Procurement Errors, Financial Losses, and Deficient Contract Administration Demonstrate Ineffective Management of the Ronald Reagan Building and International Trade Center
Report Number A110217/P/R/R14004

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

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Report Number A110217/P/R/R14004
June 17, 2014

Office of Audits
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REPORT ABSTRACT

OBJECTIVE

The objective of our audit was to determine if conditions identified in a prior audit report were corrected under Contract Number GS-11P-09-ZGD-0064. Specifically, we wanted to determine if internal controls for the trade center management services contract for the International Trade Center (ITC) at the Ronald Reagan Building effectively prevent procurement errors.

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WHAT WE FOUND

We identified the following during our audit:

Finding 1 – The contract solicitation and source selection favored the incumbent.

Finding 2 – ITC operations are depleting the ITC Working Fund and affecting the Federal Buildings Fund.

Finding 3 – PBS improperly issued contracts outside the base contract, and did not negotiate general and administrative and profit rates when services were primarily provided by subcontractors.

Finding 4 – PBS paid $161,671 for activation activities and $25,223 for construction management services that were duplicative of those provided under the base contract.

Finding 5 – PBS did not mitigate Trade Center Management Associates, LLC's (TCMA) conflicts of interest, resulting in lost revenue.

Finding 6 – The contractor performance evaluation process lacked documentation and consistency, resulting in insufficient data to evaluate option periods and future procurements.

Finding 7 – PBS and TCMA have mismanaged licenses at the ITC.

Finding 8 – PBS lost an estimated $791,991 in tenant rent and fees since a February 2011 fire occurred in the ITC.

Finding 9 – Funding for GSA NCR holiday events was partially subsidized by the TCMA contract.

WHAT WE RECOMMEND

Based on our audit findings we recommend the Regional Commissioner, National Capital Region:

1. Ensure objectivity in exercising current contract options or awarding a future contract, including: collecting historical data; conducting market research; and limiting an individual's influence in the source selection process.
2. Determine if ITC operations can be made self-sustaining. If PBS determines that the ITC cannot be self-sustaining, PBS

should contact the Office of Management and Budget and Congress regarding the self-sustaining portion of the ITC legislation. Additionally, implement policy regarding how projects in the complex should be funded.

3. Implement policies and procedures to negotiate general and administrative and profit rates when work is primarily performed by subcontractors.
4. Address payment of duplicative costs by:
   a. Recovering $186,894 in duplicative monies paid to TCMA for activation activities and construction management services; and,
   b. Implementing policies and procedures to prevent duplicative costs in future activation activities and construction management services.
5. Implement policies and procedures to mitigate known and potential conflicts of interest.
6. Improve processes for evaluating contractor performance, including: assigning performance monitors; completing monthly performance reports; defining an event; and validating events.
7. Correct deficiencies in the licensing area, including: creating a formal approval process that includes the written approval of the license and the signature of a Government Leasing Contracting Officer; clarifying PBS's position on possessory interest tax in the master license agreement; and refraining from exceeding broker commission limits from the base contract.
8. Resolve the insurance dispute expeditiously in order to recover $2.2 million in construction costs for the restoration of the food court and rent loss.
9. Refrain from granting rent waivers for any holiday event.

MANAGEMENT COMMENTS

Management agreed with the findings, concurred with the recommendations, and has already begun taking steps to correct specific issues. Management comments are included in ***Appendix B***.

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Office of Inspector General
U.S. General Services Administration

DATE:	June 17, 2014
TO:	Darren J. Blue Regional Commissioner National Capital Region Public Buildings Service (WP)
FROM:	Marisa A. Roinestad Program Director, Real Property Audit Office (JA-R)
SUBJECT:	Procurement Errors, Financial Losses, and Deficient Contract Administration Demonstrate Ineffective Management of the Ronald Reagan Building and International Trade Center *Report Number A110217/P/R/R14004*

This report presents the results of our audit of trade center management services at the Ronald Reagan Building and International Trade Center. 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:

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

Table of Contents

Introduction **1**

Results

Finding 1 – The contract solicitation and source selection favored the incumbent *2*

Recommendation 1 .... *4*

Management Comments *4*

Finding 2 – ITC operations are depleting the ITC Working Fund and affecting the Federal Buildings Fund *4*

Recommendation 2 .... *5*

Management Comments *5*

Finding 3 – PBS improperly issued contracts outside the base contract, and did not negotiate general and administrative and profit rates when services were primarily provided by subcontractors. *5*

Recommendation 3 .... *7*

Management Comments *7*

Finding 4 – PBS paid $161,671 for activation activities and $25,223 for construction management services that were duplicative of those provided under the base contract. *7*

Recommendation 4 .... *8*

Management Comments *8*

Finding 5 – PBS did not mitigate TCMA's conflicts of interest, resulting in lost revenue. *8*

Recommendation 5 .... *10*

Management Comments *10*

Finding 6 – The contractor performance evaluation process lacked documentation and consistency, resulting in insufficient data to evaluate option periods and future procurements. *11*

Recommendation 6 .... *12*

Management Comments *12*

Finding 7 – PBS and TCMA have mismanaged licenses at the ITC *12*

Recommendation 7 .... *15*

Management Comments *15*

Finding 8 – PBS lost an estimated $791,991 in tenant rent and fees since a February 2011 fire occurred in the ITC ... *15*

Recommendation 8 ... *16*

Management Comments ... *16*

Finding 9 – Funding for GSA NCR holiday events was partially subsidized by the TCMA contract ... *17*

Recommendation 9 ... *18*

Management Comments ... *18*

Conclusion ... **19**

Appendix

Appendix A – Purpose, Scope, and Methodology ... **A-1**

Appendix B – Management Comments ... **B-1**

Appendix C – Report Distribution ... **C-1**

Introduction

The objective of our audit was to determine if conditions identified in a prior audit report[1] were corrected under a new contract, awarded in December 2008. Specifically, we wanted to determine if internal controls for the trade center management services contract for the International Trade Center (ITC) at the Ronald Reagan Building effectively prevented procurement errors. Our audit team reviewed the contract solicitation and source selection procedures (Finding 1), the financial status of the ITC (Findings 2 through 4), and general contract administration matters (Findings 5 through 9).

The Federal Triangle Development Act, Public Law 100-113, enacted on August 21, 1987, authorized the development of a federal building complex and international cultural and trade center to complete the redevelopment of Pennsylvania Avenue in Washington, DC. The Ronald Reagan Building and ITC serves as the official World Trade Center in Washington, DC, and is mandated by Congress to unite the country's best public and private resources in an effort to create a national forum for the advancement of trade.

In March 1995, the Public Buildings Service (PBS) awarded Contract Number GS-11P-02-ZGC-0160 to Trade Center Management Associates, LLC (TCMA) for a base year and nine 1-year option periods for all ITC management, operations, and maintenance. The contract remained in effect through March 2009 due to construction delays and a contract extension.

In December 2008, PBS awarded the new contract, Contract Number GS-11P-09-ZGD-0064, to the incumbent for trade center management services for the ITC at the Ronald Reagan Building. TCMA was awarded the contract for a 4-month base period and nine 1-year option periods. This contract is currently in its sixth option period.

We performed this audit as a follow-up to a prior audit report, *Audit of GSA's Acquisition of Services for the International Trade Center at the Ronald Reagan Building*, issued on May 3, 2010. The prior audit report found that the initial decisions to expand the scope of the contract created a flawed platform with an intense administrative workload.

[1] Report Number A080106/P/W/R10004. The objective of this previous audit was to assess whether the extensive changes to the contract should have been made, with particular attention given to the potential procurement irregularities.

Results

Finding 1 – The contract solicitation and source selection favored the incumbent.

<u>The contract solicitation lacked information needed by potential bidders, favoring the incumbent.</u>

Although the base contract was solicited under full and open competition, it was not a competitive procurement as required by Federal Acquisition Regulation (FAR) 6.101(a), which prescribes that, "…contracting officers shall promote and provide for full and open competition in soliciting offers and awarding Government contracts."

The acquisition plan required that trade center management services be provided by a single entity to ensure effective delivery. However, there was no justification supporting this requirement. In addition, the contractor community and PBS personnel, including the then GSA Competition Advocate, expressed concern that the solicitation did not represent full and open competition. Both noted that the solicitation did not contain enough historical information to allow contractors to formulate bids. Specifically, in a letter to PBS, one potential bidder stated:

> …the lack of historical financial information provided in the solicitation is disappointing. Given the significant guarantees asked of the bidders, the lack of this critical information needed for analysis and review, we feel, stifles the competitive process and the goals of the GSA for the [Ronald Reagan Building and International Trade Center].

In July 2008, prior to the December 2008 contract award, a GSA review team issued a report to the then National Capital Region (NCR) Acting Regional Administrator expressing concern that "the limited historical data provided by GSA to the offerors, together with substantial risks placed on offerors by the solicitation, may result in a lack of full and open competition." The team recommended that the GSA Competition Advocate address this issue directly with the Regional Competition Advocate and others to, "ascertain whether full and open competition was achieved." After the review team's report was issued, the then GSA Competition Advocate expressed concern that the limited historical data available to bidders, in combination with the risks placed on the bidders, would result in a lack of full and open competition. Ultimately, only the incumbent submitted a bid.

Furthermore, in August 2008, both the former GSA Head of Contracting Activity and former NCR Acting Regional Administrator agreed on a plan to re-compete the solicitation as a result of the GSA review team's concerns. However, the former NCR Acting Regional Administrator circumvented the plan by deciding that NCR would instead analyze the requirements and market to determine if the price being paid when exercising option periods was fair and reasonable.

However, modifications exercising option periods have not documented market research or sufficient price analyses to support option pricing. Thus, PBS violated FAR 17.207(d)(2), which requires PBS to conduct an informal analysis of prices or an examination of the market before exercising option periods:

> An informal analysis of prices or an examination of the market indicates that the option price is better than prices available in the market or that the option is the more advantageous offer.

The source selection was biased in favor of the incumbent.

A PBS associate significantly influenced and biased the December 2008 source selection process by providing input for all three evaluation components: (1) Technical Evaluation Team, (2) Past Performance Evaluation Team, and (3) Cost/Price Evaluation Team.

The PBS associate, a former ITC Director, chaired the Technical Evaluation Team that evaluated TCMA's proposal. Due to the associate's familiarity with TCMA's past work, he also completed a past performance questionnaire for the Past Performance Evaluation Team. In this questionnaire, he incorrectly stated that revenue under the prior contract exceeded expenses. However, this statement could not be supported as PBS did not have a true accounting of ITC revenue and expenses at the time. When used in the Past Performance Evaluation Team's assessment of the contractor, this statement provided a favorable assessment of TCMA's performance that was not warranted. The Technical Evaluation Team and Chairperson, according to the solicitation's Source Selection Plan document, shall "conduct a comprehensive technical evaluation of competitive proposals in an impartial and equitable manner." Submission of a positive past performance questionnaire compromised the chairman's impartial and equitable evaluation as it affected the overall conclusion developed by the Technical Evaluation Team.

Furthermore, this individual did not obtain sufficient market research in his development of a $222,235,135 independent government estimate used in the Cost/Price Evaluation Team's analysis. Historical information from the previous trade center management services contract served as a basis for the independent government estimate. Comparing the incumbent's proposal against its own historical costs biased the proposal evaluation in favor of the incumbent. Management of the ITC includes basic functions such as licensed food retailers, leased office space, retail rental space, parking garage operations, and janitorial services. Market research should have been performed for each function and combined with historical cost information to provide a more thorough and unbiased cost estimate, thus ensuring price reasonableness.

Ultimately, the associate provided influence for three components of the source selection process because of his familiarity with TCMA's prior work.

Recommendation 1

We recommend the Regional Commissioner, National Capital Region, ensure objectivity in exercising current contract options or awarding a future contract, including: collecting historical data; conducting market research; and limiting an individual's influence in the source selection process.

Management Comments

In its comments, management agreed with our finding and concurred with our recommendation (see ***Appendix B***).

Finding 2 – ITC operations are depleting the ITC Working Fund and affecting the Federal Buildings Fund.

The ITC Working Fund is not self-sustaining.

Due to the unique nature of the Ronald Reagan Building complex, PBS's financial systems do not accurately represent its financial operations.[2] The ITC Working Fund, a budgetary account of the Federal Buildings Fund, is reserved specifically for use at the ITC. Prior to fiscal year 2013, expenses that should have been funded by the ITC Working Fund were instead charged to other Federal Buildings Fund budgetary accounts. Therefore, the Federal Buildings Fund subsidized the ITC, resulting in a $16.9 million ITC Working Fund balance by the end of fiscal year 2012.

For fiscal year 2013, PBS NCR developed a robust financial analysis of the ITC's operations, which led to a revised allocation of Ronald Reagan Building complex expenses. The revised allocation, which has the ITC bear its actual income and expenses, shifted $4,164,881 in utilities, operation and management, and salary expenses from the Federal Buildings Fund to the ITC Working Fund during fiscal year 2013. With these additional expenses, the ITC Working Fund's balance at the end of fiscal year 2013 was $12.2 million, a $4.7 million decrease from the previous year.

The ITC is intended to be self-sustaining, according to 40 United States Code 1107 (c) and (d). If PBS does not make any changes to ITC operations, the ITC will operate at a net loss, deplete its balance, and not meet its self-sustaining requirement.

PBS lacks a policy to determine how building projects should be funded.

The process for determining project funding at the Ronald Reagan Building complex is undefined, resulting in the potential for disagreements among PBS personnel. Given the status of the ITC Working Fund, a formalized policy is needed to ensure projects are funded properly and other Federal Buildings Fund accounts do not subsidize the ITC. Additionally, if funding is disputed, repairs and maintenance could be left unattended or delayed.

[2] The Ronald Reagan Building complex includes the Federal Office Building, ITC, and Parking Garage.

The Ronald Reagan Building complex includes activities related to the Federal Buildings Fund for federal space and the ITC Working Fund for non-federal space. As needs arise, PBS determines whether projects should be funded by the Federal Buildings Fund or ITC Working Fund. PBS explained how these determinations were made:

> (1) the Federal Buildings Fund would cover "base building" costs, such as building infrastructure, building envelope, building systems, and fixed assets; and
> (2) the ITC Working Fund would cover costs that can be tied to generating revenue or sustaining or enhancing the ITC.

However, these verbal guidelines are informal and may be inconsistently applied. There is no formalized policy defining or giving examples of "base building" projects. Additionally, it is not clear how the final determination is made if collaborating personnel disagree on which fund should bear the cost.

In one instance, PBS debated whether the Federal Buildings Fund or ITC Working Fund should be used to improve cellular telephone service in the Ronald Reagan Building. It was unclear if this project represented a "base building" improvement or a revenue-generating expense. A formalized policy could provide guidance and establish authority for final funding decisions.

<u>Recommendation 2</u>

We recommend the Regional Commissioner, National Capital Region:

a. Determine if ITC operations can be made self-sustaining. If PBS determines that the ITC cannot be self-sustaining, PBS should contact the Office of Management and Budget and Congress regarding the self-sustaining portion of the ITC legislation.
b. Implement policy regarding how projects in the complex should be funded.

<u>Management Comments</u>

In its comments, management agreed with our finding and concurred with our recommendation. Additionally, PBS has established a formalized policy through a written decision process on capital project assignments (see ***Appendix B***).

Finding 3 – PBS improperly issued contracts outside the base contract, and did not negotiate general and administrative and profit rates when services were primarily provided by subcontractors.

<u>**PBS mistakenly issued additional contracts to TCMA for work within the scope of the base trade center management services contract.**</u>

Although the base trade center management services contract excludes indefinite delivery, PBS attempted to issue task orders against the contract. As a result, PBS issued approximately $2.3 million in firm-fixed price contracts to TCMA without specifying contract terms. PBS created 29 separate, stand-alone contract actions between June 2009 and September 2010. Subsequently, PBS realized that these contracts were done incorrectly. The work, which was within the scope of the base TCMA contract, should have been awarded as modifications to the base TCMA contract, as long as it was not duplicative of work already awarded.

Shortly after the base, firm-fixed price contract was awarded, the Procurement Instrument Type Code in the contract number was incorrectly changed. Since the new code indicated that the contract was for indefinite delivery, PBS issued task orders against the contract. However, because the contract did not allow task orders, PBS in reality issued additional contracts. Typically, the scope of work in these contracts related to hosting events for the public or ordering equipment and repairs for the Ronald Reagan Building and ITC kitchen. Effective April 9, 2013, modification S106 reverted the Procurement Instrument Type Code back to its original coding, correctly identifying that this contract cannot support task orders.

PBS did not negotiate general and administrative and profit rates on additional contracts where subcontractors provided the service.

PBS paid TCMA $147,730 in fees related to general and administrative (G&A) expenses and profit on work that was primarily performed by subcontractors.[3] TCMA transferred risk to subcontractors for 16 of the 29 additional contracts, but charged similar G&A and profit rates as on work TCMA performed directly. By failing to negotiate G&A and profit rates, PBS did not effectively evaluate risk as prescribed by General Services Administration Acquisition Manual 515.404-4(h)(3):

> (iii) …The prime contractor may effectively transfer cost risk to a subcontractor. This merits a risk evaluation below the range that would otherwise apply for the contract type proposed….

As the prime contractor, TCMA performed minimal work on these additional contracts and did not significantly contribute to their performance. Yet, TCMA received similar G&A and profit rates on these subcontracts as it received on its full level efforts. In all but one case, PBS failed to negotiate the [redacted] percent G&A and [redacted] percent profit rates charged by TCMA. In the one instance, PBS questioned the rates charged by TCMA and set a [redacted] percent maximum for G&A and a [redacted] percent maximum for profit. TCMA subsequently removed the G&A and profit rates completely from the request for funding and did not charge PBS the rates.

[3] $139,677 was charged on 16 additional contracts. The remaining $8,053 was charged on two modifications to the original contract.

Recommendation 3

We recommend the Regional Commissioner, National Capital Region, implement policies and procedures to negotiate G&A and profit rates when work is primarily performed by subcontractors.

Management Comments

In its comments, management agreed with our finding and concurred with our recommendation (see ***Appendix B***).

Finding 4 – PBS paid $161,671 for activation activities and $25,223 for construction management services that were duplicative of those provided under the base contract.

PBS paid duplicative costs for activation activities.

From September 2009 to March 2012, PBS paid $161,671 in modifications and additional contracts for activation activities that were already awarded under the base contract.[4] The acquisition plan estimated $3,661,794 in costs for activation activities. However, activation activities, a key program area for the operation and management of the ITC, were not included as a line item in the pricing table of the base contract used to solicit contractors' bids. Thus, TCMA did not consider its firm-fixed price to include activation activities and charged PBS the additional amount for this key program area.

Activation activities costs are two-fold. They include those that are associated with the entertainment of events and those associated with the general costs of conducting the events. Costs related with activation ***entertainment***, such as bands and performers, could not have been known with any certainty at the time of contract award. Therefore, the costs related to modifications and additional contracts for activation entertainment are allowable.

The general costs associated with the ***conduct of*** activation activities however, should have been covered by the firm-fixed price base contract. Duplicative costs associated with the conduct of activation activities include promotion, marketing, public relations campaigns, advertising, parking, and security. When charged on modifications and additional contracts, costs associated with the conduct of activation activities overlapped with services included in the base contract. PBS paid $161,671 in duplicative costs, which includes $51,066 related to three modifications and $110,604 related to seven additional contracts.

[4] As set forth in the base contract statement of work, the trade center manager is responsible for the following activation activities during the implementation period: expanding the liveliness of the downtown area, becoming a destination for business people and tourists, performing special events beyond the typical work day or work week, activation of the plaza, maximizing pedestrian movement around Pennsylvania Avenue, and being inviting to the public.

PBS paid duplicative costs on construction management services.

PBS paid $25,223 in duplicative G&A expenses and profit on construction management services for building out the space that tenants would occupy under licenses. TCMA received compensation for construction management services on tenant build-outs in the base contract. The base contract statement of work, Section C.4.5.1, states:

> The TCM [Trade Center Manager] shall provide construction management services…. The TCM shall oversee a diverse range of projects. Some project examples include tenant build-outs…acoustical studies, architectural and engineering projects involving new build-outs and alterations of existing space, restaurant and office renovation,…and any other projects requested by GSA to operate the ITC program.

Of the 29 additional contracts PBS issued, 5 were for construction management services, renovations, or acoustical studies. TCMA received G&A expenses and profit for its oversight services on these five subcontracts, from October 2009 to September 2010. However, TCMA was specifically compensated for construction management services on these contracts in the base contract, as noted above in Section C.4.5.1. Therefore, G&A expenses and profit for construction management services on additional contracts are duplicative costs and should not have been paid.

Recommendation 4

We recommend the Regional Commissioner, National Capital Region, address payment of duplicative costs by:

a. Recovering $186,894 in duplicative monies paid to TCMA for activation activities and construction management services; and,
b. Implementing policies and procedures to prevent duplicative costs in future activation activities and construction management services.

Management Comments

In its comments, management agreed with our finding and concurred with our recommendation (see ***Appendix B***).

Finding 5 – PBS did not mitigate TCMA's conflicts of interest, resulting in lost revenue.

A related party to TCMA has avoided paying $861,535 for maintenance of the common area.

By not charging Aria, a restaurant tenant outside of the ITC food court, for common area maintenance, PBS lost $861,535 in potential revenue over the life of Aria's 10-year license. The previous restaurant tenant of this space paid $[redacted] per square foot in its first year with an annual escalation rate of [redacted] percent for common area maintenance.

However, Aria's license states that common area maintenance of $[redacted] per usable square foot, with a [redacted] percent annual escalation rate, would only apply if there were a change in parties. If these rates had been in effect for 10 years, Aria would have owed $861,535 over that time period. Additionally, another restaurant that is also outside of the ITC food court paid $[redacted] per square foot for common area maintenance.

When we asked PBS about Aria's common area maintenance, PBS conferred with TCMA. TCMA stated that Aria has no common area seating and that all seating is the responsibility of Aria. However, Aria's license notes that its right and privilege to use the common area is equivalent to other tenants. Additionally, TCMA's response does not explain why another restaurant that is also outside of the ITC food court paid common area maintenance. Likewise, it does not explain why the previous restaurant tenant in Aria's space paid common area maintenance or why Aria would have paid common area maintenance if there were a change in parties.

As we noted in our 2010 audit report, the restaurant is operated by Aria Management, LLC, which is a TCMA affiliate that is owned and operated by the same individuals who own TCMA. In addressing the recommendations of our 2010 audit report, a former contracting officer confirmed on November 30, 2010, that the conflict of interest between TCMA and Aria existed at the time of contract award and continued to exist after award. This contracting officer stressed that the PBS acquisition team needed to be vigilant and diligent to avoid, neutralize, or mitigate this conflict. The August 31, 2011, GSA Procurement Management Review required immediate steps be taken to resolve the conflict of interest and risks associated with Aria. The GSA Procurement Management Review recommended that rates in the Aria license be compared to market data along with comparing them to the rates charged to other licensees.

PBS could receive less revenue from Aria due to reliance on an expired agreement.

Aria's license does not establish a revenue remittance percentage relative to the current TCMA contract. Instead, the license agreement between TCMA and Aria is based on terms of the prior TCMA contract and could potentially allow Aria to remit less revenue.

TCMA remits 7 percent of food and beverage revenue to PBS, which is applied to its Food/Beverage minimum revenue guarantee. PBS stated that this 7 percent remittance applies to Aria and takes the place of the percentage license fee from the prior contract. However, there are no active terms to enforce the 7 percent remittance in the current Aria license. Instead, the Aria license references a payment schedule from the previous TCMA contract. If Aria's annual revenue is under $12 million, this schedule calls for a percentage license fee under 7 percent. Additionally, the schedule exempts TCMA from paying a percentage license fee if Aria's annual revenue is less than $2 million.

Potential conflicts of interest between TCMA and two related parties were not addressed.

TCMA has given, and could continue to give, preferential treatment to two potentially related parties who perform and underwrite shows at the Ronald Reagan Building's amphitheater, Capitol Production Company (Capitol Production) and Capitol Steps.[5] TCMA granted Capitol Steps preferential treatment via an exclusive rent concession when it was apparent that ticket sales would not cover rent and expenses after the events of September 11, 2001.

TCMA, on behalf of PBS, schedules events at the Ronald Reagan Building's amphitheater. When scheduling events with Capitol Production, TCMA used banquet event orders as the contractual document. However, these banquet event orders did not identify Capitol Production's business name, did not include any costs, and were non-descriptive. Capitol Production remitted room rent for use of the amphitheater directly to PBS, bypassing TCMA. However, there is no formal agreement between PBS and Capitol Production.

Capitol Steps has a contract with Capitol Production to perform shows in the amphitheater that is supposedly subordinate to a license between Capitol Production and TCMA. However, no documentation was provided to confirm a license between Capitol Production and TCMA or formalizing an agreement between PBS and Capitol Production. After review of the contract file, it was not apparent that any of these parties were related. However, we found that TCMA's president is the co-managing director of Capitol Production, and a TCMA associate stated, "We are Capitol Steps" in discussing the firms' relationship.

Without a formal, contractual arrangement disclosing the terms and conditions between Capitol Production and PBS, rent remittance cannot be fully validated, particularly since it does not receive TCMA's review. Furthermore, TCMA may not be able to fulfill its contractual obligations as an unbiased reviewer. Therefore, the Government may be taking on an otherwise avoidable risk under these conditions.

Recommendation 5

We recommend the Regional Commissioner, National Capital Region, implement policies and procedures to mitigate known and potential conflicts of interest.

Management Comments

In its comments, management agreed with our finding and concurred with our recommendation. Additionally, PBS has initialized a review of a potential conflict of interest regarding Capitol Steps (see ***Appendix B***).

[5] Capitol Steps performs periodic shows in the amphitheater at the Ronald Reagan Building. Capitol Production underwrites Capitol Steps' performances and handles the administrative duties of the shows.

Finding 6 – The contractor performance evaluation process lacked documentation and consistency, resulting in insufficient data to evaluate option periods and future procurements.

Undocumented performance monitor assignments and monthly performance reports create the risk of award fees without proper performance evaluations.

Under its fixed-price award fee contract with PBS, TCMA is eligible to earn award fees established by the Award Fee Performance Plan. PBS paid TCMA $2.2 million in award fees for performance from March 2009 to September 2012. The contract requires PBS to assign performance monitors in writing. Performance monitors evaluate and assess contractor performance and prepare contractor performance reports on a monthly basis. This information is to be used in calculating the contractor's award fee amount.

We found that performance monitors were not formally assigned and monthly performance reports were not prepared, creating the risk that the contractor could be receiving award fees despite performance problems. PBS could not explain why there were missing assignment letters for the performance monitors or why performance reports were not completed.

We identified four performance monitors for the first performance period of the contract, March 8 to September 7, 2009, but no assignment letters were available. The one performance monitor in effect at the time of our audit had not prepared monthly performance reports, nor were there indications that these reports were prepared by the four previous monitors.

Without monthly performance reports, PBS lacks an integral piece of the information needed to assess the contractor's performance. Specifically, the performance monitors would observe the contractor's strengths, areas requiring improvement, and discrepancies on a monthly basis. The results could affect the award fee amount or result in contractor discrepancy reports. Additionally, the monthly performance reports should be used when exercising option periods or when the contract is rebid. For example, if these reports show indications of poor performance, this should be taken into consideration during future evaluation periods.

Vague contract language results in insufficient event validation and inflated event counts.

Of the $2.2 million in award fees that PBS paid to TCMA, $1.8 million was paid for International Trade Program and activation activities events without sufficient validation.[6] Additionally, the event count, which determines the amount of the contractor's award fee, could be inflated by as much as 18 percent, as the definition of an "event" was not clearly defined by the contract.

[6] International Trade Program events facilitate and support a Federal Trade Program designed to enhance the exchange of American goods and services in the international market place.

When we requested validation for International Trade Program events, PBS did not possess any support and had to request the information from TCMA. The provided documents were insufficient, containing mostly calendar entries and emails. Information to support activation activities included only monthly event schedules prepared by the contractor. These schedules contained data fields for the date, time, function type, location, and other information about the event. In both cases, stronger evidence, such as proof of payment from an event client, is needed to support the occurrence of these events.

The lack of a contractual definition of an event also leads to event double-counting. Specifically, events such as lunch, dinner, and receptions are counted as events in addition to the main function. This process inflated the event count by as much as 18 percent in comparison to using a more restricted definition.[7] In April 2013, the contract's Award Fee Performance Plan was modified in an attempt to clarify the definition of an event. However, the acceptability of counting a lunch, dinner, or reception as an additional event when part of a main event remains unclear.

Recommendation 6

We recommend the Regional Commissioner, National Capital Region, improve processes for evaluating contractor performance, including: assigning performance monitors; completing monthly performance reports; defining an event; and validating events.

Management Comments

In its comments, management agreed with our finding and concurred with our recommendation. Additionally, PBS has established a formalized policy to correct administrative oversight, including documentation related to the performance plan evaluation (see ***Appendix B***).

Finding 7 – PBS and TCMA have mismanaged licenses at the ITC.

License agreements lack sufficient approval from PBS.

Due to PBS's insufficient license approval process, TCMA may be agreeing to licenses for office and retail space in the ITC that are not in the Government's best interest. Contract Section C.4.6.1 states, "The TCM shall be responsible for licensing all office and retail space and all rates, terms, and conditions shall receive prior GSA approval through the negotiation process and prior to final license execution." Licenses exceeding one month or requiring capital outlay are subject to PBS's review. Per the master license agreement, this approval process should include negotiation and execution by TCMA after the Government's written approval, as evidenced by the prior

[7] Analysis conducted on activation activities for Performance Period 3, March 8 to September 7, 2010.

concurrence of the Government Leasing Contracting Officer. PBS could not provide us with documentation of its approval for 96 percent of ITC licenses that we reviewed.[8]

In the 4 percent of instances where we did obtain documentation of PBS's approval, the documentation was via email, the approval content was insufficient, and there was no concurrence from a Government Leasing Contracting Officer. Furthermore, PBS does not have a Government Leasing Contracting Officer involved in the ITC license vetting process.

PBS's stance on possessory interest tax has not been reflected in all licenses.

The master license between PBS and TCMA, and the tenant licenses with the original possessory interest tax language, place the financial burden and legal responsibility for possessory interest tax payments on TCMA. In 2010, PBS made three payments, totaling $75,675, to TCMA for the reimbursement of possessory interest tax in an attempt to demonstrate goodwill. Later, PBS ceased these possessory interest tax reimbursements, which left TCMA responsible for the possessory interest tax, as required in the licenses.

The master license prescribes multiple situations where PBS can reimburse TCMA for license-related expenses (*e.g.*, litigation expenses, liability insurance), but possessory interest tax is not one of them. TCMA disagrees with PBS's change in position and believes that PBS should continue to reimburse possessory interest tax. In licenses that have been recently issued or renewed since PBS stopped reimbursing possessory interest tax, the language in the licenses has been changed to place the possessory interest tax burden on licensees. However, in licenses that preceded PBS's change in stance on the reimbursements, the burden of the possessory interest tax remains on TCMA.

A 2008 memorandum from the District of Columbia's Office of the Chief Financial Officer stated that possessory interest tax is imposed on property lessees who operate a business on land owned by the Federal Government or other government entities exempt from real property tax. The tax was enacted in 2000 to equalize business owners on non-taxed land with those on taxed land.

On October 23, 2012, TCMA submitted a claim and request for a Contracting Officer's Final Decision to PBS for the reimbursement of seven possessory interest tax payments totaling $247,797. PBS and TCMA are currently negotiating a settlement agreement.

PBS paid $83,001 in broker commissions above the limit from the base contract and $47,746 in broker commissions on rent that PBS never received.

PBS paid $83,001 in excess funds on one license due to a commission rate above the limit from the base contract. Emails between the cooperating broker, TCMA, and PBS

[8] We received approval documentation for 2 of the 50 licenses reviewed. Our sample included all 48 licenses in effect in May 2012 and 2 new licenses in effect in September 2012.

quote a [redacted] percent market rate for cooperating brokers. However, we did not see any documentation supporting this research. Additionally, the other two ITC licenses that used a cooperating broker both charged [redacted] percent cooperating broker rates.

The contract states that broker commissions for office licenses with the TCM (the government's broker) and a cooperating broker total [redacted] percent. PBS stated that TCMA and the cooperating broker each receive [redacted] percent. However, modification PC24 awarded a [redacted] percent broker commission, which is [redacted] percent, or $[redacted], above the limit from the base contract (see *Table 1*).

Table 1 – Excess Funds Paid in Modification PC24

	Dollar Value
Broker Commission Paid in Modification PC24 [redacted] %)	$[redacted]
Less: Broker Commission Limit in the Base Contract [redacted] %)	$[redacted]
Difference: Excess Funds	$83,001

Modification PC24 explained that the cooperating broker and TCMA would receive [redacted] and [redacted] percent, respectively. Despite PBS exceeding the limit in the base contract in an effort to give the cooperating broker a [redacted] percent broker commission, the cooperating broker invoiced for more than [redacted] percent, but for less than the full [redacted] percent broker commission. Subsequently, TCMA retained a portion of the cooperating broker's intended commission, which elevated TCMA's commission above its [redacted] percent maximum rate. It is contradictory that the modification authorizing a deviation from the limit in the base contract claims the cooperating broker requires [redacted] percent to finalize the license agreement when the cooperating broker invoiced for less.

Table 2 shows the difference between the commissions paid to the cooperating broker and TCMA, and the commissions intended to be paid to both parties.

Table 2 - Difference between Commissions Paid and Intended

	Paid Commission	Intended Commission	Difference
Cooperating Broker	$[redacted]	$[redacted]	($27,635)
TCMA	$[redacted]	$[redacted]	$27,635

Because TCMA received a portion of the cooperating broker's intended commission, PBS paid TCMA $27,635 over TCMA's broker commission limit from the base contract.

The remaining balance of $55,366 in excess payments was paid to the cooperating broker.[9]

In addition to exceeding the limit from the base contract for broker commission rates, TCMA erroneously calculated the commission using rental rates in the license's first year. Given that the license allowed for free rent for the first year, no commission should have been calculated for this period. A 13,085 square foot area was assigned a first year rental rate of $[redacted] per square foot, and a 1,957 square foot area was assigned a first year rental rate of $[redacted] per square foot. However, in accordance with the license terms, no rent was paid during that first year. These square footages and rates were used to calculate a total rent for the first year of $[redacted]. Despite not receiving any of this rent, PBS paid [redacted] percent of the $[redacted], or $47,746, as part of the broker commission.

Recommendation 7

We recommend the Regional Commissioner, National Capital Region, correct deficiencies in the licensing area, including: creating a formal approval process that includes the written approval of the license and the signature of a Government Leasing Contracting Officer; clarifying PBS's position on possessory interest tax in the master license agreement; and refraining from exceeding broker commission limits from the base contract.

Management Comments

In its comments, management agreed with our finding and concurred with our recommendation. Additionally, PBS has begun taking action to receive reimbursement for the $47,746 overpayment in real estate commissions; it embraced the recommendation to integrate additional oversight staff by engaging a Government Leasing Contracting Officer in the license review process; and it continues to pursue resolution of the settlement of the Possessory Interest Tax Claim (see ***Appendix B***).

Finding 8 – PBS lost an estimated $791,991 in tenant rent and fees since a February 2011 fire occurred in the ITC.

PBS lost an estimated $791,991 in rent and fees, as of May 2014, since a fire occurred in the ITC food court on February 15, 2011. The majority of the food court reopened on February 24, 2011. However, one food court contractor remains closed and two food court contractors were closed until April 24, 2014, due to damaged locations.

According to the contract, TCMA has an obligation to clean the kitchen hoods and ductwork. The Accident Investigation Report from May 13, 2011, describes how grease build-up in the ductwork caused the fire to spread. Maintenance of a system that failed to spray fire retardant is the food court contractor's responsibility. The food court contractor's subcontractor was required to perform maintenance work on this system.

[9] $83,001 - $27,635 = $55,366

TCMA failed to enforce the sublicense requirement for inspecting, maintaining, and testing the system. Based upon TCMA's responsibility, the food court contractor's breach of sublicense duties may be imputed to TCMA.

The Accident Investigation Report states that the only direct repair cost that PBS should bear is $7,500 for new access panels for the ductwork. The report explains that PBS is not responsible for any other direct repair costs:

> Under normal circumstances, GSA would endure direct costs associated with a fire incident within a federally owned facility's food service area. However, in the case of [Ronald Reagan Building and International Trade Center], GSA has a contract with TCMA to run the ITC, including the public food court and vendors. As such and at this time, it appears the insurance company of either TCMA or [the vendor], who is under contract with TCMA, would bear any such costs. This cost is currently estimated to be between $800,000 and $1 Million.

In September 2013, PBS awarded a contract to a separate contractor for the food court renovation. A Notice to Proceed was sent to the contractor in October 2013, 2 years and 8 months after the fire occurred. To date, PBS has not been able to obtain payment to repair the damages from TCMA, an insurance company, or the food court contractor at the site of the fire.

A January 24, 2013, Contracting Officer's Final Decision states TCMA is responsible for ensuring that the premises are repaired and that payment for the repair is recovered from the applicable insurance companies. The decision detailed the liabilities and estimated the cost of repairs to be $1.4 million and the loss of rent to be $428,455. The contracting officer also sent two letters to the insurance company on December 16, 2013, showing that the company is indebted to the Government in the updated amount of $2,222,234, which includes $1,396,150 in construction costs, $709,135 in rent lost, and a projected rent loss of $116,950 from January to May 2014.

<u>Recommendation 8</u>

We recommend the Regional Commissioner, National Capital Region, resolve the insurance dispute expeditiously in order to recover $2.2 million in construction costs for the restoration of the food court and rent loss.

<u>Management Comments</u>

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

Finding 9 – Funding for GSA NCR holiday events was partially subsidized by the TCMA contract.

PBS indirectly spent funds on a holiday event by forfeiture of a rent waiver that could have been used to save $25,200 in room rent for a training course. The federal contract between PBS and TCMA partially funded Holiday Soirees from 2009 to 2011 when both the former and current NCR Regional Administrators authorized three separate rent waivers. The Holiday Soirees did not include an awards component and are deemed social, rather than official, in nature. It is inappropriate to use federal contract provisions for a holiday event, as noted in the Comptroller General of the United States' decision in the "Department of the Interior - Funding of Receptions at Arlington House - Reconsideration" dated August 3, 1982.

In one instance, PBS could have saved $25,200 in room rent for a training course by exercising a rent waiver, but instead used the waiver on a holiday event. The base contract authorizes the NCR Regional Administrator to waive room rent in the Ronald Reagan Building and ITC six times per year. PBS did not execute one of the six rent waivers when it awarded a task order that included $25,200 in room rent for a training course on April 29, 2009. Instead, PBS used a rent waiver, and ultimately federal funds, for the GSA NCR annual Holiday Soiree in the Ronald Reagan Building and ITC on December 17, 2009. The former NCR Regional Administrator authorized this rent waiver in the same period the training course was held. PBS could have applied the rent waiver to save $25,200 in federal funds on rent charged for the April 29, 2009, training course in replacement of the holiday event.

Additionally, the TCMA base contract includes a room rent matrix with a range of high and low rental rates. PBS would typically be charged a federal tenant rate; however, a tenant low option could be offered depending on the circumstances, time of year, time of day, and demand for the space. Additionally, a reduced rate could be charged based on partial day use, but is dependent upon event date and volume of space. Based on this, *Table 3* estimates room rent waived from 2009 to 2011 for the Holiday Soirees.

Table 3 – Estimates of Room Rent Waived for Holiday Events

Year and Room(s) Rented	Tenant Low Rent	Federal Tenant Rent
2009, Atrium Hall	$2,000	$4,000
2010, Atrium & Atrium Ballroom	$2,500	$15,200
2011, Atrium & Atrium Ballroom	$2,500	$15,200
Total Estimated Range	*$7,000*	*$34,400*

The Holiday Soirees were held from 2009 to 2011. However, they have not been held since 2011.

Recommendation 9

We recommend the Regional Commissioner, National Capital Region, refrain from granting rent waivers for any holiday event.

Management Comments

In its comments, management agreed with our finding and concurred with our recommendation. Additionally, PBS acknowledges they have ceased holding holiday parties at the Ronald Reagan Building and ITC (see ***Appendix B***).

Conclusion

By law, the ITC at the Ronald Reagan Building is supposed to be self-sustaining. However, a non-competitive procurement for the trade center management services contract and flawed contract administration are contributing to financial issues at the ITC.

When awarding the trade center management services contract, PBS failed to achieve a competitive procurement and circumvented plans to re-compete the contract. Subsequently, PBS's contract administration has resulted in flawed oversight of the contractor's performance, as well as increased costs, many of which should be the contractor's responsibility. As a result, the ITC Working Fund may not be able to sustain the operations of the ITC.

Despite a 2010 audit report that highlighted many areas for improvement at the ITC, significant weaknesses still exist. PBS must improve the operation of the ITC by:

(1) Addressing previous and current recommendations to improve functionality and performance;
(2) Strengthening its management of the ITC and the trade center management services contract to correct its deficiencies;
(3) Enhancing its collection of performance and financial data, market research, and source selection processes to ensure objectivity when exercising option periods and soliciting future contracts for trade center management services.

To improve the financial management of the ITC, PBS must:

(1) Enhance the viability of the ITC Working Fund;
(2) Negotiate G&A and profit rates; and
(3) Recover and prevent payment of duplicative costs.

Additionally, PBS should proactively mitigate conflicts of interest, improve evaluation of contractor performance, correct licensing deficiencies, resolve the fire-related insurance dispute, and refrain from granting rent waivers to any holiday event.

Due to organizational changes within GSA, the responsibility for the Ronald Reagan Building management contract has alternated between the NCR Regional Administrator and the PBS NCR Regional Commissioner. Under the most recent change, the PBS NCR Regional Commissioner is now responsible for the contract.

Appendix A – Purpose, Scope, and Methodology

Purpose

This audit was included in the Office of Inspector General's Audit Plan for fiscal year 2012 to follow-up a prior audit report, *Audit of GSA's Acquisition of Services for the International Trade Center at the Ronald Reagan Building*, issued on May 3, 2010.[10]

Scope

The audit covered the procurement and contract administration for the trade center management services contract, Contract Number GS-11P-09-ZGD-0064, awarded on December 2, 2008. We also reviewed PBS's implementation of the action plan for the previous audit report.

Methodology

To accomplish our objective, we:

- Interviewed PBS contract, project management, and finance staff, as well as the trade center manager; and
- Reviewed and analyzed contract and project management files. Specifically those related to contract procurement, contract modifications, issuance of additional contracts, contractor performance, subcontractors, licenses, finances of the International Trade Center, and conflicts of interest.

We conducted the audit between September 2011 and May 2013, 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 audit is to determine if internal controls governing the administration of the contract are effective in preventing procurement irregularities. The audit also examined PBS's compliance with the Federal Acquisition Regulation and General Services Administration Acquisition Manual, when applicable. We evaluated internal controls over contract administration to the extent necessary to answer the audit objective. Related internal control issues are discussed in the context of the audit findings.

[10] Report Number A080106/P/W/R10004.

GSA

GSA National Capital Region

MAY 2 3 2014

MEMORANDUM FOR MARISA A. ROINESTAD
PROGRAM DIRECTOR
REGIONAL INSPECTOR GENERAL FOR AUDITING
REAL PROPERTY AUDIT OFFICE (JA-R)

FROM: DARREN J. BLUE Darren James Blue
REGIONAL COMMISSIONER
PUBLIC BUILDINGS SERVICE (WP)

SUBJECT: Response to Audit Number A110217/P/R:

Procurement Errors, Financial Losses, and Deficient Contract Administration Demonstrate Ineffective Management of the Ronald Reagan Building and International Trade Center

The National Capital Region (NCR) appreciates the opportunity to review and comment on this Draft Audit Report.

The uniqueness of the statutory framework and vision under which the Ronald Reagan Building (RRB) and International Trade Center (ITC) was created presents management challenges for the Public Building Service (PBS). In passing the Federal Triangle Development Act of 1987, Congress declared that it was in the "national interest to build a Federal building complex and establish an international cultural and trade center on the Federal Triangle property in the District of Columbia." Public Law 100-113 Section 2(a)(1). Congress further declared that the "appropriate development, maintenance, and use of the Federal Triangle property should be a joint development effort of the General Services Administration, the Pennsylvania Avenue Development Corporation, and the International Cultural and Trade Center Commission." Public Law 100-113 Section 2(a)(4). Although the Act contemplated such a joint effort, due to the dissolution of the Pennsylvania Avenue Development Corporation (PADC) and the never-created International Cultural and Trade Center Commission, carrying out Congress' intent fell exclusively to the U.S. General Services Administration (GSA).

With the help of the Office of the Inspector General, PBS has continued to refine its management of the ITC and, in response to the last three audits, initiated a series of robust corrective action plans to gain greater fiscal control, to enhance contractor transparency and to develop management procedures for the ITC.

As your office is aware from our prior audit responses, we are continuing with the approved Corrective Action Plan (CAP) with only eight of the 37 discrete steps

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remaining. In that CAP, we successfully implemented the recommended controls including improved financial and administrative oversight settlement of the open claim. The controls remaining in process will enhance our preparation for a future solicitation.

Toward implementing controls for this most recent audit report, PBS has embraced the draft findings and already taken steps to correct shortfalls cited. Actions taken thus far include:

- Pursuing a substantial portion of the funds cited. PBS has already received reimbursement for the $47,746 overpayment in real estate commissions (Finding #7) and continues to pursue collection of other funds.
- Establishment of formalized policies for areas cited as unstructured. This includes: a written decision process on capital project assignment (Finding #2); review of a potential conflict of interest regarding Capitol Steps (Finding #5); and, correction of administrative oversight, including documentation related to the performance plan evaluation (Finding #6).
- Ceased holding holiday parties at the RRB / ITC (Finding #9).
- Embraced the recommendation to integrate additional oversight staff (Finding #7) by engaging a Government Leasing Contracting Officer in the license review process.
- Finally, PBS continues to pursue resolution of the contractual dispute for the Food Court (Finding #8) and settlement of the Possessory Interest Tax Claim (Finding #7).

While much progress has been made, we acknowledge that further improvement is possible. To that end, GSA proposes to primarily focus on revising our procurement approach and undertake a new procurement, as soon as practical. This will allow PBS to more fully address the structural, management and oversight issues identified across the family of OIG audits on the ITC.

We thank you for your continued interest in this important asset and we look forward to working with the OIG as we begin to implement our new plan to address your findings.

Appendix C – Report Distribution

Commissioner, PBS (P)

Deputy Commissioner, PBS (PD)

Chief of Staff, PBS (P)

Regional Administrator, National Capital Region (WA)

Regional Commissioner, PBS, National Capital Region (WP)

Regional Counsel, National Capital Region (LDW)

Director, Ronald Reagan Building/International Trade Center (WPM1CA)

Branch Chief, GAO/IG Audit Response Branch (H1C)

Audit Liaison, PBS (BCP)

Audit Liaison, PBS, National Capital Region (BCPA)

Assistant Inspector General for Auditing (JA)

Deputy Assistant Inspector General for Investigations (JID)

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