



Office of Audits
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U.S. General Services Administration

Audit of PBS Basic Repairs and Alterations Project: William Augustus Bootle Federal Building and U.S. Courthouse

Report Number A210076/P/4/R23009
September 29, 2023

Executive Summary

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Why We Performed This Audit

Since Fiscal Year 2020, we have performed audits of the GSA Public Buildings Service's (PBS's) basic repairs and alterations projects. For Fiscal Year 2022, Congress authorized PBS to spend approximately \$389 million for its basic repairs and alterations projects, which are designed to keep federal buildings reliably safe and in good repair. With a deferred maintenance and repairs backlog of approximately \$3.13 billion, PBS faces challenges in maximizing the use of these funds to address the needs of its aging real property inventory. Accordingly, the proper execution of PBS's selected projects is critical.

We performed an audit of the PBS Southeast Sunbelt Region's (PBS Region 4's) \$3.345 million sole-source basic repairs and alterations contract to modernize the heating, ventilation, and air conditioning (HVAC modernization) at the William Augustus Bootle Federal Building and U.S. Courthouse (Bootle Building) in Macon, Georgia. PBS awarded the sole-source contract to a participant in the U.S. Small Business Administration's 8(a) Business Development program (8(a) program).

Our audit objective was to determine whether PBS Region 4 planned, awarded, administered, and closed out the Bootle Building HVAC modernization contract in accordance with the Federal Acquisition Regulation, General Services Administration Acquisition Manual, and other applicable policies.

What We Found

PBS did not award and administer the Bootle Building HVAC modernization contract in accordance with applicable regulations and GSA policies. As a result, PBS Region 4 overpaid the contractor, providing it with excessive profits; circumvented congressional oversight; did not enforce building security requirements; and enabled subcontractors to underpay employees.

Based on our audit, we found that PBS:

1. Awarded the Bootle Building HVAC modernization contract at significantly inflated prices without justification;

2. Paid the contractor at least \$73,400 for work that was not performed when the contracting officer's representative inappropriately authorized changes to the scope of work for the project;
3. Circumvented congressional oversight by awarding two concurrent contracts to the same contractor for related HVAC projects;
4. Did not enforce building security requirements, allowing contract workers without required security clearances to access the Bootle Building; and
5. Did not enforce Construction Wage Rate Requirements, which enabled subcontractors to underpay employees.

PBS's actions disregarded the intent of the congressional prospectus process and caused the government to incur significantly inflated costs.

What We Recommend

Based on our audit findings, we made several recommendations to the PBS Region 4 Regional Commissioner. These include recommendations to ensure that 8(a) program contractors provide applicable cost or pricing data, and PBS Region 4 contract officials properly justify pricing and incorporate design changes into contracts. Additionally, PBS Region 4 should ensure that PBS personnel do not circumvent the prospectus process by splitting related projects. Finally, PBS should ensure that contractor and subcontractor employees possess appropriate security clearances, and subcontractor employees are paid in accordance with Construction Wage Rate Requirements.

See the report **Conclusion** section for a full list of recommendations.

The PBS Region 4 Regional Commissioner agreed with our recommendations and acknowledged the problems that occurred with the contract after award. However, PBS Region 4 maintains that it did not disregard the intent of the congressional prospectus process. PBS Region 4's written comments are included in their entirety in **Appendix B**.

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Introduction

We performed an audit of GSA's Public Buildings Service (PBS) Southeast Sunbelt Region's (PBS Region 4's) \$3.345 million sole-source basic repairs and alterations contract to modernize the heating, ventilation, and air conditioning (HVAC modernization) at the William Augustus Bootle Federal Building and U.S. Courthouse (Bootle Building) in Macon, Georgia.

Purpose

Since Fiscal Year (FY) 2020, we have performed audits of PBS's basic repairs and alterations projects. For FY 2022, Congress authorized PBS to spend approximately \$389 million for its basic repairs and alterations projects, which are designed to keep federal buildings reliably safe and in good repair. With a deferred maintenance and repairs backlog of approximately \$3.13 billion, PBS faces significant challenges in maximizing the use of these funds to address the needs of its aging real property inventory. Accordingly, the proper execution of PBS's selected projects is critical.

Objective

Our audit objective was to determine whether PBS Region 4 planned, awarded, administered, and closed out the Bootle Building HVAC modernization contract in accordance with the Federal Acquisition Regulation (FAR), General Services Administration Acquisition Manual, and other applicable policies.

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

Background

According to GSA's *FY 2022 Agency Financial Report*, the average age of GSA-owned buildings is 50 years. For FY 2022, GSA reported a deferred maintenance and repairs cost of approximately \$3.13 billion for critical repairs and upgrades necessary to maintain its buildings in acceptable condition. Deferred maintenance and repairs include preventive maintenance; replacement of parts, systems, or components; and other activities to preserve or maintain the buildings.

PBS funds these maintenance and repairs needs and all of its real property activities through the Federal Buildings Fund (FBF). The FBF operates as a revolving fund; however, unlike typical revolving funds, it is subject to annual enactment of new obligational authority by Congress. As part of the annual appropriations process, Congress authorizes FBF funding for PBS's Basic Repairs and Alterations Program.

Within PBS, the Basic Repairs and Alterations Program is commonly referred to as the Budget Activity 54 (BA54) program, which is the FBF's budget activity account for the program. The BA54 program funds the cost of repairs, remodeling, improvements, and associated design and

construction services that exceed \$50,000, but are below the prospectus level.¹ Examples of BA54 program projects include repairs of roofs, plazas, and parking decks; replacements of or improvements to major building systems and equipment; and exterior window repairs or improvements.

William Augustus Bootle Federal Building and U.S. Courthouse

The Bootle Building (shown in *Figure 1*) was completed in 1908, with a post office on the first floor and courtrooms and judges' chambers on the second floor. Additions were constructed in 1917 and 1934. The building was listed in the National Register of Historic Places in 1972. The building houses the U.S. District Court for the Middle District of Georgia, the U.S. Marshals Service, and the offices of a U.S. Court of Appeals for the Eleventh Circuit judge.

Figure 1 – William Augustus Bootle Federal Building and U.S. Courthouse²



Since September 2016, PBS Region 4 has spent more than \$7.5 million of BA54 funds to address water intrusion; interior damage; humidity control; indoor air quality; and mold, lead paint, and asbestos at the Bootle Building (see *Figure 2* on the next page).

¹ Some contract actions require congressional authorization if the dollar amount exceeds a certain threshold as codified by 40 U.S.C. 3307, *Congressional Approval of Proposed Projects*. The Public Buildings Act of 1959 requires GSA to submit a project proposal (prospectus) to congressional authorizing committees.

² Image obtained from the GSA website, <https://www.gsa.gov/historic-buildings/william-augustus-bootle-federal-building-and-us-courthouse-macon-ga>, on October 14, 2022.

Figure 2 – Bootle Building BA54 Contracts Awarded in Calendar Years 2016–2020

Contract Number	Award Date	Description	Total Contract Costs
GS04P16EWC7056	9/1/2016	Building envelope repairs	\$2,183,693
47PE0218C0030	7/18/2018	Replace one air handling unit in the first floor courtroom	146,467
47PE0218C0053	9/29/2018	HVAC modernization, including new air handling units (10), air distribution systems, a dedicated outdoor air unit, controls, and retrofit of the air handling unit awarded in July 2018	3,345,032
47PE0219C0006	12/21/2018	Interior repairs, including asbestos, lead paint, and mold abatement	1,777,032
47PE0220C0014	3/20/2020	Replace atrium metal roof	<u>109,348</u>
		Total	\$7,561,572

U.S. Small Business Administration’s 8(a) Business Development Program

The Small Business Act authorized the U.S. Small Business Administration to establish the 8(a) Business Development program (8(a) program).³ The 8(a) program was created to help firms owned and controlled by socially and economically disadvantaged individuals. Once certified, 8(a) program participants are eligible to receive federal contracting preferences. FAR 6.302-5, *Authorized or required by statute*, allows federal agencies to award sole-source contracts to eligible 8(a) program participants. In FY 2018, PBS Region 4 obligated more than \$37 million (13 percent) of its small business awards to 8(a) program participants.

PBS Region 4 awarded all of the BA54 contracts listed above in *Figure 2*, to 8(a) program participants. Three of these contracts, totaling \$5,268,531, were awarded to the same contractor.⁴

Bootle Building HVAC Modernization

In FY 2017, PBS’s Office of Portfolio Management and Customer Engagement approved \$2.3 million in FBF funding for PBS Region 4 to provide adequate indoor air quality and moisture control at the Bootle Building. PBS Region 4 increased funding to \$2.72 million prior to issuing a solicitation. However, PBS Region 4 was unable to award a contract within the allotted funding. In FY 2018, PBS’s Office of Portfolio Management and Customer Engagement approved \$2.66 million for the project.

³ 15 U.S.C. 636(j)(10) and 15 U.S.C. 637(a).

⁴ The three contracts were 47PE0218C0030, 47PE0218C0053, and 47PE0219C0006.

In February 2018, PBS Region 4 issued a solicitation for the work but did not receive any proposals. In March 2018, PBS Region 4 reissued the solicitation with a revised scope of work. In May 2018, PBS Region 4 received three proposals ranging from \$3.4 million to \$4.3 million. Because the lowest bidder was not qualified and the remaining two proposals were “extremely high,” PBS did not make an award.

Subsequently, PBS Region 4 awarded the following three contracts to the same contractor for HVAC and interior repairs at the Bootle Building:

- In July 2018, PBS Region 4 awarded a contract to replace one air handling unit in the Bootle Building (47PE0218C0030) for \$100,727.⁵ PBS issued three modifications to this contract, for a total contract cost of \$146,467.
- In September 2018, PBS Region 4 awarded a contract (47PE0218C0053) for \$3,152,074 for HVAC modernization. The scope of work for this contract included 10 new air handling units, as well as air distribution systems, a dedicated outdoor air unit, controls, and retrofitting of the air handling unit that was awarded in July 2018. PBS issued nine modifications to this contract, for a total contract cost of \$3,345,032.
- In December 2018, PBS Region 4 awarded a contract (47PE0219C0006) for \$1,508,965 for interior repairs, and asbestos, lead paint, and mold abatement. PBS issued four modifications to this contract, for a total contract cost of \$1,777,032.

All three contracts were closed by September 2021, with total costs including modifications of \$5,268,531. The Bootle Building HVAC modernization contract (47PE0218C0053) was the subject of our audit.

⁵ An air handling unit is the heart of a central air conditioning system. The unit takes outside air and room air, removes dust and other particles from the collected air, and adjusts the temperature and humidity. The unit then supplies comfortable conditioned air into rooms through ducts.

Results

PBS did not award and administer the Bootle Building HVAC modernization contract in accordance with applicable regulations and GSA policies. As a result, PBS Region 4 overpaid the contractor, providing it with excessive profits; circumvented congressional oversight; did not enforce building security requirements; and enabled subcontractors to underpay employees.

Based on our audit, we found that PBS:

1. Awarded the Bootle Building HVAC modernization contract at significantly inflated prices without justification;
2. Paid the contractor at least \$73,400 for work that was not performed when the contracting officer's representative inappropriately authorized changes to the scope of work for the project;
3. Circumvented congressional oversight by awarding two concurrent contracts to the same contractor for related HVAC projects;
4. Did not enforce building security requirements, allowing contract workers without required security clearances to access the Bootle Building; and
5. Did not enforce Construction Wage Rate Requirements, which enabled subcontractors to underpay employees.

PBS's actions disregarded the intent of the congressional prospectus process and caused the government to incur significantly inflated costs.

Finding 1 – PBS awarded the Bootle Building HVAC modernization contract at significantly inflated prices without justification.

PBS awarded the HVAC modernization contract at significantly inflated prices without justification. In doing so, PBS provided the contractor with excessive profits.

The FAR establishes numerous proposal analysis techniques to ensure that contracting officers effectively evaluate pricing. Among other FAR requirements applicable to the Bootle Building HVAC modernization procurement, the contracting officer was required to comply with:

- FAR 15.403-4, *Requiring certified cost or pricing data*, which requires the contracting officer to obtain certified cost or pricing data when determining a fair and reasonable price for acquisitions without adequate price competition, such as 8(a) program sole-source contracts.⁶ Under this certification, the contractor asserts that to the best of its knowledge and belief, the cost or pricing data provided to the government and used during negotiations is current, accurate, and complete.

⁶ *Truthful Cost or Pricing Data* (41 U.S.C. 3502) requires offerors to make certified cost or pricing data available if a procurement exceeds a dollar threshold.

- FAR 15.404-1, *Proposal analysis techniques*, which lists techniques contracting officers can use to ensure the final price is fair and reasonable. Under FAR 15.404-1(a)(3), the contracting officer must use cost analysis to evaluate the reasonableness of individual cost elements when certified cost and pricing data are required. Under FAR 15.404-1(a)(5), the contracting officer may request advice and assistance from subject matter experts to ensure that an appropriate analysis is performed.
- FAR 19.807, *Estimating fair market price*, which requires the contracting officer to use cost or price analysis and consider an independent government estimate (IGE) to estimate a fair market price for work to be performed by an 8(a) program participant.
- FAR 36.203, *Government estimate of construction costs*, which requires the contracting officer to obtain an IGE for the proposed construction contract.

According to PBS's IGE, the estimated cost of the Bootle Building HVAC modernization contract was nearly \$2.48 million. The contracting officer awarded the Bootle Building HVAC modernization contract for \$3.15 million, which exceeded the IGE by almost \$675,000 (27 percent). As described below, the contractor realized excessive profits because the contracting officer did not obtain certified cost or pricing data and relied on the contracting officer's representative's (COR's) flawed technical evaluation to determine a fair and reasonable price.

PBS's Contracting Officer Did Not Obtain Certified Cost or Pricing Data

Certified cost or pricing data is used to determine a fair and reasonable price because it requires a contractor to certify that its proposed pricing is current, accurate, and complete. When the Bootle Building HVAC modernization contract was awarded, FAR 15.403-4 required certified cost or pricing data for prime contracts exceeding \$2 million. However, the contracting officer did not require the contractor to submit certified cost or pricing data. Without this certified data, PBS did not have assurance that the contractor appropriately disclosed subcontractor pricing proposals, discounts, rebates, and other factors that could have a significant effect on price negotiations. This left the government at risk of overpaying for services.

The contracting officer told us that the contract was awarded the day before the end of the fiscal year—on a Saturday—to meet the region's annual small business goals "quick and fast." However, this is not a valid reason for the failure to obtain certified cost or pricing data, which is a FAR requirement.

PBS's Contracting Officer Relied on the COR's Flawed Technical Evaluation

To evaluate pricing, the contracting officer relied on a technical evaluation prepared by the COR. In this evaluation, the COR compared the contractor's proposal to the IGE. The contractor's proposal for the awarded base contract and options 1–3 exceeded the IGE by nearly \$675,000. The COR justified some differences between the IGE and the contractor's

pricing based on “previous estimates and historic [*sic*] data,” and also referred to adjustments to the IGE. However, the COR did not include these previous estimates, historical data, or an adjusted IGE with the technical evaluation.

When we asked for historic data, the COR told us it is a “blanket statement.” The COR also told us that they justified the higher prices based on the contractor’s “customer service.” However, the COR did not incorporate “customer service” in the technical evaluation to justify the cost increase.

The PBS Region 4 Architecture and Engineering Division Director, who manages the regional cost estimators, told us that “customer service” is sometimes used to justify such costs. The director also said that the region is “under so much pressure to use small businesses and meet the [small business] goals—paying more doesn’t factor in” to procurement decisions. However, the PBS Region 4 Acquisition Division Deputy Director told us that good customer service is not a “reasonable explanation” to pay 27 percent more than the IGE.

In sum, the contracting officer did not obtain certified cost and pricing data and relied on the COR’s flawed technical evaluation in evaluating contract pricing to determine a fair and reasonable price. As a result, PBS provided the contractor with excessive profits of almost \$675,000. PBS should review current and pending 8(a) program contracts to ensure that certified cost or pricing data is received, when applicable, and to ensure contractor pricing is justified.

Finding 2 – PBS paid the contractor at least \$73,400 for work that was not performed when the contracting officer’s representative inappropriately authorized changes to the scope of work for the project.

The FAR establishes that the contracting officer has sole authority to modify a contract. However, we found that the COR inappropriately authorized numerous changes to the scope of work for the Bootle Building HVAC modernization contract. The COR’s actions caused PBS to pay the contractor for work that was not performed, thus providing the contractor with excessive profits. In one example, PBS paid the contractor \$73,409 for work that was not performed.

The contracting officer is responsible for ensuring that all contractual agreements, commitments, or modifications that involve price, quantity, or other terms and conditions are incorporated into the contract. The COR develops the contract requirements, such as the scope of work and schedule, and ensures that the contractor meets the commitment of its contract. According to FAR 1.602-2, *Responsibilities*, the COR does not have authority to make changes or direct the contractor or its subcontractors to make changes that affect price, quality, quantity, delivery, or other contract terms and conditions. The COR’s designation letter for the Bootle Building HVAC modernization contract similarly states that the COR “may not take any action which may affect contract or delivery order schedules, funds, or scope.”

However, we found that the COR authorized numerous changes to the Bootle Building HVAC modernization contract without consulting the contracting officer to determine whether a modification was necessary. In one example, the COR authorized the contractor to eliminate one air handling unit from the scope of work. Prior to completion of the project, the contractor invoiced \$57,494 for the air handling unit even though it was not installed. The COR subsequently authorized payment of \$73,409 for the unit. The COR could not explain why they authorized an erroneous payment for an air handling unit that was never installed.

When we asked about the unauthorized changes to the scope of work, the COR told us that “this was a firm fixed cost project and [they] believed the costs were off set [*sic*].” The COR’s response seems to imply that because the contract was awarded for a firm-fixed-price, any changes to the scope of work would have no effect on contract pricing. However, FAR 52.243-1, *Changes-Fixed-Price*, allows for adjustments to the price of fixed-price contracts when changes to the scope of work occur. Therefore, when scope changes were necessary, the COR should have notified the contracting officer, who could have made appropriate price adjustments and modified the contract accordingly.

The COR also acknowledged in the same response that PBS “should have done an amendment...but [...] did not.” As previously discussed, the COR does not have the authority to make changes or direct the contractor or its subcontractors to make changes that affect price, quality, quantity, delivery, or other contract terms and conditions. Only the contracting officer has this authority.

PBS should review current repairs and alterations contracts to ensure that contracting officers incorporate design changes into the contract and perform appropriate cost analyses. When appropriate, PBS should determine whether ratifications are required for changes in scope that were inappropriately authorized.

Finding 3 – PBS circumvented congressional oversight by awarding two concurrent contracts to the same contractor for related HVAC projects.

Congress exercises oversight of GSA’s major construction and repairs and alterations projects through the prospectus process. Under this process, GSA is required to submit a prospectus request to Congress when a proposed project’s estimated cost of construction (excluding design and management and inspection costs) is anticipated to exceed GSA’s annual prospectus threshold.⁷ However, we found that PBS circumvented congressional oversight by splitting the Bootle Building HVAC modernization project into two separate contracts awarded to the same contractor, with related scopes of work and concurrent periods of performance.

Prior to awarding the two HVAC contracts, PBS Region 4 made several attempts to award a single contract for the Bootle Building HVAC modernization project, as listed on the next page.

⁷ 40 U.S.C. 3307.

- In February 2017, PBS Region 4 solicited proposals from its six indefinite-delivery indefinite-quantity contract holders; however, the solicitation was canceled after only one proposal—which far exceeded funding limitations—was received.⁸
- In February 2018, PBS Region 4 issued a new solicitation for the project but did not receive any proposals. Prior to issuing this solicitation, PBS Region 4 considered using a sole-source 8(a) program contract but opted not to do so because the “acquisition strategy team felt that their price [would] be extremely high.”
- In March 2018, PBS Region 4 issued another solicitation with a revised scope of work. Three proposals were received in May 2018. According to the contracting officer, the lowest bidder was not qualified, and the other two proposals were “extremely high.” As a result, PBS Region 4 did not award a contract. We noted that the two remaining proposals exceeded the prospectus threshold.

After these unsuccessful attempts, PBS Region 4 awarded two separate contracts for HVAC work at the Bootle Building. PBS Region 4 awarded the first contract on July 18, 2018, to replace one air handling unit. PBS Region 4 then used the selected contractor’s 8(a) status to award a sole-source contract on September 29, 2018. The second contract was for a larger-scale HVAC modernization project to replace 10 additional air handling units, and retrofit the air handling unit included under the July 2018 contract. As shown in *Figure 3* below, the construction costs for these contracts totaled nearly \$3.15 million. This total exceeded the prospectus threshold of \$3.095 million that was in effect at the time.

Figure 3 – Total Construction Costs for FY 2018 BA54 HVAC Contracts at the Bootle Building

Contract Number	Contract Duration	Description	Construction Costs *
47PE0218C0030	7/18/2018 – 2/26/2020	Replace one air handling unit in the first floor courtroom	\$129,565
47PE0218C0053	9/29/2018 – 8/30/2021	HVAC modernization, including new air handling units (10), air distribution systems, a dedicated outdoor air unit, controls, and retrofit of the air handling unit awarded in July 2018	3,016,481
		Total	\$3,146,046

* Total construction costs include contract modifications and exclude \$345,453 for design.

A manager from PBS Region 4’s Office of Portfolio Management and Customer Engagement Division told us that PBS Region 4 previously requested prospectus approval for repair and alteration work at the Bootle Building; however, the request did not receive approval. The

⁸ Indefinite-delivery indefinite-quantity contracts are used to acquire services when the exact times and/or exact quantities of future deliveries are not known at the time of contract award.

manager told us that PBS Region 4 developed a “multi-part strategy” to address building needs through multiple projects. Consistent with this strategy, PBS has awarded several repair and alteration contracts for the Bootle Building (see *Figure 2 on page 3*), including the two separate contracts for HVAC modernization work.

While PBS Region 4 awarded the HVAC contracts more than 2 months apart, the contractor performed the work concurrently. PBS Region 4 issued notices to proceed for both contracts less than 2 weeks apart—on October 16, 2018, and October 26, 2018, respectively.⁹ Further, contractor invoices show that the contractor performed work to retrofit the air handling unit under the September 2018 contract while simultaneously completing installation of the air handling unit covered by the July 2018 contract. Taken together, the timing of the notices to proceed and performance of work demonstrate that PBS split the procurement for the HVAC modernization work to avoid the prospectus threshold.

PBS policy has consistently prohibited the practice of splitting projects to avoid the prospectus threshold, and requires that each project produce a viable finished product. For example, PBS’s 2003 policy, *Prospectus Guidance Bulletin #1, Prospectus Requirements for Alteration and New Construction Projects Involving Split (Tenant Agency and GSA) Funding*, provided that a “project cannot be split merely to evade the prospectus threshold,” and that “a project scope must be organic and whole: it must produce a viable, usable, finished end-product building space or system.” Similarly, PBS’s 2022 *Repairs and Alterations Desk Guide* provides that prospectus-level repairs and alterations “projects should not be split into below-prospectus-level projects in order to avoid the prospectus requirement.”

In sum, PBS Region 4 disregarded the intent of the congressional prospectus process and violated PBS policy by awarding two separate HVAC contracts that had overlapping scopes of work, concurrent periods of performance, and combined construction costs that exceeded the prospectus threshold. PBS should review current and planned repairs and alterations projects and take steps to ensure that PBS personnel adhere to existing PBS policy that prohibits the practice of splitting projects to circumvent the prospectus process.

Finding 4 – PBS did not enforce building security requirements, allowing contract workers without required security clearances to access the Bootle Building.

During the HVAC modernization, workers without required security clearances accessed the Bootle Building. The HVAC modernization contract requires that contractor and subcontractor employees performing work on the project obtain appropriate security clearances before being granted access to the site. According to the contract:

- Personnel requiring daily/weekly access to occupied building areas housing federal operations over a period of 180 days or more must undergo background investigations and receive clearance in accordance with Homeland Security Presidential Directive 12:

⁹ A notice to proceed is a letter from the Agency to the contractor authorizing the start of work on a contract.

Policy for a Common Identification Standard for Federal Employees and Contractors.
Once cleared, personnel will be issued federal personal identity verification credentials.

- Personnel requiring access for a period exceeding 10 days, but less than 180 days, must receive a favorable law enforcement check.

We reviewed certified payroll records and identified 12 subcontractor employees who accessed the Bootle Building for a period of over 180 days. At our request, a PBS security specialist in Region 4 reviewed the GSA Credential and Identity Management System and could not find required security clearances for six of these employees.¹⁰

The COR told us that contractors sign into the building at the front entrance security station while the court security officers are on duty—until 6 p.m. However, work was often performed after-hours to minimize disruption to the tenants. The Bootle Building’s site visit logs show that the six subcontractor employees without security clearances regularly accessed the building after hours. Further, the PBS Region 4 onsite building manager told us that the project site superintendent had keys to the Bootle Building. With keys, the superintendent “could do anything [they want].” The building manager also said that the tenants “got comfortable” with the contractor.

The Bootle Building is a Facility Security Level IV building and houses a U.S. District Court for the Middle District of Georgia, the U.S. Marshals Service, and the offices of a U.S. Court of Appeals for the Eleventh Circuit judge. As a U.S. Courthouse and Level IV building, the Bootle Building has a high volume of public contact, and tenant agencies that may include high-risk law enforcement, courts, judicial offices, and highly sensitive government records. It also houses critical systems that, if damaged or compromised, could have significant adverse consequences for the facility, operation of the facility, or mission of the agency or its occupants and visitors. These systems include generators, air handlers, electrical feeds, and utilities, which were all part of the HVAC modernization contract.

Notwithstanding the tenants’ “comfort” level with the contractor, PBS cannot ensure the safety of the Bootle Building or its occupants when it gives building access to contract workers who do not hold required security clearances. Accordingly, PBS should review current repairs and alterations contracts to ensure contractor and subcontractor employees possess appropriate security clearances to comply with contract and Homeland Security Presidential Directive 12 requirements.

¹⁰ The GSA Credential and Identity Management System manages all credentials issued to GSA personnel and GSA contractors and background investigation processes.

Finding 5 – PBS did not enforce Construction Wage Rate Requirements, which enabled subcontractors to underpay employees.

PBS failed to obtain and review certified payrolls throughout the performance of the Bootle Building HVAC modernization contract to ensure that the contractor and its subcontractors paid its employees according to Construction Wage Rate Requirements. This allowed some subcontractors to violate labor standards by paying employees less than the required wage or fringe rates.

Construction Wage Rate Requirements, formerly known as the Davis-Bacon Act, apply to federally funded contracts in excess of \$2,000 for construction, alterations, or repairs of public buildings.¹¹ Under these requirements, contractors and subcontractors must pay their laborers and mechanics working on federal construction projects no less than the locally prevailing wages and fringe benefits for corresponding work on similar projects in the area.¹² In addition, the HVAC modernization contract includes FAR 52.222-8, *Payrolls and Basic Records*, which requires the contractor to submit weekly certified payrolls to the contracting officer. FAR 22.406-7, *Compliance checking*, requires that the contracting officer review the payrolls and conduct onsite inspections and interviews to ensure compliance with labor standards, including Construction Wage Rate Requirements.

Notwithstanding these requirements, the contracting officer and COR told us that there were no certified payrolls for the project. As a result, we requested certified payrolls directly from the contractor. We reviewed the payrolls and found seven instances where subcontractors paid employees less than Construction Wage Rate Requirements.

When we alerted the contracting officer to the potential underpayments, they told us that the underpaid employees would have to “file against the Prime Contractor via the Miller Act if they have an issue.”¹³ This response is not consistent with the contracting officer’s responsibility under the FAR to review certified payrolls to identify noncompliance with labor standards. Doing so could have enabled the contracting officer to identify the underpayments and initiate other actions prescribed by the FAR to address the problem. Specifically, the contracting officer could have:

- Conducted a labor standards investigation in accordance with FAR 22.406-8, *Investigations*; and

¹¹ FAR 22.4, *Labor Standards for Contracts Involving Construction*.

¹² The U.S. Department of Labor defines laborers and mechanics as workers whose duties are manual or physical in nature, including apprentices, trainees, and helpers.

¹³ The Miller Act, codified at 40 U.S.C. 3131–3134, is a federal statute that requires prime contractors on federal construction projects to furnish payment and performance bonds, each with a value equal to the contract price. Such bonds, issued by sureties, provide a source of guaranty for the performance of the work and payment of subcontractors and suppliers.

- Withheld payments due to the contractor in amounts equal to the estimated wage underpayments and liquidated damages in accordance with FAR 22.406-9, *Withholding from or suspension of contract payments*.

The former PBS Region 4 Acquisition Division Director told us that “there is not proper oversight” of 8(a) contracts, that “no one has ever pulled certified payroll,” and that there is a “lack of understanding of roles and responsibilities” on a project.

Since the Bootle Building HVAC contracts were awarded in 2018, PBS has issued guidance designed to improve oversight of contractor compliance with Construction Wage Rate Requirements. In May 2021, PBS Central Office released a COR policy that included a standardized COR designation letter. The addendum to the letter requires the COR to “monitor contractor labor compliance by collecting and reviewing the contractor’s certified payrolls.” Accordingly, PBS should ensure that CORs review certified payroll records and perform labor interviews, as appropriate, prior to approval of invoices to verify that contractor and subcontractor employees are paid in accordance with Construction Wage Rate Requirements.

Conclusion

PBS did not award and administer the Bootle Building HVAC modernization contract in accordance with applicable regulations and GSA policies. As a result, PBS Region 4 overpaid the contractor, providing it with excessive profits; circumvented congressional oversight; did not enforce building security requirements; and enabled subcontractors to underpay employees.

PBS Region 4 should take corrective actions to address the deficiencies identified in our report. These include actions to ensure that 8(a) program contractors provide applicable cost or pricing data, and that PBS Region 4 contract officials properly justify pricing and incorporate design changes into contracts. Additionally, PBS Region 4 should ensure that PBS personnel do not circumvent the prospectus process by splitting related projects. Finally, PBS should ensure that contractor and subcontractor employees possess appropriate security clearances, and that subcontractor employees are paid in accordance with Construction Wage Rate Requirements.

Recommendations

We recommend that the PBS Region 4 Regional Commissioner:

1. Review current and pending 8(a) program contracts to ensure contractor pricing is justified, and renegotiate when appropriate.
2. Review current and pending 8(a) program contracts to ensure certified cost or pricing data is received when applicable.
3. Review current repairs and alterations contracts to ensure that contracting officers incorporate design changes into the contract and perform appropriate cost analyses. Contracting officers should also determine whether ratifications are required for changes in scope that were inappropriately authorized.
4. Review current and planned repairs and alterations contracts and take steps to ensure that PBS personnel adhere to existing PBS policy that prohibits the practice of splitting projects to circumvent the prospectus process.
5. Review current repairs and alterations contracts to ensure contractor and subcontractor employees possess appropriate security clearances to comply with the contract and Homeland Security Presidential Directive 12 requirements.
6. Review current repairs and alterations contracts and ensure that CORs review certified payroll records and perform labor interviews, as appropriate, prior to approval of invoices to verify that contractor and subcontractor employees are paid in accordance with Construction Wage Rate Requirements.
7. Review the performance of PBS personnel involved in the award and administration of the Bootle Building HVAC modernization contract, including their supervisory chains of command, and take appropriate action to address deficiencies identified in this report.

GSA Comments

The PBS Region 4 Regional Commissioner agreed with our recommendations and provided general comments on PBS Region 4's efforts to improve acquisition processes, oversight, and training. In response to *Finding 3*, the PBS Region 4 Regional Commissioner maintained that PBS Region 4 did not disregard the intent of the congressional prospectus process because the HVAC contract values at the time of award were under the prospectus limit "even if combined." The PBS Region 4 Regional Commissioner wrote that "[t]herefore, there was no need to split the procurements for the reasons stated in the audit."

GSA's written comments are included in their entirety in **Appendix B**.

OIG Response

We disagree with the PBS Region 4 Regional Commissioner's response to *Finding 3* and maintain that PBS Region 4 disregarded the intent of the congressional prospectus process.

Prior to awarding the contracts for the Bootle HVAC modernization project, PBS Region 4 should have known that the project risked exceeding the prospectus threshold. As discussed in *Finding 3*, starting in 2017, PBS Region 4 made several attempts to award one consolidated contract for the HVAC work. However, PBS Region 4 could not make an award primarily because qualified contractors submitted proposals that exceeded the prospectus threshold.

Thereafter, PBS Region 4 took actions that were clearly designed to split the procurement for the project and circumvent the prospectus process. PBS Region 4 awarded two separate contracts to the same contractor for the project. These contracts had concurrent periods of performance and overlapping scopes of work. The individual and collective values of these contracts at initial award fell below the prospectus threshold. However, as shown in *Figure 3*, contract modifications pushed the total cost of construction to \$3.146 million, thereby exceeding the prospectus threshold of \$3.095 million that was in effect at the time.¹⁴

Congressional approval is required when total estimated construction costs, including contract modifications, are expected to exceed the prospectus threshold. Therefore, even if PBS's estimated cost of construction was below the prospectus threshold at the time of award, PBS should have not executed contract modifications prior to obtaining appropriate prospectus authority.

Based on the above, we reaffirm our finding.

¹⁴ See p. 9.

Audit Team

This audit was managed out of the Southeast Sunbelt Region Audit Office and conducted by the individuals listed below:

Nicholas V. Painter
Valerie R. Smith
Renee E. Davis

Regional Inspector General for Auditing
Audit Manager
Auditor-In-Charge

Appendix A – Objective, Scope, and Methodology

Objective

Our audit objective was to determine whether PBS Region 4 planned, awarded, administered, and closed out the Bootle Building HVAC modernization contract in accordance with the FAR, General Services Administration Acquisition Manual, and other applicable policies.

Scope and Methodology

Our audit scope consisted of one contract, judgmentally selected based on defined parameters (detailed below). The sample pool of contracts included 758 PBS Region 4 BA54 basic repairs and alterations projects funded through the FBF and awarded and closed between FY 2018 and FY 2021. Our selected contract was awarded as an 8(a) program sole-source contract for the HVAC modernization at the Bootle Building in Macon, Georgia.

To accomplish our objective, we:

- Reviewed the FAR; the General Services Administration Acquisition Manual; PBS memorandums and bulletins, including: (1) PBS Procurement Instructional Bulletin 18-02, *PBS Contract File Content and Organization*, and (2) PBS Procurement Instructional Bulletin 21-02, *Electronic Acquisition System Integration for PBS Issued Contracts*; and Homeland Security Presidential Directive 12, *Policy for a Common Identification Standard for Federal Employees and Contractors*, to gain an understanding of PBS's responsibilities in following the regulatory criteria;
- Researched PBS's BA54 basic repairs and alterations background information using GSA's InSite intranet;
- Analyzed prior GSA Office of Inspector General audit reports and corrective actions significant to the audit objective;
- Independently obtained source documentation for our sample, to the extent practicable, from the following applicable GSA systems: Electronic Acquisition System Integration, Data to Decisions, and Pegasys;
- Reviewed the Bootle Building's Asset Business Plan and awards in Federal Procurement Data System-Next Generation. Reviewed all contract file documentation for preaward, award, administration, and closeout for accuracy and completeness;
- Interviewed PBS Central Office and PBS Region 4 employees and a contractor who had a part in the approval, funding, acquisition, management, and closeout of the project; and
- Communicated with the contractor's vice president by email to obtain missing contract documentation and obtain financial aspects of the project.

Data Reliability

We assessed the reliability of contract data by comparing PBS's Electronic Acquisition System Integration system to extracted data from Pegasys and Federal Procurement Data System-Next Generation. We determined that the data were sufficiently reliable for the purpose of this audit.

Sampling

We obtained a listing of all PBS Region 4 basic repairs and alterations projects completed within the past 3 years (September 1, 2018, through September 20, 2021) and selected a judgmental sample of one contract using the following parameters: total contract value over the prospectus threshold, fully funded by the budget activity for basic repairs and alterations (commonly referred to as BA54), and contained contract modifications.

Internal Controls

We assessed internal controls significant within the context of our audit objective against GAO-14-704G, *Standards for Internal Control in the Federal Government*. The methodology above describes the scope of our assessment, and the report findings include any internal control deficiencies we identified. Our assessment is not intended to provide assurance on GSA's internal control structure as a whole. GSA management is responsible for establishing and maintaining internal controls.

Compliance Statement

We conducted the audit between September 2021 and August 2022 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 objective. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objective.

Appendix B – GSA Comments


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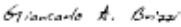


Public Buildings Service

September 12, 2023

MEMORANDUM FOR NICHOLAS V. PAINTER
REGIONAL INSPECTOR GENERAL FOR AUDITING
SOUTHEAST SUNBELT REGION AUDIT OFFICE (JA-4)

THROUGH: NINA M. ALBERT
COMMISSIONER 
PUBLIC BUILDINGS SERVICE (P)

FROM: GIANCARLO BRIZZI 
REGIONAL COMMISSIONER
PUBLIC BUILDINGS SERVICE (4P)

SUBJECT: Response to the Office of Inspector General Draft Report,
*Audit of PBS Basic Repairs and Alterations Project: William
Augustus Bootle Federal Building and U.S. Courthouse
(Report Number A210076)*

Thank you for the opportunity to comment on the subject draft audit report. The PBS Southeast Sunbelt Region (Region 4) has reviewed the report and agrees with the recommendations.

In recent years, Region 4 has proactively sought to identify and close gaps in our acquisition program and processes. Since 2018, when the subject procurement began, Region 4 has realigned its acquisition management structure, implemented new acquisition oversight and reviews, and, most significantly, in fiscal year 2020 re-trained the entire PBS Region 4 Acquisition Management Division workforce. This initiative, called *Back to Basics*, consisted of over 50 hours of mandatory training designed to reemphasize and reinforce procurement procedures, policies, and regulatory guidance.

The results of these efforts are demonstrated by our 86% score in the November 2021 Procurement Management Review (a stringent internal acquisition compliance review), a significant increase from our previous score of 76% in 2017. We look forward to incorporating the OIG recommendations into our ongoing continuous improvement efforts.

With regard to the finding that Region 4 circumvented congressional oversight in

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awarding two concurrent contracts, Region 4 maintains that it did not disregard the intent of the congressional prospectus process as, at the time of award, both projects were under the prospectus limit even if combined. Therefore, there was no need to split the procurements for the reasons stated in the audit. We fully acknowledge the problems that ensued after award and will develop a corrective action plan accordingly.

If you have any questions, please contact Kendra Turner, R4 PBS, Director, Office of Strategy & Engagement, kendra.turner@gsa.gov.

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Appendix C – Report Distribution

GSA Administrator (A)

GSA Deputy Administrator (AD)

PBS Commissioner (P)

PBS Deputy Commissioner (PD)

Chief of Staff (PB)

Deputy Chief of Staff (PB)

Assistant Commissioner for Strategy and Engagement (PS)

Acting Regional Commissioner (7P)

Chief Financial Officer (B)

Deputy Chief Financial Officer (B)

Office of Audit Management and Accountability (BA)

Assistant Inspector General for Auditing (JA)

Deputy Assistant Inspector General for Acquisition Program Audits (JA)

Deputy Assistant Inspector General for Real Property Audits (JA)

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