



U.S. GENERAL SERVICES ADMINISTRATION
Office of Inspector General

November 15, 2011

MEMORANDUM FOR: JIM WELLER
REGIONAL COMMISSIONER, PBS
GREATER SOUTHWEST REGION (7P)

FROM: ADAM GOOCH *Adam Gooch*
REGIONAL INSPECTOR GENERAL FOR AUDITING
GREAT LAKES REGION (JA-5)

SUBJECT: Contract Administration of Window Replacement Contract at the
Tulsa Federal Building and Courthouse - a PBS Limited Scope
Construction Project Funded by the American Recovery and
Reinvestment Act of 2009¹
Memorandum Number A090184-48

As part of our oversight of projects funded via the American Recovery and Reinvestment Act of 2009 (Recovery Act) we identified two issues related to the administration of this window replacement contract which warrant your attention. First, the value of the architect-engineering (A/E) services may have exceeded the limitation established by the contract; second, one subcontractor had at least four employees working without security clearances. We based these observations on documentation found in the contract file and our correspondence with PBS personnel. In some instances, we consulted additional sources for supplemental information.

On July 27, 2009, the Greater Southwest Region awarded Contract Number GS-07P-09-UY-C-0003 to C3, LLC (C3) of Broken Arrow, Oklahoma, for \$2,699,903. This sole-source contract was awarded under section 8(a) of the Small Business Act. C3 is a Small Business Administration-certified, minority-owned small business located in an area designated as a HUBZone.² The purpose of the contract was to replace existing windows at the Tulsa Federal

¹ The American Recovery and Reinvestment Act of 2009 (Recovery Act) provides 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 mandates 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 is conducting oversight of the projects funded by the Recovery Act. One objective of this oversight is to determine if PBS is awarding and administering contracts for limited scope and small construction and modernization projects in accordance with prescribed criteria and Recovery Act mandates.

² FAR 19.1301 states "The Historically Underutilized Business Zone (HUBZone) Act of 1997 (15 U.S.C. 631 note) created the HUBZone Program. The purpose of the HUBZone Program is to provide Federal contracting assistance for qualified small business concerns located in historically underutilized business zones, in an effort to increase employment opportunities, investment, and economic development in those areas."

Building and Courthouse with those of a more energy efficient design that also meet current safety standards.

A/E Services costs may have exceeded contract allowances

During our review of the contract's statement of work, and other contract documentation and requirements, we determined that C3 may have charged more than the 6 percent allowed in the contract for A/E design services. Therefore, the Government may have overpaid for these services.

C3's Schedule of Values for the window replacement contract lists the following costs for the design phase:

Item Number	Item	Cost
1	35% design	\$63,150
2	65% design—PDG ³ cost only	\$27,826
3	95% design—PDG cost only	\$27,826
4	Construction Documents	\$11,019
5	Window Shop Drawings & Calcs	\$150,000
6	Field Measure/Window Investigation	\$50,000
7	C3 Estimating Costs	\$3,003
8	C3 Project Manager	\$40,726
9	C3 Project Engineer	\$26,500
10	C3 Schedule Costs	\$500
11	C3 Security Badge Processing	\$1,000
12	C3 Fuel & Oil	\$975
13	C3 Telecomm Cost	\$1,755
14	C3 Truck Expense	\$10,170
	Total	\$414,450

As specified on page four of the statement of work, the

...contractor shall submit separate prices for architect-engineer services, construction work, and other activities (and the equipment)...Under Section 304(b) of the Federal Property and Administrative Services Act, GSA is not authorized to obligate funds, or pay for, architect-engineer services that exceed six percent of the estimated project cost, exclusive of fees.

Accordingly, A/E costs should have been limited to \$161,994 (\$2,699,903 contract amount x 0.06 = \$161,994).

³ PDG = Pinnacle Design Group

While this Schedule does not indicate which costs are specifically for A/E services, we believe, based on definitions in the Federal Acquisition Regulation (FAR),⁴ that at least items 1 through 5 would constitute A/E services. FAR defines these services as:

- (1) Professional services of an architectural or engineering nature, as defined by State law, if applicable, that are required to be performed or approved by a person licensed, registered, or certified to provide those services;
- (2) Professional services of an architectural or engineering nature performed by contract that are associated with research, planning, development, design, construction, alteration, or repair of real property; and
- (3) Those other professional services of an architectural or engineering nature, or incidental services, that members of the architectural and engineering professions (and individuals in their employ) may logically or justifiably perform, including studies, investigations, surveying and mapping, tests, evaluations, consultations, comprehensive planning, program management, conceptual designs, plans and specifications, value engineering, construction phase services, soils engineering, drawing reviews, preparation of operating and maintenance manuals, and other related services.

The total value of items 1 through 5 is \$279,821. To determine costs “exclusive of fees” we subtracted overhead and profit (C3’s final proposal listed overhead⁵ and profit of 15.42 percent). Our computed total for A/E services is \$242,437, \$80,443 over the 6 percent threshold.

Furthermore, pay application number one, for the period ending September 28, 2009, reallocated \$100,000 from the construction phase to the design phase, for “Window Shop Drawings & Calcs” (item number five), in the table above. PBS expressed concern about this reallocation, but nonetheless accepted the Schedule of Values accompanying this and subsequent payment requests. This raises additional questions as to the appropriateness and amount of the design phase costs.

In response to our concern, Region 7 stated:

...This [6%] limitation is only applicable to design services and GSA PBS Region 7 acknowledges the requirement should not have been included in a design build Statement of Work. The proposal submitted by C3 included a design fee of \$94,497.00 which represented 3.5% of the award price. C3 confirmed the cost of the Pinnacle Design Group (PDG) subcontract in the ARRA Recipient Report submittal. The design section of the schedule of values was ultimately structured to include accelerated cost items specifically related to technical calculations and supporting documents which were a part of the actual manufacturing process (including ‘window shop drawings and calcs’, which were performed by the manufacturer and not by the design firm). Therefore, GSA PBS Region 7 feels we did not violate any rulings mandated by the [FAR] as it relates to the limitation of design fees.

⁴ FAR 2.101, Definitions.

⁵ We recognize that overhead is a cost; however we took a conservative approach in our computation.

We accept that the requirement should not have been included in a design build Statement of Work; however, it was included and therefore becomes binding on the contractor and the Government. In addition, the final 100 percent construction drawings completed by the A/E firm included window measurements and detailed “exploded” views of windows. Whether these measurements were supplied by the manufacturer or performed by the A/E firm, they would still constitute design work. Were Region 7 PBS’ position to hold, any A/E firm on a construction project could delegate the preparation of shop drawings, calcs, and similar tasks to a subcontractor, such as the manufacturer, in order to keep design costs below the six percent threshold.

One subcontractor had at least five employees working without security clearances

The HSPD-12⁶ guidelines require temporary contractors working up to 6 months at a job site to obtain a clearance through a law enforcement background check, or be escorted as a provision of granting them access to non-public areas of GSA-controlled facilities. At least five employees of one subcontractor were working onsite without security clearances.

Payroll records show that AAA Glass & Mirror, a subcontractor of C3, had fifteen employees working on this project for 2 or more weeks during the construction phase. PBS officials told us that six of these employees were escorted, or worked outside and, as of July, 2011, four workers had obtained clearances. None of them obtained a clearance before beginning work on the project.

After contacting Region 7 GSA security personnel, we determined that the remaining five employees lacked security clearances. We were unable to determine if the employees were escorted or worked outside.

Lack of adequate security clearances for subcontractor employees could put the occupants of the building, as well as the public, at risk.

In response to our concern, Region 7 PBS stated:

Please consider that the AAA Glass employees only worked assembling and installing the new windows from the outside of the building, and did not come into the building except at breaks and lunch. Upon each entry, the employees were required to clear the building’s security entry station, and were only allowed into public areas and the occupied offices of the prime contractor, C3. GSA did not require the employees to be escorted when entering in this capacity. For the few times the AAA employees needed additional access, an escort was provided, as was the case with the workers noted in your memorandum. Therefore, GSA PBS

⁶ Homeland Security Presidential Directive 12 (HSPD-12) is a directive establishing a common identification standard for federal employees and contractors. HSPD-12 requires all Federal Executive departments and agencies to conduct personnel investigations, adjudicate the results, and issue identity credentials to all federal employees and contractors who require routine access to their building facilities and information technology systems

Region 7 feels we did not violate the HSPD-12 guidelines for contractor security clearances and building access.

While we cannot assess the assertion that the AAA Glass employees only worked outside on assembling windows, only four of the fifteen AAA Glass employees working on the job two or more weeks were cleared and none of them before beginning work on the project. Furthermore, the contractor used the building's restrooms instead of providing temporary sanitary facilities per the contract. It is reasonable to conclude that using the building's restrooms would have required multiple entries to the building each day for contractor and subcontractor employees, and that an escort would not have always been available for these individuals.

We appreciate the support that has been provided throughout this review. If you have any questions about this memorandum, please contact me at (312) 353-0500 or John Langeland at (312) 353-6691.

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