

**Audit of the Federal Maritime
Commission's Budget Execution
Processes, Procedures and
Policies for Fiscal Year 2007
A08-06**



September 2008



FEDERAL MARITIME COMMISSION

800 North Capitol Street, N.W.
Washington, DC 20573

September 10, 2008

Office of Inspector General

TO: Anthony Haywood, Deputy Director
Office of Administration

FROM: Adam R. Trzeciak
Inspector General

SUBJECT: Transmittal of OIG Audit Report

Attached for your information is a recently completed Office of Inspector General (OIG) report entitled *Performance Audit of the Federal Maritime Commission's Budget Execution Processes, Procedures and Policies for Fiscal Year 2007 (A08-06)*. The objectives of the audit were to determine whether (i) the agency followed spending priorities and limitations provided to it by Congress, OMB and the Commission, (ii) budgetary controls over obligations were in place and followed, and (iii) the agency complied with laws, regulations and internal policies and procedures in executing its budget.

The OIG found that the agency generally follows budget practices and procedures used by other agencies in the Federal government. Budget staff stayed within the appropriation and submitted formal reprogramming requests to the Appropriations Committees when required to do so. Staff kept the Commission apprised of funds that became available throughout the year (i.e., changed priorities and program savings) and presented alternative spending options to meet previously unfunded needs. By the end of the year, the agency reallocated approximately \$1.3 million.

On the other hand, some of the FY 2007 appropriated funds were used for purposes other than what the Appropriations Committees approved them for. This is not unusual. The Committees have thresholds for the movement of funds – which the agency exceeded only once. In this instance, the agency informed the Appropriations Subcommittees of its intentions. But while not required to communicate all modifications to its spending estimates, the OIG believes it is a good practice to informally discuss significant changes with Committee – and OMB – staff, before these changes are implemented. The OIG identified numerous examples where funds were reallocated – under the reprogramming threshold – that still represented significant departures from the original estimates provided to the Subcommittee. The Subcommittees were not informed of these changes until after the close of the fiscal year. An e-mail or telephone call to committee staff to keep them apprised of changes is what we have in mind.

The OIG also found that, in the rush to process multiple procurement actions in the waning days of the fiscal year, the agency did not adhere to all procurement regulations. We found multiple examples where proposals were not competed and minority set asides were not contacted. We also found two examples where the agency violated the *bona fide* needs rule. This rule requires that fiscal year appropriations be obligated only to meet a legitimate need arising in the fiscal year for which the appropriation was made.

The OIG made four recommendations to correct deficiencies noted in the report. In some cases, management has already taken steps to implement the recommendations. Management's comments to the report's findings and recommendations are attached.

Finally, we would like to thank OFM and OMS management and staff for their cooperation and assistance on this audit, and for always making the time to answer one more question or to find one last document.

cc: Commissioners
Director, OFM
Director, OMS

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Audit of the Federal Maritime Commission's Budget Execution Processes, Procedures and Policies for Fiscal Year 2007

The Office of Inspector General (OIG) completed a performance audit of the agency's implementation of Office of Management and Budget (OMB) Circular No. A-11, *Instructions on Budget Execution*. The objectives of the performance audit were to determine whether:

- the Federal Maritime Commission (FMC) followed spending priorities and limitations provided to it by the Congress;
- budgetary controls over obligations were in place and followed; and
- the agency complied with laws, regulations, and internal policies and procedures in executing its budget.

Due to prior Congressional interest concerning spending of funds on furniture and equipment (F&E), the OIG concentrated much of our work on F&E allocations and obligations.

Audit Criteria

To assist us in our review, the OIG reviewed Federal regulations and guidelines agencies are required to follow in executing their budgets. We also reviewed FMC internal policies and procedures:

- OMB No. A-11, *Instructions on Budget Execution*, provides guidance to Federal agencies to assist them when preparing annual budgets. This guidance includes detailed instructions on budget formulation, submission, execution and reporting, and is updated annually.
- The Federal Acquisition Regulation (FAR) provides uniform policies and procedures for acquisitions by Federal executive agencies.
- Commission Order No. 77, *Administrative Control of Funds*, (December 15, 2003), prescribes a budget execution and administrative fund control system for FMC appropriations and funds. It is designed to restrict obligations or expenditures to amounts made available through apportionment by OMB and holds individuals accountable for violations of the Anti-Deficiency Act.
- Commission Order No. 112, *Procurement*, (December 15, 2003), provides internal guidance for all applicable agency acquisitions in accordance with the FAR and Titles 41 and 48 of the Code of Federal Regulations. Commission Order No. 112 also establishes the authority and accountability of FMC officials involved in the procurement process.

Objectives, Scope and Methodology

The objectives of the audit were to determine whether (i) the agency followed spending priorities and limitations provided to the agency by Congress, OMB and the Commission, (ii) budgetary controls over obligations were in place and followed, and (iii) the agency complied

with laws, regulations and internal policies and procedures in executing its budget. The audit focused on FY 2007.

We interviewed staff in the Office of Financial Management (OFM) who prepares the agency's budget requests to OMB and to Congress, and the Office of Management Services (OMS) who administratively supports program operations of the Commission, including the procurement of all goods and services. We reviewed OMB and FMC policies and procedures regarding budget planning, execution and control. We also reviewed budget tracking (status) reports, and OMB and Congressional budget submissions.

We obtained documentation of fiscal 2007 year-end obligations and reviewed a sample of vendor acquisition files. We examined detailed reports on furniture and equipment expenditures in FY 2007 and Commission Notation memorandums that documented proposed reallocations of funds that the Commission was asked to approve. We also reviewed documentation identifying sources and uses of funds that became available during the year due to unfilled positions and changing needs.

To assess procurement processes, we obtained purchase orders for all furniture purchased with FY 2007 funds and documented order date, purchase and vendor. We also reviewed FAR regulations dealing with procurements.

We conducted this performance audit from May 12, 2008, to July 16, 2008, in accordance with generally accepted government auditing standards. Those standards require that 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 that the evidence obtained provides a reasonable basis for our findings and conclusions based on these objectives.

Background

The budget process consists of formulation, submission, approval, execution and reporting. At the FMC, budget formulation begins approximately 18 months prior to the start of the budget year. Bureau and office heads receive a "call letter," from the Director, Office of Administration (OA) requesting various budget narratives, summary information on accomplishments, details of major planned initiatives and funding needs. OFM calculates salaries and benefits for existing staff and projected hires but relies on bureaus/offices to provide it with estimates of travel, training, furniture/equipment (F&E) and other administrative expenses.

OFM staff combines the projected payroll costs with bureau/office requirements to determine the operating budget for the fiscal year. This aggregate budget is discussed among the agency senior executives before it is presented to the agency chairman. The chairman reviews the budget line items and may provide OFM further instructions to reduce or increase

resources among program areas.¹ The chairman-approved budget is then submitted to OMB for its approval.

In September 2005, the FMC chairman requested \$22,899,000 to fund the Commission's programs: \$16,465,000 for personnel compensation and benefits, \$6,190,000 for administration and \$244,000 for travel. Within the administration request, the chairman requested \$321,775 for furniture and equipment (F&E) purchases, which represented an increase of \$245,000 over the prior year F&E budget. The FY 2007 F&E request consisted of \$285,725 for equipment and \$36,050 for furniture.

OMB approved a reduced budget of \$21,474,000 in the FY 2007 "pass back." OMB did not provide the FMC guidance on which budget object classes or line items to reduce or eliminate to reconcile with its "pass back" to the agency. The Director, OFM, told the OIG that OMB generally does not provide this guidance and instead relies on agency managers to make the needed cuts. With the help of the chairman and senior staff, the OFM Director told us that she focused on funding mission critical activities and cut (reduced or eliminated) discretionary items. She said that savings accrued throughout the fiscal year (in funded areas) are applied to unmet needs. In other words, cuts are revisited throughout the year and, in many cases, funds are restored.

The agency made cuts/reductions to reconcile to OMB's pass back (a \$1.425 million reduction from the chairman's September, 2005, request) in personal services (\$16,465,000 to \$15,691,000) and administration (\$6,190,000 to \$5,546,000). Notable within these categories are the elimination of staff awards (\$350,000 to \$0) and F&E (\$321,775 to \$0).

The agency submitted its OMB-approved funding request to the Appropriations Committees in February 2006. The request to the Appropriations Committee contained tables detailing funds requested for Salaries/Benefits, Travel, and select Administrative Expenses (Transportation of Things, Rent, Communications, Printing, Supplies, F&E and Other Services).

Like most other agencies, the FMC began FY 2007 (October 1, 2006) operating under a continuing resolution that funded the agency at FY 2006 levels. On February 15, 2007, Congress passed the *Transportation, Treasury, Housing and Urban Development, the Judiciary, the District of Columbia, and Independent Agencies Appropriation Act, 2007, Continuing Appropriation Resolution, 2007*, that funded FMC operations at \$20,427,910 – a reduction of over \$1 million dollars from the OMB-approved pass back. On March 1, OMB apportioned funds² to the FMC in the following amounts:

¹ The FMC has been without a chairman since November 2006. The sitting Commission members act as the chief executive officer and perform essentially the identical functions described above.

² An apportionment is an OMB-approved plan to spend resources provided by law. The primary purpose of the apportionment is to prevent agencies from obligating funds in a manner that would require deficiency or supplemental appropriations.

**FMC Apportionment Schedule
(FY 2007)**

1 st and 2 nd Quarters:	\$12,322,676
3 rd Quarter:	4,212,292
4 th Quarter:	<u>3,892,942</u>
	<u>\$20,427,910</u>

Furniture, Equipment and ADP Operating Plan Allocations

An operating plan is the agency's blueprint for spending based on amounts appropriated by Congress. It is necessary to have a plan for several reasons. While the agency provides the Appropriations Committees with details on proposed spending items, Congress does not appropriate by line item. The plan helps to ensure spending allocations are in keeping with Congressional appropriations and OMB apportionments. Also, the plan, which is updated monthly, reflects adjustments and actual expenses. While the "bottom line," i.e., the appropriation, remains constant, the allocations within line items often change.

The FMC's FY 2007 operating plan began with FY 2006 funding levels per the continuing resolution (CR) that funded the government. In that plan, the FMC allocated \$0 for F&E at the beginning of the fiscal year. When the agency's FY 2007 budget was submitted to Congress as part of the President's budget in February 2006, the agency estimated that it would be spending \$0 on F&E. By the end of the fiscal year, the agency allocated \$522,767 to F&E, as illustrated in the following table:

Month	Furniture	Equipment	Software	IT Equipment
October 2006	\$ -0-	\$ -0-	\$ -0-	\$ -0-
November 2006	-0-	861	-0-	-0-
December 2006	-0-	-0-	-0-	-0-
January 2007	-0-	-0-	-0-	-0-
February 2007	30,000	12,139	-0-	45,000
March 2007	-0-	-0-	2,767	-0-
April 2007	-0-	-0-	2,767	-0-
May 2007	-0-	8,000	(2,767)	51,090
June 2007	-0-	(8,000)	19,932	(10,000)
July 2007	38,100	-0-	(10)	-0-
August 2007	1,400	(2,900)	-0-	-0-
September 2007	<u>108,114</u>	<u>40,958</u>	<u>54,368</u>	<u>130,948</u>
TOTAL	<u>\$ 177,614</u>	<u>\$ 51,058</u>	<u>\$ 77,057</u>	<u>\$ 217,038</u>

Grand Total = \$ 522,767

Sources of Funds

The FMC was able to re-allocate funds to F&E and other budget line items throughout FY 2007 as result of cost savings in several areas. For instance, the Commission unexpectedly operated during most of FY 2007 without a chairman. Certain other staff vacancies remained unfilled, and previously planned acquisitions and services were not acquired. The agency identified savings totaling \$1,304,996 during the fiscal year, including a balance of \$126,600 accrued as of March 31, 2007, as follows:

Unallocated balance up through March 2007	\$126,600
Unallocated funds identified in June 2007, Notation No. 07-70:	
Lapse of EOD dates for Chairman and staff	51,100
Leave without pay	35,500
Unscheduled retirement	27,700
Transfers to other offices	135,000
Lapse of EOD date for AR	15,500
Transfer/ Internal hire - net (used)	(36,900)
Changes in WIG/Promotion amounts/dates	(1,400)
Unbudgeted court costs	<u>(100)</u>
Unallocated funds at May 2007	\$353,000
Unallocated funds identified in July 2007, Notation No. 07-98:	
Lapse of EOD date for Chairman and staff	75,700
LWOP	51,400
Resignation, lapse of EOD date for AR, and misc. personnel issues	33,300
Relocation benefits (obligated)	(137,300)
Funds used for OIT purchases (SQL), DC rent tax bill in excess of estimate, etc. net of misc. savings	<u>(44,850)</u>
Unallocated funds at July 2007	\$331,250
Unallocated funds identified in September 6, 2007, Notation No. 07-123:	
Lapse of EOD date for Chairman and staff	\$64,000
Unscheduled - Transfer (OA) /Resignation (BOE)	17,200
Reduced Benefits and Promotion Costs, LWOP	67,600
Lapse of EOD dates for staff positions	15,200
Travel	34,900
Library Subscriptions	32,000
GPO Printing	26,000
Unused Training Funds	19,135
Other Admin. savings (net)	19,915
Redesign internet	(12,000)
9 th floor conference room furniture	(12,000)
Furniture replacement (various budget office requests)	(26,000)
Subscriptions, supplies, miscellaneous other	<u>(8,300)</u>
Unallocated funds at September 6, 2007	\$568,900

Identified in September 19, 2007, Notation No. 07-140:	
Cancellation of relocation/transfer	\$137,800
DHS Security expenses not utilized	150,000
Release of telephone usage excess funds	40,000
Release of misc. bureau/office funds	33,835
Miscellaneous other savings	46,100
Staff awards and benefits – new allocation	(318,300)
PIERS, imaging, disability accommodations, etc.	(96,200)
Furniture and I.T. (ADP) needs	<u>(171,345)</u>
Unallocated funds at September 19, 2007	\$390,790

Use of funds from September 19, 2007 balance:	
I.T. database contract	(127,000)
Additional PIERS contract extension	(50,000)
Furniture and equipment	(94,000)
Awards supplemental allocation	(69,000)
Email upgrade	(28,000)
Two copiers	(42,000)

Additional funds savings were identified and reported as Notation No. 07-146 on September 26, 2007, and used as follows:	
Telecommunications and de-obligations savings	49,511
Upgrade to doors, I.T. hot spares, etc	<u>(25,790)</u>
Balance unallocated	<u>\$4,511</u>

Total Savings	\$1,304,996
Total Uses	<u>(1,300,485)</u>
Returned to Treasury	<u>\$ 4,511</u>

Results of Audit

The OIG found that the agency generally follows budget practices and procedures used by other agencies in the Federal government. The identification of needs occurs several months prior to the beginning of the fiscal year. Some estimates are relatively easy to project (rent), while others are more difficult (training, furniture and travel). Reductions made by OMB and Congress are generally made in the aggregate, requiring agency managers to recommend to the chairman / Commission where funds should be cut to reconcile with the agency's appropriation.

The Commission stayed within its appropriation and submitted formal reprogramming requests to the Appropriations Committees when required to do so. OA staff also kept the Commission apprised of funds that became available throughout the year (i.e., changed priorities and program savings) and presented alternative spending options to meet previously unfunded needs. By the end of the year, the Commission reallocated approximately \$1.3 million this way.

On the other hand, some of the FY 2007 appropriated funds were used for purposes other than what the Appropriations Committee approved them for. This is not unusual. The Committees have thresholds for the movement of funds – which the agency exceeded only once. In that instance, the agency informed the Appropriations Subcommittees of its intentions. While the agency is not required to communicate all modifications to its spending estimates, the OIG believes it is a good practice to discuss significant changes with Committee – and OMB – staff, before these changes are implemented. The OIG identified numerous examples where funds were reallocated – under the reprogramming ceiling – that still represented significant departures from the original estimates provided to the Subcommittees. The Subcommittees were not informed of these changes until after the close of the fiscal year. An e-mail or telephone call to committee staff to keep them apprised of changes is what we have in mind.

The OIG also found that, in the rush to process multiple procurement actions in the waning days of the fiscal year, the agency did not adhere to all procurement regulations. We found multiple examples where proposals were not competed and minority set asides were not contacted. We also found two examples where the agency violated the *bona fide* needs rule. This rule requires that fiscal year appropriations be obligated only to meet a legitimate need arising in the fiscal year for which the appropriation was made.

Details on these and other findings are presented below.

Finding 1. The agency deviated from funding allocations approved by Congress but did not violate spending limitations

Twelve months passed from the time the agency submitted detailed spending estimates to the Appropriations Committees (February, 2006) and the passage of its FY 2007 appropriations (February 2007). During this time, the agency made modest changes to its spending plan that were required to reconcile the appropriation with the budget request (the appropriation was over \$1 million less than the request) and adjustments for actual (as opposed to anticipated) spending.

By the end of FY 2007, the deviations from amounts originally reported to Congress became more significant. For example, the agency spent significantly less than expected on personnel, benefits and security. Rent (as expected) remained relatively constant. Spending grew significantly on F&E and employee awards.

In February 2006, the agency estimated that it would be spending \$0 on F&E and \$0 on staff awards in budget submission back-up materials to the Appropriations Committees. The OFM director recommended, and the chairman approved, selective reductions to reconcile to the OMB-approved request. In a February, 2007, update to the Appropriations Committees, the agency revised its F&E estimate upwards to \$16,000. Actual (final) funding in these areas (\$522,767 and \$374,000, respectively) represented significant departures from what the agency told Congress it would be spending both in its initial request and in its update. However, the agency did not violate Congressional reprogramming requirements by reallocating these funds.

According to language in the FMC's appropriation bill, the agency can reallocate funds resulting from savings without having to notify Congress or OMB, as long as the re-allocation is

not more than \$500,000 or 10 percent of the original allocation by major reporting category. The agency has three major reporting categories: personnel compensation, administration and travel. Any movement of funds between or among these three reporting categories is subject to the reprogramming limits issued by the Appropriations Committees. Funds in excess of the limits moved within one reporting category, from one line item to another, e.g., from training to supplies, do not require notification to the Appropriations Committees.

There were numerous reallocations that fell below the monetary and/or percentage thresholds that did not require Congressional approval, even though they represented significant increases or decreases in line items. Again, using F&E and employee awards as examples, the updated estimates provided to the Appropriations Committees (\$16,000 and \$0, respectively) understated actual spending (\$522,767 and \$374,000, respectively) for the year. Yet, the agency did not notify the Appropriations Committees of these reallocations until after the close of the fiscal year.³

The agency's budget is comprised of funds for "salaries and expenses." Because the funds are, in effect, co-mingled, it is not possible to match which savings went to which "unmet need." For example, we could not determine if the \$522,767 (request for F&E) came from personnel or administrative savings. If it came from the former, then a reprogramming action would be required. The agency's accounting records do not track cost savings this way.⁴

On the other hand, Title 1, U.S.C. Section 1514, *Administrative Division of Apportionments*, and OMB Circular A-11, *Instructions on Budget Execution*, also require agencies to notify the Appropriations Committees when (i) the reallocated funds would initiate a new program or terminate an existing one; (ii) if the reallocation changes allocations specifically denied, limited, or increased by the Congress in report language or in the appropriations table included in the report; or (iii) ***the reallocation represents a significant departure from budget plans previously presented to the Congress*** (emphasis added). Although we could not locate guidance to shed light on what constitutes a "significant departure," we believe that the amounts identified above for F&E and awards met this criteria.

³ The agency informed the House Appropriations Committee, Subcommittee on Transportation, Housing and Urban Development, and Related Agencies, of these final allocations in the Spring of 2008, in response to "Questions for the Record" from the Subcommittee. The OIG also identified actual FY 2007 totals for F&E in the FY 2009 budget estimate submitted to the Appropriations Committees in February 2008. The FY 2009 estimate erroneously informs the Committee that no funds were allocated for awards in FY 2007. (The OIG notes that information provided to the Appropriations Committees in response to the April 2008, "Questions for the Record" identifies the award amounts.)

⁴ On September 12, 2007, the Director of Administration sent a reprogramming request to the House Appropriations Committee to move funds from travel to administration. Travel represents only about 1 percent of the agency's budget but is still considered a separate "major reporting category" by OMB A-11. The agency requested authority to reprogram up to \$35,000 in FY 2007 funds from travel to administrative expenses. Since the original submission to the Appropriations Subcommittee requested \$237,000 for travel, any movement of funds exceeding \$23,700 required notification.

Recommendation No. 1

The OIG recommends that in order to meet the “spirit” of the Congressional and OMB reprogramming guidance, FMC should notify Congress when reallocations are made to line items that were either not included in the original submission to the Appropriations Committee or significantly change items that were in the original submission.

Finding 2. The Office of Financial Management informed the Commission of the reallocations in summarized formats

The FMC has operated without a chairman since November 2006. The remaining Commissioners, as a body, by law, assume the responsibilities of the chairman. One of these responsibilities is to approve the operating budget and vote on reallocations of funds throughout the fiscal year. Commission Order 77 gives the Director, OFM responsibility to *approve, certify, or otherwise authorize those actions dealing with appropriations or funds made available to the Commission*. However, decisions on spending, to include reallocations, must be approved by the chairman or the full Commission acting in its capacity as chairman.

In FY 2007, the FMC experienced vacancies, cancelled relocations and took other administrative actions that impacted its spending plan. The biggest impact was the vacancies in the chairman’s office during the final 10 months of the year. The Director, OA, kept the Commission informed through a series of Commission notations – or memoranda - that identified savings and “unmet needs.” In some instances, these needs were identified in the chairman’s request to OMB in September of 2005. In many instances, they were needs identified by FMC managers during FY 2007 to OFM.

The OIG, to a very large extent, did not attempt to opine of the validity of these “unmet needs” identified by management during the fiscal year. Rather we focused on OA’s efforts to keep the Commission informed of spending reallocations, as it is required to do.

The OIG identified several Commission memoranda from the Director of Administration identifying spending reallocations. In most instances, savings from one line item or object class were proposed to address unmet needs in other areas, as the notations below illustrate (note: the emphasis presented below is on F&E acquisitions):

- Notation No. 07-29, dated March 26, 2007, included F&E reallocations of \$95,000.
- Notation, No. 07-70, dated June 1, 2007, requested a reallocation of \$58,000 for equipment, for two new SQL servers and two new digital scanner/senders.
- Notation No. 07-98, dated July 23, 2007, requested allocations for 9th floor conference room furnishings (\$12,000) and office furniture replacements for multiple Bureaus/Offices (\$26,000). This item also identified \$331,200 in unallocated savings.
- Notation 07-123, dated September 6, 2007, informed the Commission that the unallocated amount had grown to almost \$569,000. The Commission approved \$318,300 for performance awards. Other expenditures were approved for IT upgrades, a six-month subscription to PIERS, and other miscellaneous items, for a total of \$586,000 (\$17,000

over the then-documented amount available, before future savings which were anticipated to accrue).

- Notation 07-140, dated September 19, 2007, identified the balance of cost savings at \$391,000, resulting from Federal Protective Service savings (\$150,000), and de-obligation of relocation costs (\$137,800) and various other cost savings and de-obligations. The Director, OA, based on management recommendations, proposed uses of these savings, to include an IT database contract (\$127,000), additional PIERS contract modifications, two new copiers (\$42,000), E-mail system upgrades (\$28,000), furniture/equipment purchases (\$75,000) and additional awards (\$69,000). Certain other items proposed were not approved by the Commission, such as a Voice-Over-Internet Protocol expenditure. Another \$19,000 was recommended and approved by the Commissioners for furniture/supplies/equipment.
- A final Notation No. 07-146, dated September 26, 2007, identified another \$45,000 of savings that was expected to accrue in the remaining days of September. Upgrades to internal doors and spare computer equipment were identified as needs in this notation, along with a few smaller items.

Although the narratives grouped items, we found that the spreadsheets attached to these memoranda identified all savings and proposed uses, although not in a detailed format that would identify specific purchases. This was especially true for the F&E items, as illustrated above. For example, the OIG noted in a prior audit that the Commission voted to approve the purchase of office furniture for the chairman's office. Yet, when asked about the purchase by the OIG, all Commissioners responded that they were aware that new furniture was being considered for the chairman's office but were not aware that they had voted to approve a specific purchase.⁵

There is no easy answer as to how much detail the Commission should have before it votes. With too much information, the Commission would likely be inundated in such frequent intervals that one has to wonder whether, in these particular cases, more would, in fact, be less. The OIG notes that OA offered, in writing, to meet with the Commissioners to explain any of the actions proposed by the memoranda. The OIG also notes that the absence of a chairman made this process necessary – a process that will cease to exist once a presidentially-appointed and Senate-confirmed chairman is in place. OFM met with individual Commissioners to respond to specific questions about line items. The Commission also is now meeting to discuss and debate budget matters. These meetings are open to FMC staff and ensure that all viewpoints are heard.⁶

The OIG believes that the questioning of OA staff during Commission meetings and direct access to budget staff are the best solutions to keep the Commission aware of individual items without unnecessarily burdening the process in detail.

⁵ A08-04, *Review of Expenses to Furnish, Redecorate or Improve the Offices of Federal Maritime Commissioners*, March 2008

⁶ Prior to this time, the Commissioners voted on vote sheets, which had the effect of discouraging dialog on various issues.

Finding 3. FMC violated the *bona fide* needs rule on some year-end purchases

The *bona fide* needs rule is a fundamental principle of appropriations law. It states that a fiscal year appropriation may be obligated only to meet a legitimate or *bona fide* need arising in, or in some cases arising prior to but continuing to exist in, the fiscal year for which the appropriation was made. The guidance does not imply that an agency's obligation of an annual appropriation on the last few days of the fiscal year can never constitute a *bona fide* need of that fiscal year. There are valid reasons for year-end spending.

As already noted, the FMC allocated \$522,767 to purchase furniture and equipment in fiscal year 2007. \$334,388 or about 64 percent was allocated in the final month of the fiscal year. Since the \$522,767 includes office and IT equipment, we broke out furniture purchases as a separate item. Based on records we reviewed, the FMC allocated \$177,614 during the year for furniture only. Between September 25, 2008 and September 29, 2008, the agency obligated \$131,692 (or about 74 percent) of the total furniture allocation.

It was beyond the scope of this audit to review all of these purchases to validate that all year-end purchases represented *bona fide* FY 2007 needs. However, we have noted breakdowns in the procurement process resulting from, we believe, pressure on staff to complete these multiple, high-dollar transactions in the last days of the fiscal year. As discussed in Finding 4 below, we identified a lack of competitive bidding on purchases, failure to document small business sources considered, and a lack of specificity on orders concerning what the agency intended to purchase. The OIG has documented two examples of this breakdown from the 22 files reviewed to illustrate questionable year-end procurement practices.

In general, obligations can be made near year end for services and goods for the subsequent fiscal year as long as those services and goods are specified and there is a valid contract in place. However, agencies cannot "park or bank" funds for generic goods or services that are not specified.

On September 28, 2007, the FMC issued purchase order FMC-07-K-00034 (for furniture) for various Commission offices, totaling \$30,053. On October 10, 2007, the agency received a proposal from a private vendor for five executive chairs for the Commission's hearing room. Total cost, including delivery and installation, was \$5,404. The proposal was accepted by the agency on October 26, 2007.

The chairs were delivered to the agency in mid-November, 2007 (the ticket date is partially illegible). The order was accepted by the agency on December 19, 2007.

On February 27, 2008, order FMC-07-K-00034 (for furniture) was modified to increase the order amount from \$30,053 to \$35,457, or by a total of \$5,404, i.e., to add the five executive chairs. Funds for this FY 2008 purchase came from the agency's FY 2007 appropriation. We question the decision to amend an FY 2007 order for this furniture. It appears to us that this was an effort to improperly use FY 2007 funds. We question whether the chairs were a *bona fide* need in FY 2007 when the order was not submitted until five months into the subsequent (2008) fiscal year. We also question the timing of the order in relation to the delivery of furniture. A valid obligation must precede the purchase.

Our second example involves furniture purchased through an interagency agreement with the Federal Prison Industries (FPI), also referred to as UNICOR, a self-supporting, wholly-owned government corporation of the District of Columbia.⁷ The agency issued purchase order FMC-IA-07-0035 on September 27, 2007, for \$34,000 for “workstations for general staff” and “executive workstations” (\$20,000 and \$14,000 respectively).

The OIG reviewed order confirmations against the agreement. (We could not determine from the file the date the orders were placed.) We identified six transactions totaling \$35,617.31, or \$1,617 over the obligated amount.

<u>Order Confirmation</u>	<u>Amount</u>	<u>Invoice Date</u>	<u>Invoice Amount</u>
October 18, 2007	\$ 2,696.00	April 9, 2008	\$ 2,696.00
January 2, 2008	10,998.62	Not in File	*****
January 17, 2008	3,933.00	May 7, 2008	3,933.00
February 12, 2008	938.00	April 9, 2008	938.00
May 16, 2008	14,577.00	Not in File	*****
June 11, 2008	<u>2,474.69</u>	Not in File	*****
	<u>\$ 35,617.31</u>		

It appears to the OIG that the agency “parked” FY 2007 funds at UNICOR for use in FY 2008. We note that the general description on the order – workstations – without specifying quantity, characteristics, etc., as evidence that agency plans were not fully in place when the funds were obligated. We also note that furniture continued to be purchased as late as June, 2008, from this FY 2007 order.

Procurement staff told us that purchases made from UNICOR permit the use of funds for unspecified needs. The OIG was able to locate a document, dated “FY 2005” in the procurement file from the UNICOR website stating that “*Federal agencies... can choose to obligate their end-of-year funds with UNICOR, even when specific requirements and purchase details are still unknown.*”

We visited the website to search for clarifying information. While the above-identified quote appears to have been deleted from the webpage, we noted language that, in fact, encourages agencies to provide UNICOR funds “*now, and make your specific selections later...*” UNICOR staff we spoke to said that many agencies obligate funds with UNICOR at fiscal yearend with varying degrees of specificity of items to be purchased.

Two contracting officers we spoke with from sister Federal agencies told the OIG that this language is misleading and contrary to the spirit of appropriations law. Staff in the Government Accountability Office, Office of the General Counsel – who writes GAO’s *Principles of Appropriations Law Handbook*, and issue decisions on the proper uses of appropriated funds – concurred. We have referred this matter to the Department of Justice OIG for follow up.

⁷ FPI provides training and employment for prisoners confined in Federal penal and correctional institutions through the sale of its supplies and services to Government agencies.

Notwithstanding the language on the UNICOR website, we continue to believe that ordering furniture several months into fiscal year 2008 is not a *bona fide* need of the FY 2007 appropriation. It is not proper to ask another entity to perform a task that the FMC cannot legally do for itself.

The fact that the agency obligated significant amounts late in the year - for furniture needs that were identified during the year - raises a flag to us. However, we also recognize that OMS was waiting to ensure that all mission-critical functions were addressed before it spent resources on discretionary items. OMS would otherwise have spent evenly all throughout the fiscal year if it had had assurances that it would not run out of money before the fiscal year end.

This is a valid argument. However, we remain concerned that funds appropriated by Congress for salaries/benefits were not used for this purpose. Rather, they were used to purchase F&E and other items without discussing this significant reallocation with the Committee staff. We found no indication that returning these funds to the Treasury was ever considered.

Recommendation No. 2

The OIG recommends that the agency make accounting adjustments to charge purchases made on the above-identified orders against its FY 2008 appropriation, and return the deobligated FY 2007 funds to Treasury.

Recommendation No. 3

The OIG recommends that Director, OA, include, as an option, the return of unallocated funds to the U.S. Treasury, when presenting spending alternatives to the chairman/commission.

Finding 4. Competition, small business and minority contractor utilization requirements were not followed

Procurement regulations require competitive bidding of other than micro-purchases of \$3,000 or less. In OIG Audit Report No. A07-02, the OIG found that the agency issued a sole source contract to a consultant in violation of Commission Order 112 and FAR competitive sourcing requirements. In A08-04, the OIG found that the agency did not solicit competitive bids on a \$36,000 furniture procurement. To follow up on agency actions to address these violations, we examined 26 procurement files for furniture obligations in FY 2007. Nine (9) obligations were under the \$3,000 competitive bid threshold. Seven (7) files contained evidence of competitive pricing at least for some of the items purchased. The remaining 10 files did not appear to be competitively bid based on documentation in the file. None of the procurements were made by the FMC's procurement agent, the Bureau of Public Debt (BPD).

Federal Prison Industries, a.k.a. UNICOR, was the source for seven of the procurements over \$3,000 and seven of the 10 procurements that were not competitively bid. Agencies are not required to obtain three competitive bids when ordering from UNICOR. However, agencies are required to conduct market research to compare products available from other sources to determine which products best meet its needs. In other words, documentation should exist that

shows that the price and selection offered by UNICOR represents the best value to the agency. There was no evidence of such market research in the UNICOR files examined.

Procurement regulations also require small business and minority contractor utilization in small acquisitions. Of the 26 files examined, only six files contained information that showed small or minority contractors were utilized in the procurements. The remaining files either indicated that an "other than small business was used," (one), or the file contained no evidence as to the small business or minority business designation of the company from which the FMC issued the purchase order (19). Each of the orders over \$3,000 qualified as being eligible for small business and minority contracting based on the size of the procurement.

The OIG believes that the rush to spend funds at fiscal year-end contributed to the agency's overlooking competitive and small business requirements.

Recommendation No. 4

The OIG recommends that the Office of Management Services ensure that FAR 13.104, Promoting Competition, and Commission Order No. 112, Procurement are closely followed when procuring supplies, materials, furniture and services for all procurement actions not processed by the FMC's procurement agent, the Bureau of Public Debt. Also, sufficient lead time must be given to procurement officials, as detailed in Order No. 112.

The OIG notes that similar recommendations were made in AR 07-02 and A08-04. Based on these reports management agreed to make changes in the procurement process, including reviewing all procurement files for compliance with FAR requirements, developing a checklist for use by staff identifying FAR requirements, and relying on its procurement agent, the Bureau of Public Debt, for procurement assistance on actions exceeding \$5,000. These changes should address the finding identified above.

The OIG identified many actions that exceeded this threshold but were processed in house. The agency informed the OIG that this resulted from BPD's required lead time (generally 45 to 60 days) to process transactions. There is a reason for such a requirement. It helps to ensure that all procurement requirements are addressed.

The OIG believes that the agency should improve its procurement planning. When F&E needs are identified, they should be articulated in budget requests, and met as part of a procurement plan that starts on the first day of the fiscal year. Further, needs in all areas that arise throughout the year should be documented and maintained centrally in OFM so that, as funds become available, the agency can rely on documentation to support its reallocations. It is unclear why the agency, knowing that it would accrue significant savings from unfilled positions early on in the fiscal year, waited until the final month of the fiscal year to apply most of these savings to its unmet needs.

Conclusion

The OIG review identified areas where improvements are possible in executing the budget. During our review we discussed budget execution at two sister regulatory agencies. We did this to identify “best practices” in use to assess how other agencies execute their budgets. We spoke with the head of Budget at these agencies.

Both agencies indicated that budget practices in place and followed at the FMC are generally followed by their respective agencies. There is a concerted effort to use all the funds appropriated by Congress so as not to reduce subsequent years’ funding. Budget needs change over time, and the ways managers plan to spend funds when putting together their funding requests often deviate from how the funds are used during the year. Unused funds are used to address unmet needs – as they were at the FMC.

We believe that OA did a good job informing the Commission about accrued savings and presenting spending options, although, looking back, potentially sensitive purchases should have been better identified to the Commission. However, we feel that more can be done to keep the agency’s appropriating committees abreast of spending changes. Appropriation staff we spoke with stressed that communication between the agency and the Committees’ staff could be improved upon, as staff was unaware of the extent or volume of the reallocations. Given some of the large differences in spending over what the agency had originally planned to spend, this is not an unreasonable action to take. We also believe that returning unused funds is a viable, albeit unexplored, option for the agency to consider at year end.

Finally, while we believe that year-end spending is often justifiable, the risks it brings must be addressed. The rush to spend often creates shortcuts and overlooked requirements. We believe this rush was at the root of the procurement oversights we identified. These requirements are in place to ensure that the Government gets the best value for its dollar. By not following them, e.g., by not getting competitive bids at the end of the year, the agency likely overpaid.⁸

The FMC will, almost certainly, finish this (FY 2008) fiscal year without a chairman, requiring the Commission to again vote on all spending adjustments and reallocations. The OIG encourages the agency to make the needed changes in its procedures to guard against revisiting the same issues and challenges it faced in executing its FY 2007 budget. The OIG will again examine these issues closer in the FY 2008 financial statement audit.

⁸ This conclusion is supported, in part, by a recent General Services Administration (GSA)/OIG audit that found that vendors negotiating contracts with GSA are frequently not offering their lowest prices. Companies failed to offer their “most favored customer” prices, which are the lowest prices a vendor offers to its commercial customers, in 71 percent of the contract proposals reviewed by the OIG.

FEDERAL MARITIME COMMISSION
Office of Administration

Memorandum

Date: September 4, 2008

To : Inspector General

From : Deputy Director of Administration

Subject : Comments on Draft Review of Performance Audit of the FMC's
Budget Execution Processes, Procedures and Policies for FY 2007

I have reviewed the recommendations in the instant Review. Below are our comments regarding corrective actions which will be effected to address the recommendations.

Recommendation #1. The OIG recommends that in order to meet the "spirit" of the Congressional and OMB reprogramming guidance, FMC should notify Congress when reallocations are made to line items that were either not included in the original submission to the Appropriations Committee or significantly change items that were in the original submission.

Response. The Office of Administration ("OA") agrees that increased communication with Congress concerning material changes to line items submitted in the Congressional Budget could be improved. In fact, the OA has already increased its dialogue with the Congressional staff in fiscal year 2008 by providing advance notification of the Commission's recent reprogramming of funds request. The effective date for this corrective action is immediate.

Recommendation #2. The OIG recommends that the agency make accounting adjustments to charge purchases made on the above-identified orders against its FY 2008 appropriation, and return the deobligated FY 2007 funds to Treasury.

Response. The individual who processed these procurements retired in March 2008. Inasmuch as we are unable to locate documents to satisfy the *bona fide* needs rule for the five executive chairs ordered under purchase order FMC-FMC-07-K-00034, OA agrees that FY 2008 funds in the amount of \$5,404 should be used to pay for the chairs. The OA will work with the agency's accounting provider (BPD) to prepare appropriate documentation to reverse the FY 2007

expenditure and apply the expense against FY 2008 funding. Appropriate obligation and deobligation documents will be prepared, as well. These transactions will be completed by September 30, 2008.

Regarding the \$34,000 obligated with UNICOR under FMC-FMC-IA-07-0035, OA believes that this procurement was proper and within federal procurement guidelines (note: \$24,599 was actually expensed against this purchase order; paperwork was initiated to deobligate the remaining \$9,401). Managers identified the *bona fide* need for workstations for general staff and executive workstations in FY 2007 (although some of the furniture had been identified previously during the development phase of the FY 2007 OMB Budget process). The Commission approved expending FY 2007 funds once funds were available. OA is providing email correspondence under separate cover which demonstrates that *bona fide* needs were clearly met. OA commits to preparing future procurement documentation with more specificity. The effective date for this corrective action is immediate.

Recommendation #3. The OIG recommends that Director, OFM, include, as an option, the return of unallocated funds to the U.S. Treasury, when presenting spending alternatives to the chairman/commission.

Response. The OA agrees that return of unallocated funds to the U.S. Treasury at the end of the fiscal year is an option available to the agency. Unallocated funding not used to address existing obligations during the five year expired status of the appropriation, does, in fact, get returned to the general fund when the appropriation is cancelled.

OA identifies cost savings throughout the fiscal year and holds periodic budget meetings with management to allow them to put available funds to better use to facilitate the Commission's accomplishment of its mission. OA will inform management of the option to turn back funds to the Treasury in all subsequent budget meetings. Future status reports prepared and presented to the Commission will reflect an option of not spending unallocated funding balances. The effective date for this corrective action is immediate.

Recommendation #4. The OIG recommends that the Office of Management Services ensure that FAR 13.104, *Promoting Competition*, and Commission Order No. 112, *Procurement* are closely followed when procuring supplies, materials, furniture and services for all procurement actions not processed by the FMC's procurement agent, the Bureau of Public Debt. Also, sufficient lead time must be given to the procurement officials, as detailed in Order No. 112.

Response. Similar recommendations were made in OIG's March 2008 *Review of Expenses to Furnish, Redecorate or Improve the Offices of the*

Federal Maritime Commissioners (A08-04). As the OIG pointed out in that review, although utilization of BPD's services is the preferred method of procurement for items which exceed the \$5,000 threshold, there are some limitations, given the significant lead time requirement to effect such procurements; it is sometimes not possible to provide a 60-day lead time for such purchases, particularly at the end of a fiscal year. Recognizing this, OMS has developed a "Simplified Acquisition Checklist" for staff to use, based on one used by BPD and many other agencies to help ensure that all appropriate steps are taken and documentation included in the procurement file. Further, the Contracting Officer will make it a practice to review such procurement files to confirm that the checklist is used. We have previously established a corrective action completion date of March 31, 2008, for this recommendation.

If you have any questions about these comments, please let me know.


Anthony Haywood

FEDERAL MARITIME COMMISSION
Office of Administration

Memorandum

Date: September 10, 2009

To : Inspector General

From : Deputy Director of Administration

Subject : Addendum to Comments on Draft Review of Performance Audit of the FMC's Budget Execution Processes, Procedures and Policies for FY 2007

Below are additional comments regarding Finding #1 for the audit indicated above.

Finding #1: The agency deviated from funding allocations approved by Congress but did not violate spending limitations

Recommendation #1. The OIG recommends that in order to meet the "spirit" of the Congressional and OMB reprogramming guidance, FMC should notify Congress when reallocations are made to line items that were either not included in the original submission to the Appropriations Committee or significantly change items that were in the original submission.

Response. The Office of Administration agrees that increased communication with Congress concerning material changes to line items submitted in the Congressional Budget could be improved. In fact, the OA has already increased its dialogue with the Congressional staff in fiscal year 2008, such as providing advance notification of the Commission's recent reprogramming of funds request. We also advised Congressional staff that the Commission recently restored award funding that was cut from our FY 2008 OMB Budget submission.

OA will develop an internal policy regarding reporting significant budget changes to Congressional staff. OA intends to inform Congressional staff when spending for a major object reporting category is increased or decreased by 10%. This notification of change will be limited to differences of \$100,000 or more. Currently the major reporting object classes are as follows: Salaries; Awards; Benefits; Travel; Transportation of Things; Rental Payments, Communications; Printing & Reproductions; Other Services; Supplies & Materials; and Equipment. When a major object class change has been reported to Congressional staff, this will establish a new baseline.

The additional reporting requirements are not intended to be overly burdensome on OA staff, but are intended to provide a vehicle for keeping Congressional staff apprised of changes the FMC makes to its operating budget as funding requirements change. The effective date for this new internal OA policy is September 30, 2008.

If you have any questions about these comments, please let me know.


Anthony Haywood