



U.S. GENERAL SERVICES ADMINISTRATION
Office of Inspector General

June 23, 2011

MEMORANDUM FOR: JULIA E. HUDSON
REGIONAL ADMINISTRATOR
NATIONAL CAPITAL REGION (WA)

A handwritten signature in red ink that reads "R. Nicholas Goco".

FROM: R. NICHOLAS GOCO
DEPUTY ASSISTANT INSPECTOR GENERAL FOR
AUDITING
REAL PROPERTY AUDIT OFFICE (JA-R)

SUBJECT: Recovery Act Memorandum—Cool Roof Installation at the
Forrestal Complex
Review of PBS's Limited Scope and Small Construction
Projects Funded by the American Recovery and
Reinvestment Act of 2009
Audit Number A090184-40/P/R

As part of our oversight of the National Capital Region's (NCR) limited scope and small construction American Recovery and Reinvestment Act¹ (Recovery Act) projects, we reviewed the task order award² for the roofing project for the Department of Energy Forrestal Complex in the amount of \$2,363,797³, including the base amount for the South Building roof and the West Building roof option. Our objectives were to determine if the project met the requisite "green building" investment strategy and if GSA's Public Buildings Service (PBS) awarded the task order in accordance with the provisions of the Federal Acquisition Regulation (FAR).

¹ The American Recovery and Reinvestment Act of 2009 appropriated \$5.55 billion to the Public Buildings Service's Federal Buildings Fund, the majority of which was related to measures necessary to convert its facilities to High-Performance Green Buildings. The Recovery Act also required the Office of Inspector General to oversee and audit programs, grants, and projects funded under this Act.

² Task order number GS-P-11-10-YT-0221 was issued against Multiple Award Schedule 56 contract GS-07F-0400W.

³ The South Building roof work in the amount of \$1,576,830 was funded by non-Recovery Act Reimbursable Work Authorization N0529073. The West Building roof work in the amount of \$786,967 was funded by the Recovery Act and issued as a modification to the task order for the South roof work.

During our review, we identified several issues with the procurement process that we would like to bring to your attention. Specifically:

- 1) Use of a Multiple Award Schedule (schedule) was not appropriate for this procurement;
- 2) There was no price reasonableness determination for the Recovery Act work;
- 3) The Acquisition Plan was not completed prior to the project's publication in the Federal Business Opportunities (FBO) website;
- 4) All interested parties may not have been provided with two of the amendments to the solicitation; and
- 5) The government estimate was not signed by the preparer.

Misuse of Multiple Award Schedule

Multiple Award Schedule 56 was not an appropriate contract vehicle for this procurement. First, PBS should have acquired the cool roof as a construction procurement rather than as a commercial item or service under a schedule contract. Second, the project's technical specifications requested lump sum pricing and therefore could not be tied to the underlying schedule pricing.

PBS contracted for the design and construction of the cool roof as a commercial item under a schedule contract; however, this violates Federal procurement policy. The Office of Management and Budget's Office of Federal Procurement Policy (OFPP) issued guidance⁴ related to when construction can be acquired as a commercial item under FAR Part 12, rather than as a construction procurement under FAR Part 36⁵. OFPP stated, "...Part 12...should rarely, if ever, be used for new construction activities or non-routine alteration and repair services. In accordance with long-standing practice, agencies should apply the policies of FAR Part 36 to these acquisitions." OFPP specified that, "...Part 12 generally may be suited for routine painting or carpeting, simple hanging of drywall, everyday electrical or plumbing work, and similar noncomplex services...". FAR Part 12 is applicable to schedule contracts as the schedule, "...provides Federal agencies with a simplified process for obtaining commercial supplies and services..."⁶

This project is a complex alteration requiring both the design and construction of cool roofs at the South and West Buildings and should not be considered as routine alteration and repair services. The selected schedule contractor required the design services of an Architect & Engineering (A&E) subcontractor to meet the design requirements of the project. Further, the design services were valued at nearly five

⁴ Applicability of FAR Part 12 to Construction Acquisitions, dated July 3, 2003.

⁵ FAR Part 12 addresses Acquisition of Commercial items; FAR Part 36 addresses Construction and Architect-Engineer Contracts.

⁶ FAR Subpart 8.4 addresses Federal Supply Schedules.

percent of the project's cost, which is just below the statutory design fee limitation of six percent of estimated construction costs⁷. Additionally, the complex nature of the project is noted in the technical specifications, which state, "One notable aspect of the South Building roof is the large variety of telecommunications, testing and other apparatus that have been installed. This may make re-roofing more complicated." Given the complex nature of the project, the schedule contract should not have been used.

Furthermore, PBS requested lump sum pricing in the technical specifications, and did not require offerors to provide an itemization or other breakdown of the pricing components. Since a schedule was used, PBS should have analyzed the pricing to confirm that the proposed prices reflected schedule contract prices. However, the lump sum bidding rendered this comparison impossible. PBS therefore had no assurance that the proposed price was based upon the underlying schedule, which had previously been determined to be fair and reasonable.

Additionally, the procurement was performed improperly, since there were no negotiations for additional discounts. According to Federal regulations, when the task order exceeds the maximum order threshold, the ordering agency shall seek a price reduction from the schedule contract holder⁸. This task order exceeded the schedule maximum order threshold of \$200,000, and PBS did not pursue or receive additional discounts.

Management Comments

In its June 8, 2011, response to our draft memorandum, PBS explained that, "Another GSA Region provided the project team with a copy of a Request for Proposals (RFP) using the same MAS [Multiple Award Schedule] to procure similar materials and services. Upon review of that RFP and the MAS, we determined that the MAS applied to this requirement, posted an advertisement in the Federal Business Opportunities (FBO), and subsequently awarded a task order."

Office of Inspector General Response

As stated above, the schedule was improper for this procurement. Management's comments do not add clarity regarding the finding. The comments do not address the issues outlined in the audit finding and do not provide support for the use of the contract.

No Price Reasonableness Determination for Recovery Act Work

The price reasonableness determination in the Price Negotiation Memorandum (PNM) was deficient. The PNM is required to include documentation of fair and reasonable pricing. However, there was no justification for price reasonableness for the Recovery

⁷The Brooks Act (Public Law 92-582) limits the architect's fee to six percent of the estimated construction cost.

⁸ FAR 8.405-1(d).

Act-funded Option 4, which called for the installation of a cool roof on the West Building of the Forrestal Complex. Although both the West and South Building roofs were included in the scope of work and request for quote, the PNM only contained discussion of the prices for the base work to the South Building of the Forrestal Complex. The work to the West Building was disregarded in the PNM, regardless of the fact that the modification for the West Building cool roof was effective six days after the original task order and comprised more than 33 percent of the entire project value.

Management Comments

PBS's response stated that, "The contract file (Tab 15) contains the record of negotiations and a review of the technical and price proposals submitted in response to the RFP. Part of that memo identifies the price proposals in lump sum amounts, which were evaluated after the technical reviews and included the base bid for the South roof and the option price for the West roof."

Office of Inspector General Response

As stated above, the West Roof was not included in the record of negotiations or its price reasonableness determination. After receiving management's comments, we requested and obtained the document referred to in the comments. The record of negotiations does not change the finding as it does not refer to the pricing or negotiations for the West roof. The record of negotiations in the contract file had been reviewed previously and only provided information regarding the procurement of the South Roof.

Acquisition Plan Not Completed Prior to Publicizing Opportunity

The Acquisition Plan for this procurement was not completed before the project was advertised in FBO. The purpose of this planning is to ensure that the Government meets its needs in the most effective, economical, and timely manner. Additionally, the Acquisition Plan considers the contract type selection. In this case, the contract was advertised in FBO before the completion of the Acquisition Plan. Therefore, we cannot be sure that adequate planning occurred before the solicitation was publicized.

Management Comments

PBS noted in its response, "The pre-solicitation notice was published in FBO on June 15, 2010; the Acquisition Plan was completed on June 21, 2010; and, the RFP was issued on June 28, 2010. The Office of Regional Counsel advised the project team that we could issue the pre-solicitation notice before final completion of the Acquisition Plan, but not the RFP. The project team followed this guidance."

Office of Inspector General Response

After receiving management's comments, we contacted the Office of Regional Counsel to discuss the advice given to PBS. Counsel explained that there was no legal violation in posting the FBO pre-solicitation notice prior to completing the Acquisition Plan. Although not a legal violation, this process is not a best practice. Per FAR 7.105(b)(4)(i), contract type selection is an element of acquisition planning. The FBO pre-solicitation notice, posted two days before the earliest signature on the Acquisition Plan, stated that the requirement would be awarded to a schedule holder. For this project, complete acquisition planning prior to publicizing the requirement may have resulted in selection of a more appropriate contract vehicle.

Amendments Potentially Not Provided to All Interested Parties

We cannot conclude that all amendments to the solicitation were sent to all interested parties. None of the nine amendments were posted in FBO to notify the interested parties. Additionally, there was no documentation outside of FBO indicating that amendments six and nine were sent to all interested parties. In both of these cases, one interested party may not have received the amendment. FAR 14.208 requires that amendments be sent to every party that was sent an invitation to bid. Some of the parties invited to bid did not submit proposals, but it is unknown whether the possible lack of information was a factor in their lack of response.

Management Comments

PBS concurred in the audit finding.

IGE Not Signed by Preparer

The IGE for this award, though otherwise well documented, was not signed. In this case, the estimate worksheet did not include a signature line, which may have contributed to this oversight. GSA guidelines prescribe that IGEs be signed by a qualified government employee whose major responsibility is creating or approving cost estimates. The contracting officer uses the IGE to determine whether an offeror's proposed price is fair and reasonable and reflects an understanding of the project requirements. PBS took action to provide a signed IGE after the fact; however, the IGE should be signed prior to negotiations since it is used to establish prenegotiation objectives and/or used as the basis for commitment of funds before issuing the solicitation per FAR 15.406-1.

Management Comments

PBS concurred in the audit finding.

We appreciate the support that has been provided throughout this review. If you have any questions about this memorandum, please contact me at (202) 219-0088.

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Funded by the American Recovery and Reinvestment Act of 2009
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Regional Administrator (WA)

Regional Commissioner, Public Buildings Service (WP)

Regional Recovery Executive (WP)

Public Buildings Service Commissioner (P)

National Program Office Recovery Act Executive, Public Buildings Service (PCB)

Public Buildings Service Audit Liaison (PFF)

Assistant Inspector General for Auditing (JA)

Deputy Assistant Inspector General for Investigations (JI)