



August 24, 2011

MEMORANDUM FOR: JULIA E. HUDSON  
REGIONAL ADMINISTRATOR  
NATIONAL CAPITAL REGION (WA)

FROM: *R. Nicholas Goco*  
R. NICHOLAS GOCO  
DEPUTY ASSISTANT INSPECTOR GENERAL FOR  
AUDITING  
REAL PROPERTY AUDIT OFFICE (JA-R)

SUBJECT: Recovery Act Memorandum—Photovoltaic, Lighting,  
Building Tune-up, and Building System Project for Group 1  
Review of PBS's Limited Scope and Small Construction  
Projects Funded by the American Recovery and  
Reinvestment Act of 2009  
Audit Number A090184-41/P/R

As part of our oversight of the National Capital Region's limited scope and small construction American Recovery and Reinvestment Act<sup>1</sup> (Recovery Act) projects, we reviewed the contract award<sup>2</sup> for the photovoltaic, lighting, building tune-up, and building system project for Group 1<sup>3</sup> in the amount of \$17,998,488, including options. Our objectives were to determine if the project met the requisite "green building" investment strategy and if GSA's Public Buildings Service (PBS) awarded the task order in accordance with the provisions of the Federal Acquisition Regulation (FAR).

During our review, we identified several issues that we would like to bring to your attention. Specifically:

1. Standard Form 30 (SF30) was not used to process solicitation amendments;
2. The contracting officer could not rely on the independent government estimate (IGE) due to the significant difference between the IGE and award amount; and

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<sup>1</sup> The American Recovery and Reinvestment Act of 2009 appropriated \$5.55 billion to the Public Buildings Service's Federal Buildings Fund, the majority of which are related to measures necessary to convert its facilities to High-Performance Green Buildings. The Recovery Act also required the Office of Inspector General to oversee and audit programs, grants, and projects funded under this Act.

<sup>2</sup> Contract number GS-11P-10-YA-C-0047.

<sup>3</sup> Group 1 includes the U.S. Tax Court, Howard T. Markey National Courts, and Martin V.B. Bostetter Courthouse.

3. An incomplete assessment of three energy conservation measures (ECMs) circumvented management controls established to ensure ECMs meet greening strategy goals.

### **Standard Form 30 Not Used to Process Solicitation Amendments**

There were six amendments to the project's solicitation. Only Amendment 5 was processed with a Standard Form 30 (SF30). FAR 14.208(a) prescribes that:

If it becomes necessary to make changes in quantity, specifications, delivery schedules, opening dates, etc., or to correct a defective or ambiguous invitation, such changes shall be accomplished by amendment of the invitation for bids using Standard Form 30, Amendment of Solicitation/Modification of Contract.

The SF30 therefore signals that the Government is officially amending the solicitation.

Although PBS posted information supporting Amendments 1, 2, 2a, 3, and 4 on the Federal Business Opportunities (FBO) website, there were no related SF30s in FBO or the contract file. Without the use of the SF30, we cannot ensure that all bidders were aware of the amendments. None of the six bidders acknowledged all solicitation amendments. Upon audit inquiry, contract staff prepared SF30s for Amendments 1 through 4. However, this occurred after contract award and therefore could not rectify any preaward ambiguities.

### **Management Comments**

PBS concurred in the audit finding.

### **The Contracting Officer Could Not Rely on the IGE Due to the Significant Difference Between the IGE and Award Amount**

Contracting officers use IGEs to determine whether an offeror's proposed price is fair and reasonable and reflects an understanding of the project requirements. A significant difference between the IGE referenced in the Price Negotiation Memorandum (PNM)<sup>4</sup> and the overall bid calls into question the accuracy of the IGE and/or the reasonableness of the proposed price.

In this case, the \$11,530,638 IGE was significantly lower than the bids received and approximately 36 percent lower than the ultimate award amount of \$17,998,488, including options. As a result, the contracting officer could not rely on the IGE as a tool for assuring price reasonableness. The PNM acknowledges that the proposed price

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<sup>4</sup> There were two IGEs for this project, a signed IGE and an unsigned IGE. The PNM relied upon the unsigned IGE, and it is unclear why the signed IGE was not utilized. However, there was only a 3 percent variance between the two IGEs. GSA guidelines prescribe that IGEs be signed by a qualified government employee whose major responsibility is creating or approving cost estimates.

was considerably higher than the IGE, but this fact was discounted because the offer was within the competitive market range. However, since the price reasonableness determination was based in part on FAR 15.404-1(b)(2)(v), Comparison of proposed prices with independent Government cost estimates, the variance between the IGE and successful offer should have been further analyzed.

### Management Comments

In its August 22, 2011, response to our draft memorandum, PBS disagreed that the price reasonableness determination was based in part upon the IGE, and noted that the IGE was determined to be unreliable.

### Office of Inspector General Response

The price reasonableness determination was based upon both the competitive range of bidders and through a comparison with the IGE. The PNM does not mention that the IGE was deemed unreliable. Section IV of the PNM, Basis for Price Reasonableness, states:

In accordance with FAR 15.404-1(b)(2)(i)&(v), the Government conducted a price analysis comparison with the market and IGE to determine reasonableness. While [awardee's] proposed price is considerably higher than the Government estimate, it is within the competitive market range.

Given that the price reasonableness determination was based partially on a comparison with the IGE, the variance between the IGE and successful offer should have been further analyzed.

### **Energy Conservation Measures Not Submitted for Review by Program Management Office**

The Group 1 project includes 31 potential ECMs valued at \$17,998,388. The three ECMs listed below were not vetted through the proper approval process:

- U.S. Tax Court ECM 1301, adding items to the energy management control system, for \$3,311,457;
- Bostetter Courthouse Option 6, existing lighting replacement, for \$443,692; and
- Bostetter Courthouse Option 7, existing lighting modification, for \$107,586.

The proper process to approve an ECM begins with the creation of an energy study that identifies estimated savings and payback for ECMs. This information would then be incorporated in the Limited Scope Approval Request (LSAR), which is reviewed by the National Recovery Program Management Office. While energy studies were performed for these ECMs, the ECMs were not incorporated into an LSAR or reviewed by the National Recovery Program Management Office. This circumvents the management controls established to ensure that PBS only awards energy measures that meet GSA's

greening strategy goals. The Project Manager indicated that they did not seek LSAR approval due to oversight and a lack of funding. However, all line items on the Standard Form 1442 award document have the potential to be awarded and should therefore be reviewed centrally.

### Management Comments

PBS concurred in the audit findings related to ECM 1301, Option 6, and Option 7. Our draft memorandum included an additional finding related to ECM 1042. In its August 22, 2011, response to our draft memorandum, PBS provided further explanation related to ECM 1042.

### Office of Inspector General Response

Based on the additional data provided by management, we have removed the finding related to ECM 1042.

We appreciate the support that has been provided throughout this review. If you have any questions about this memorandum, please contact me at (202) 219-0088.

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Regional Administrator (WA)

Regional Commissioner, Public Buildings Service (WP)

Regional Recovery Executive (WP)

Public Buildings Service Commissioner (P)

National Program Office Recovery Act Executive, Public Buildings Service (PCB)

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