

Federal Maritime Commission Service Contract Inventory Analysis Fiscal Year 2015

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 on November 5, 2010 to provide guidance to Federal agencies on preparing their initial inventories of service contracting for Fiscal Year (FY) 2010 and beyond.

As provided in the OMB Memoranda of November 5, 2010 and December 19, 2011, Service Contract Inventories (SCI), (<http://www.whitehouse.gov/omb/procurement-service-contract-inventories>), agencies were tasked to conduct 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. Moreover, OMB established the reporting threshold of \$25,000 and above. As a result, the Federal Maritime Commission's (FMC) contracting staff reviewed each of these contracts. The results of this review are summarized below.

Methodology

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

PSC	PSC Description	Number of Contracts FY 2015 for PSC	Total Contracting Dollars FY 2015 for PSC
R704	Auditing Services	1	\$32,080.18
R431	Support – Professional: Human Resources	1	\$50,000.00
R707	Support- Management: Contract/Procurement/ Acquisition Support	1	\$40,920.00

These PSCs were selected because they may be identified as closely related to the work of government employees and have the potential for inherently governmental work to be performed by contractors.

Agency Analysis of Contracts

Eleven service contracts, totaling \$1,920,100.06 have been 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 that are closely associated with inherently governmental functions. Contracts in the Special Interest Function areas represented \$123,000.18 of the total contract obligations of the FMC for FY 2015.

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.

All contracts on this Service Contract Inventory (SCI) are put into place in order to aid in the fulfillment of the FMC's Strategic Goals and Strategies. Contracts identified as Critical (CT) on the SCI are directly related to the mission and strategic goals of the FMC.

Agency Findings

Eleven contracts for services totaled \$1,920,100.06 in obligations. The FMC reviewed three SIF codes on three contracts totaling \$123,000.18. Of the remaining contracts in FMC's sample: one contract is for the maintenance of large IT projects; two are for scanning services; one is for professional support in the area of Human Resources; and four are for professional support in the areas of computer assisted legal research and contract/procurement/acquisition.

- 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 FY15 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 adhered to for each of the contracts 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 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 eleven FMC contracts were 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 Contracting Officer Representatives (CORs) and contract staff, was also assessed as sufficient.
- v. The Contracting Officer identified no contracts as being poorly performed because of excessive costs or inferior quality.

Responsible Officials

The senior agency management official who is 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 Vern W. Hill, Managing Director.

The official who is responsible for ensuring appropriate internal management attention is given to the development and analysis of service contract inventories is Kristian Jovanovic, Director, Office of Management Services.

Vern W. Hill
Managing Director

December 30, 2015

Kristian Jovanovic
Director, Office of Management Services

December 30, 2015