



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

DATE: February 29, 2012

TO: CATHLEEN C. KRONOPOLUS
REGIONAL COMMISSIONER
PUBLIC BUILDINGS SERVICE (WP)

Susan P. Hall

FROM: SUSAN P. HALL
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SUBJECT: Recovery Act Memorandum – 425 Eye Street Swing Space Lease for
the Department of Veterans Affairs
Review of Lease Projects Funded by the American Recovery and
Reinvestment Act of 2009
Audit Memorandum Number A100203-3

The General Services Administration's (GSA) Office of Inspector General is conducting oversight of projects funded by the American Recovery and Reinvestment Act¹ (Recovery Act). One of the projects we reviewed involved approximately \$39,000,000² (about \$16.6 million of which was funded through the Recovery Act) in tenant improvements at 425 Eye Street in Washington, D.C. The objective of our oversight of this project was to determine if the Public Buildings Service (PBS) procured and implemented these tenant improvements in accordance with the provisions of the Recovery Act and PBS guidance.

During our review, we identified two issues that require your attention. Specifically:

1. PBS lacks support for its decision to pay the Lessor's funding costs.
2. PBS did not verify compliance with the Davis-Bacon Act during the project.

¹ The American Recovery and Reinvestment Act of 2009 appropriated \$5.55 billion to the Public Buildings Service's Federal Buildings Fund. The Act provided \$108 million for leasing temporary space in connection with these projects. PBS used these funds to make lump sum payments for tenant improvements in leased space. The Recovery Act also required the Office of Inspector General to oversee and audit programs, grants, and projects funded under this Act.

² The final costs were still being negotiated at the time of our review (months after the June 7, 2011, effective date of the lease). This amount does not include a credit of \$5,383,496.96.

Finding 1 – PBS lacks support for its decision to pay the Lessor’s funding costs.

PBS did not support its decision to pay the Lessor for “advancing funds for tenant improvements during the buildout of the leased space”³ in the amount of \$1,153,570.80. According to PBS, this cost represents the additional burden the Lessor claimed was for financing tenant improvements that exceeded the tenant improvement amount in the solicitation for offers. PBS did not explain how the amount was determined, nor why the source of funds (i.e. “free rent”⁴) was used.

The facility at 425 Eye Street was being improved for use as “swing space” during renovations at the U.S. Department of Veterans Affairs Lafayette Building in Washington, D.C. Prior to lease award, the Lessor was required to show that it could provide financing of the tenant improvements. However, after lease award, the Lessor claimed that it did not have sufficient funding to cover these costs, which were projected to be significantly higher than the \$80 per square foot cited in the solicitation for offers. According to PBS, the Lessor threatened to delay the work unless the Government provided reimbursement. These delays would add significant costs to the Lafayette renovation project. PBS decided to pay the Lessor through a supplemental lease agreement. The payment totaled \$1,153,570.80, which equaled the Broker’s Commission Credit that the initial lease stated was to be used for rent abatement.⁵

Beginning in July 2011, we requested support for the Lessor’s claims and the basis for the contracting officer’s award amount to the Lessor. Despite numerous requests, PBS has not provided us with any documentation or other satisfactory explanations for its actions in this case. The Federal Acquisition Regulation (FAR) requires that cost or pricing data be used to establish the final price agreement when the price is expected to exceed \$650,000 (unless an exception applies). FAR also cites cost or pricing data as an example of a record normally retained in contract files. When we reviewed the official contract file as late as October 26, 2011, we could find no documentation supporting the contracting officer’s decision or justifying the amounts paid to the Lessor.

PBS’s official contract files should include sufficient documentation to support all contracting actions, including a decision to pay a Lessor over \$1.1 million for funding costs not referenced in the initial lease. This is particularly true when the solicitation for

³ Supplemental Lease Agreement #1, dated April 26, 2011.

⁴ GSA was represented by an authorized real estate broker during this lease transaction. Under GSA’s contract with this broker, the broker agreed to forego a percentage of the commission that it was entitled to receive from the Lessor. Under the terms of the initial lease, this Broker Commission Credit was to “be paid as free rent in equal monthly installments of \$576,785.40 during the 1st and 2nd full months of the first year of the lease.”

⁵ The PRICING FOR RECOVERY ACT PROJECTS, Internal Guidance for GSA, Revised February 1, 2011, stated: “In some ARRA-funded swing space or permanent move leases, as approved by the ARRA PMO, the broker’s commission credit can be used toward the lump-sum component of TI allowances.” This guidance also included an ad hoc clause to be incorporated into the customer’s occupancy agreement. The customer, in its final occupancy agreement, acknowledges the use of the Broker Commission Credit to reimburse the Lessor for its cost in advancing funds for tenant improvements.

offers requires “Satisfactory evidence of at least a conditional commitment of funds in an amount necessary to prepare and/or construct the space...”

Finding 2 – PBS did not verify compliance with the Davis-Bacon Act during the project.

PBS did not verify that contractor pay rates complied with the Davis-Bacon Act during the course of the improvement work because the contracting officer did not obtain certified payrolls in a timely manner.

Realty Services Letter-2009-04 (RSL) provides implementation guidance to contracting officers for leases funded by the Recovery Act. The RSL requires that the Recovery Act’s Labor Standards be referenced in these leases and notes that certain FAR clauses “shall apply to all work (including base building and tenant build out) performed using Recovery Act funds.” These clauses include: (1) FAR 52.222-6, Davis-Bacon Act, which requires the general contractor to pay the appropriate wages to laborers no less than once a week; and (2) FAR 52.222-8, Payrolls and Basic Records, which requires that, each week, the contractor submit a copy of all payrolls to the contracting officer for any contract work performed, along with a “Statement of Compliance.”

Although the lease included these clauses, PBS did not monitor compliance with wage regulations while tenant improvements were in process. PBS did not obtain the certified payrolls until the end of the project. When the payrolls were eventually reviewed, discrepancies were discovered. Two of the subcontractors on the Lessor’s competitive pricing proposal for the tenant improvements were not subcontractors who actually performed the work. PBS also found a difference of \$749,052 between the subcontract amount awarded and the actual subcontract value.

Since PBS considered this defective pricing, they sent a letter to the Lessor on October 12, 2011, noting that the difference between the amount awarded and the actual subcontract value “shall be deducted from the remaining retainage funds.” Had the payrolls been reviewed during the project, this money could have been withheld earlier in the process.

Management Comments

The PBS Regional Commissioner agreed with the review findings and listed the corrective actions that have been, or will be, taken to address the review findings.

I would like to thank you and your staff for your assistance during this review. 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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