



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

Recovery Act Report -- Mariposa Land Port of Entry
Modernization Project
Construction Management Services for Phase 1
Construction
Audit of PBS's Major Construction and
Modernization Projects Funded by the American
Recovery And Reinvestment Act of 2009

Report Number A090172/P/R/12005
March 30, 2012



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

DATE: March 30, 2012

TO: Jeff Neely
Regional Commissioner
Public Buildings Service, Pacific Rim Region (9P)

FROM: Nicholas V. Painter
Audit Manager
GSA Office of Inspector General
Southeast Sunbelt Region, Field Audit Office (JA-4)

SUBJECT: Recovery Act Report – Mariposa Land Port of Entry Modernization Project
Construction Management Services for Phase 1 Construction
Audit of PBS's Major Construction and Modernization Projects
Funded by the American Recovery and Reinvestment Act of 2009
Report Number A090172/P/R/12005

During our oversight of the American Recovery and Reinvestment Act (Recovery Act) projects administered by the General Services Administration (GSA), we identified a number of issues related to the Mariposa Land Port of Entry (Mariposa) modernization project in the Pacific Rim Region that warrant your attention. First, the Public Buildings Service (PBS) violated competition requirements by exercising an unpriced option for Construction Management (CM) services. Second, the CM contractor did not provide GSA with evidence of competition for subcontracted services as required by the contract. Last, PBS did not modify the CM contract to incorporate required Recovery Act clauses.

PBS Exercised an Unpriced Option in Violation of Competition Requirements

PBS awarded contract number GS-09P-08-KTC-0005 to Vanir Construction Management, Inc. (Vanir) for CM services related to Mariposa on September 18, 2008, prior to passage of the Recovery Act. The initial award was for design phase services and included options for procurement, construction, and close-out phase services. The design phase services were priced at \$1,242,662; the options were not priced and, as

such, constitute sole source procurements¹ because only with the winning CM contractor could be awarded the options as they were exercised. This practice violates the competition requirements of both the Federal Acquisition Regulation (FAR) and Competition in Contracting Act. While agencies may use noncompetitive procedures in certain situations, these conditions were not met for this project.

Further, FAR Subpart 17.207(f) requires that the Government evaluate option pricing as part of the initial contract competition. In this instance, the contracting officer did not consider option pricing in making the initial award. Instead, PBS exercised all these options at a total cost of \$1,767,876,² with prices based upon labor rates in the base contract and a comparison of Vanir's proposals to the Government's estimate.

CM Contractor Did Not Provide Evidence of Competition for Testing and Inspection Services

The base CM contract contained a provision to award subcontracts for testing and inspection services to an independent third party on a reimbursable basis. The contract required that the CM contractor provide the Government with at least three proposals from testing firms. However, we found no evidence that Vanir obtained more than one bid. Therefore, although GSA negotiated the price for the testing and inspection services with Vanir, the Government did not have the information it needed to assess the reasonableness of the proposed subcontract pricing. Despite this, GSA issued five contract modifications, totaling \$740,787,³ for these services.

PBS did not incorporate required Recovery Act contract clauses

The original Mariposa CM contract pre-dated the Recovery Act and was funded through the Federal Buildings Fund; however, the modifications for construction and close-out phase services were funded by the Recovery Act. Accordingly, PBS should have modified the contract to incorporate required Recovery Act contract clauses. PBS did not incorporate these clauses.

¹ FAR 2.101 defines a sole source acquisition as "a contract for the purchase of supplies or services that is entered into or proposed to be entered into by an agency after soliciting and negotiating with only one source."

² This amount represents the total of (a) The procurement phase option that was exercised via modification PS04 for \$27,183 (Recovery Act funding was not used for this modification); (b) Phase 1 construction services option exercised via modification PS07 for \$1,445,845; and (c) Close-out services option exercised via modification PS12 for \$294,848. (This modification included the closeout services and a time extension for Phase 1 CM services awarded at a lump sum.)

³ Includes modifications PC05, signed November 10, 2009, for \$90,000; PC08, signed February 18, 2010, for \$70,000; PS09 signed March 26, 2010, for \$433,513; PS13 signed October 1, 2010, for \$85,413; and PS15 dated October 19, 2010, for \$61,861.

GSA Acquisition Letter V-09-01 identifies several clauses that must be incorporated⁴ into contracts receiving Recovery Act funds. In this case, the following required clauses were not included in the contract:

- FAR Subpart 52.215-2 Audits and Records – Negotiation
- FAR Subpart 52.204-11 Recovery Act Reporting Requirements
- General Services Acquisition Manual (GSAM) Clause 552.232-70 Invoice Requirements⁵
- FAR Subpart 52.203-15 Whistleblower Protections under the Recovery Act

Failure to incorporate these clauses could jeopardize the transparency and integrity desired for Recovery Act projects. Therefore, PBS should modify the Mariposa CM contract to incorporate these required clauses.

Recommendations

We recommend that the Regional Commissioner of the Public Buildings Service:

- 1) Perform a review of the Mariposa construction and close-out phase CM costs to ensure they are fair and reasonable based on information that is current, accurate, and complete;
- 2) Ensure contract requirements are followed when evaluating cost reimbursable contract modifications for testing and inspection services; and
- 3) Incorporate required Recovery Act clauses into the Mariposa CM contract.

Management Comments

In its response to the draft report, PBS concurred with our findings and accepted the report recommendations. PBS's response is included in its entirety as **Attachment A** to this report.

⁴ Contractors refusing to incorporate these clauses will not be eligible for receipt of Recovery Act funds.

⁵ PBS Acquisition Implementation Guidance for the Recovery Act (Attachment B) initially cited the GSAM Clause 552.232-70 requirement. However, since that time, the GSAM has the clause listed as "Reserved."

We appreciate the support that has been provided throughout this review. If you have any questions about this report, please contact me at (404) 331-5520.

Sincerely,

A handwritten signature in black ink, appearing to read "Nicholas V. Painter". The signature is fluid and cursive, with a prominent initial "N" and a long, sweeping underline.

Nicholas V. Painter
Audit Manager (JA-4)

Appendix A – Management Comments

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GSA Pacific Rim Region

February 3, 2012

From: Gregory McSweeney
Contracting Officer *Gregory McSweeney*
Design and Construction Division (9P2PCG)

Subject: Recovery Act Report –
Mariposa Land Port of Entry Modernization Project
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by the American Recovery and Reinvestment Act of 2009
Audit Number A090172/P/R/R

To: James P. Hayes
Regional Inspector General for Audits (JA-9)
San Francisco, CA

This is the response to the above referenced audit of the Construction Management Contract for the Mariposa Land Port of Entry.

PBS Exercised an Unpriced Option in Violation of Competition Requirements

The original contract GS-09P-08-KTC-0005 for Construction Management Services at the Mariposa Land Port of Entry included a scope of work for Design Phase Services, Construction Phase Services, and Close Out Phase Services. The original contract included the costs and price for design phase services but did not include a price for the follow on phases that were included in the contract as Options.

Between the award of the original contract and the start of construction the project was split into two separate and distinct construction phases. The first phase of the project was to increase the physical footprint of the Port by the building of large retaining walls and backfilling the site with dirt. The second phase included the complete buildout of the Port. This caused a significant change in the Construction Management contract from one Phase of construction services to two separate phases. Modification PS07 to the contract, a bi-lateral agreement, was issued to the Construction Manager for Phase I construction management services.

The Audit staff has correctly identified this modification as a sole source procurement based on the fact that options for construction and close out services in the original contract had not been priced as is required by the Federal Acquisition Regulations (FAR).

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In the future, internal review procedures will ensure that when a contract is awarded, all potential options will be negotiated and the price for each option will be included in the base contract. Additionally, if an option is not priced, a sole source justification will be provided to include the additional scope of work in the contract.

CM Contractor Did Not Provide Evidence of Competition for Testing and Inspection Services

The contract between Vanir and GSA did not have evidence of three firms being solicited by the CM firm as required in their contract. The documentation of competition for the testing services would not necessarily be included in the contract between the Government and Vanir because the testing services were contracted between Vanir and a third party testing service. In this case, Western Testing was selected by Vanir to provide testing services. In the future, Contracting Officers, in their final documentation of modifications for the testing services should at the very least indicate that third party testing services were competed.

PBS did not Incorporate Required Recovery Act Contract Clauses

The Contracting Officer will include the Recovery Act clauses by Modification.

Management Comments:

GSA will ensure thorough internal measures that in the future, all contracts include fully negotiated and priced options for all phases of the project and contract. Additionally, if an option is not priced, a Sole Source justification will be provided in accordance with FAR and GSAM prior to awarding the additional scope of work.

In the future, Contracting Officers will indicate in the final documentation that third party testing services were adequately competed by the Construction Management firm.

GSA will incorporate the appropriate Recovery Act clauses into the contract.

Appendix B – Objective, Scope, and Methodology

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Background

The American Recovery and Reinvestment Act of 2009 (Recovery Act) provided the General Services Administration (GSA) with \$5.55 billion for the Federal Buildings Fund. In accordance with the Recovery Act, the GSA Public Buildings Service (PBS) is using the funds to convert federal buildings into High-Performance Green Buildings as well as to construct federal buildings, courthouses, and land ports of entry. The Recovery Act mandated that \$5 billion of the funds must be obligated by September 30, 2010, and that the remaining funds be obligated by September 30, 2011. The GSA Office of Inspector General (OIG) is conducting oversight of the projects funded by the Recovery Act.

The Mariposa Modernization Project is a project to expand the land port of entry in Nogales, Arizona, in order to accommodate increasing traffic volumes, correct safety and security deficiencies, and provide adequate conditions for the tenant agencies to conduct their inspection mission as mandated by Congress. The pre-design and design phase services began in October 2008. The project received Recovery Act funding in November 2009, with the exercise of Modification PS07 to provide construction management services for Phase 1 of construction. GSA allocated \$173,712,000 of Recovery Act funds to this project.

Objective

The objective of the OIG's Recovery Act oversight is to determine if PBS is planning, awarding, and administering contracts for major construction and modernization projects in accordance with prescribed criteria and Recovery Act mandates. The work for this report was performed while evaluating the award for construction management services for Phase 1 of the Mariposa Modernization Project.

Scope and Methodology

To accomplish the objective, we conducted fieldwork in the Pacific Rim Region, reviewed the contract file and other pertinent project documents, and reviewed applicable guidance and regulations. The work for this report was performed between March 2011 and May 2011.

Except as noted below, we conducted this performance audit in accordance with generally accepted government auditing standards except as noted below. 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 our audit objectives. The planning for this audit is based on the audit plan for oversight of the Recovery Act projects as well as audit guidance being applied to all Recovery Act projects. A separate audit guide was not prepared for this project.

Internal Controls

As this work was performed under the continuing oversight of all GSA Recovery Act projects, management controls have not been fully assessed. Only those management controls discussed in the report have been assessed.

Appendix C – Report Distribution

Report Number A090172/P/R/12005

Regional Commissioner, PBS (P)

Regional Recovery Executive (9P2)

Regional Administrator (9A)

Regional Counsel (9L)

Division Director, GAO/IG Audit Response Division (H1C)

Audit Liaison (PFF)

Assistant IG for Auditing (JA)

Director, Audit Planning, Policy, and Operations Staff (JAO)

Deputy Assistant IG for Investigations (JID)

Director, Office of Internal Operations (JI-I)

Investigator, Office of Internal Operations (JI-I)