



FEDERAL MARITIME COMMISSION
SERVICE CONTRACT INVENTORY ANALYSIS
Fiscal Year 2018

Introduction

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 contracts on this Service Contract Inventory (SCI) was put into place in order to aid in the fulfillment of the FMC’s Strategic Goals and Strategies. If a contract is identified as Critical (CT) on the SCI, it is directly related to the mission and strategic goals of the FMC.

Scope

As prescribed in the notice, 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. The following PSCs have been selected for review. They were selected because they met the threshold in FY2018.

PSC	PSC Description	Number of Contracts FY 2018	Total Dollars Obligated FY 2018 for PSC	Total Base and All Options Value for PSC
D304	IT AND TELECOM-TELECOMMUNICATIONS AND TRANSMISSION	1	\$1,197,590.00	\$2,646,230.00
R497	SUPPORT-PROFESSIONAL: PERSONAL SERVICES CONTRACTS	1	\$139,120.00	\$210,071.20

Methodology

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

The FMC had two active awards in FY2018, that met the threshold in accordance with FAR 4.1703 Reporting requirements. The FMC’s, Office of Management Services, Procurement Analyst conducted meetings with the program offices or the COR responsible for identifying the appropriate PSC based on their requirement.

Findings

The FMC has issued no contracts for personal services. It should be noted that SIF R497, listed above is a personal services PSC. The PSC has been changed in FPDS to the appropriate code of R707 – Contract, Procurement and Acquisition Support Services.

In FY 2018, the planned analysis was focused on product service code D313. A modification was issued to the contract, and the PSC was changed in error to D304. After an in-depth review of the error, it was decided that PSC - D325 IT and Telecom- Data Centers and Storage was more appropriate and consistent with the Statement of Work.

The sole Contractor associated with PSC D304, has reported in SAM, but has not reported the prime contractor direct labor hours expended on the services performed during the previous Government fiscal year. The contractor has been informed that their failure to comply with the reporting requirements will be made a part of the their performance information in accordance with FAR subpart 42.15.

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 \$1,336,710.00, or 37% of the total contract obligations of the FMC for FY 2018.

The FMC is giving special management attention to functions that are closely associated with inherently governmental functions. In accordance with OFPP Policy Letter 11-01, Performance of Inherently Governmental and Critical Functions, 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 FY18 actions to date have been reviewed in accordance with the guidance.

- A. The FMC has placed emphasis on issuing awards 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.
- B. The following characteristics were noted for the awards 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 an award.
 - 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 and for ensuring appropriate internal management attention is given to the development and analysis of service contract inventories is Katona Bryan-Wade, Director of the Office of Management Services.

Plan for Analyzing the FY 2019 Data

The FY 2019 planned analysis will focus on the below special interest functions.

PSC	PSC Description
R431	SUPPORT- PROFESSIONAL: HUMAN RESOURCES
R799	SUPPORT- MANAGEMENT: OTHER

The above product service code was selected to ensure compliance with FAR 4.1703. FMC will analyze the above to ensure proper reporting requirements have been completed by contractors and ensure inherently governmental functions are not being performed.

Katona Bryan-Wade
Director, Office of Management Services