



U.S. GENERAL SERVICES ADMINISTRATION  
Office of Inspector General

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October 13, 2011

MEMORANDUM FOR ALLISON H. AZEVEDO  
REGIONAL COMMISSIONER, PBS  
GREAT LAKES REGION (5P)

FROM: ADAM GOOCH *Adam Gooch*  
REGIONAL INSPECTOR GENERAL FOR AUDITING  
GREAT LAKES REGION (JA-5)

SUBJECT: Award and Administration of Roof Replacement at the  
Federal Building, 536 S. Clark St., Chicago, IL  
Funded through the American Recovery and Reinvestment  
Act of 2009<sup>1</sup>  
Memorandum Number A090184-42

As part of our oversight of projects funded via the American Recovery and Reinvestment Act of 2009 (Recovery Act), we identified four areas of concern related to the award and administration of the subject task order. First, the project should not have been awarded under a Multiple Award Schedule (MAS) given the non-routine aspects of the project. Second, Public Buildings Service (PBS) personnel did not resolve the significant difference between bids and the Independent Government Estimate (IGE) prior to award. Third, several months after award, PBS issued a modification for over \$1 million, which could not be verified to the MAS price list. Finally, five subcontractors did not provide certified payroll records.

On July 24, 2009, the Great Lakes Region's PBS awarded a \$2,461,717 task order (GSP0509SI0362) to Tremco, Inc., of Beachwood, Ohio. The award was made under the Federal Acquisition Service's (FAS) MAS contract number GS-07F-8798D. The work was for a roof replacement at the Federal Building, 536 S. Clark St., Chicago, Illinois.

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<sup>1</sup> The American Reinvestment and Recovery Act of 2009 (Recovery Act) provides the General Services Administration (GSA) with \$5.55 billion for the Federal Buildings Fund. In accordance with the Recovery Act, the GSA Public Buildings Service (PBS) is using the funds to convert Federal buildings into High-Performance Green Buildings as well as to construct Federal buildings, courthouses, and land ports of entry. The Recovery Act mandates that \$5 billion of the funds must be obligated by September 30, 2010 and that the remaining funds be obligated by September 30, 2011. The GSA Office of Inspector General (OIG) is conducting oversight of the projects funded by the Recovery Act. One objective of this oversight is to determine if PBS is awarding and administering contracts for limited scope and small construction and modernization projects in accordance with prescribed criteria and Recovery Act mandates.

## **MAS not appropriate contracting vehicle**

Given the non-routine and complex nature of this roof replacement, it should not have been awarded under an MAS program contract.

In a 2003 memo, the Office of Federal Procurement Policy (OFPP) divided construction activity into two discrete categories: (1) new construction and complex alteration/repairs; and (2) routine alteration/repair and acquisition of construction materials and ancillary services. A project's particular requirements dictate which Federal Acquisition Regulation (FAR) covers its procurement. FAR Part 36 covers construction and Architect-Engineer contracts, and FAR Part 12, covers commercial items, such as purchased under the MAS program. OFPP indicated that FAR part 12 should "rarely, if ever, be used for new construction acquisitions or non-routine repair and alteration services."

This project's statement of work required the contractor to make a number of changes to the roof substructure and other building components prior to the new roof installation. These changes included removal/replacement and rerouting of roof drains and raising curbs and ductwork of various small mechanical items. In addition, the scope of work stated: "All design shall be per International Building Code (IBC), UL 1-90 uplift system, Chicago Building Code, Local Ordinances, or Zoning Requirements whichever has the most stringent requirements." The heightened requirements, along with the required changes and the physical layout of the roof, in particular, the presence of penthouses, and the large amount of equipment and conduit suggest a complex, non-routine project rather than a routine roof replacement/installation.

As OFPP explained, in supporting FAR 36 for construction: "Complex alteration and repair, in particular, involve[s] a high degree of variability, including innumerable combinations of site requirements, weather and physical conditions, labor availability, and schedules." The current coverage of the MAS program "fails to allocate risk in a manner that takes into account the nature of these activities." As shown above, the roof replacement is a non-routine, complex project involving design. Therefore, we believe the 536 S. Clark project fits the OFPP definition of FAR Part 36 projects (new construction and complex alteration/repairs) and should not have been awarded under the MAS program.

## **Independent Government Estimate (IGE)**

FAR 36.214 (b) (2) requires that "When a proposed price is significantly lower than the Government estimate, the contracting officer shall make sure both the offeror and the Government estimator completely understand the scope of the work. If negotiations reveal errors in the Government estimate, the estimate shall be corrected and the changes shall be documented in the contract file."

On July 16, 2009, the estimator sent the contracting officer an email with an IGE, totaling \$4,038,177, for this project. Four vendors submitted bids, three of which ranged from 20 to 39 percent below the original IGE amount. PBS awarded the task order to Tremco, the low bidder, for \$2,461,717, 39 percent below the IGE. The IGE provided \$200,000 for design work. This, in addition to the value of the post-award modification, may account for the difference between the award amount and the IGE. There was no evidence that PBS ensured that the scope of work in the Request for Quotation was sufficiently understood by all parties, nor that the contracting officer discussed the estimate with the offeror or the estimator.

### **Prices not supported by MAS**

Subsequent to the contract award, PBS issued a modification for over \$1 million. Because the modification only provided lump-sum prices, and did not identify open-market items, we were not able to verify the pricing to the contractor's GSA MAS price list. PBS therefore had no assurance that the proposed price was based upon the underlying schedule pricing, which had previously been determined to be fair and reasonable.

On December 15, 2009, PBS issued modification PC02, for \$1,045,194. The modification raised the total value of the order to \$3,506,911. The modification listed six items of work, including replacing three penthouse roofs, tuckpointing and repairing the parapet wall, and rerouting electrical conduit, but only lump sum prices for each of the six tasks. We requested assistance from the FAS Contracting Officer to help us determine if pricing on the modification could be traced to the underlying MAS contract's price list. She indicated that it would not be possible, given the lump-sum nature of the contractor's proposal. Because the price for the additional work cannot be traced to the price list and additional research was inconclusive, there is no assurance that the pricing for this modification is in accordance with the negotiated prices of the MAS contract.

In addition, the modification did not indicate whether these items of work were open-market items and did not refer to the offeror's MAS price list. According to FAR 8.402(f), open market items can be included on an MAS order only if they are clearly labeled on the order as not on the GSA contract, and the ordering activity's contracting officer has determined the prices for these items are fair and reasonable.

### **No payroll records for five subcontractors**

GSA did not receive payrolls from five of Tremco's subcontractors. The absence of required payroll documentation precludes the Government from properly assessing

what work the subcontract employees performed and whether the subcontractor employees were paid in accordance with the Davis-Bacon Act<sup>2</sup> wage determination.

The task order requires submission of weekly certified payroll records for all work performed, including work done by subcontractors, in accordance with FAR 52.222-8<sup>3</sup>. However, five of the eight subcontractors employed on the project (CBM Plumbing, Metal Works of Chicago, RAM Mechanical Services, Inc., Refrigeration Service Co., and Walcor Electric) submitted no payroll records to GSA. Also, we found no labor standards interviews in the file.

Our review concluded that these subcontractor employees were performing work subject to the Davis-Bacon Act wage determination found in the task order. Conclusion Had PBS obtained all certified payrolls, or performed labor standards interviews, it might have been able to evaluate whether the contractor paid the prevailing wage rates, a key requirement of the Davis-Bacon Act.

We appreciate the support that has been provided throughout this review. If you have any questions about this memorandum, please contact me at (312) 353-0500 or John Langeland at (312)-353-6691.

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<sup>2</sup> The Davis-Bacon Act as amended, requires that each contract over \$2,000 to which the United States or the District of Columbia is a party for the construction, alteration, or repair of public buildings or public works shall contain a clause setting forth the minimum wages to be paid to various classes of laborers and mechanics employed under the contract. Under the provisions of the Act, contractors or their subcontractors are to pay workers employed directly upon the site of the work no less than the locally prevailing wages and fringe benefits paid on projects of a similar character.

<sup>3</sup> Per FAR 52.222-8 (a), payrolls and related records are to be maintained by the contractor during the course of the work and preserved for 3 years thereafter for all laborers and mechanics working at the site of the work. These records shall include the name of each worker, classification, hourly rates of wages paid, daily and weekly number of hours worked, deductions made, and actual wages paid, among others. Further, according to FAR 52.222-8(b)(1), the prime contractor is responsible for the submission of copies of payrolls by all subcontractors.

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