

**Recovery Act Report – Termination of Original
Group 7 Award
Review of PBS’s Limited Scope and Small
Construction Projects Funded by the American
Recovery and Reinvestment Act of 2009
Report Number A090184/P/R/R13006**

Information in this report has been redacted due to the
proprietary nature of the material.



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

Recovery Act Report – Termination
of Original Group 7 Award
Review of PBS’s Limited Scope and
Small Construction Projects Funded
by the American Recovery and
Reinvestment Act of 2009

Audit Number A090184/P/R/R13006
April 15, 2013



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

REPORT ABSTRACT

OBJECTIVES

Our objectives were to determine why the Public Buildings Service (PBS) terminated the original Group 7 contract award and if the termination was in accordance with the Federal Acquisition Regulation (FAR), General Services Administration Acquisition Manual, and Recovery Act mandates.

*Real Property Audit
Office (JA-R)
1800 F Street, NW
Room 5014
Washington, DC 20405
(202) 219-0088*

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WHAT WE FOUND

We identified the following during our audit:

Finding 1 – PBS insufficiently documented the contract termination.

Finding 2 – PBS inappropriately waived the bid guarantee for the contract.

Finding 3 – PBS made an insufficient price reasonableness determination.

WHAT WE RECOMMEND

Based on our audit findings we recommend the Regional Administrator, Nation Capital Region:

1. Strengthen the document control process for terminating contracts to ensure compliance with the FAR;
2. Implement policies, processes, and procedures to ensure that bid guarantee waivers are used only when necessary, that proper approvals are obtained, and that waivers are fully documented; and
3. Establish a document control process to ensure contract files fully support the price reasonableness determination.

MANAGEMENT COMMENTS


Management agreed with the findings and concurred with the recommendations. Management’s comments are included in **Appendix B**.



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

DATE: April 15, 2013

TO: Julia E. Hudson
Regional Administrator
National Capital Region (WA)

FROM: Marisa A. Roinestad 
Program Director, Real Property Audit Office (JA-R)

SUBJECT: Recovery Act Report – Termination of Original Group 7 Award
Review of PBS's Limited Scope and Small Construction Projects
Funded by the American Recovery and Reinvestment Act of 2009
A090184/P/R/R13006

This report presents the results of our audit of the Termination of the Original Group 7 Award. Our findings and recommendations are summarized in the Report Abstract. Instructions regarding the audit resolution process can be found in the email that transmitted this report.

Your written comments to the draft report are included in **Appendix B** of this report.

If you have any questions regarding this report, please contact me or any member of the audit team at the following:

Marisa Roinestad	Program Director	marisa.roinestad@gsaig.gov	202-273-7241
Anthony Jones	Auditor-In-Charge	anthony.jones@gsaig.gov	202-273-7242
Kyle Plum	Auditor	kyle.plum@gsaig.gov	202-273-5004

On behalf of the audit team, I would like to thank you and your staff for your assistance during this audit.

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Introduction

Under the Recovery Act, Congress appropriated \$5.55 billion to the Federal Buildings Fund with \$4.5 billion for measures necessary to convert GSA facilities to high-performance green buildings.¹ PBS awarded the Group 7 contract on August 17, 2010, for \$4.2 million.² The Group 7 contract was for design-build construction services for energy efficiency improvements. Specifically, the scope of work for the project included building systems replacement, building tune-ups, and lighting replacement.

PBS terminated the original Group 7 contract on September 17, 2010. The contract was subsequently re-procured and awarded to a different contractor on September 29, 2010, for \$2.8 million. We previously audited this re-procurement and issued an audit memorandum on July 5, 2011.³ However, at the time, no documentation regarding the original procurement or termination was provided to the audit team.

The objective of our audit was to determine why PBS terminated the original Group 7 contract award and if the termination was in accordance with the Federal Acquisition Regulation (FAR), General Services Administration Acquisition Manual, and Recovery Act mandates.

See ***Appendix A*** – Purpose, Scope, and Methodology for additional details.

¹ As defined by Section 401 of Public Law 110-140.

² Group 7 consists of the Lyndon B. Johnson Building and 601 4th Street, NW, Washington Field Office. The Group 7 contract number is GS-11P-YAC-0044.

³ The objectives of the previous audit were to determine if the project met the requisite high-performance green building investment strategy and if PBS awarded the task order in accordance with the Federal Acquisition Regulation.

Results

Finding 1 – PBS insufficiently documented the contract termination.

PBS insufficiently documented the contract termination, risking dispute with the contractor regarding \$4.2 million. The termination modification did not indicate the termination type, contain the related FAR clauses, or include information substantiating the termination.

The no-cost termination modification stated that the contract was terminated “due to the contractors [sic] failure to meet the requirements set forth in the contract.” There was no explanation in the contract file as to how the contractor failed to meet the contract requirements or why a no-cost termination was selected rather than a termination for default. The contract file indicated that PBS thought it was awarding a firm-fixed price contract, as solicited, while the awardee thought it was proposing “cost allowances.”⁴

Additionally, the termination modification did not contain the proper termination clauses. FAR 49.603-6 requires the inclusion of the following clause in a no-cost settlement agreement, under a complete termination:

(a) This supplemental agreement... ‘terminates the contract in its entirety’.... (b) The parties agree as follows: The Contractor unconditionally waives any charges against the Government because of the termination of the contract and... releases it from all obligations under the contract or due to its termination.

However, this specific termination language for a no-cost settlement was not included in this termination modification.

It appears PBS's urgency to obligate Recovery Act funds by September 30, 2010, may have resulted in the termination. PBS terminated the contract on September 17, 2010. The project was subsequently re-procured on September 29, 2010. If funds were not obligated by September 30, 2010, the Recovery Act Program Management Office may have re-programmed funds to other projects. In order to award a contract by September 30, 2010, it appears that PBS terminated the contract rather than hold the contractor responsible for this misunderstanding or further negotiate the difference.

Recommendation 1

We recommend the Regional Administrator, National Capital Region, strengthen the document control process for terminating contracts to ensure compliance with the FAR.

⁴ The contractor proposed “cost allowances” for the amount of work that could be achieved as determined during the design phase.

Management Comments

In its comments, management agreed with the audit finding and concurred with the recommendation (See **Appendix B**).

Finding 2 – PBS inappropriately waived the bid guarantee for the contract.

PBS inappropriately waived the bid guarantee for the contract, leaving the Government at risk of contractors withdrawing their bids before contract award and the winning bidder not executing the contract once awarded. The Standard Form 1442, solicitation, offer, and award document did not require an offer⁵ guarantee from the contractor. The chief of the contracting office did not approve this bid guarantee waiver as required by FAR 28.101 which states:

The chief of the contracting office may waive the requirement to obtain a bid guarantee when a performance bond or a performance and payment bond is required if it is determined that a bid guarantee is not in the best interest of the Government for a specific acquisition.

Bid guarantees provide the Government with a form of security, assuring that the bidder will not withdraw its bid within the period specified for acceptance and that the winning bidder will execute a written contract.

PBS did not provide a justification for not requiring a bid guarantee. Due to the improper bid guarantee waiver, contractors did not provide bid bonds for the project. In the event bid guarantees had been required, the contract could have been terminated for default in accordance with FAR 52.228-1(d)-(e) which prescribes:

(d) If the successful bidder, upon acceptance of its bid by the Government within the period specified for acceptance, fails to execute all contractual documents or furnish executed bond(s) within 10 days after the receipt of the forms by the bidder, the Contracting Officer may terminate the contract for default.

(e) In the event the contract is terminated for default, the bidder is liable for any cost of acquiring the work that exceeds the amount of its bid, and the bid guarantee is available to offset the difference.

If the contract was terminated for default, the awardee would have been accountable for costs over its bid amount, including administrative and in-house costs of a re-procurement. For this project, PBS could not hold the contractor responsible for these costs since a bid guarantee was not required. Had PBS not waived the bid guarantee requirement, the bid bond could have been used under a termination for default if the contractor failed to meet the requirements of the contract.

⁵ Offer guarantees and bid guarantees are synonymous.

Recommendation 2

We recommend the Regional Administrator, National Capital Region, implement policies, processes, and procedures to ensure that bid guarantee waivers are used only when necessary, that proper approvals are obtained, and that waivers are fully documented.

Management Comments

In its comments, management agreed with the audit finding and concurred with the recommendation (See **Appendix B**).

Finding 3 – PBS made an insufficient price reasonableness determination.

The contract file did not contain sufficient data to support the basis of award; therefore PBS cannot ensure it paid a fair and reasonable price. The contract file included a documented independent government estimate (IGE)⁶ and two price negotiation memorandums (PNM)⁷ citing two different IGEs. Neither PNM IGE was found in the contract file. *Table 1* compares the documented IGE, contractor's bid, and the PNM IGEs.

Table 1 - Comparison of Cost Estimates and Contractor's Bid

Cost Estimate	Date	Base	Allowances	Options	Total
Documented IGE	2/8/10	\$4,470,883	-	-	\$4,470,883
Contractor's bid	3/24/10	██████████	██████████	Incl. in base	██████████
PNM IGE	4/29/10	-	-	-	\$5,917,000
PNM IGE	8/5/10	\$4,470,883 ⁸	\$200,000	\$4,292,000	\$8,962,883

PBS did not provide explanations for the increases between IGEs. Since only the base of the August 5, 2010, PNM IGE is documented, a comparison cannot be made amongst the IGEs to determine if project elements changed.

The contractor's bid included options in its base value while the documented IGE estimated only the base. The contractor's bid exceeded the documented IGE by \$██████████. Conversely, IGE amounts quoted in the PNMs were higher than the contractor's total bid. Specifically, the August 5, 2010 PNM IGE exceeds the contractor's bid by \$████████████████████. The fact that the bid compared differently to all versions of the IGEs (higher and lower) makes it unclear how PBS could have used comparison with the IGEs to determine fair and reasonable price.

⁶ The documented IGE combines separate IGEs for the Lyndon B. Johnson Building and 601 4th Street, NW, Washington Field Office.

⁷ PBS conducted two price reasonableness determinations as a result of a change in contracting officer before contract award.

⁸ This base value is identical to the February 8, 2010 documented IGE.

PBS deemed the price fair and reasonable in the August 5, 2010, PNM based on comparison to its IGE and recently awarded projects. However, the August 5, 2010, IGE was unsupported and varied significantly from the contractor's bid. Additionally, the PNM did not include any details supporting the historical project comparison. These two conditions precluded comparison to ensure price reasonableness as prescribed by FAR 15.404-1(b):

(2) The Government may use various price analysis techniques and procedures to ensure fair and reasonable price. Examples of such techniques include, but are not limited to, the following:

(ii) Comparison of the proposed prices to historical prices paid, whether by the Government or other than the Government, for the same or similar items. This method may be used for commercial items including those "of a type" or requiring minor modifications...

(v) Comparison of proposed prices with independent Government cost estimates.

Recommendation 3

We recommend the Regional Administrator, National Capital Region, establish a document control process to ensure that contract files fully support the price reasonableness determination.

Management Comments

In its comments, management agreed with the audit finding and concurred with the recommendation (See **Appendix B**).

Conclusion

Several deficiencies were identified in the termination of the original Group 7 contract for design-build services for energy efficiency improvements. PBS needs to: (1) strengthen controls for terminating contracts in compliance with FAR, (2) ensure that bid guarantee waivers are used only when necessary, are properly approved, and are fully documented, and (3) establish controls to ensure that price reasonableness determinations are fully supported.

Appendix A – Purpose, Scope, and Methodology

Purpose

This audit was performed as part of the Office of Inspector General's ongoing oversight of GSA's implementation of the American Recovery and Reinvestment Act (Recovery Act).

Scope

The review covered contract administration for the original Group 7 contract (number GS-11P-10-YAC-0044). Group 7 consists of the Lyndon B. Johnson Building and 601 4th Street, NW, Washington Field Office.

Methodology

To accomplish our objectives, we:

- Interviewed PBS contract and project management staff;
- Reviewed and analyzed contract and project management files; and
- Compared the timeline of the original Group 7 contract termination with the subsequent Group 7 contract award.

We conducted the audit between August and October 2012 in accordance with generally accepted government auditing standards. 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.

Internal Controls

The focus of the review is to determine if GSA is complying with the Federal Acquisition Regulation, General Services Administration Acquisition Manual, and Recovery Act mandates governing the administration of the contract. We evaluated internal controls over contract administration to the extent necessary to answer the review objective. Related internal control issues are discussed in the context of the review findings.

Appendix B – Management Comments



GSA National Capital Region

APR - 1 2013

MEMORANDUM FOR SUSAN P. HALL
ACTING DEPUTY ASSISTANT INSPECTOR GENERAL
FOR AUDITING
REAL PROPERTY AUDIT OFFICE (JA-R)

FROM: JULIA E. HUDSON
REGIONAL ADMINISTRATOR (WA)

SUBJECT: Recovery Act Report –
Termination of Original Group 7 Award
Review of PBS's Limited Scope and Small Construction Projects
Funded by the American Recovery and Reinvestment
Act of 2009
Audit Number A090184/P/R
February 27, 2013

The National Capital Region (NCR) appreciates the opportunity to comment on the subject draft audit report. The audit reviewed the task order award for the building systems, building tune-up, and lighting system project for Group 7 in the amount of \$4.2 million and identified several issues that require a written response. NCR concurs with the draft report and specific comments are attached.

We appreciate the support that has been provided by your review of PBS's limited scope and small construction projects funded by the ARRA.

If you have any questions or need additional information, please feel free to contact me at (202) 708-9100, or Thomas James, Acting Regional Commissioner, Public Buildings Service. He may be reached at (202) 708-5891

Attachment

U.S. General Services Administration
301 2nd Street, SW
Washington, DC 20407-4801
www.gsa.gov

Appendix B – Management Comments (cont.)

Finding 1 – PBS insufficiently documented the contract termination.

Response 1: NCR concurs with the finding. Our intent was to issue a no cost termination for convenience. The format in FAR 49.603-6 should have been used to effect a bilateral no cost modification.

Finding 2 – PBS Inappropriately waived the bid guarantee for the contract.

Response 2 – NCR concurs with the finding. The solicitation incorrectly indicated a bid guarantee was not required. The requirement was re-procured, however, via the GSA area wide utility contract for a lower cost than the design proposal received. Therefore, the Government realized a cost savings notwithstanding the inadvertent error.

Finding 3 – PBS made an insufficient price reasonableness determination.

Response 3 – NCR concurs with the finding.

Appendix C – Report Distribution

Commissioner, PBS (P)

Acting Deputy Commissioner, PBS (PD)

Acting PBS Chief of Staff (PB)

Acting Director, PBS Executive Response (PBA)

Regional Recovery Executive, PBS, National Capital Region (WP)

National Program Office ARRA Executive, PBS (PCB)

Chief of Staff, PBS Office of Construction Programs (PCB)

Regional Administrator, National Capital Region (WA)

Acting Regional Commissioner, PBS, National Capital Region (WP)

Regional Counsel, National Capital Region (LDW)

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

Audit Liaison, PBS (BCP)

Audit Liaison, PBS, National Capital Region (BCPA)

Assistant Inspector General for Auditing (JA)

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

Deputy Assistant Inspector General for Investigations (JID)

Director, Office of Internal Operations (JI-I)

Investigator, Office of Internal Operations (JI-I)