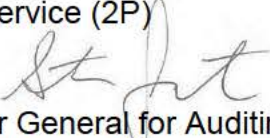




Office of Audits
Office of Inspector General
U.S. General Services Administration

DATE: January 8, 2015

TO: Joanna Rosato
Acting Regional Commissioner
Northeast and Caribbean Region
Public Buildings Service (2P)

FROM: Steven Jurysta 
Regional Inspector General for Auditing
Northeast and Caribbean Region Audit Office (JA-2)

SUBJECT: Award and Administration Issues on Task Order GS-P-02-10-PC-5025 for Construction Services on the Recovery Act Project at the Joseph P. Addabbo Federal Office Building in Jamaica, New York
Audit Memorandum Number A090184-78

As part of our oversight of GSA's American Reinvestment and Recovery Act of 2009 (Recovery Act) projects,¹ we identified areas of concern that we would like to bring to your attention. Specifically:

- (1) The contractor frontloaded its billings to GSA;
- (2) Price negotiations were not adequately documented;
- (3) The contractor had an undisclosed relationship with another contractor whose involvement with the project was unknown to GSA; and
- (4) The contractor was not performing its required Quality Control oversight.

On March 31, 2010, PBS awarded Task Order GS-P-02-10-PC-5025 to M.E.R.I.T Investigative Services, Inc. (MERIT) to provide Design/Build services to implement energy conservation measures to reduce energy consumption at the Joseph P. Addabbo Federal Office Building in Jamaica, New York. PBS awarded the \$6,436,404 firm-fixed price task order against MERIT's Term Design Build Multiple Award Indefinite Quantity Contract Number GS-02P-08-PE-D-0065.

¹The Recovery Act provided GSA with \$5.5 billion for the Federal Buildings Fund. In accordance with the Recovery Act, the GSA PBS issued funds to convert federal buildings to High-Performance Green Buildings, as well as construct federal buildings, courthouses, and land ports of entry. The Recovery Act mandated 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 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 in the Recovery Act.

Front Loading of Billings

MERIT unnecessarily front loaded its billings to GSA. We compared MERIT’s applications for payment to GSA to billings to MERIT by its subcontractor, Universal Heating & Air Conditioning (Universal). These comparisons show that MERIT was billing GSA substantially more than the costs it was incurring.

Figures 1 and 2 illustrate the front loading of billings associated with the boiler costs and the lighting zone control work. The Figures show the amounts for the boiler and lighting zone control work from the Schedule of Values for MERIT and its subcontractor, Universal.² These amounts are normally used to evaluate project billings. The Figures also show the billings by MERIT and Universal. In both Figures, MERIT is billing well before the costs are being incurred.

Figure 1 – Front Loading of Boiler Costs

Schedule of Values (SOV) Listings for Boiler Purchase		
	MERIT	Universal
	<u>SOV</u>	<u>SOV</u>
Purchase of Boilers (i.e., Release of Long Lead Materials)	\$ 430,000	\$ [REDACTED]
<u>MERIT Payment Applications (PA)</u>	<u>MERIT Billings to GSA</u>	<u>Universal Billings to MERIT</u>
PA 3 - Thru PE 08/31/10	\$ 155,000 <i>36% of SOV</i>	\$ - <i>0% of SOV</i>
PA 4 - Thru PE 09/30/10	\$ -	\$ -
<i>10/08/10</i>	<i>PO issued by Universal for boilers</i>	
PA 5 - Thru PE 10/31/10	\$ -	\$ -
PA 6 - Thru PE 12/31/10	\$ 175,000 <i>77% of SOV</i>	\$ -
PA 7 - Thru PE 02/28/11	<u>\$ 100,000</u>	\$ [REDACTED]
Total Billings	<u>\$ 430,000</u> <i>100% of SOV</i>	\$ [REDACTED] <i>81% of SOV</i>

Boilers delivered to site in February 2011

Figure 1 shows that MERIT billed GSA \$155,000 for the boilers before the purchase order for the boilers had even been issued. MERIT billed GSA another \$175,000 for the boilers (for a total of \$330,000) before it had been billed anything by its subcontractor.

² The Schedule of Values is the contractor’s detailed cost breakdown of the contract value based on the contractor’s schedule.

The boilers were delivered to the site in February 2011, at which point Universal billed MERIT [REDACTED] (per Universal's representative, he could not bill MERIT until the equipment was onsite and he provided MERIT with appropriate documentation.)

When asked about this issue, the contracting officer's representative (COR) stated that the boilers are referred to as Release of Long Lead Materials on MERIT's Schedule of Values because, typically, there could be a long lag time between the ordering and delivery of these items. The COR explained this is why MERIT was allowed to bill 35 percent of long lead items in advance, which may explain the first billing. The COR also asserted that this arrangement is an industry standard. However, we did not find any evidence of such an agreement, nor were we provided with any support that the 35 percent metric was an industry standard. We were told by Universal that the boiler vendor did not require any upfront money to complete the order, so there was no need for the advance billing by MERIT.

Figure 2 – Front Loading of Lighting Zone Control Work

Schedule of Values (SOV) Listings for Lighting Zone Control		
	MERIT <u>SOV</u>	Universal <u>SOV</u>
Lighting Zone Control	\$ 774,500	\$ [REDACTED]
<u>MERIT Payment Applications (PA)</u>	<u>MERIT Billings to GSA</u>	<u>Universal Billings to MERIT</u>
PA 6 - Thru PE 12/31/10	\$ 65,000 <i>8% of SOV</i>	\$ - <i>0% of SOV</i>
PA 7 - Thru PE 02/28/11	\$ 227,250 <i>38% of SOV</i>	\$ [REDACTED] <i>7% of SOV</i>
PA 9 - Thru PE 04/30/11	\$ 160,000 <i>58% of SOV</i>	\$ - <i>7% of SOV</i>
PA 10 - Thru PE 06/30/11	\$ -	\$ -
PA 13 - Thru PE 10/31/11	\$ 30,000	\$ [REDACTED]
Total Billings	<u>\$ 482,250</u> <i>62% of SOV</i>	<u>\$ [REDACTED]</u> <i>60% of SOV</i>

The lighting zone control work depicted above is comprised of seven line items in MERIT's Schedule of Values, including release of materials and installation work. Conversely, this work is captured in a single line item on Universal's Schedule of Values. MERIT billed GSA for 58 percent of this work well before it received any significant billing from Universal.

The payments clause of the contract requires progress payments based on estimates of the work accomplished. However, by front loading its billings, MERIT received

payments from GSA that it had neither earned nor was liable to others for. As a result, the Government bears the financial risk until the work is actually completed.

In her response, dated October 14, 2014, the Regional Commissioner acknowledged that advance payments were approved for the boiler and lighting zone control work. According to the response, “with the exception of the two items mentioned all other payments under this project were made in accordance with progress payment clauses. This does not represent R2 PBS project management practices.”

Absence of adequate price negotiation records prior to contract award

Documentation of negotiations between PBS and MERIT was lacking. Neither the GSA contracting officer nor the COR prepared a Price Negotiation Memorandum (PNM) nor maintained any type of correspondence (e.g., memos, e-mails, etc.) regarding these negotiations. While the contract files contained revised proposals prepared by MERIT and revised estimates prepared by Jacobs Technology Inc. (Jacobs),³ indicating that price negotiations had likely occurred between MERIT and GSA, the files did not explain what technical and/or pricing issues were discussed and resolved prior to award.

Federal Acquisition Regulation 15.406-3, Documenting the Negotiation, requires the preparation of a PNM at the conclusion of negotiations as an integral part of the contract file. A key element included in the PNM is:

A summary of the contractor’s proposal, any field pricing assistance recommendations, including the reasons for any pertinent variances from them, the Government’s negotiation objective, and the negotiated position. Where the determination of a fair and reasonable price is based on cost analysis, the summary shall address each major cost element. When determination of a fair and reasonable price is based on price analysis, the summary shall include the source and type of data used to support the determination.

However, according to the prior COR,⁴ there was simply not enough time to prepare a PNM due to the limited time available to award the contract.

The lack of documented negotiations is problematic. For example, prior to award, MERIT modified its proposal several times. We noted a large disparity between PBS’s Independent Government Cost Estimate and MERIT’s proposals. MERIT’s initial and revised proposals showed the following:

³ PBS engaged Jacobs to develop the Scope of Work and the Independent Government Cost Estimates.

⁴ The “prior COR” was involved through the award process. A mechanical engineer was hired for all Recovery Act projects assigned to the Brooklyn, Queens, Long Island Engineering Unit. She took over as the COR on this project after the task order was awarded.

Proposal Date	Proposed Amount	Comments About Scope of Work
03-18-2010		Includes All Base and Option Work
03-24-2010		Includes All Base and Option Work
03-29-2010	\$6,436,404 <i>Award Amount</i>	Includes All Base and Option Work except for Option 2.3 (\$) and Option 2.7 (\$)

The Independent Government Cost Estimate was [REDACTED] so the award amount of \$6,436,404 exceeded the estimate by [REDACTED] or [REDACTED] percent. Since a PNM or other type of price negotiation document was not prepared, we could not determine how the contracting officer concluded that the award amount was fair and reasonable given that it exceeded the estimate by [REDACTED] percent.

Additionally, the lack of negotiation records makes it difficult to determine the extent to which the Government's interests were protected. Several examples follow:

- On March 26, 2010, Jacobs e-mailed the COR with the following assessment of MERIT's proposed pricing of the hot water pumps and variable frequency drives:

We believe pump pricing for 25HP pumps should be approximately \$10K per pump. Big difference between \$30K and the [REDACTED] proposed for the equipment only.

Variable Frequency Drives for each 25 HP pump should probably be more like \$9.5K - \$10K. Big difference between \$30K and proposed [REDACTED] proposed [sic] – even considering the labor that will be needed.

The lack of a PNM or other negotiation record precludes us from determining whether this advice was discussed or even considered. However, it does appear that MERIT's proposed amounts were included in its contract, without any reduction. As a matter of fact, Universal's subcontract Schedule of Values includes [REDACTED] to furnish the pumps, almost the exact amount proposed by MERIT.

- GSA and MERIT did not agree on whether or not there was a contract requirement for the separate monitoring of each lighting panel's energy usage. The initial document that addressed this issue was dated February 15, 2010; however, the issue was not resolved until well after the contract was awarded. The modification to fund this work was not issued until December 21, 2011. Consequently, the lack of a PNM or other negotiation record precludes us from determining how this issue was treated during the time that led up to the award.

The preparation of a PNM at the conclusion of negotiations is an integral part of the contract file. The absence of a properly prepared PNM casts doubt on whether GSA was able to determine whether the awarded price was fair and reasonable.

In her response, the Regional Commissioner acknowledged that “negotiated items were not documented in a Price Negotiation Memorandum (PNM) format. GSA understands that the PNM is an essential document which should be included in the contract file.”

Regarding the specific examples cited, the response offers an explanation for each. With regards to the hot water pumps and variable frequency drives, the response explains that these items were individual elements of a specific energy conservation measure. Consequently, “while the government looked at the various sub-items involved in comprising the total value of the line item, the cost of these items were not necessarily reviewed individually.” The response then lists all the other line items that comprised the energy conservation measure. We would point out that since Jacobs did evaluate individual elements of the contractor’s proposal, that information was readily available for the Government to review. Therefore, we reiterate that the lack of a PNM or other negotiation record precludes us from determining whether this information was discussed or even considered.

Regarding the separate monitoring of the lighting panels, the response explains that “it was determined by the project team at that time that the SOW [Statement of Work] did not include the electrical panel energy monitoring meter and a change order was subsequently issued....” We reiterate that the lack of a PNM or other negotiation record precluded a determination of how this issue was treated during the time that led up to the award.

MERIT had an undisclosed relationship with Reva, Inc.

Universal was not actually MERIT’s subcontractor; Universal’s subcontract was actually with Reva, Inc. (Reva) who, in turn, was supposedly MERIT’s construction manager (CM). It appears this arrangement was not disclosed to GSA and Reva’s involvement with this project was unknown to GSA.

According to Universal’s vice president, the company’s subcontract for the subject project was with Reva, not MERIT; although Universal’s bid was submitted directly to MERIT. According to Universal, MERIT designated Reva as its CM and Universal submitted its Applications for Payment to Reva. Supposedly, both MERIT and Reva reviewed Universal’s applications and Reva then paid Universal.

The Revised Technical Proposal, Volume 1, which was presented to the GSA Evaluation Board, does not mention any participation by Reva or its president, nor was his resume submitted for review. In the minutes of a Weekly Construction Project Status Meeting, Reva’s president appears as an attendee as a representative of MERIT, with a MERIT e-mail address. We asked the GSA COR to identify the individual in question, and she responded that she believed that he was one of MERIT’s project managers.

Reva's actual role on the project was not apparent. Reva's name was virtually absent from the project file. Reva's president was copied on some e-mail correspondence (using his MERIT e-mail address), but we did not find any e-mails that he actually authored or responded to. As a matter of fact, when we requested Quality Control reports, ordinarily the province of a CM, we received nothing authored by Reva.

It should be noted that MERIT's underlying Design/Build contract is a Small Business set-aside (8(a)) contract and that when this task order was awarded, Reva was not eligible for contracts under the 8(a) program. In February of 2008, the Small Business Administration informed GSA that Reva should not be awarded one of the impending 8(a) contracts because Reva was due to graduate from the 8(a) program in 2010.

Additionally, the relationship between MERIT and Reva appeared to become very close after this task order was awarded. For example, 5 days after its Notice to Proceed date of May 19, 2010, MERIT informed GSA that it had relocated to 211 Warren Street, Newark, New Jersey, which is the same building where Reva is located. Further, on July 21, 2010, Reva and MERIT entered into a Mentor/Protégé Agreement sponsored by the Department of Veterans Affairs. The agreement identifies MERIT as a certified 8(a) small business and Reva as a graduate of the 8(a) program.

The Regional Commissioner responded to this issue as follows:

The GSA project team was not made aware of the relationship between MERIT and Reva, Inc. during the course of this project and had no way of knowing this information. Although the auditor states that MERIT and Reva entered into a Mentor/Protege agreement sponsored by the Dept of Veteran Affairs on July 21, 2010, that agreement would not be valid for work on GSA projects. Going forward, GSA will be looking into any other projects currently awarded to MERIT and defining any relationships where REVA, Inc. is involved.

The contractor was not performing its required Quality Control

MERIT was contractually obligated to provide a Quality Control Plan (QC Plan), per the following:

9.1 General: The Contractor shall develop, provide, and maintain a Quality Control Plan during the design development phase of the project, based upon the Design-Build contract requirements referenced within this Document. The Quality Control Plan shall address special factors impacting the construction of the project. This aspect of the Quality Control plan is intended to establish and document the methods, measures, and procedures to be used by the Contractor for performance of the work in an "occupied" building during "off-hours" and weekends. In addition, the Quality Control Plan is also intended to document those inspections/tests necessary to assure the Government that product

delivery, quality and performance requirements have been met, and serves as an inspection coordination tool between the Contractor and the Government.

9.4 Submissions: The Quality Control Plan shall be prepared and submitted with the Intermediate Design Documents. Construction shall not begin until the Quality Control Plan is approved.⁵

MERIT provided us a copy of its QC Plan and asserted that this plan had been previously submitted to GSA. However, we did not find the QC Plan in the contract files. Neither the contracting officer, the COR, nor GSA's construction manager recalled ever seeing this plan. The document itself is generic and does not cite the Addabbo project on any of its pages. Therefore, it is questionable whether the QC Plan was ever actually submitted as required.

We provided a copy of the QC Plan to GSA's construction manager to determine whether it complied with requirements. According to GSA's construction manager, although the plan is very comprehensive, MERIT never implemented any of the plan's provisions. For example, to that point in time, MERIT never provided a daily onsite inspector; the only MERIT representative to have visited the site was its project manager, and he only visited on a bi-weekly basis to attend a staff meeting.

GSA's construction manager also stated that MERIT never provided any inspection reports as provided for in the QC Plan. Nevertheless, we asked MERIT to provide copies of its inspection reports. After waiting almost 7 weeks, MERIT forwarded 23 daily inspection reports. The 23 reports represented one report per week, from December 7, 2010, through May 31, 2011.

The contractor's ability to disregard the quality control requirement was enabled by a lack of contract oversight by GSA. The submission of the QC Plan was overlooked, as was the fact that the contractor was not performing its required quality control. And as previously noted, construction was not supposed to begin until a QC Plan was approved.

In her response, the Regional Commissioner acknowledged that "the Quality Control Plan and related reports were not in the contract file folder at the time of the auditor's request." We point out that, not only were the reports not in the contract file, there is no evidence they had been submitted to GSA at the time of our request.

Finally, the Regional Commissioner's response also stated that since the subject procurement took place, "Region 2 has put in place measures to address the concerns identified in this audit in order to prevent a similar occurrence in the future." Specifically, the Region: (1) created an Acquisition Management Division, (2) implemented review protocols, (3) has begun conducting training for contracting staff that will address the

⁵ Request For Proposals, Volume 1, Section 3 – Construction Services, Paragraph 9 – Quality Control Plan.

