td>1</td>
<td>$401,577</td>
</tr>
</tbody>
</table>

This PSC was selected because it may be identified as closely related to the work of government employees and has the potential for inherently governmental work to be performed by contractors.

Agency Analysis of Contracts

One service contract, totaling $401,577 was reviewed. The FMC has issued no contracts for personal services, and the agency is giving attention, as set forth in FAR 37.114, to avoid contracting for functions closely associated with inherently governmental functions. Contracts in the SIF areas
represented $401,577.00 of the total contract obligations of the FMC for FY 2016. The analysis will help the FMC to manage these services for performance and cost efficiencies. The FMC will evaluate the extent to which contract awards within this function leverage existing Federal or Departmental enterprise contract vehicles or present future opportunities for strategic sourcing. The FMC will specifically assess effective balancing of contracted and government resources for these efforts.

**Contracted Services and Agency Objectives**

The mission of the FMC is “to foster a fair, efficient and reliable international ocean transportation system and to protect the public from unfair and deceptive practices.”

The FMC ensures competitive and efficient ocean transportation services for the shipping public by:

- Reviewing and monitoring agreements among ocean common carriers and marine terminal operators (MTOs) serving the U.S. foreign oceanborne trades to ensure that they do not cause substantial increases in transportation costs or decreases in transportation services;
- Maintaining and reviewing confidentially filed service contracts and Non-Vessel-Operating Common Carrier (NVOCC) Service Arrangements to guard against detrimental effects to shipping;
- Providing a forum for exporters, importers, and other members of the shipping public to obtain relief from ocean shipping practices or disputes that impede the flow of commerce;
- Ensuring common carriers’ tariff rates and charges are published in private, automated tariff systems and electronically available;
- Monitoring rates, charges, and rules of government-owned or -controlled carriers to ensure they are just and reasonable; and
- Taking action to address unfavorable conditions caused by foreign government or business practices in U.S. foreign shipping trades.

The FMC protects the public from financial harm, and contributes to the integrity and security of the U.S. supply chain and transportation system by:

- Helping resolve disputes involving shipment of cargo, personal or household goods, or disputes between cruise vessel operators and passengers;
- Investigating and ruling on complaints regarding rates, charges, classifications, and practices of common carriers, MTOs, and Ocean Transportation Intermediaries (OTIs), that violate the Shipping Act;
- Licensing shipping companies with appropriate character and adequate financial responsibility;
- Identifying and holding regulated entities accountable for mislabeling cargo shipped to or from the United States; and
• Ensuring that cruise lines maintain financial responsibility to pay claims for personal injury or death, and to reimburse passengers when their cruise fails to sail.

The FMC also recognizes the critical importance of providing effective, performance-oriented management. The FMC ensures the protection of resources allocated to its mission through strategic plans and measurement mechanisms for human capital, information technology, and financial management at the Commission.

The contract for the maintenance of large IT projects described in this Service Contract Inventory (SCI) was put into place in order to aid in the fulfillment of the FMC’s Strategic Goals and Strategies. Due to historical budgetary constraints, the FMC had been unable to migrate from its legacy applications and aging architecture. While the Commission’s budget remains lean, this contract will aid the FMC’s internal applications developer in establishing a more robust IT infrastructure to both enhance cybersecurity efforts and better manage current and future business demands to support key Commission processes.

Agency Findings

One contract for services (the maintenance of large IT projects) totaled $401,577 in obligations.

A. Currently, the FMC is implementing OMB Policy Letter 11-01, Performance of Inherently Governmental and Critical Functions. In accordance with the Policy Letter, an Agency Designee has been appointed to conduct reviews of all actions over the simplified acquisition threshold. The designee is the Contracting Officer, and all FY16 actions to date have been reviewed in accordance with the guidance.

B. The FMC has placed emphasis on awarding contracts to underrepresented socioeconomic categories where feasible, and will continue to do so. Also, contractors will not be utilized to perform inherently governmental functions, but to meet agency needs for skills and services not available through current staff.

C. The following characteristics were noted for the contract reviewed:

i. The agency is not using contractor employees to perform inherently governmental functions as outlined in FAR Subpart 7.5. The FMC is giving special management attention, as set forth in FAR 37.114, to functions that are closely associated with inherently governmental functions. This review assessed the extent to which functions might be closely associated with inherently governmental functions, and identified internal controls, including governance and internal reviews, to ensure functions that are closely associated with inherently governmental functions are given special attention. Although the functions are not inherently governmental, contractors’ employees may work in a situation that permits or might permit access to confidential business information or other sensitive information, or may provide support for human resources management. The FMC depends on well-trained Contracting Officer Representatives (CORs) to ensure that work performed by contractors does not expand into inherently governmental functions during the performance of a contract.
ii. 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 FMC has utilized acquisition personnel to provide training to improve understanding of the necessary oversight to ensure that work being performed by contractors has not changed or expanded during performance to become an inherently governmental function.

iii. The agency is not using contractor employees to perform critical functions in a manner that could affect the ability of the agency to maintain control of its mission and operations. The contract was assessed based on the complexity of the functions, impact of stop-work, and the risk of the functions. Based on this assessment, it is our determination that the FMC used contractor support to enhance the agency’s mission, and did not use contractor employees to perform critical functions which would adversely impact the agency’s ability to maintain control of its mission.

iv. Based on the number of contractors compared to the number of Federal workers, and Federal workers providing oversight and management of service contracts, the FMC has sufficient internal resources to manage and oversee contracts effectively. The availability of appropriately trained and experienced CORs and contract staff was also assessed as sufficient.

v. The Contracting Officer identified no contract as being poorly performed because of excessive costs or inferior quality.

**Responsible Officials**

The senior agency management official accountable for the development of procurement policies, procedures, and training associated with OFPP Policy Letter 11-01 addressing the performance of inherently governmental and critical functions is Karen Gregory, Managing Director.

The official responsible for ensuring appropriate internal management attention is given to the development and analysis of service contract inventories is James Nussbaumer, Assistant Managing Director for Administration.

/s/
Karen Gregory  February 21, 2017
Managing Director

/s/
Jim Nussbaumer  February 21, 2017
Assistant Managing Director for Administration