

Office of Inspector General

Audit of the Office of the
Secretary's Oversight of
Document Scanning Services
A10-03



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FEDERAL MARITIME COMMISSION



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Office of Inspector General
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Office of Inspector General

TO: Karen V. Gregory
Secretary

FROM: /Adam R. Trzeciak/
Inspector General

SUBJECT: Audit of the Office of the Secretary's Oversight of Document Scanning Services

The Office of Inspector General conducted a review of contract oversight by the Office of the Secretary (OS) for scanning services at the Federal Maritime Commission. The overall objective was to assess whether the contract was adequately competed and monitored.

This review of the agency's contract was part of the annual financial statement audit. This contract was selected based on the total awarded obligation and its impact on the financial statements.

We thank OS staff for its help and cooperation throughout the review.

cc: Assistant Secretary
Managing Director
Special Assistant

Audit of the Office of the Secretary's Oversight of Document Scanning Services

The Office of Inspector General (OIG) conducted a review of contract oversight by the Office of the Secretary (OS) for scanning services at the Federal Maritime Commission (FMC). The objective of this review was to assess whether the agency followed Federal Acquisition Regulations (FAR) principles in the procurement of this contract and that the contractor was adequately monitored.

Background

A contract is a mutually binding legal relationship obligating the seller to furnish products and/or services and the buyer to pay for them. In fiscal year (FY) 2009, the agency awarded \$2.3 million in contracts for the purchase of goods and services to help the agency meet its mission-related needs.

The Director of the Office of Management Services (OMS) serves as the agency's Contracting Officer (CO). The FMC also has a service level agreement with the Bureau of Public Debt (BPD) to assist the agency with contracting for goods and services and other procurement functions.

When BPD serves as the CO on FMC procurements, BPD's procurement specialist directs the procurement action from start to finish. The specialist works with the FMC's program office to define the requirements and procure the service or item necessary to meet the agency's needs. All contracts, whether processed by FMC or BPD staff, are assigned a Contracting Officer's Technical Representative (COTR) to provide technical direction on the contract within the scope of the contract. The COTR's delegated responsibilities include monitoring contract performance, evaluating work progress, inspecting and accepting deliverables, approving invoices for payment and assisting the CO with the contractor's performance evaluation.

In February 2008, the Office of the Secretary entered into a contract to scan the Commission's current and historical official paper documents for the OS, the Office of the General Counsel (OGC), and the Bureau of Enforcement (BOE) into an electronic file format. Program staff prepared a Procurement Request (PR) identifying the services needed and estimated cost, and a Performance Work Statement (PWS) to initiate the contract action.¹ The PR was entered into BPD's procurement system - PRISM. The requisition was approved by the Secretary, the Office of Budget and Finance (OBF) for budgetary clearance and OMS.

The BPD served as the CO on the procurement of scanning services. Based on the PR and the PWS, it identified qualified vendors and requested bids from them. Six vendors submitted proposals competing for the stated services. Staff from the Secretary's office and

¹ A performance work statement identifies project tasks, deliverables and milestones.

OGC evaluated each proposal. The winning contractor was selected after a review of its technical approach and past performance on similar projects. The contract provides the FMC with a full-time contractor employee to work at FMC Headquarters to perform scanning services at a fee of \$26.12 per hour worked for the duration of the contract (per order number TPD-FMC-08-00004). The FMC provides the contractor with needed hardware/software to perform the duties.

The contract was awarded for \$52,240 a year, with the option to exercise four additional years, totaling \$261,200. The FMC is currently in the first option year of this labor-hour contract.

Objectives, Scope and Methodology

The objective of this review was to assess whether the agency followed FAR principles in the procurement of this contract and that the contract was adequately monitored.

We reviewed applicable FAR and FMC guidelines for the procurement of services, the PWS to document contract milestones and deliverables, the contract, contract modifications and contract evaluation summaries. We also reviewed “Productivity Standards” provided to the contractor, completed timesheets and associated invoices.

We interviewed the COTR and the FMC Secretary to document OS’s processes for monitoring the contract. We also spoke to representatives at BPD to document its procurement procedures and to discuss applicable FAR requirements.

We analyzed cost data to compare contracting out verses hiring a full-time equivalent (FTE) employee to perform scanning services in keeping with recent guidance from the Office of Management and Budget’s (OMB) M-09-25, *Improving Government Acquisition*, dated July 29, 2009. This memorandum requires each agency to develop a plan to save 3.5 percent of baseline contract spending in FY 2010 and 3.5 percent in FY 2011, for a total of 7 percent. We estimated federal salary and benefit costs using various assumptions based on grade – and FTE availability.

We conducted the audit in September 2009 through January 2010, in accordance with generally accepted 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 audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on these objectives.

Audit Findings and Recommendations

The Office of the Secretary and BPD met FAR requirements in procuring the scanning services. OS initiated a requisition with a PWS that identified the need, reviewed proposals and rated the contractors based on their technical approach and prior scanning work experience. OS assigned a COTR who monitored the contractor through her review of work tasks and certified

the contractor's timesheets and invoices. Timesheets maintained by the contractor tied to the monthly contractor invoices. With a minor exception, the invoices were accurate and submitted timely. Contractor staff performed well and appeared to meet PWS workload targets.

However, we also identified some monitoring activities where improvement is possible. One significant oversight, in our opinion, involves monitoring funding availability. We found that the COTR made an unauthorized commitment of funds to maintain services after funding authority had expired. In other words, the contractor was assigned tasks to perform even though there were no funds obligated to pay for the services provided. We also found that the COTR did not record when the contractor worked in lieu of a lunch break. Consequently we could not review the accuracy of these occurrences.

The COTR maintained a non-disclosure statement signed by the contractor as required in the PWS because of the contractor's access to sensitive data, but when the contractor went on extended leave, her substitute did not complete the form. Finally our cost-benefit analysis indicated that the agency could save money by hiring this employee over continuing to contract out for services, but it would lose the expertise of the vendor for special needs.

These and other findings, along with recommendations to address the noted deficiencies, are provided below.

Finding 1. The Agency made an Unauthorized Commitment of Funds to the Contractor

Federal Acquisition Regulation 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. Ratification is the act of approving an unauthorized commitment by an official who has the authority to do so.

The Department of the Treasury's Acquisition Regulations (DTAR) requires that a case file be prepared for all ratifications above the micro-purchase threshold (\$2,500²) that includes all relevant documents and facts concerning the commitment, the name of the individual making the unauthorized commitment, whether s/he previously made other unauthorized commitments and a statement indicating corrective action taken to preclude recurrence. Legal review must be obtained for all ratifications exceeding 10 percent of the simplified acquisition threshold (\$10,000).³

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 order goes on to state that the requesting office must not direct a contractor to perform services prior to being notified that a requisition has been approved and a signed order is in place.

² The FAR effective November 13, 2009, changed the micro-purchase threshold to \$3,000.

³ According to the service level agreement between the FMC and BPD, BPD will process all transactions in accordance with both the FAR and DTAR.

On January 5, 2009, the COTR prepared a requisition to exercise option year one of the contract for scanning services. A purchase order was signed on January 21, 2009. The period of performance for the first option year would begin on March 3, 2009. Because the agency was funded under a continuing resolution at the time, the first option year was only funded for 10 days at \$1,880.64.

The January 21, 2009, order clearly stated on its face that the contract was *incrementally funded through March 13, 2009...* and that ***the contractor may not perform work in excess of the obligation amount of the contract.*** (Emphasis added.) This prohibition on working without obligated funds was further emphasized by the BPD contract specialist on January 22, 2009. In an e-mail to the contractor and to the COTR, the contract specialist reiterated that the contract was only partially funded through March 13, 2009, and that *no work beyond that date is authorized without another contract modification to add additional funds.*

The FMC received its appropriation for the remainder of FY 2009 on March 11, 2009. However, we found no obligating documents to fund the scanning task (beyond the March 13, 2009 ending point) until June 12, 2009, when the contract was fully funded for the remainder of the contract year. Notwithstanding the contract specialist's reminder, and agency and FAR requirements prohibiting the provision of services without funding authority, the contractor continued to provide the agency scanning services for approximately three months (431 hours) at a cost to the agency of \$11,258.

The OIG confirmed through contractor timesheets that the contractor worked during the period March 13 through June 12. OS officials confirmed that they did not instruct the contractor not to work during this period. However, we noted that the agency was not billed for these services until May 8, 2009; previous invoices had been sent by this contractor monthly.⁴ The Secretary informed us that the FMC was not billed timely because the contract manager responsible for invoicing was on extended leave during this period.

Whether the COTR told the contractor to work or simply permitted the contractor to work, the action resulted in an unauthorized commitment of funds. For funding to be provided for services already received, the contracting officer is required to ratify the action. We found no evidence in the file indicating that the action was ratified, that documentation was prepared by OS explaining the need for ratification or that legal review was sought (since the ratification exceeded \$10,000).

In addition to violating FAR and agency rules, the action also put the COTR, the contractor and the agency at risk: the COTR (or whoever allowed the contractor to continue working without authorization) could have been personally liable for the obligation, the contractor risked not being reimbursed by continuing to work without a valid contract and the agency could have potentially faced a costly lawsuit.

⁴ The OIG confirmed that the invoice was not paid until June 25, 2009, just after the order obligating the funds was signed.

OS officials informed the OIG during the period in question (March 13 – June 12) that there was confusion within OS as to whether BPD, OMS or the COTR was to initiate a requisition to fully exercise the contract. However, since this occurrence the Secretary stated that the COTR is now aware of her responsibilities. If the Commission doesn't receive its FY 2010 appropriations in time to fully exercise option year two (2), the Secretary indicated that the office will incrementally fund the contract until the full appropriation is in place. The OIG found numerous additional instances of unauthorized commitments in other FMC bureaus and offices during fieldwork on our annual financial statement audit. These, along with an OIG recommendation for corrective action, will be reported in the management letter to the financial statements in the coming weeks.

Finding 2. Recordkeeping of Work In Lieu of Lunch Needs Improvement

According to GAO's *Standards for Internal Control in the Federal Government*, transactions need to be clearly documented, and the documentation should be readily available for examination. Transactions should be promptly recorded to maintain their relevance and value to management in controlling operations. We found that OS generally has controls in place to review contractor work production and timesheets timely.

For each document scanned for the Secretary's office, OGC and BOE, the contractor maintains a log containing the document name, date received and date completed. When documents are received by the contractor for scanning, she initials and dates the back of the document; she also initials and dates the document when she completes the scanning process. Documents are scanned into a daily folder where the COTR reviews the files for clarity before the original files are shredded by FMC staff.

On the 15th and the last day of each month, the contractor submits a signed timesheet to the COTR identifying the contractor's hours worked. The timesheet identifies the date, time-in, time-out, description of work performed, hours worked and project name. The COTR verifies the information on the timesheet, initials and dates the timesheet before it is submitted to the contractor's supervisor. Once the contractor's supervisor certifies the timesheet it is submitted to the COTR to reconcile with the monthly invoice.

The invoice is submitted to the BPD where it is logged in and forwarded to the FMC's OBF. The invoice is provided to the COTR with a due date. The COTR reconciles it with the timesheets and certifies the invoice is proper (and accurate) for payment. The COTR also maintains an invoice log that provides a monthly opening balance, monthly invoice activity and closing balance. The invoice is provided to the Secretary who, along with the COTR, certifies it for final payment. As a final step the invoice is returned to BPD for final processing.

For the most part, our review noted that the contractor was signed in for 8.5 hours: eight hours billed to the agency and 30 minutes for lunch. On 27 occasions, we noted that the contractor signed in for between six and eight hours, but made no deduction for lunch. Our observations are presented in the following table:

Table 1. Arrival/Departure Times

| Date of Occurrence | Arrival/Departure Times | Hours Reported Worked | Actual Hours Worked |
|---------------------------|--------------------------------|------------------------------|----------------------------|
| April 15, 2008 | 9:30 am – 5:00 pm | 7.50 | 7 |
| May 19, 2008 | 10:30 am – 5:30 pm | 7 | 6.50 |
| June 2, 2008 | 11:00 am – 5:00 | 6 | 5.50 |
| June 19, 2009 | 9:00 am – 5:00 pm | 8 | 7.50 |
| July Timesheet* | | 90.50 | 90 |
| August 8, 2008 | 9:30 am – 5:00 pm | 7.50 | 7 |
| August 15, 2008 | 10:00 am – 5:00 pm | 7 | 6.50 |
| August 19, 2008 | 8:30 am – 3:00 pm | 6.50 | 6 |
| August 26, 2008 | 9:30 am – 5:30 pm | 8 | 7.50 |
| September 18, 2008 | 8:30 am – 2:30 pm | 6 | 5.50 |
| September 29, 2008 | 8:45 am – 5:00 pm | 7.45 | 7.25 |
| December 4, 2008 | 8:30 am – 2:30 pm | 6 | 5.50 |
| December 15, 2008 | 10:00 am – 5:00 pm | 7 | 6.50 |
| January 9, 2009 | 8:45 am – 5:00 pm | 8 | 7.75 |
| January 30, 2009 | 9:00 am – 4:45 pm | 7 | 7.25⁵ |
| February 19, 2009 | 8:30 am – 3:00 pm | 6.50 | 6 |
| March 3, 2009 | 9:15 am – 5:15 pm | 8 | 7.50 |
| March 31, 2009 | 8:15 am – 2:30 pm | 6 | 5.75 |
| April 15, 2009 | 8:30 am – 3:00 pm | 6.50 | 6 |
| May 4, 2009 | 8:30 am – 2:30 pm | 6 | 5.50 |
| June 5, 2009 | 11:00 am – 5:00 pm | 6 | 5.50 |
| June 8, 2009 | 8:30 am – 3:00 pm | 6.50 | 6 |
| June 9, 2009 | 10:00 am – 5:00 pm | 7 | 6.50 |
| June 19, 2009 | 9:00 am – 5:00 pm | 8 | 7.50 |
| June 22, 2009 | 8:40 am – 3:30 pm | 6.75 | 6.25 |
| June 29, 2009 | 8:00 am – 2:30 pm | 6.50 | 6 |
| July 27, 2009 | 9:30 am – 5:00 pm | 8 | 7.50 |

*inaccurately added and certified by the COTR

The Fair Labor Standards Act of 1938 does not require an employer to provide meal periods for their employees. However, under Code of Federal Regulation (CFR) (29 CFR 785.19 – *Meal*) when meals periods or rest breaks are provided employees must be completely relieved from duty for the purpose of eating regular meals. Ordinarily 30 minutes or more is sufficient for a bona fide meal period. The Department of Labor (DOL) defines a bona fide meal period as time that is not compensable and not spent working.

During the exit conference, the COTR told us that on each of the occasions identified, the contractor worked through lunch. However, we found no notes or annotations on any timesheets to support the COTR’s claim. As a result, we could not perform tests to verify that the COTR was aware of the contractor’s decision not to take a lunch break.

⁵ The OIG also identified one instance where the contractor under billed the FMC by one-quarter of an hour (\$6.53).

Although most contracts do not address lunch breaks, it is important for the COTR to monitor lunch breaks to ensure that only the time spent working is billed to the agency, especially on labor hour contracts where the agency is billed for time spent performing work tasks.

Recommendation 1. The OIG recommends that the COTR annotate the timesheet when the contractor works through lunch to ensure that appropriate deductions are made.

Finding 3. COTR Files did not Contain a Non-Disclosure Statement for One Temporary Contractor

Agency contracts require contractors to sign non-disclosure forms. A non-disclosure agreement prohibits an individual or firm from releasing, disseminating or transferring, whether orally or by any other means, any part of confidential information, to any person or entity, and provides recourse for the Commission should any confidential information be released.

The performance work statement prepared by OS and provided to the contractor states that the work to be performed is considered sensitive, therefore, any personnel performing tasks on the contract is required to sign a non-disclosure statement.

We reviewed the COTR's file and found a non-disclosure agreement for the full-time contract staff. However, in March 2008 this employee was on extended leave and another contract employee substituted for her. A non-disclosure form was not obtained for this individual.

Recommendation 2. We recommend the COTR ensure that all contractor employees assigned to agency tasks submit a non-disclosure form.

Finding 4. Cost-Analysis of Contractor vs. Federal Employee

The Office of Management and Budget issued M-09-25; *Improving Government Acquisition* dated July 29, 2009. This OMB memorandum requires agencies to review their existing contracts and acquisition practices and develop a plan to save 7 percent of baseline contract spending by the end of FY 2011 (3.5 percent in FY 2010 and another 3.5 percent in FY 2011). Using FY 2009 contract figures, the agency needs to save about \$81,000 annually to meet the goal.

The OIG assessed whether hiring a full-time staff dedicated to scanning documents and other technical duties would help the agency to meet the OMB requirement. Clearly, \$52,000 per year would go a long way toward satisfying the agency's contribution toward this goal. However, we also reviewed the overall fiscal impact on the agency resulting from the additional funded FTE (full-time equivalent) and the trade offs in flexibility and staffing expertise. While

the conversion to this position would have little fiscal impact, we believe the benefits gained through contracting, in this instance, outweigh the benefits from hiring full time.

The OIG performed a cost analysis under various pay-rate assumptions over a five year period. We used the Office of Personnel Management’s 2009 pay scale along with a projected two-percent annual cost of living adjustment and a fringe benefit rate of 36.45 percent.

The current award for the contract is \$52,240, each year for a five year total of \$261,200. The following table projects fully loaded salary for five years at the GS-5 – GS-7 pay scales. For example, salary and benefits for a GS-5 employee, with annual step increases, totals to \$245,409. The difference between \$245,409 and \$261,200 (contract cost) is \$15,791, or the estimated savings from hiring staff verses contracting out for five years. As the table indicates, however, this cost savings to the agency disappears as the grade-scale level increases:

Table 2. Cost Comparison for Five Years

| Grade/Step | Total Yearly Salary | Total Projected COLA | Total Fringe Benefits | Grand Total for All Steps | Difference from Entire Contract |
|--|----------------------------|-----------------------------|------------------------------|----------------------------------|--|
| GS-5/1 through GS-5/4⁶ | \$176,326 | 3,527 | 65,556 | \$245,409 | \$15,791 |
| GS-6/1 through GS-6/4 | \$196,544 | 3,931 | 73,073 | \$273,548 | (\$12,348) |
| GS-7/1 through GS-7/4 | \$218,416 | 4,368 | 81,205 | \$303,989 | (\$42,789) |

Although the OMB guidelines do not require such a cost/benefit analysis, it is useful for decision makers when considering among positions to hire when the function performed by the contractor is still needed by the agency. Not reflected in the above analysis are the non-budgetary factors, including the added flexibility contracting brings and the finite number of FTE that the agency cannot exceed. Currently, OS does not have an FTE to use on this or any position it wishes to create. It would have to compete with other FMC bureaus and offices, each having unmet staffing needs of their own. Further, the added flexibility the contractual relationship brings is useful and can save the agency money too. For example, a technological impasse can be brought to the contractor supervisor’s attention and addressed, without the need to encumber staff time on projects where it lacks expertise.

The Secretary recognized the advantages and disadvantages (listed above) to contracting out the scanning function. She indicated that she has no plans to hire full time for the position. The OIG concurs with her decision.

⁶ A government employee at a step four within grade has a waiting period of two years before eligible for a step five.

Memorandum

TO : Inspector General

DATE: February 25, 2010

FROM : Secretary

SUBJECT: Response of OS to the OIG's Draft Audit Report on the Secretary's Oversight of Document Scanning Services

This memorandum constitutes management's response to the subject OIG Audit Report re-transmitted in draft form on the week of February 16th, and subsequent to a follow-up OIG exit conference with OS staff and Managing Director staff on February 4, 2010.

The OS concurs with all of the OIG's findings and recommendations. The OS has either already taken steps to address findings and adopt recommendations or will do so as discussed below.

Finding 1. The Agency made an Unauthorized Commitment of Funds to the Contractor

The OS agrees with this finding and has taken the following step(s) to address this issue. As indicated in the OIG's finding, the COTR is now aware of her responsibilities in this area. If the Commission does not receive its FY 2010 appropriations in time to fully exercise option year two (2), the office will incrementally fund the contract until the full appropriation is in place.

Finding 2. Recordkeeping of Work In Lieu of Lunch Needs Improvement

Recommendation 1 – The OIG recommends that the COTR annotate the timesheet when the contractor works through lunch to ensure that appropriate deductions are made.

The OS agrees with this recommendation and the COTR has implemented the recommendation.

Finding 3. COTR Files did not Contain a Non-Disclosure Statement for One Temporary Contractor

Recommendation 2 – We recommend the COTR ensure that all contractor employees assigned to agency tasks submit a non-disclosure form

The OS agrees with this finding and has taken the following steps to address this issue. The COTR was given an electronic copy of the standard Non-Disclosure form issued by the Commission's Office of Information Technology for contractors and has made it a policy to have each contractor fill it out and sign the Non-Disclosure form before they are issued a Contractor Building Pass by the Commission's Office of Management Services.

/Karen V. Gregory/
Secretary

Cc: Managing Director
(Audit Follow-up Official)