



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

DATE: July 9, 2013

TO: ANN P. KALAYIL
REGIONAL ADMINISTRATOR
GREAT LAKES REGION (5A)

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

SUBJECT: PBS Violated Price Competition Requirements on the Construction Services Contract for the Recovery Act Project at the Joseph P. Kinneary United States Courthouse in Columbus, Ohio
Audit Memorandum Number A090184-64

As part of our oversight of General Services Administration (GSA) American Recovery and Reinvestment Act (Recovery Act) projects,¹ we reviewed a task order for construction services at the Joseph P. Kinneary U.S. Courthouse in Columbus, Ohio (Kinneary). We identified an issue with the procurement for the construction manager as constructor (construction services) task order.²

On December 15, 2009, the Public Buildings Service (PBS) awarded option 1 of task order number GS-P-05-10-SL-0056 for \$5,083,691 to the Berglund Construction Company for lighting and building systems replacement. Option 2 was awarded to Berglund Construction for façade restoration services in the amount of \$12,434,557. The task order also included design stage services valued at \$80,000, for a total contract value to Berglund Construction of \$17,598,248.

¹ The Recovery Act provided GSA with \$5.55 billion for the Federal Buildings Fund. In accordance with the Recovery Act, 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 be obligated by September 30, 2010, and the remaining funds by September 30, 2011. The GSA Office of Inspector General is conducting oversight of 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 This general issue was previously identified on other construction manager as constructor projects in Office of Inspector General report number A090172/P/R/R12007, dated May 10, 2012. The report found that Region 5 PBS provided bidders with pricing information and violated competition requirements.

PBS Provided Bidders with Pricing Information and Violated Competition Requirements

Our review found that PBS provided pricing information on the subject procurement, based wholly or partially on government cost estimates, in the request for proposals; thereby violating competition requirements of the Competition in Contracting Act, the Federal Acquisition Regulation (FAR), and the General Services Acquisition Manual (GSAM). Our bid abstract is shown in *Table 1*:

Table 1 – Kinneary Bid Abstract

	Berglund Construction	Pepper Construction	Shiel Sexton	Clark Construction
Option 1				
General Conditions ³	\$509,678	\$823,388	\$430,000	\$625,000
Trade Costs ⁴	\$4,274,972	\$3,961,262	\$4,354,650	\$4,159,650
Option 2				
General Conditions	\$1,291,214	\$1,262,159	\$760,000	\$1,475,000
Trade Costs	\$10,411,899	\$10,440,954	\$10,943,113	\$10,228,113
Contractor Total	\$16,487,763	\$16,487,763	\$16,487,763	\$16,487,763
PBS-provided estimate	\$16,487,763 ⁵	\$16,487,763	\$16,487,763	\$16,487,763

Although PBS used a competitive bid process,⁶ pricing for the construction options was not based on competition. PBS provided bidders with specific pricing information in the request for proposals. PBS then received four bids for the Kinneary project. As the table shows, the contractors proposed varying costs for the elements of construction, but their totals matched the amounts provided by PBS. By providing the pricing information, PBS limited price competition to minor portions of the task order. This negated price competition as a factor in establishing price reasonableness. As a result, requirements of the Competition in Contracting Act were violated.

FAR 36.204 (disclosure of the magnitude of construction projects) states that “Advance notices and solicitations shall state the magnitude of the requirement in terms of physical characteristics and estimated price range. In no event shall the statement of magnitude disclose the Government’s estimate.” In addition, internal agency guidance found in the GSAM advises that the overall amount of the government estimate not be disclosed before award.

³ General conditions are costs associated with, for example, superintendent, project management, engineering, administrative staff, computers and office supplies, and consultants.

⁴ Trade costs are the costs of the actual construction, that is, the costs of the construction trades and materials.

⁵ Berglund’s total contract value of \$17,598,248, shown on page 1 of this memorandum includes the PBS-directed 4 percent contingency of \$659,510 and \$450,975 in competed fee and design stage services

⁶ In name only: the contractors were given a quote sheet with the estimated cost of work for options 1 and 2 filled in. They could fill in the supporting blanks with any amounts they chose – as long as they totaled to the PBS-provided amount.

The pricing information provided for the lighting and building systems replacement option (Option 1) disclosed the exact government estimate of the total cost of the work, which was \$5,724,500.⁷ The pricing information provided by PBS for the façade restoration option (Option 2) represented the Government’s estimate of \$11,703,113. The total amount provided by PBS was \$16,487,763 (\$4,784,650 + \$11,703,113).

PBS in Region 5 provided the following response:

We concur with the findings of this audit. However, regional contracting staff awarded the Construction Manager as Constructor (CMc) contracts using guidance provided at the time. All CMc contracts have since followed the new management controls and current PBS guidance. All Region 5 employees who work with CMc contracts have completed the “Construction Manager as Constructor (CMc) Project Delivery Method – Policy Overview” training on GSA Online University.

If you have any questions regarding this 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 review.

⁷ The original estimate was prepared by the architect employed by PBS for the building systems option and totaled \$5,724,500. The architect’s estimate was provided in the request for proposals. A revised estimate (\$4,784,650) was provided by PBS with amendment one when roofing work was no longer contemplated. We concluded that the basis for the revised estimate was the architect’s original estimate less the value of the roofing work.

Distribution

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