

**FEDERAL MARITIME COMMISSION**  
**SERVICE CONTRACT INVENTORY ANALYSIS**  
**FY 2012**

**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 Office of Management and Budget (OMB) Memorandum on 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 if 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. 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 PSC was reported to OMB as FMC Special Interest Functions:

PSC	PSC Description	Number of Contracts FY 2012 for PSC	Total Contracting Dollars FY 2011 for PSC
D307	Automated Information Systems Services	3	\$436,101.00
D318	IT and Telecom- Programming	3	\$118,594.00

These PSCs were selected because they have the potential for inherently governmental work to be performed by contractors. These PSCs also cover some FMC critical functions.

### Agency Analysis of Contracts

All service contracts were reviewed. 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 7% (D307) and 2% (D318) of the total contract obligations of the FMC for Fiscal Year 2012.

### Contracted Services and Agency Objectives

The mission of the FMC is “[t]o 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
- 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
- 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. 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 inventory are put into place on order to aid the fulfillment of the FMCs 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**

Of the two contracts in FMC’s sample, both are contracts for the maintenance and supervision of large IT projects. The maintenance and supervision of large IT projects is not within FMC’s core mission and is not an inherently governmental function.

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.

- 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 such a way that could affect the ability of the agency to maintain control of its mission and operations. The FMC has utilized acquisition personnel to continuously provide training to improve the management oversight of awards for critical functions.
- iv. The FMC has determined that its acquisition staff has sufficient resources to oversee contracts and is continuing to provide training to other Agency resources regarding management and oversight of existing service contracts.
- v. No contracts have been identified as being poorly performed, as determined by the contracting officer, because of excessive costs or inferior quality.

### **Actions Taken**

Currently, 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 FY12 actions to date have been reviewed in accordance with the guidance.

FMC has improved the data input process to FPDS-NG and will continue to improve the reporting before the next submission to ensure the complete and accurate retention of contracting data.

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.