



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

Limited Scope Audit - Operations and Maintenance Services Contract at St. Elizabeths

*Report Number A150048/P/R/R16001
March 2, 2016*



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

REPORT ABSTRACT

OBJECTIVE

To determine whether the award of a separate operations and maintenance contract for the St. Elizabeths West Campus complied with competition requirements specified under the Competition in Contracting Act of 1984 and the Federal Acquisition Regulation.

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Finance Audit Office
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Limited Scope Audit - Operations and Maintenance Services Contract at St. Elizabeths

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WHAT WE FOUND

We identified the following during our limited scope audit:

Finding – PBS failed to comply with competition requirements in its procurement of operations and maintenance services for the St. Elizabeths West Campus, thus denying opportunities to other contractors and eliminating price competition.

WHAT WE RECOMMEND

We recommend the Regional Commissioner, PBS National Capital Region:

1. Take immediate action to expedite the procurement of a new operations and maintenance contract that adheres to competition requirements specified in the Competition in Contracting Act of 1984 and the Federal Acquisition Regulation.
2. Determine and implement the appropriate corrective action needed for PBS personnel's non-compliance with competition requirements.
3. Institute the necessary management controls to ensure that procurements for the Department of Homeland Security Headquarters consolidation comply with the Competition in Contracting Act of 1984 and Federal Acquisition Regulation 6.3.

MANAGEMENT COMMENTS


The Regional Commissioner, PBS National Capital Region, concurred with the recommendations. Management's written comments to the draft report are included as **Appendix B**.



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

DATE: March 2, 2016

TO: Mary Gibert
Regional Commissioner
Public Buildings Service
National Capital Region (WP)

FROM: Sonya D. Panzo
Audit Manager 
Real Property and Finance Audit Office (JA-R)

SUBJECT: Limited Scope Audit – Operations and Maintenance
Services Contract at St. Elizabeths
A150048/P/R/R16001

This report presents the results of our Limited Scope Audit – Operations and Maintenance Services Contract at St. Elizabeths. Our finding 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	
<i>Finding – PBS failed to comply with competition requirements in its procurement of operations and maintenance services for the St. Elizabeths West Campus, thus denying opportunities to other contractors and eliminating price competition.</i>	<i>3</i>
Conclusion.....	6
<i>Recommendation 1</i>	<i>6</i>
<i>Recommendation 2</i>	<i>6</i>
<i>Recommendation 3</i>	<i>6</i>
<i>Management Comments</i>	<i>6</i>
Appendixes	
Appendix A – Purpose, Scope, and Methodology.....	A-1
Appendix B – Management Comments	B-1
Appendix C – Report Distribution.....	C-1

Introduction

The Department of Homeland Security (DHS) Headquarters consolidation on the St. Elizabeths West Campus is an effort to reduce DHS's real estate costs, as DHS currently leases more than 50 facilities across the Washington, D.C., area. St. Elizabeths is a National Historical Landmark that is divided between the East and West Campuses. The East Campus is owned by the District of Columbia and serves as a mental health hospital. The West Campus is owned by GSA and will serve as the consolidated DHS Headquarters. The consolidation is expected to provide a more unified, secure campus that brings together DHS executive leadership and operational management. This will allow for more efficient incident management responses and command-and-control operations.

The project was designed to be completed in three phases. The first phase involved the construction of the United States Coast Guard (Coast Guard) building, which was completed on time and within budget in May 2013. However, funding uncertainty has created serious challenges to completing the remaining phases, resulting in revisions to project plans and an extended schedule. Currently, the consolidation is scheduled to be completed by fiscal year 2021, provided Congress authorizes funding.

The original design-build contract for the construction of the Coast Guard building included an option for 3 years of operations and maintenance (O&M) services at a monthly cost of \$274,300. This cost could potentially be higher if GSA places service calls which are charged at an hourly rate. These services were to begin after substantial completion of the building. The O&M scope of work under this option included the performance of routine, preventive, predictive, scheduled, and unscheduled actions to prevent the failure or decline of all systems and equipment for the building.

Ultimately, PBS issued a no cost modification to the contract that purportedly exercised the option for the O&M services for the Coast Guard building. However, the modification essentially established a new contract with the construction contractor for the O&M services for the entire St. Elizabeths West Campus at a monthly cost of \$390,706, without any further competition. Eventually, the cost of the O&M services was increased to \$763,470 per month. According to PBS, the no cost modification was done due to multiple project challenges including insufficient funding, constraints related to campus security and utilities, and potential warranty issues related to the installed systems and equipment in the Coast Guard building.

Background

Our review focused on PBS's compliance with the Competition in Contracting Act of 1984 (CICA) and Federal Acquisition Regulation (FAR) 6.3 for the award of the O&M services contract for the St. Elizabeths West Campus. This law and regulation govern federal contracting practices and require full and open competition or a justification for other than full and open competition.

CICA requires that contracts be entered into after “full and open competition through the use of competitive procedures” unless certain circumstances exist that would permit agencies to use noncompetitive procedures. CICA recognizes seven circumstances that permit the use of noncompetitive procedures:

- (1) Single source for goods or services;
- (2) Unusual and compelling urgency;
- (3) Maintenance of the industrial base;
- (4) Requirements of international agreements;
- (5) Statutory authorization or acquisition of brand-name items for resale;
- (6) National security; and
- (7) Contracts necessary in the public interest.

FAR 6.3 prescribes the policies and procedures for contracting without full and open competition. If other than full and open competition is warranted, FAR 6.303 requires the contracting officer to do the following:

- (1) Justify the use of such actions in writing;
- (2) Certify the accuracy and completeness of the justification; and
- (3) Obtain the appropriate approval based on the contract value.

In accordance with FAR 6.303-1(d), the justification and approval for contracting without full and open competition should be documented in the contract file.

Objective

Our objective was to determine whether the award of a separate O&M contract for the St. Elizabeths West Campus complied with competition requirements specified under CICA and the FAR.

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

Results

Finding – PBS failed to comply with competition requirements in its procurement of operations and maintenance services for the St. Elizabeths West Campus, thus denying opportunities to other contractors and eliminating price competition.

PBS's procurement of O&M services for the St. Elizabeths West Campus did not comply with CICA and FAR competition requirements. In procuring the O&M services, PBS established a noncompetitive, stand-alone contract under the guise of exercising an option on an existing contract.

On August 14, 2009, PBS entered into design-build contract GS11P09MKC0051 for the construction of the Coast Guard building on St. Elizabeths West Campus. This contract was partially awarded with funds from the American Recovery and Reinvestment Act of 2009. The contract included Option 8 for a "Three-year O&M Services Contract" to be fulfilled by the design-build contractor after substantial completion. The original O&M scope of work included the performance of routine, preventive, predictive, scheduled, and unscheduled actions to prevent the failure or decline of all building systems and equipment.

On May 9, 2013, PBS signed Modification PS53, claiming to exercise Option 8 for 3 years of O&M services in the amount of zero dollars. The modification stated that the option was "revised and included" under separate O&M contract GS11P13MMC0015, rather than under the design-build contract. This separate O& M contract was issued on May 9, 2013, at a monthly cost of \$390,706. However, instead of being for O&M services at the Coast Guard building that were proposed under the option, the new contract was for O&M services for the entire St. Elizabeths West Campus. The scope of the awarded O&M services was well beyond the original scope of work. In fact, the design-build contractor highlighted the scope increase when submitting its proposal for the increased scope of work. According to the contractor:

During the determination of scope and creation of this proposal there were significant differences identified in comparison to the original scope of work solicited by the GSA for submittal with our construction bid in August 2009. Additional work includes the operation and maintenance of utility plants, after hours service desk operations and the expansion of facilities to 20 separate buildings to be maintained, now totaling 2.62 million square feet.

PBS officials told us they determined it was beneficial to use the current design-build contractor because the contractor was knowledgeable of the building systems and equipment. Also, PBS officials opined that using the current design-build contractor would alleviate the potential issues experienced when using a different contractor for servicing the installed systems and equipment.

PBS's noncompetitive award of a separate O&M contract for the entire St. Elizabeths West Campus violated both CICA and FAR requirements. Contracting officers must seek competition for new contracts according to CICA and FAR requirements, or document a justification for other than full and open competition. PBS officials made no efforts to justify the sole-source award, nor did any of the circumstances permitting sole-source awards apply. Thus, contractors who were capable of performing the work at possibly a lower cost were not provided the opportunity to compete for the contract.

PBS officials provided two contradictory explanations for their contracting actions. First, they stated that budgetary constraints would not allow the release of O&M funding under the design-build contract, resulting in the need to award a separate contract for these services. Second, PBS officials claimed they considered the separate O&M contract to be a task order under the original design-build contract.

However, both explanations would result in violations of CICA and FAR competition requirements. With regard to the first explanation that a separate contract was needed due to budgetary issues, we found that the award documentation did not note any such issues. Further, PBS did not take any steps to compete the procurement as if it were a new contract. PBS did not issue a solicitation for the separate contract; it only requested a proposal from the current design-build contractor, which resulted in a sole-source award. The contract files also did not have a justification and approval for other than full and open competition for the O&M services contract. Given this, PBS violated CICA and FAR competition requirements.

The second explanation that the O&M services award was a task order under the design-build contract is also problematic. First, the original design-build contract was not an indefinite delivery/indefinite quantity contract under which task orders could be ordered. Second, this award would have also violated competition requirements because it would have resulted in a cardinal change to the design-build contract due to significant increases in scope and cost. A cardinal change is a measure of whether an agency may be violating CICA and FAR requirements for competition by significantly altering the scope and/or amount of a contract after it has been awarded. In this case, the scope of work and cost increased so significantly it would have resulted in a cardinal change.

From the proposed option in the design-build contract through the option years of the separate O&M contract, the scope of work increased from O&M services for the newly constructed building to O&M services for the entire St. Elizabeths West campus. These additional services resulted in significant cost increase from the amount proposed under the original design-build contract. From the design-build contract's proposed cost in August 2009, through the separate O&M contract's option year ending September 30, 2015, the cost increased from \$274,300 to \$763,470 per month, a 178 percent increase (see *Figure 1* on the next page).

Figure 1 - Cost Increases for O&M Services

	Time Period	Cost per Month	Percent Increase from Proposal
Design-Build Proposal	August 14, 2009	\$274,300	
O&M Partial Base Year	May 9, 2013 – September 30, 2013	\$390,706	42%
Option 1	October 1, 2013 – September 30, 2014	\$709,751	159%
Option 2	October 1, 2014 – September 30, 2015	\$763,470	178%

Due to the significant change in scope and cost, the additional services would have resulted in a cardinal change to the design-build contract and been a violation of competition requirements.

Conclusion

PBS failed to comply with CICA and FAR competition requirements when it did not seek full and open competition for O&M services for the entire St. Elizabeths West Campus. Although PBS officials identified benefits in using the current design-build contractor for O&M services, including the efficient resolution of warranty issues, the procurement of these services should have been in compliance with federal laws and regulations, including competition requirements. The award of the separate O&M contract did not comply with CICA or FAR requirements. Given the significance of these contracting issues, PBS should issue a competitive solicitation for the O&M support services that would allow multiple contractors to bid on performing the services for the St. Elizabeths West Campus. It should also determine and implement the appropriate corrective action needed for PBS personnel's non-compliance with competition requirements. Finally, PBS should also institute the necessary management controls to ensure that future procurements for the DHS Headquarters consolidation comply with CICA and FAR competition requirements.

Recommendations

We recommend that the Regional Commissioner, PBS National Capital Region:

1. Take immediate action to expedite the procurement of a new operations and maintenance contract that adheres to competition requirements specified in the Competition in Contracting Act of 1984 and the Federal Acquisition Regulation.
2. Determine and implement the appropriate corrective action needed for PBS personnel's non-compliance with competition requirements.
3. Institute the necessary management controls to ensure that procurements for the Department of Homeland Security Headquarters consolidation comply with the Competition in Contracting Act of 1984 and Federal Acquisition Regulation 6.3.

Management Comments

In its comments, PBS management agreed with the audit finding and concurred with the recommendations (see **Appendix B**).

Appendix A – Purpose, Scope, and Methodology

Purpose

We are monitoring PBS's efforts at the DHS Headquarters at St. Elizabeths. We conducted this limited scope audit because our monitoring efforts identified a specific issue requiring management's attention.

Scope and Methodology

Our audit focused on the procurement of O&M services for the St. Elizabeths West Campus. This included a limited review of PBS's contract actions related to Option 8 of the design-build contract for the procurement of O&M services for the Coast Guard building on the St. Elizabeths West Campus.

To accomplish our objective, we:

- Toured the St. Elizabeths campus to gain an understanding of the magnitude of the project and the current condition of the campus;
- Obtained the design-build contract (GS11P09MKC0051) for the Coast Guard building and the separate O&M services contract (GS11P13MMC0015);
- Reviewed the O&M requirements under each contract; and
- Interviewed PBS officials to obtain clarification regarding the requirements and awarded contract actions.

We conducted our limited scope audit between March and April 2015 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 the evidence obtained provides a reasonable basis for our finding and conclusions based on our audit objective.

Internal Controls

Our assessment of internal controls was limited to those necessary to address the objective of the audit. Identified internal control issues are discussed in the Results section of this report.

Appendix B – Management Comments

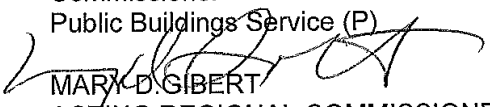


GSA National Capital Region

JAN 19 2016

MEMORANDUM FOR MARISA A. ROINESTAD
ASSOCIATE DEPUTY ASSISTANT INSPECTOR GENERAL
FOR AUDITING
REAL PROPERTY AND FINANCE AUDIT OFFICE (JA-R)

THROUGH: Norm Dong
Commissioner
Public Buildings Service (P)

FROM: 
MARY D. GIBERT
ACTING REGIONAL COMMISSIONER
PUBLIC BUILDINGS SERVICE (WP)

SUBJECT: Limited Scope Audit – Operations and Maintenance Services
Contract at St. Elizabeths Draft dated November 30, 2015
Report Number A150048

This memorandum is in response to your correspondence dated November 30, 2015, transmitting the above-referenced Limited Scope Audit report draft. The report identified several issues that require a written response.

Finding 1 - PBS failed to comply with competition requirements in its procurement of operations and maintenance services for the St. Elizabeths West Campus, thus denying opportunities to other contractors and eliminating price competition.

Response 1 – We agree with the finding.

Recommendation 1 - Take immediate action to expedite the procurement of a new operations and maintenance contract that adheres to competition requirements specified in the Competition in Contracting Act of 1984 and the Federal Acquisition Regulation.

Response 1 - GSA is currently procuring a new operations and maintenance contract that will adhere to the competition requirements specified in the Competition in Contracting Act of 1984 and Federal Acquisition Regulation. This new contract will replace the current contract and should be in place by May 2016.

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Appendix B – Management Comments (cont.)

2

Recommendation 2 - Determine and implement the appropriate corrective action needed for PBS personnel's non-compliance with competition requirements.

Response 2 - This recommendation has been addressed by advising the appropriate program and acquisition personnel of their responsibilities under the Competition in Contracting Act (CICA) in January, 2016.

Recommendation 3 - Institute the necessary management controls to ensure that procurements for the Department of Homeland Security Headquarters consolidation comply with the Competition in Contracting Act of 1984 and Federal Acquisition regulation 6.3.

Response 3 - All future procurements for the Department of homeland Security Headquarters consolidation will be reviewed by NCR's Director, Construction Division, Office of Acquisition, PBS, to ensure compliance with FAR 6.3 and CICA.

We appreciate the support that has been provided by your review of the Operations and Maintenance Services Contract at St. Elizabeths.

If you have any questions or need additional information, please contact me at (202) 708-5891.

Appendix C – Report Distribution

GSA Administrator (A)

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)

Regional Director, PBS Office of Design and Construction,
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