




**Office of Audits  
Office of Inspector General  
U.S. General Services Administration**

DATE: February 6, 2014

TO: SARA MANZANO-DIAZ  
REGIONAL ADMINISTRATOR  
MID-ATLANTIC REGION (3A)

FROM:   
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MID-ATLANTIC FIELD OFFICE (JA-3)

SUBJECT: Security and Pricing Concerns on the Recovery Act Projects at the  
Byrne Courthouse and Green Federal Building  
Audit Memorandum Number A090184-77

As part of our oversight of projects funded by the American Recovery and Reinvestment Act of 2009 (Recovery Act),<sup>1</sup> we identified security and pricing concerns related to the Recovery Act projects at the Byrne-Green building complex in Philadelphia, Pennsylvania, that we would like to bring to your attention. Specifically:

- (1) Several subcontractor employees worked onsite without evidence of appropriate security clearances, including one who worked onsite without a favorable preliminary adjudication;
- (2) The prime contractor applied excessive overhead and profit factors to subcontractor work resulting in overcharges of \$45,859; and
- (3) For one significant modification, the contracting officer could not rely on the Independent Government Estimate (IGE) for assuring price reasonableness.

On March 19, 2010, the Public Buildings Service (PBS), Mid-Atlantic Region (Region 3) awarded a \$16,398,000 firm-fixed price contract to Keating Building Corporation (Keating), for the replacement of the Air Handler Units (AHUs) with high performance equipment and the installation of a vegetative roof at the Green Federal Building; and the installation of a rooftop crystalline photovoltaic system at the Byrne Courthouse.<sup>2</sup>

<sup>1</sup> The Recovery Act appropriated \$5.55 billion to the Federal Buildings Fund, the majority of which was related to converting facilities to High-Performance Green Buildings. The Recovery Act required the Office of Inspector General to oversee and audit programs, grants, and projects funded under the Act.

<sup>2</sup> Contract Number GS-03P-10-AZC-0004 consisted of a base award, plus four options.

**Five subcontractor employees worked onsite without proper security clearances, including one that subsequently received an unfavorable preliminary adjudication.**

The GSA HSPD-12 Personal Identity Verification and Credentialing Handbook guidelines require temporary contractors, working up to 6 months at a job site, to obtain a clearance for their employees through a law enforcement background check or be escorted as a provision of granting them access to non-public areas of GSA-controlled facilities. In addition, according to the contract solicitation, Section 01593 Security Regulations, Part 1.2(b)(note) states in all capital letters,

NO INDIVIDUAL EMPLOYEE WILL BE PERMITTED TO COMMENCE WORK ON THIS PROJECT UNTIL THEY HAVE RECEIVED, AT A MINIMUM, A PRE-FAVORABLE CLEARANCE FROM THE DEPARTMENT OF HOMELAND SECURITY (DHS).

On these projects, five subcontractor employees worked without evidence of security clearances. Payroll records for the projects show there were a total of 22 employees from various subcontractors onsite for more than 10 days during the construction phase. Although Region 3 security officials provided favorable security clearance documentation for 17 of the subcontractor employees, favorable clearance documentation was not available for the remaining five.

For four of these employees, there was no documentation of their security clearances. These four worked less than 6 months on the project and had no case files within DHS's Contract Suitability system.<sup>3</sup> We were unable to determine if these employees were escorted as required.

However, one subcontractor employee worked onsite for about 7 months and subsequently received an unfavorable preliminary adjudication. Payroll documents showed that the individual worked on the project from October 25, 2010, through May 11, 2011. We also obtained sign-in/sign-out sheets for the period October 2010 through January 2011, which confirmed the individual entered the Byrne-Green complex to work on the project. In a letter dated June 9, 2011, shortly after his employment ended, he received an unfavorable preliminary adjudication.<sup>4</sup>

A lack of adequate security clearances for contractor/subcontractor employees could put the occupants of the building, as well as the public, at risk.

In her response, dated January 23, 2014, the Regional Administrator agreed that all employees should have had a favorable security clearance, and "Region 3 is in the process of reviewing current procedures...and make additional changes to procedures

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<sup>3</sup> The Contract Suitability system records all contractor employee clearances.

<sup>4</sup> According to Region 3's Program Specialist (Office of Mission Assurance), a preliminary favorable adjudication letter "approves the employee to enter on duty and perform services. The purpose of the enter on duty letter, is to allow the contractor to come on site [sic] and work..."

to prevent future incidents.” She also stated that the Acquisition Management Division has added the Security Program Manager to the distribution list of newly awarded projects and that the Emergency Management and Security branch hired another Security Manager to “increase the oversight of projects....”

**The prime contractor applied excessive overhead and profit factors to subcontractor work on several modifications, resulting in overcharges.**

The overhead and profit factors applied by Keating (the prime contractor) to subcontractor work on several modifications were not in compliance with GSA Acquisition Regulation (GSAR) 552.243-71(h)(6), resulting in overcharges of \$45,859. The contract files contained 21 modifications, 10 of which involved subcontractor effort. Keating applied a 10 percent overhead factor and a 5 percent profit to its subcontractors’ price(s) for each of those 10 modifications.<sup>5</sup>

However, GSAR 552.243-71(h) *Markups*, limits the combined overhead/profit markup to 10 percent as shown below:

(6) Overhead and profit shall be allowed on the direct costs of work performed by a subcontractor within two tiers of a firm at rates equal to only fifty percent of the overhead and profit rates negotiated..., but not in excess of ten percent when combined.

The contract files did not address negotiated overhead and profit rates since the award was based on “Price Analysis.” Region 3’s Project Manager also acknowledged that the rates were not negotiated.<sup>6</sup> He stated that the overhead and profit amounts were deemed acceptable by the contracting officer. In a July 24, 2013, meeting with Region 3 contracting officials, we informed them of this GSAR requirement, which is also included in the contract.

Since there is no documentation in the contract files addressing negotiated overhead and profit rates, we allowed the maximum 10 percent (when combined) in computing the overcharges.<sup>7</sup>

In her response, dated January 23, 2014, the Regional Administrator agreed that the contractor’s markups on subcontractor work did not comply with General Services Acquisition Regulation (GSAR) Subpart 552.243-71(h). According to the response, PBS “has already provided training regarding the GSAR...requirement to the region’s acquisition workforce and will continue to do so.”

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<sup>5</sup> The total applicable subcontractor amount relating to the 10 modifications was \$845,813 (rounded).

<sup>6</sup> The contracting officer retired in 2012, before our review began and, therefore, was unavailable to be interviewed or provide responses to our requests.

<sup>7</sup> The 10 percent includes 7 percent for overhead and 3 percent for profit, consistent with Keating’s approximate ratio of overhead to profit.

**For one significant contract modification, the contracting officer could not rely on the IGE due to the significant difference between the IGE and award amount.**

According to Federal Acquisition Regulation 15.404-1(b)(2)(v), the comparison of proposed prices with the independent Government cost estimates can be used as a price analysis technique to determine price reasonableness.

However, for contract modification PS18 for the replacement of Air Handler Unit #3, the contracting officer could not rely on the IGE as a tool for assuring price reasonableness. On this modification, the IGE, dated May 2, 2011, in the amount of \$419,648, was significantly lower than the negotiated amount of \$731,885.

According to the Price Reasonableness Memo,<sup>8</sup> Keating submitted a proposal, dated June 22, 2011, for \$871,404, an amount much higher than the IGE. The proposal was forwarded to GSA officials and an Architect/Engineering firm for review and technical analysis. The technical analysis detailed areas of the proposal which needed to be discussed. It was forwarded to Keating on July 6, 2011. Negotiations were held on July 11, 2011. During negotiations, Keating agreed with GSA's position and concerns with several areas of its proposal; specifically, the prices submitted by three of its subcontractors.

Keating submitted a revised proposal, dated July 11, 2011, in the amount of \$731,885. The contracting officer concluded that the proposed price of \$731,885 to be fair and reasonable based on the resubmission.

When asked to explain how the contracting officer concluded that the revised proposal amount was considered fair and reasonable since the IGE was significantly less, the Project Manager provided a revised IGE, dated July 8, 2011, in the amount of \$572,893, with no additional rationale for the contracting officer's determinations. This IGE was not included in the contract files nor cited in the Price Reasonableness Memo. Regardless, the revised IGE is still significantly lower than the contractor's revised price and final negotiated amount of \$731,885. The significant difference between the IGE and the proposed price calls into question whether the price for the contract modification was fair and reasonable.

In her response, dated January 23, 2014, the Regional Administrator agreed that the "file does not contain supporting documentation." She stated that the Region instituted an Acquisitions Review Policy in May 2013 that now requires a review of Pre and Post Negotiation Memoranda to ensure that contract actions are properly supported and documented.

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<sup>8</sup> The Price Reasonableness Memo was dated July 2011. It did not indicate a specific day.

If you have any questions regarding this audit memorandum, please contact me or any member of the audit team at the following:

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I would like to thank you and your staff for your assistance during this audit.

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## ***Memorandum Distribution***

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Regional Administrator (3A)

Regional Commissioner, Public Buildings Service (3P)

Deputy Commissioner, Public Buildings Service (PD)

Regional Recovery Executive (3PN)

Strategic Program Manager, PBS Program Management & Support Division (PCBF)

Chief of Staff, Public Buildings Service (P)

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