

STATEMENT OF HON. BRIAN D. MILLER
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BEFORE THE HOUSE COMMITTEE ON TRANSPORTATION AND
INFRASTRUCTURE, SUBCOMMITTEE ON ECONOMIC DEVELOPMENT,
PUBLIC BUILDINGS, AND EMERGENCY MANAGEMENT



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Mr. Chairman, Ranking Member Norton, and distinguished members; I want to thank you for the opportunity to testify about my office's review of the modernization of the Richard H. Poff Building (Poff Building).

There are two key issues I would like to address today. The first is the General Services Administration's (GSA) award of a contract for construction services for the Poff Building without adequate price competition, in violation of the Competition in Contracting Act. The second is GSA's decision to proceed with building renovations before it had completed a cost benefit analysis. Without these safeguards, GSA cannot be certain it received a fair and reasonable price on behalf of the American taxpayer.

Lack of Price Competition

We issued an independent audit report on the renovation of the Poff Building on November 17, 2010, as part of our continuing oversight of GSA's American Recovery and Reinvestment Act (Recovery Act) projects. We found that GSA awarded the construction services contract for the Poff Building without adequate price competition. The Competition in Contracting Act generally requires that procurements be conducted using full and open competitive procedures. GSA violated this Act when it did not obtain price competition for the cost of construction services for the renovations to the Poff Building. Additionally, the construction cost was established using a budget estimate without an independent government estimate. Without these safeguards, GSA does not have assurance that a fair and reasonable price was achieved.

The contract was awarded using the Construction Manager as Constructor (CMc) methodology. Generally, this type of contract is initially awarded for design phase

services¹ at a firm fixed price with an option for construction phase services at a Guaranteed Maximum Price (GMP) that is established at contract award. The GMP acts as a ceiling price for the actual construction phase services. During the evaluation and selection process, before the award is made, the proposed GMP should be evaluated along with the pricing for the design services. By evaluating total pricing and the technical proposal, rather than considering only the cost of design phase services, the overall price is set based on competition.

However, GSA established a GMP of \$39 million in its Request for Proposals (RFP); GSA did not allow the contractors and the marketplace to set the maximum construction price. The ten bidders all had the same GMP that GSA had identified in the RFP. By establishing the GMP, GSA eliminated cost or price as an evaluation factor for the construction services option that constituted the vast majority of the contract price. In November 2009, GSA awarded the contract to a contractor whose technical proposal was in the competitive range and who had the lowest price for the design phase services. The cost for the design services, which was the only price competition, was \$225,000. GSA did not comply with the Competition in Contracting Act requirement, that federal agencies ensure fair and reasonable pricing by using full and open competition, when it exercised the construction option without obtaining price competition. In short, a contractor need only be competitively priced on a \$225,000 option to win a contract in excess of \$40 million.²

Further, the GMP of \$39 million had limited support, as it was based on an internal budget estimate rather than an independent government estimate as required by the Federal Acquisition Regulation.

GSA has little assurance that fair and reasonable pricing was achieved because its actions did not comport with either the Federal Acquisition Regulation or the Competition in Contracting Act.

Including the Poff modernization project, my office has reported on six Recovery Act projects using the CMc methodology.³ The awarded construction costs for these projects totals over \$464.8 million. In each case, the construction price lacked price competition and was either set by GSA or through sole-source negotiation with the CMc contractor. In each case, the Competition in Contracting Act was violated. My office has recommended that GSA institute a system of management controls to ensure that contracts using the CMc methodology meet competition requirements.

In response, GSA has developed a corrective action plan. The plan includes standardizing the CMc methodology, issuing guidance and providing training to GSA

¹ Design phase services include activities such as ensuring the design complies with applicable regulations, codes, and standards, as well as ensuring the constructability of the design.

² The value of the contract option for construction services, when exercised, was \$39.9 million.

³ The six projects are the Austin U.S. Courthouse, 50 United Nations Plaza, Poff Federal Building, Huntington Federal Building, Edith Green-Wyndell Wyatt Federal Building, and Peace Arch U.S. Land Port of Entry.

project and contracting staff, and having CMc procurements reviewed on an annual basis. GSA has begun to implement these corrective actions by issuing a standard contract template and guidance for CMc contracts; however, the other steps are still in process.

Cost Benefit Analysis Done After the Award

We also did a limited review in response to a July 2010 letter from Congressman Goodlatte. During that review, we identified the following chronology of events, which showed that GSA did not do a cost benefit analysis until after it had awarded the contract.

July 2009	Request for Proposals issued
November 2009	Contract awarded
March 2010 ⁴	Cost benefit analysis conducted

Normally, a cost benefit analysis that compares the cost of various alternatives (such as new construction and renovation) is performed as part of project planning along with an analysis of how each alternative addresses the tenants' housing needs. Both GSA and Veterans Administration (VA) officials advised the Office of Inspector General that the VA (the primary tenant) will continue to need the building. According to GSA project staff, the cost benefit analysis was not done earlier because constructing a new building was not considered to be a viable option, as one of the tenants, the U.S. District Court, would require a new courthouse that was not on the Judiciary's five-year construction plan.

We further noted that normally such a cost benefit analysis would be required in order to obtain prospectus approval, which would have allowed the appropriate Congressional committee to review the project's merits in order for it to be funded. However, since this project was funded under the Recovery Act, GSA only had to provide a spending plan to Congress, and GSA did not have to go through the prospectus approval process. This project was on the spending plan at \$50,968,000, which was the estimated cost for design, management and inspection, and construction. The spending plan did not include such costs as temporary leased space to house tenants during renovations or security enhancements. GSA has exceeded the reported estimated Recovery Act amount. As of April 6, 2011, the contract amounts reported in the Federal Procurement Data System - Next Generation for the Poff Building totaled \$52,325,608 as follows:

- o \$6,510,196 for Design
- o \$3,320,883 for Management & Inspection
- o \$42,476,250 for Construction
- o \$18,279 for Historic Preservation

⁴ GSA conducted another cost benefit analysis on September 7, 2010.

Conclusion

In summary, GSA did not follow the safeguards for demonstrating and ensuring that projects are financially prudent. GSA did not perform a cost benefit analysis until after the contract was awarded. GSA did not use an independent government estimate to establish a target price for the construction services, which constituted the vast majority of the contract. Finally, GSA set the cost of construction services, rather than establishing that cost through competition. Because GSA did not comply with these safeguards, we do not have assurance that this project did not cost the taxpayer too much.