Office of Inspector General

Fiscal Year 2009 Management Letter to the Financial Statements

A10-01A

March 2010

FEDERAL MARITIME COMMISSION

FEDERAL MARITIME COMMISSION
800 North Capitol Street, N.W.
Washington, DC 20573

March 2, 2010

Office of Inspector General

TO: Richard A. Lidinsky Jr.
Chairman

FROM: /Adam R. Trzeciak/
Inspector General

SUBJECT: Transmittal of the FY 2009 Management Letter

When performing an audit of an agency's major financial systems and accounting processes, auditors often detect deficiencies in internal controls that do not rise to a level of seriousness to be reported in the auditor's opinion. These findings are communicated to the auditee in a management letter. Attached is a copy of the FY 2009 Financial Statement Management Letter that reports on such findings.

During the annual review, findings within the same general area as earlier findings are likely to occur. Consequently, the management letter begins with reporting on the status of prior year findings. This is not necessarily an indication that management is not addressing these issues. Rather, it reflects that certain areas are vulnerable to accounting errors or system breakdowns and need constant oversight.

This year's management letter contains the status of two prior-year findings and five new findings.

The OIG will continue to review areas vulnerable to accounting error and report any findings in next year's management letter.

I am available to discuss the letter at your convenience.

Attachment

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Certified Public Accountants and Consultants

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March 1, 2010

Federal Maritime Commission
Washington, D.C.

In planning and performing our audit of the financial statements of the **Federal Maritime Commission (FMC)** as of **September 30, 2009**, in accordance with auditing standards generally accepted in the United States of America and Government Auditing Standards, issued by the Comptroller General of the United States, we considered the FMC's internal control over financial reporting as a basis for designing our auditing procedures for the purposes of expressing our opinion on the financial statements, and not for the purpose of expressing an opinion on the effectiveness of the agency's internal control. However, based on our audit, we are providing the following findings and recommendations.

Prior Year Findings - Updated

Finding 1. Agency floor on erroneous payments is set too low

Commission Order 78, *Collection of Erroneous Payments Made to or On Behalf of Commission Employees,* (erroneous payments policy) sets forth the procedures for the recovery of erroneous payments. An erroneous payment is defined as a payment made that should not have been made or an overpayment, and may be due to procedural or administrative errors.

The agency's Deputy Director of Administration (DDA) is responsible for the determination of indebtedness. When an erroneous payment is made, the Director, Office of Financial Management (OFM), prepares a detailed statement of the facts and circumstances causing the erroneous payment. The DDA validates the debt based on information furnished by the OFM Director. The Chairman is the only agency employee authorized to consider a waiver of collection of the payment upon request from the employee.

It is the Commission's policy to take action to recoup all erroneous payments in excess of $1.00.

During our fieldwork on the FY 2008 financial statement audit, the OIG reviewed documentation relating to controls over erroneous payments. The OIG learned of an erroneous claim made by an employee on a travel voucher. Due to a procedural error by the agency, the traveler had been paid the claimed amount before OFM had completed its inquiry. The amount erroneously paid was $15.

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This transaction generated several e-mails and discussions that ultimately focused on per diem claims (deductions for a vendor-provided meal) and the timing of OFM's inquiry – much of it coming after the claim had been paid. OFM told the OIG that agency policy to seek to recoup all claims over $1.00 left it little flexibility, notwithstanding the de minimus amount in question.

We are not questioning the actions of either party concerning this transaction. However, we believe the episode highlights the need to revisit the agency's erroneous payments policy. It is difficult to imagine any scenario where the agency comes out ahead by aggressively seeking to collect a few dollars owed to it because of mistake or error. Rather, management needs the discretion to forgive small claims made in error (without involving the FMC Chairman) while continuing to pursue intentional false claims, regardless of the amounts involved.

Neither OFM nor the OIG believe that this individual attempted to defraud the federal government. The employee was a first-time traveler who was not familiar with all federal travel regulations. The traveler was intimidated by sanctions for submitting false claims (fines and/or imprisonment) and laboriously researched this case. For its part, OFM followed the agency's policies on vendor-provided meals and erroneous payments.

To resolve this $15 claim, the OIG estimates that the agency (OFM, the traveler, and the traveler's coworkers and supervisor) spent 25 hours in research and discussions.[1] If all involved were paid at a fully loaded average rate of $75 an hour (both conservative estimates), we calculate that the agency spent over $1,500 to recover $15, or $100 for each $1 recovered. While we do not underestimate the deterrent effect of OFM actions on future, would-be violators, we believe that the costs to the agency to enforce a policy that seeks to recoup $1.00 far exceed its benefits.[2]

FY 2008 Recommendation: The OIG recommends that the Office of Administration seek Commission approval to revise Commission Order 78, *Collection of Erroneous Payments Made to or On Behalf of Commission Employees,* to give the Director of Administration the authority to forgive erroneous payments of $25 or less.

FY 2009 Follow-up: The OIG noted that Commission Order 78 was revised to include the $25 limit. This comment is considered closed.

Finding 2. The Office of Management Services is not optimally using the agency's procurement services provider

The FMC contracted with the Bureau of Public Debt, Administrative Resource Center (BPD/ARC) to provide accounting, travel and procurement services to the agency. BPD/ARC charges for services based on actual direct and indirect costs of providing services in accordance with an agreed-upon cost schedule. The cost schedule is updated at the beginning of each annual service period. Costs are set for the service period, regardless of the number of transactions BPD/ARC processes on behalf of the FMC.

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[1] OIG estimates are based in large part on a log maintained by the traveler documenting hours spent researching and discussing the case with coworkers.

[2] We believe that our calculated estimate of agency costs to resolve this $15 transaction is not representative of all erroneous payment resolution costs.

During our review, the OIG focused on the procurement-related services provided to the agency by BPD/ARC, specifically simple acquisitions support. According to the Federal Acquisition Regulation (FAR) 2.101, simplified acquisitions consist of any acquisitions under $100,000, with some exceptions. Specific services provided by BPD include maintaining purchase order files, issuing guidance to agency staff on purchasing methodologies to obtain needed goods or services; and preparing acquisition purchase descriptions, work statements and final awards.

In FY 2008, the BPD's cost to provide acquisition support to the FMC was $134,571. This amount includes both transaction-based and overhead costs. Transaction costs are extrapolated from prior year procurement activity, and include full-time equivalent (FTE) labor as well as procurement system usage. Overhead costs include system labor support, PRISM application and underlying support software fees, as well as other components, such as network, firewalls, telecommunications, etc. FMC procurement costs are broken down as follows:

BPD FY2008 Procurement Costs Breakdown

Item	Amount
Procurement Services	$ 72,600
Procurement System Services	35,160
OIT Costs	26,811
Total	$ 134,571

The OIG notes that the $72,600 Procurement Services costs represent the direct labor paid (i.e., FTE) to BPD for processing procurement transactions. The remaining amount ($61,971) represents FMC's costs for using BPD systems. The latter cost remains essentially constant, regardless of who (BPD or FMC) uses the system to process a procurement transaction.

The OIG researched procurement information from the agency's on-line procurement system, PRISM, to identify and compare the number and dollar amount of FY 2008 transactions processed by BPD with the number processed in-house, i.e., by FMC's Office of Management Services. The following tables summarize our findings:

	BPD/ARC	OMS/FMC
Number of Transactions		
Original Orders:	29	144
Amendments:	27	110
Total:	56	254
Transaction Dollar Amounts		
Original Orders:	$ 916,340	$ 1,488,744
Amendments:	674,525	3,949,257
Total:	$ 1,590,865	$ 5,438,001

The agency paid $72,600 to BPD for direct labor to process 56 transactions, or $1,300 per transaction processed. [3] Further, the FMC processed over four times as many transactions as did BPD and the average dollar value for transactions processed at BPD was greater than those processed at FMC ($33,389 vrs. $21,409). Finally, 29 percent of all BPD-processed transactions were processed in the last two months of the fiscal year, compared with 44 percent of OMS-processed transactions.

In a May 2007 audit report, the OIG recommended that management "consider transferring Office of Administration's (OA) contracting function to the Bureau of Public Debt." [4] The recommendation was made in response to weaknesses identified in the agency's procurement process. In its comments on the audit, management informed the OIG that "procurement requests above the $5,000 threshold are now sent to the Bureau of Public Debt for procurement action." [5] Notwithstanding, the OIG identified 76 actions that exceeded the $5,000 threshold that were processed by OMS in FY 2008, with 33 processed in the first 10 months of the fiscal year.

The OIG believes that OMS is not using BPD acquisition services optimally and is not complying with its earlier response to rely on BPD to process transactions exceeding $5,000. In prior discussions, OMS told the OIG that BPD would not process transactions that it receives with less than 60 days remaining in the fiscal year (to allow sufficient time for competitive bidding). BPD staff confirmed this standard, but also indicated that it is to be applied on a case-by-case basis. For example, as noted above, 29 percent of all FY 2008 transactions sent to BPD were processed in the final two months of the fiscal year.

FY 2008 Recommendation: The OIG recommends that the Office of Management Services establish quotas for simple acquisitions to be processed by BPD/ARC, increasing by at least 10 percent each year.

FY 2009 Follow-up: On December 15, 2009, management told the OIG that the recommendation had been implemented. Upon review of management's supporting documentation, we determined that the agency submitted to BPD the same number of simplified procurement actions in FY 2009 as it did in FY 2008. We questioned management's conclusion.

In management's February 19, 2010, response to this finding, it concluded that, notwithstanding earlier certification to the OIG that the recommendation had been implemented, "*this recommendation would not be beneficial to the Commission.*" The response points out that the price for BPD's services each succeeding year is based on the amount of services used the previous year. Accordingly, increasing transactions would result in higher costs. Further assigning a quota to insure increases in transactions sent to BPD each year for processing "*is arbitrary and assumes that the Commission will process an ever growing number of transactions each year*." For these reasons, the Managing Director concluded that his office could not justify implementing the recommendation.

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[3] Of the 56 transactions, the OIG identified six contract actions (which generally require more labor effort to process), 22 small purchases averaging $33,389 per transaction, and 28 interagency transactions which, according to BPD, require little time or effort to process.
[4] Audit of Contracts FMC-05-00021 and FMC-06-00007, Procurement of Consulting Services, A07-02
[5] Management comments to A07-02, April 23, 2007, p. 2.

As our finding points out, a little less than half of the total costs paid to BPD are essentially fixed, i.e., they are based on system usage time that will accrue whether BPD or FMC staff process a procurement transaction. Another consideration not mentioned by management but discussed in our original finding is the burden on FMC staff (one staff dedicated to procurement and one staff performing procurement responsibilities among other duties). In two previous reports, the OIG identified weaknesses in the agency's acquisitions process.[6] Sending procurement requests to BPD would address many of our concerns identified therein.

Admittedly, the OIG has noted improvements in acquisitions since the issuance of prior audit reports and we are willing to give management the benefit of the doubt regarding its ability to process procurement requests following Federal Acquisition Regulation requirements in house. However, we will closely monitor these transactions and revisit this recommendation if we identify a return to past practices. This comment is considered closed.

Current Year Findings

Finding 3. Accounts Payable are understated

Accounts payable (or payables) represent amounts owed for purchases of goods or services. During the year, payables are recorded when an invoice, packing slip or receiving report is received by the agency. The Office of Management Services (OMS) reviews all obligations at year-end and establishes an accrual for all services and goods received by year-end (e.g., to recognize that money is owed in the period that the goods were received). For example, an invoice for computer monitors that were delivered on September 15 (FY 2009) may not be sent by the manufacturer until October 10 (FY 2010). The expense should be recorded on the FY 2009 books because the monitors were received in FY 2009.

We reviewed accounts payable at year-end to ensure that all expenses for goods and services were properly recorded in the appropriate period. During our review, we identified approximately $94,000 in additional FY 2009 payables that were not recorded by the agency. Without making the necessary adjustments, the payables were erroneously recorded as FY 2010 expenses, even though the goods or services were received in FY 2009. This understated the FMC's liabilities on its financial statements.

Identifying expenses when they occur near the end of the fiscal year is a two-step process requiring agency staff (generally finance or procurement staff) (i) to identify large contract and purchase items and to follow-up with the Contracting Officer's Technical Representatives (COTR) or other contact points to inquire whether the goods were received, and (ii) to estimate the dollar amount of services or goods that were received since the prior invoice up through the end of the fiscal year (September 30). The amounts are then accrued as payables.

[6] See Audit of Contracts FMC-05-00021 and FMC-06-00007, Procurement of Consulting Services, (A07-02) and Presidential Appointee Furniture Purchases (A08-04).

Under this standard operating procedure, OMS identifies all procurements over $10,000 at year end then contacts the COTR to determine any amounts that should be accrued. The OIG noted that OMS staff sent a letter to all COTRs requesting this accrual information but only half responded. The remaining COTRs either did not respond or did not provide the needed information.

The OIG also noted that when COTR responses indicated that accruals were required, the accruals were not always made. According to OMS staff, she informed BPD finance staff but did not follow up to verify the amounts were recorded. Generally, agency finance staff is responsible for all accounting functions; however, the FMC's Office of Budget and Finance (OBF) is not involved in the year end accrual process.

FY 2009 Recommendation: Consistent with best practices at other federal agencies, the OIG recommends that OBF assume responsibility for contacting COTRs to ensure that all accruals are identified and recorded on agency books and records. OBF should also establish procedures to follow-up with COTRs to ensure that all COTRs respond to the request letter and that the appropriate accruals are made.

Finding 4. Close out procedures on contracts need improvement

Obligations represent the amount of orders placed, contracts awarded, services received, and similar transactions during a given period that will require payment during the same or future periods. Undelivered orders are obligations that are awaiting the receipt of the goods or services ordered before funds are paid. During the normal course of business, officials may cancel an obligation (i.e. undelivered order) that is no longer needed. An example of a service that is frequently canceled after an obligation has been established is travel. Once canceled, the funds may be used for other purposes, subject to appropriation limitations.

Periodically, and at the end of each fiscal year, federal agencies are required to reconcile their obligation controlling accounts to the total amount posted to supporting records. In addition, program and support offices are to review obligations to determine whether the amount obligated on the books is a valid commitment of funds. In the absence of adequate system controls to perform deobligation of invalid or unneeded orders, obligations will both accumulate and remain open until they expire (i.e. 5 years). In certain situations these funds, if deobligated timely, may be used for other contracts.

The OIG reviewed 10 undelivered orders to ensure payables were properly recorded (see Finding 3). During this review, we identified one FY 2008 undelivered order for $155,850 where services were completed and the amount remained in undelivered orders at September 30, 2009. The amount was deobligated in FY 2010 and returned to Treasury after identification by the OIG. While it did not appear that these funds could have been used for other unmet agency needs because the order was issued in FY 2008 and services were provided in FY 2009, the discipline to deobligate funds timely, i.e., within the fiscal year the funds are obligated, will provide the agency the flexibility to use funds where they are needed.

FY 2009 Recommendation: The OIG recommends that the Office of the Managing Director establish contract closing procedures where COTRs notify OMS and OBF staff when contracts are completed so deobligation can be made timely and funds used to meet other agency needs when appropriate. The OIG also recommends that OMS provide training for COTRs on this procedure.

Finding 5. Formal procedures needed to account for internal use software

The mission of the Federal Accounting Standards Advisory Board (FASAB) is to promulgate federal accounting standards after considering the financial and budgetary information needs of citizens, congressional oversight groups, executive agencies, and the need of other users of federal financial information. In June 1998 FASAB issued standard number 10, "*Accounting for Internal Use Software*." This standard identifies when to capitalize costs of software developed or obtained for internal use. This includes the software used to operate an entity's programs (e.g., financial and administrative software, including that used for program management). In this standard there are three phases (i.e. preliminary design phase, software development phase, and Post-Implementation/Operational phase) of development of software. These phases establish the standards of when and how software should be capitalized.

During the financial statement audit the OIG identified that the agency will begin developing in FY 2010, two new software programs, including a new optical electronic method for filing Form FMC-18, "*Application for a License as an Ocean Transportation Intermediary*" and teleconferencing software. Although the agency plans to develop these software programs there is not a formal procedure on how the agency will capture costs associated with these programs.

FY 2009 Recommendation: OBF, in consultation with OMS, should establish procedures on how costs will be accumulated for these programs and work with the COTRs in accumulating the costs. The costs then should be capitalized or expensed and reported on the agency's financial statements as appropriate.

Finding 6. Improvements needed in quality assurance review of Management's Discussion and Analysis

The agency prepares and submits its Performance and Accountability Report (PAR) on an annual basis to the Office of Management and Budget (OMB). In this report the agency must complete a Management Discussion and Analysis (MD&A). This section includes items such as the President's Management Agenda, Financial Performance overview, and Financial Highlights. The Financial Highlights section includes a review of the agency's financial statements and explanations of changes occurring to the financial statements.

OBF and its staff members are integrally involved in the preparation of the PAR. The short time frame for compilation of the PAR limits the availability for the quality assurance (QA) review process. Further, the "over familiarity" with the details by staff compiling the PAR can be counterproductive when the QA review process commences.

During our financial statement audit the OIG noted that QA procedures were not adequate to ensure that errors would be discovered in the MD&A before issuance of the PAR. When the OIG reviewed a draft of the MD&A several errors were discovered that included formatting errors, addition errors and financial information that was inconsistent with the agency's financial statements.

FY 2009 Recommendation: The OIG recommends that the Office of the Managing Director establish a quality control review of the MD&A that reviews for mathematical errors, formatting and consistency with the financial statements and footnotes.

In management's response (attached to this report), the Managing Director stated that, moving forward, he would "*provide information to the OIG only when the MD&A is complete. Although this will limit the time available for the OIG to review the document for substance, and for changes to be made to reflect OIG concerns, OIG will have an accurate document to review. This will be accomplished by October 31, 2010…*"

As the OIG pointed out to management, providing the MD&A by October 31 of each year would be an improvement in timing – not a limitation as management's response suggests. For example, during the FY 2009 review of the PAR, the OIG received a copy for audit on November 5, 2009. Due to statutory deadlines, we had only a few days to complete our tests and review of the information in the MD&A. This past year, our review found numerous errors of an accounting nature that, in the usual course, would be identified in management letter. The OIG looks forward to receiving the MD&A by October 31 of each year.

Finding 7. Agency program officials risk unauthorized commitments and anti-deficiency violations when purchase orders are signed after services begin

Federal Acquisition Regulation (FAR) 1.602-3, defines an unauthorized commitment as an agreement that is not binding - solely because the government representative who made it lacked the authority to enter into that agreement on behalf of the government.

Section 13(g) of Commission Order 112, *Procurement*, states that no employee shall enter into a formal or informal agreement to acquire services unless that employee has been delegated specific written authority to do so. The requesting office must not direct a contractor to perform services prior to being notified that a requisition has been approved.

The Anti-deficiency Act prohibits federal agencies from obligating or expending federal funds in advance or in excess of an appropriation or apportionment. An Anti-deficiency Act violation occurs when government officials make payments or commit the United States to make payments at some future time for goods or services when there are insufficient funds in the appropriation to cover the cost in full.

During our fieldwork, the OIG identified a number of unauthorized commitments by FMC managers and staff involving transactions processed in house and by the agency's procurement service provider, the Bureau of Public Debt. These transactions involved purchase orders for

services that were "signed off" by the contracting officer (CO) after the period of service had already begun.[7] For example,

- The agency entered into a contract with a vendor to provide court reporting and transcription for Commission meetings. The order was signed by the contracting officer on November 7, 2009. Before funds were obligated, the vendor provided services for two Commission hearings on October 15th and 29th, 2009.
- The agency signed a contract (order) for cell phone services on December 3, 2008, for services received in October 2008 and November 2008.
- An order for document scanning services was signed by the contracting officer on June 13, 2009. However, the vendor provided daily services to the Commission in March 2009 through June 2009.
- A vendor provided keycard monitoring and maintenance services to the agency beginning on October 1, 2008. The contracting officer signed the order for these services on November 18, 2008.

In all of the above unauthorized commitments, the agency received services without a valid obligating document in place. This puts the vendor, the COTR and the agency at risk. The vendor is at risk of not being paid for services provided; the COTR is at risk of being personally liable for payment of these services and for an Anti-Deficiency Act violation if funds are not provided by Congress to fund the activity; and the agency at risk of a costly lawsuit if the vendor was told to provide the service by agency personnel.

One cause for late authorization of purchase orders is the timing of the procurement request (PR) by program staff. Section 8(a) of Commission Order 112, *Procurement*, requires staff to prepare a PR form to initiate the acquisition of a product or service and to route it through the FMC's automated procurement and contracting system for concurrence/approval at the required FMC management levels prior to being submitted to the CO for any appropriate action. Further, all PR's shall include sufficient information and lead time to allow for preparation of the procurement material (e.g., purchase order) in compliance with FAR time and content requirements.

For the four orders identified above, the OIG noted that PRs for three of the four orders were dated after the beginning of the performance period. The remaining PR was submitted one day before the performance period, as the following table illustrates:

SERVICE	PROCUREMENT REQUEST	PURCHASE ORDER	PERFORMANCE PERIOD
Court Reporting	09/30/08	11/07/08	10/01/08
Cell Phone	10/15/08	12/03/08	10/01/08
Document Scanning	06/04/08	06/13/08	03/06/08
Keycard Monitoring	11/12/08	11/18/08	10/01/08

[7] According to FAR 2.101, a purchase order is an offer by the Government to buy supplies or services upon specified terms and conditions, using simplified acquisition procedures.

It is unclear why managers are submitting purchase requisitions after the performance period has already begun. Based on discussions with staff, it appears that, in some of the cases, the timing of vendor invoices may contribute to some of the delay. Agency managers often know in advance when the agency will be billed for a service. For services that bill at the end of each quarter, we were told that that PRs and orders are often prepared just prior to invoicing. However, waiting to obligate funds means that services are being provided to the agency without funding authority, which creates risks to the vendor and the agency, as discussed above.

We also noted that, in all cases, the agency was operating under a continuing resolution (CR) at prior year funding levels. During these periods, it cannot obligate funds for a full year to a vendor due to funding uncertainty. Rather, the agency will "incrementally" fund an activity for some period of time not exceeding the CR. When interim funding runs out, or when a new CR or appropriation bill is enacted, program staff must revise the order for services to, again, obligate funds. Unless COTRs actively monitor the funding timeframes in the purchase order, they are unlikely to prepare PR's (and by extension, purchase orders) timely.

Regardless of managers' intent to spend funds cautiously during CR funding, it is important to have purchase orders in place at the beginning of the period of performance because the purchase order obligates funds for the activity. This ensures that funds will be available to pay for services received, regardless of when the agency is billed.

The OIG commends management for recognizing the seriousness of this issue. On February 4, 2010, the FMC's Managing Director spoke to FMC participants at the annual COTR refresher training about the need to monitor funding to avoid unauthorized commitments.

FY 2009 Recommendation: The OIG recommends that the Managing Director establish a procedure to notify COTRs when funding on purchase orders are about to expire to assist them to submit timely purchase requests to continue funding.

We believe that the implementation of these recommendations will provide the **Federal Maritime Commission** with a stronger system of internal controls while also making its operations more efficient. We will be happy to discuss the details of these recommendations with you and assist in any way possible with their implementation.

Management comments to this letter are attached in their entirety.

While this report is intended solely for the information and use of the management of the **Federal Maritime Commission**, it is also a matter of public record, and its distribution is, therefore, not restricted.

Rockville, Maryland

UNITED STATES GOVERNMENT FEDERAL MARITIME COMMISSION

Memorandum

TO : Inspector General **DATE:** February 19, 2010

FROM : Managing Director

SUBJECT : FY 2009 Financial Statement Management Letter

I have reviewed the recommendations contained in the instant Management Letter. Please note that while this Management Letter was presented to the Office of Administration, that office was abolished during the recent reorganization of the Commission. The Office of the Managing Director is therefore submitting these corrective actions which will be effected to address the recommendations.

Management Letter Recommendation #1 (Finding 2).

FY 2008 Recommendation: The OIG recommended that the Office of Management Services establish quotas for simple acquisitions to be processed by BPD/ARC, increasing by at least 10 percent each year.

FY 2009 Follow-Up: On December 15, 2009, management responded that the recommendation had been implemented. Upon review of management's supporting documentation, we determined that the agency submitted to BPD the same number of simplified procurement actions in FY 2009 as it did in FY 2008. The recommendation remains open and will be reported as such in the OIG's Semiannual Report to Congress in April 2010.

Response: After further reviewing the recommendation, and evaluating the benefits and detriments of implementing quotas for increasing acquisitions processed by BPD/ARC, it has become clear that this recommendation would not be beneficial to the Commission. Accordingly, I am retracting the original 2008 concurrence of the Office of Administration with the recommendation.

A quota increasing the number of transactions processed by BPD each year could result in increased future year costs to the Commission. The recommendation is predicated on the finding that, in any given fiscal year, the Commission has a fixed price contract for BPD services, no matter how many transactions are processed. Under your rationale, the more transactions processed by BPD, the lower the cost per transaction, thereby benefitting the Commission. As your finding also recognizes, however, the price for BPD's services each succeeding year is based on the amount of services used the previous year. Accordingly, increasing the number of transactions in any given year will result in a higher price to the Commission in the following year. To implement a quota increasing the use each year would, then, result in ever increasing total costs year after year, rather than a cost saving. Moreover, a quota increasing the number

of transactions by 10 percent annually is arbitrary and assumes that the Commission will process an ever growing number of total transactions each year. In the long run, there is no benefit to the Commission establishing such a quota. In this regard, the value to the Commission of using BPD is the need for expertise regarding fiscal and contractual matters, in view of the Commission's limited resources in that area. On any individual transaction, a variety of factors may be considered in determining whether to process it in-house or to use the services of BPD. Such factors include timeliness and urgency, complexity, exigencies of Continuing Resolutions and their impact on incremental funding, and the degree of control that the Commission must exercise in ensuring that the contractor fully understands the Commission's needs.

Consequently, we cannot justify implementing your recommendation. Individual transactions will continue to be evaluated as to the means most advantageous to the Commission, considering available resources. We consider this matter closed.

Management Letter Recommendations #2 and #3 (Findings 3 and 4).

FY 2009 Recommendation: The OIG recommended that the OFM assume responsibility for contacting COTRs to ensure that all accruals are identified and recorded on agency books and records. OFM should also establish procedures to follow up with COTRs to ensure that all COTRs respond to the request letter and that the appropriate accruals are made.

FY 2009 Recommendation: The OIG recommended that OA establish contract closing procedures where COTRs notify OMS and OFM staff when contracts are completed so deobligations can be made timely and funds used to meet other agency needs when appropriate. The OIG also recommends that OMS provide training for COTRs on this procedure.

Response: Each COTR, when appointed, receives a COTR appointment letter, which details the major responsibilities of the COTR in monitoring each contract. It is the responsibility of every COTR to notify OMS and OFM (now Office of Budget and Finance (OBF)) with respect to accruals and payment information. The OIG found that COTRs, as a group, have been somewhat dilatory in performing their responsibilities, even when follow-up has been made by OBF or OMS. Since OBF has followed up with COTRs to little avail, it seems that the OIG recommendation would be insufficient to correct this problem. Accordingly, we have taken the following steps.

First, refresher training emphasizing this and other problems was provided to all COTRs on February 4, 2010. All of the COTR-related issues described in this FY 2009 Management Letter were addressed during the on-site training. In addition, with the reorganization of the Commission that was effective on January 31, 2010, responsibility was assigned to an individual within OMS to coordinate with agency contracting personnel, with OBF and with COTRs to follow-up and ensure that timely and appropriate accruals are made and that contracts are

properly and timely closed. That individual, a former OIG staff official, will be designing procedures to ensure timely compliance.

We will also be imposing a requirement that COTRs be rated as to their performance in their annual performance evaluations, even when their COTR responsibilities are a minimal part of their performance plans.

New procedures will be in place by September 30, 2010.

Management Letter Recommendation #4 (Finding 5).

FY 2009 Recommendation: The OIG recommended that OFM, in consultation with OMS, should establish procedures on how costs will be accumulated for these programs (internal use software) and work with the COTRs in accumulating the costs. The costs then should be capitalized or expensed and reported on the agency's financial statements as appropriate.

Response: OBF and OMS are working closely together to determine how costs will be accumulated and to determine whether costs should be capitalized or expensed. Once it is determined which costs will be capitalized, the SOP will be revised accordingly. It is anticipated that this determination will be made by September 30, 2010.

Management Letter Recommendation #5 (Finding 6).

FY 2009 Recommendation: The OIG recommended that the Office of Administration establish a quality control review of the MD&A that reviews for mathematical errors, formatting and consistency with the financial statements and footnotes.

Response: In order to effect early coordination with the OIG, an early draft of the MD&A was provided to the OIG in order to obtain expedited consultation. This draft, as an early stage document, admittedly contained several errors. Since this is a problem for the OIG, in the future the Managing Director will provide information to the OIG only when the MD&A is complete. Although this will limit the time available for the OIG to review the document for substance, and for changes to be made to reflect OIG concerns, OIG will have an accurate document to review. This will be accomplished by October 31, 2010, with the upcoming submission of the MD&A for FY 2010.

Management Letter Recommendation #6 (Finding 7).

FY 2009 Recommendation: The OIG recommended that the Managing Director establish a procedure to notify COTRs when funding on purchase orders is about to expire to assist them to submit timely purchase requests to continue funding.

Response: Purchase Orders, prepared by BPD and/or OMS, are dependent upon the submission of Purchase Requests submitted through PRISM by Bureaus and Offices. COTRs are responsible for timely initiating properly documented PRs and ensuring that they are routed and approved prior to the periods of performance.

Staff of the Office of the Managing Director has been reviewing current procedures in conjunction with the recent agency reorganization. In the response to Recommendations 2 and 3 above, I advised that certain responsibilities were being assigned to an individual within OMS to coordinate with agency contracting personnel, with OBF and with COTRs. Procedures developed to satisfy Recommendations 2 and 3 will include a requirement for COTRs/requisitioners to ensure that purchase documents are issued prior to commencement of performance, and compliance with appropriation requirements. The procedures will also include a mechanism to assist COTRs to submit timely purchase requests to continue funding. This will be completed by September 30, 2010.

/s/

Ronald D. Murphy
Managing Director