

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



**March 2008**



## FEDERAL MARITIME COMMISSION

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TO: Anthony Haywood, Deputy Director  
Office of Administration

FROM: Adam R. Trzeciak  
Inspector General

SUBJECT: Transmittal of OIG Audit Report

The Office of Inspector General (OIG) has completed a review of furniture purchases and renovations pertaining to offices used or controlled by the Federal Maritime Commission's (FMC) Presidentially-appointed Commissioners. The review focused on agency compliance with Section 614 of Public Law 101-136, as amended. The law prohibits departments and agencies from obligating or expending in excess of \$5,000 for furnishing or redecorating offices for Presidential appointees during their appointment period.

The review found that the FMC has complied with applicable laws and regulations regarding funds expended on office space occupied or controlled by FMC Commissioners. No commissioner exceeded the \$5,000 limitation. All Commissioners told the OIG that they were informed of the limitation on purchases by the Office of Financial Management and were, thus, aware of the requirement. Notwithstanding compliance, the FMC needs to do more to track purchases occurring during the period of appointment for the agency's Commissioners to prevent unintended violations.

The OIG determined that a September 2007 purchase of furniture for the Chairman's Office suite, totaling \$36,625, did not violate the \$5,000 limitation. We identified several mitigating circumstances, including our determination that no Presidential appointee played any role in the purchase of furniture for this vacant office suite. Rather, the agency's Office of Administration acted to replace furniture that, in many cases, was over 20 years old and showing signs of wear and age. On the other hand, we believe the Office of Administration should have worked with the Commission, to include notifying it of the planned purchase, before making this potentially sensitive purchase.

Our review of documentation indicated that the agency had violated Federal Acquisition Regulation (FAR) 13.104, *Promoting Competition*, which requires soliciting bids from at least three sources to promote competition to the maximum extent possible. The FMC's Office of Management Services relied on one vendor to assist the agency in the Chairman's Office furniture procurement. Management also violated its own policy requiring all procurement actions exceeding \$5,000 to be processed by the FMC's contracted procurement agent in the Bureau of Public Debt.

The OIG made three recommendations to address our concerns in these areas. We also plan to begin an audit of budget execution to document how spending decisions are implemented and monitored throughout the year.

We greatly appreciate the assistance of the Commission, Commissioners' staff and the Office of Administration for their valuable assistance and insights.

## ***Review of Expenses to Furnish, Redecorate or Improve the Offices of Federal Maritime Commissioners***

The Office of Inspector General (OIG) has completed a review of furniture purchases and renovations pertaining to offices used or controlled by the Federal Maritime Commission's (FMC) Presidentially-appointed Commissioners. The review focused on agency compliance with Section 614 of Public Law 101-136, as amended. The law prohibits departments and agencies from obligating or expending in excess of \$5,000 for furnishing or redecorating offices for Presidential appointees during their appointment period.

### **Background**

General Services Administration (GSA) Bulletin, Federal Property Management Regulation (FPMR) 215, dated August 19, 1988, prohibited agencies and departments from spending or obligating more than \$5,000 for renovating, remodeling, furnishing or redecorating the offices of Presidential appointees. Any expenditures over this amount required express approval by the House and Senate Appropriations Committees.

Section 614 of Public Law 101-136, dated November 3, 1989, prohibited Federal departments and agencies from obligating or expending funds, in excess of \$5,000, to redecorate, to purchase furniture or to make improvements for the offices of Presidential appointees. This limitation applied during the appointee's complete term of office. The law modified the GSA guidance in two ways: (i) it made the \$5,000 limitation applicable for the duration of each Presidential appointee's term, and (ii) it deleted the words "renovation" and "remodeling" from the \$5,000 ceiling. The new language is contained in the revised GSA guidance, GSA Bulletin FPMR D-232, dated December 11, 1992, entitled *Public Buildings and Space*.

In 1992, Section 618 of Public Law 102-393, amended previous legislation by defining "office" as the "entire suite of offices assigned to the appointee, as well as any other space used primarily by the individual or the use of which is directly controlled by the individual." The language has appeared annually, most recently in Public Law 110-161, the Consolidated Appropriations Act of 2008.

### **Objectives, Scope and Methodology**

The objectives of this compliance review were to determine whether the Federal Maritime Commission complied with applicable laws and regulations pertaining to the \$5,000 limit on redecorating by Presidential appointees and to determine whether associated expenses are recorded and tracked during the complete term of office for each FMC Commission member. As part of this effort, the OIG reviewed a September 2007

purchase of office furniture for the Chairman's office suite, which has been vacant since December 2006, for compliance with the Act and with federal acquisition regulations.

The OIG review focused on the FMC's Office of Administration (OA) and the role it plays in identifying furniture needs, addressing those needs in the procurement process and tracking purchases against the \$5,000 legal limit. We reviewed Commission Orders 108, *Personal Property Management*, dated March 9, 2005, and 112, *Procurement*, for internal guidance on furniture purchases. We researched furniture purchases made in FY 2007 in the agency's procurement files and identified all furniture and redecorating expenses incurred by FMC Commissioners during the term of their appointments.<sup>1</sup> We then supplemented our understanding with interviews of FMC procurement staff.

In addition to our document reviews, we interviewed the Commissioners and their staff to discuss purchases made for them by the agency. We combined the interview results with the results of our file search to construct a complete purchase history.

We interviewed staff in the Office of Financial Management (OFM) to discuss controls in place to monitor spending on furniture by Commissioners. As a benchmark, we contacted other small agencies in Washington, DC, to discuss how they control such purchases.

To review the September 2007 purchase of the Chairman's office furniture, we identified purchase orders totaling \$36,625 for new furniture in the Chairman's private office, conference and file rooms. We performed a walk-through of the area to verify and match furniture ordered with the furniture received, and to ensure that we had purchase orders for all new purchases. We discussed the furniture purchase with the Commissioners, their advisors and OA finance and procurement staff. We met with officials from GSA's Office of Governmentwide Policy to discuss the procurement in relation to guidance contained in GSA Bulletin FPMR D-232, *Public Buildings and Space*.

We conducted this compliance review from December 2007 – February 2008 using guidance contained in the 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 review objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions.

### **Findings**

The OIG review found that the FMC has complied with applicable laws and regulations regarding funds expended on office space occupied or controlled by FMC Commissioners. No Commissioner exceeded the \$5,000 limitation. All Commissioners

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<sup>1</sup> At the FMC, only Commissioners are Presidentially appointed and subject to the \$5,000 limitation. During the period of our review, there were four Commissioners at the FMC. One individual is awaiting confirmation by the Senate for the fifth and final Commission vacancy.

told the OIG that they were informed of the limitation on purchases by the OFM and were thus aware of the requirement. Notwithstanding compliance, the FMC needs to do more to track purchases occurring during the period of appointment for the agency's Commissioners to prevent unintended violations.

Our review of documentation indicated that the agency had violated Federal Acquisition Regulation (FAR) 13.104, *Promoting Competition*, which requires soliciting bids from at least three sources to promote competition to the maximum extent possible. Management also violated its own policy that requires all procurement actions exceeding \$5,000 to be processed by the FMC's contracted procurement agent in the Bureau of Public Debt (BPD).

**Finding 1. The FMC has Complied with Limits on Expenditures for Offices of Presidential Appointees**

The FMC is composed of five Commissioners appointed by the President with the advice and consent of the Senate. Commissioners serve five-year staggered terms. The President designates one of the Commissioners to serve as Chairman. During the period of our review, the Commission was staffed by four-appointed Commissioners. No other FMC employees are Presidential appointees.

The four sitting Commissioners have served for varying lengths of time at the FMC. The longest serving Commissioner was initially appointed in 1994. The other three Commissioners were appointed in calendar years 1999, 2002 and 2003.

In assessing compliance with the requirements of P.L. 101-136, as amended, the OIG noted that the FMC does not maintain a tracking system to capture expenditures on personal preference items by Presidential appointees. Consequently, we collected information as a basis for our conclusion through discussions with the Commissioners and with staff in the FMC's OFM and Office of Management Services (OMS).

Without exception, the Commissioners told the OIG that they were aware of the \$5,000 limitation on purchases / renovations.<sup>2</sup> All told us that the OFM director apprised them of this limitation soon after each arrived at the agency, coinciding with their first purchase. Each Commissioner provided the OIG with documentation to support their claim of adherence to the limits or described purchases in sufficient detail to enable the OIG to create the purchase history.

To corroborate the information provided to us, the OIG then met with OFM and OMS staff to collect documents to support the claims and to inquire about any other purchases that were made for these offices. The OIG noted that in some instances there were discrepancies between what OFM/OMS provided to us and the discussions we held

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<sup>2</sup> Furniture purchases were made by three of four current FMC Commissioners during their tenures. One current Commissioner has made no furniture or redecorating-related purchases to date.

the Commissioners. We attributed them to imperfect memories of events going back a number of years. More importantly, all were under the \$5,000 limit.

In one instance, one Commissioner was very close to exceeding the limitation. One purchase order request, totaling \$4,876, just \$124 under the \$5,000 limit, was made in February, 2004. The following May, 2004, this Commissioner's advisor requested a new lamp. The OIG determined that the price of the lamp was \$52, bringing the total office furniture-related purchases to \$4,928 – just \$72 under the \$5,000 limitation. The advisor assured the OIG that the proximity to the \$5,000 limitation was discussed with OMS staff prior to making the purchase to avoid a violation of the limit.

The FMC has relied on the diligence and memories of staff to stay within the \$5,000 limitation. This has been a successful approach, but as the above example illustrates, even an occasional small purchase can put the office very close to the \$5,000 limitation unless meticulous records are maintained. Possible inadvertent violations are especially likely during periods of procurement or finance staff turnover.

The OIG believes that OFM should establish a tracking system to record all purchases subject to the \$5,000 limitation. A file should be established for each Commissioner that includes items purchased, purchase dates and amounts purchased. The file should be maintained for the full tenure of each Commissioner.

The OIG also noted that all Commissioner office spaces were painted and received new carpet as part of a larger agency-wide upgrade and maintenance of space. Commissioners were provided an opportunity to make cosmetic selections, to include paint and carpet colors. As these modifications were in keeping with routine, scheduled maintenance for the entire agency, the agency did not include these sums in the Commissioner totals for furniture / redecorating. The OIG concurs with this decision.

***Recommendation 1. The OIG recommends that OFM develop a tracking system to document purchases and improvements for Commissioners' Office spaces, including a justification for purchases that are not subject to the \$5,000 limitation.***

**Finding 2. The FMC's Furniture Purchase for the Chairman's Office did not Violate the \$5,000 Legislative Limitation**

During the period of our review, the FMC operated without an appointed Chairman. The former Chairman left the agency in December 2006. As of the issue date of this report, the agency continues to operate without a Chairman.

Preceding our review, questions were raised to the OIG about a recent office furniture purchase for the Chairman's office suite. Few details were provided, although questions were raised about the legality of the purchase, which totaled \$36,625, in light

of the \$5,000 purchase limitation. As the purchase pertained directly to the subject of this review, the OIG chose to review the purchase in the context of the broader audit.

Based on our review of the facts surrounding the purchase, our review of other Federal agency policies and practices and discussions with General Services Administration personal property management policy staff, we have concluded that the FMC did not violate the \$5,000 legislative limitation on furniture purchases. We do, however, believe that more needs to be communicated to the Commissioners when they are asked to consider potentially controversial or high profile expenditures, as explained below.

As a result of the absence of a Chairman, the remaining four Commissioners have assumed responsibility as the chief executive and administrative officer of the agency. This requires the Commission to vote on matters, including agency budgets and spending priorities. One of the current FMC Commissioners has been nominated by the President to be the agency's next Chairman.

The idea to replace the furniture in the Chairman's office originated in the Office of Administration (OA) near the end of FY 2006. At that time the agency purchased new furniture for the "Commissioners' Conference Room;" space not used or controlled by the Chairman. During this general timeframe, OA/OMS staff responsible for furniture procurement began to discuss an "overhaul" of the Chairman's office space to upgrade furniture that in some instances was 20 years old or older and had never been refinished. A visual inspection by the OIG of the furniture revealed numerous instances of wear and tear.

During FY 2007, the FMC operated under a continuing resolution. Expenditures were closely monitored to ensure that the agency had sufficient funds for required spending items. Throughout the year, agency administrative staff discussed options should unspent funds be available at fiscal year end. One of the needs identified by OA staff was the Chairman's office furniture.

Also during the fiscal year, one of the four sitting Commissioners (not the Commissioner nominated to be the Chairman) approached his colleagues on the Commission with the idea to replace the Chairman's office furniture due to its age and condition. He opined that the Chairman's office is the "public face" of the agency and therefore needs to reflect its status to visitors. No action was requested by this Commissioner nor taken by the Commission.

According to this Commissioner, he also spoke to the OA Director about the need to update the Chairman's office furniture. The OA Director indicated to the Commissioner that OA was already looking into replacing the furniture. At this point, the Commissioner ceased his inquiries.

Since the Commission, like many Federal agencies, operated under a continuing resolution for the entire year, the agency spent cautiously to ensure that payroll and other



mission-critical functions would continue. Routine needs, e.g., IT equipment purchases, obligations for staff awards, furniture and supply purchases, were postponed unless necessary to meet immediate agency needs.

As the fiscal year end approached, the Director, OA, held budget meetings among office heads to identify unused funds and unmet spending needs. Unused funds were allocated to areas within the agency with previously unaddressed needs. Fund availability changed frequently. For example, with each passing pay period, the funds set aside for the Chairman's salary became available, as did funds tied to other vacant positions within the agency. In addition, previously obligated funds for building security, a planned staff relocation and various other unrealized travel and administrative expenses, became available near fiscal year end to address previously unmet needs, to include funds for staff performance awards, numerous IT-related upgrades and the purchase of equipment and (agency-wide) furniture. It was during this period of fund availability that the agency used \$36,625 to purchase new office furniture for the Chairman's office.

Presidential appointees are limited to purchases totaling \$5,000 over the life of their appointment, as detailed in the following legislative provision:

*During the period in which the head of any department or agency, or any other officer or civilian employee of the Government appointed by the President of the United States, holds office, no funds may be obligated or expended in excess of \$5,000 to furnish or redecorate the office of such department head, agency head, officer, or employee, or to purchase furniture or make improvements for any such office, unless advance notice of such furnishing or redecoration is expressly approved by the Committees on Appropriations. For the purposes of this section, the term "office" shall include the entire suite of offices assigned to the individual, as well as any other space used primarily by the individual or the use of which is directly controlled by the individual.<sup>3</sup>*

The OIG noted that the FMC did not have a Chairman during the period the furniture was ordered (and delivered), which calls into question the applicability of the provision that requires a presidential appointee to *hold office* when purchases are made. However, because of the circumstances at the FMC, specifically (i) a current Presidentially-appointed Commissioner, (ii) nominated to be the Chairman, (iii) was in a position to request or influence a purchase (and thus violating the spirit of the provision), we decided to proceed with our inquiry.

FMC guidance on Personal Property Management is contained in Commission Order 108. This Commission Order establishes the basic policies and procedures concerning the control and management of the agency's personal property and sets forth the responsibilities for management of Government-owned personal property. However, it is silent on implementation of the \$5,000 limitation. The OIG then reviewed government-wide policy issued by GSA to assess whether a violation had occurred. GSA

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<sup>3</sup> Sec. 713 of the Consolidated Appropriations Act of 2008

identified three guidelines to consider when determining whether purchases fall under the legislative limitation:

1. *Age / Condition of Furniture – Furniture in need of replacement due to visual condition or structural integrity* OIG inspection of the furniture revealed wear and tear. According to OA staff, much of the furniture was, with minor exceptions, between 20 and 30 years old. One piece, the Chairman's conference table, was, in actuality, a dining room table (part of a table and chair set) that had been purchased in the early 1990's.
2. *The furniture purchased is not a personal preference item* The OIG determined that no Commissioner had input into the decision to purchase the furniture, nor did any Commissioner express preferences for style, color or any other attribute. The OIG focused on the activities of the designated Chairman and his influence or role in this regard. The OIG found no evidence to suggest that the Chairman designate, a current FMC Commissioner, played any role or had any influence, over the selection of the furniture or the decision to purchase furniture. The decision to upgrade the Chairman's office suite was a decision made by OA staff. OA staff alone, working with interior designers from a GSA vendor, designed and selected the furniture layout. Our discussions with the design consultant verified that she worked only with OA staff.
3. *The furniture will stay with the agency for its continued use.* The OIG verified that the furniture was purchased by OA with the intent that it be used for several years by subsequent Chairmen. It would be impractical to remove large pieces, unlike a piece of art or an accent item.

The OIG also contacted other agencies who informed us that they do not treat the replacement of worn furnishings as items subject to the \$5,000 limitation. While we do not regard the activities of sister agencies as setting policy to be followed by the FMC, their actions provide a useful benchmark as to how the limits are implemented elsewhere.

On the other hand, the OIG believes that OA should have informed the Commission of its plans to purchase specific furniture for the Chairman's office suite, to include the price of the planned purchase. As it was, all Commissioners, who vote on the application of unallocated funds to unmet needs, told the OIG that they were not aware that the agency had made the furniture purchase, although all said that they were aware that new furniture was under consideration. The OIG identified FY 2007 budget allocation memorandums circulated to the Commission for its approval which identified agency-wide furniture needs and plans to spend over \$100,000 to address those needs, but contained no mention of the Chairman's office furniture.

The OIG believes that such a sensitive, potentially controversial purchase should have been made explicit in the memoranda circulated. We do not believe that the Director of OA violated internal guidance or Federal regulation by proceeding in the manner he did. Commission Order 112, *Procurement*, delegates authority to the

Executive Director (now the Director of Administration) to approve all purchases over \$10,000. However, the order also states that the Chairman will be assured of the efficient discharge of procurement policies, procedures and responsibilities through conferences with and reports from the Director of Administration and other officials with delegated procurement authority. The OIG believes that this purchase, due to its amount and potentially sensitive nature, should have been explicitly identified to the Commission, acting in its capacity as the “chairman” of the FMC.

The OIG is not making a recommendation at this time to address this outcome. Rather, we are planning to begin an audit of agency budget execution processes and procedures within the next several weeks that will review how the agency monitors spending.

**Finding 3. FMC did not Comply with Internal Policy Regarding Processing of Procurement Actions**

In OIG Audit Report No. A-07-02,<sup>4</sup> the OIG found that the agency issued a sole source contract to a consultant in violation of Commission Order 109 and FAR competitive sourcing requirements. The OIG recognized that the agency does not enter into many large, competitive source contracts, and that it is sometimes difficult to keep up with changing acquisition requirements. We recommended that the agency transfer the contracting function to the BPD, the agency’s administrative service agent, to process procurements over a predetermined amount.

In response, the agency agreed with the recommendation and, effective April 23, 2007, informed the OIG that it would send all procurements over \$5,000 to the Bureau of Public Debt for processing.

The furniture purchases made for the Chairman’s Office were detailed on four purchase orders. Three of the four exceeded the \$5,000 threshold and should have been processed by BPD. The OIG verified that none of the purchases were processed by BPD. Agency officials we spoke with indicated that the proximity to the end of the fiscal year precluded transferring the procurement to BPD. BPD officials told the OIG that it generally requires a 60-day lead time to process procurements at fiscal year end.

On the other hand, the agency is vulnerable to violating FAR regulations when expediting procurements at year end. For example, as discussed in Finding 4. (below), the agency did not seek competitive bids on the furniture purchase, potentially resulting in the overpayment for services it received.

***Recommendation 2. The OIG recommends that OMS establish controls to ensure that FAR requirements are followed at year end when purchases are made without assistance of BPD.***

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<sup>4</sup> Audit of Contracts FMC-05-00021 and FMC-06-00007, Procurement of Consulting Services

#### **Finding 4. Competitive Bidding Requirements were not Followed**

Staff in the Office of Administration reviewed GSA supply catalogs to identify and procure furniture for the Chairman's office. Many manufacturers of goods and materials do not offer GSA-negotiated pricing directly to Federal agencies. Rather, agencies must go through vendors who have contracts with the manufacturers. In the procurement of the Chairman's furniture, the FMC selected a vendor that had prior business relationships with the agency. The vendor then worked with the agency to procure the desired items.

FAR 13.104, *Promoting Competition*, requires the federal government to seek proposals from at least three sources when using the GSA schedule vendor list. In this procurement, the agency sought only the assistance of one vendor, and did not obtain bids from at least two other vendors as required by the FAR. While the price difference may or may not have been material, the agency did not benefit from any competitive pressures to receive services at the lowest possible price.

***Recommendation 3. The OIG recommends that the Office of Management Services ensure that FAR 13.104, Promoting Competition, is 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.***

#### **Conclusion**

The OIG determined that the FMC does not have procedures in place to track furniture and decorating expenses by its Presidentially-appointed Commissioners. Nevertheless, the agency has not violated the Congressionally-mandated limitation on such purchases. This is due in large part to the diligence of staff in researching past purchases by the Commissioners, a labor-intensive exercise made somewhat manageable by the small number of procurement actions and the memories of staff. However, once those who processed actions leave the Commission, the institutional memory will likely leave with them, resulting in unintentional violations. At least one other agency we spoke to has established a furniture / redecoration file which tracks all purchases in one place. While some may argue that the absence of past violations negates the need to establish systems, the efforts required to establish and maintain these systems are minimal.

We also found no evidence to suggest that any Commissioner played a role in the decision to purchase furniture for the Chairman's Office suite or, once the decision was made, to influence the characteristics of the purchases. We do, however, believe that the Director, OA, should have notified the Commissioners of the furniture purchase.

Finally, the timing of the purchases – at the very end of the fiscal year, likely facilitated the agency's failure to seek competitive bids. Because the agency postponed fulfilling legitimate needs throughout much of the year, it had to rush a number of

purchases that ordinarily would have been spread out over the preceding months. Unfortunately, the timing of agency budgets, including whether the agency receives a budget, is beyond its control. Therefore the agency needs to establish controls to ensure that, at a minimum, the agency follows regulations even under uncertain budgetary conditions.

**\*\* MANAGEMENT'S COMMENTS \*\***

**FEDERAL MARITIME COMMISSION**  
**Office of Administration**

**Memorandum**

**Date:** March 4, 2008

**To** : Inspector General

**From** : Deputy Director of Administration

**Subject** : Review of Presidential Appointee Furniture Purchases

The instant review contains three recommendations. We are providing corrective action advice concerning them herein.

**Recommendation 1: The OIG recommends that OFM develop a tracking system to document purchases and improvements for Commissioner office spaces, including a justification for purchases that are not subject to the \$5,000 limitation.**

**Response:** OA will establish a tracking system to record all purchases subject to the \$5,000 limitation, and will establish files for the tenure of each Commissioner that include items purchased, purchase dates and amounts of purchases, and will include a justification for purchases that are not subject to the \$5,000 limitation, i.e., modifications which do not involve personal preference items such as routine agency-wide upgrades of furniture/redecorating and maintenance of space. We have established a corrective action completion date of March 31, 2008, for this recommendation.

**Recommendation 2: The OIG recommends that OMS establish controls to ensure that FAR requirements are followed at year end when purchases are made without assistance of BPD.**

**Response:** As the OIG pointed out in the review, while 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 will develop a "Simplified Acquisition Checklist" for staff to use; the checklist will be 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 established a corrective action completion date of March 31, 2008, for this recommendation.

**Recommendation 3: The OIG recommends that the Office of Management Services ensure that FAR 13.104, Promoting Competition, is 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.**

**Response:** Please see comments relative to Recommendation 2 above. The corrective action contemplated for Recommendation 2 will achieve corrective action for this Recommendation as well. We have established a corrective action completion date of March 31, 2008, for this recommendation.

If you have any questions regarding these actions, please let me know.

  
Anthony Haywood

cc: Directors OFM, OMS