



U.S. GENERAL SERVICES ADMINISTRATION  
Office of Inspector General

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February 9, 2011

MEMORANDUM FOR ROBIN GRAF  
REGIONAL COMMISSIONER, PBS  
NORTHWEST/ARCTIC REGION (10P)

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

SUBJECT Administration of Contracts for Construction Services in  
Support of the American Recovery and Reinvestment Act of  
2009<sup>1</sup> at the James A. McClure Federal Building and U.S.  
Courthouse, Boise, ID  
Audit Memorandum Number A090184-01

Task order number GS-P-10-10-LT-5047, awarded to Northwest Technologies, Inc. (NWT) on March 11, 2010, in the amount of \$660,667 for various construction services at the James A. McClure Federal Building and U.S. Courthouse in Boise, Idaho was improperly administered; specifically it (1) included scope reductions and substitutions that were not ratified by a GSA contracting officer; (2) did not comply with Buy American provisions; and (3) failed to require payment of prevailing wages.

Additionally, a separate \$60,340 task order related to construction management services for the project was not properly priced. We also reviewed contractor employee background investigations for two ARRA construction task orders performed at the subject facility and could not determine the security status of seven (7) subcontractor employees.

The PBS Commissioner, Northwest/Arctic Region, submitted a formal response to our audit memorandum. We have incorporated his position into the final memorandum.

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<sup>1</sup>The American Recovery and Reinvestment Act of 2009 (Recovery Act) provides the General Services Administration (GSA) with \$5.5 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.

## Scope reductions and substitutions

The task order was changed when two contract line item numbers (CLINs) with a combined value of over \$369,000 were either not undertaken or were completely changed. These changes constituted cardinal changes to this ARRA-funded construction project, representing nearly 56 percent of the task order's value. However, they were not ratified by a GSA contracting officer and no effort was made to re-advertise the revised scope of work. This occurred due to the absence of detailed design documents, the use of a procurement vehicle designed for remodeling office space, not replacing components of building systems and ineffective oversight by the contracting officer. Consequently:

- 1) the work performed did not conform to the requirements stated in the statement of work (SOW); and
- 2) price distortions may have occurred because significant changes were made in a non-competitive environment.

Specifically, changes to CLINs one and four of the task order are in question.

CLIN number one, a lighting upgrade priced around \$71,000, was not undertaken because the contractor could not find appropriate fixtures that would produce the required amount of light and energy savings. However, the requirement was not deleted from the SOW. GSA paid \$1,785 for the work that was done on this CLIN and may be exposed to claims for additional costs the contractor could have incurred.

CLIN number four, valued at over \$297,000, called for providing window tint on several floors (around 750 windows) and motorized roll-down screens on the ground level. Despite the stated SOW requirements, PBS did not decide what work would actually be done until well after award. On May 6, 2010, PBS changed the requirements and substituted window shade panels affixed with Velcro on the ground level only. The approximately 1,000 square foot shade system is completely non-mechanical.

NWT was paid \$24,929<sup>2</sup> for the installation of the shade panels, which it subcontracted out at a cost of \$13,533. The prime contractor's 94 percent mark-up is an example of price distortion that can occur when changes are made in a non-competitive environment.

CLIN number four was effectively, but not officially, changed; PBS "reapplied" the balance of the CLIN's value (around \$247,364)<sup>3</sup> to cover the new fixed window shades, additions to existing CLINs, and new items like "conversion of exhausted air", valued at

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<sup>2</sup> The price quoted by NWT was \$26,240.76; there is \$1,311.76 balance to finish.

<sup>3</sup> PBS may be liable for claims on the general requirements portion of CLIN four, for items like mobilization and project management.

around \$148,880. In total, at the time of our review, NWT had been paid \$41,975 to perform these unauthorized services.<sup>4</sup>



Window Shades in the McClure Federal Building and Courthouse

The PBS Commissioner Northwest/Arctic Region, in his response to our draft memorandum, disagreed with our contention that the use of the wrong contract vehicle was a contributing cause of the scope changes and substitutions that occurred. He stated that a determination had been made by the project team to use the Multiple Award Task Order Contract (MATOC) because it included mechanical, electrical, and plumbing systems, as well as, architectural alteration and new construction.

The underlying MATOC does mention “repairs” as one of the services to be provided. A repair may result in the replacement of a component of a system. Replacement of components was part of the task order’s scope of work. We concur, therefore, with the Regional Commissioner’s position that the MATOC was an appropriate contract vehicle to employ.

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<sup>4</sup> The basis for our statements about contractor payments is NWT invoice number 1031B-2 for work performed through August 31, 2010; the signed construction progress report; the associated schedule of values; and a review of payments made to NWT in Pegasys.

The Regional Commissioner agreed that the window shading and lighting upgrade changes amounted to a cardinal change to the contract. The Commissioner did not contest the audit memorandum's basic premise: the prime contractor was paid \$41,975 for work that was not formally ratified by the contracting officer.

### **Electric motors not compliant with Buy American Act**

During our review, we inspected two large electric motors purchased for the project. The data plate affixed to one of the motors indicated that it was "Made in Brazil" by a company named WEG. In response to our inquiries, NWT provided us with information showing that the WEG Electric Corporation had "its main plants in Brazil."

Federal Acquisition Regulation (FAR) 52.225-21 (Required Use of American Iron, Steel, and Manufactured Goods-Buy American Act-Construction Materials) applies to this acquisition.<sup>5</sup> The clause implements section 1605 of the Recovery Act by requiring, unless an exception applies, that all manufactured construction material in the project is manufactured in the United States. The contracting officer did not provide exceptions. Therefore, furnishing and installing the WEG motors is in opposition to the intent of the ARRA.

The Regional PBS Commissioner responded that he directed the contracting officer to have the contractor replace the motors to comply with the Buy American Act.

### **Construction manager services proposal not priced correctly**

On March 4, 2010, Hill International, Inc. (Hill) was awarded task order number GS-P-10-10-LT-0015 (off of its Multiple Award Schedule (MAS) contract number GS-23F-0035P) for Construction Manager Assist and Commissioning Management Services at the project.

Hill did not price its proposal correctly. FAR 52.216-18b states that all delivery orders or task orders are subject to the terms and conditions of the contract. In the event of conflict between a delivery order or task order and the contract, the contract shall control. Regulation I-FSS-600(b) requires that the contractor prepare and distribute a schedule price list using the pricing information accepted by the Government.<sup>6</sup>

Hill's contract includes a schedule price list, consisting of labor classifications and their fully burdened hourly rates. Hill did not adhere to the price list in preparing its proposal.

In this case, Hill provided the contracting officer a lump sum quote of \$60,439 stating that this price was based on an employee's salary burdened with an overhead multiplier of two (potentially a 200 percent overhead rate) and ten percent profit applied to the

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<sup>5</sup> FAR 52.225-22, which deals with requests for determinations of inapplicability, also applies.

<sup>6</sup> The cited clauses are included in the governing professional engineering services solicitation in their entirety or by reference.

total of the salary plus overhead. The submitted proposal was not an adequate basis for determining price reasonableness. Therefore, the contracting officer should not have awarded this task order.

In addition, the invoices submitted by Hill do not comply with the terms and conditions of its contract. Hill's contract incorporates FAR 52.212-4 by reference which requires that invoices include a description, quantity, unit of measure, unit price, and extended price of the items delivered. We reviewed two Hill invoices dated August 12, 2010 and September 10, 2010, respectively. The invoices were for a lump sum amount accompanied by the notation "Professional Services" for the given month.

The Regional PBS Commissioner noted in his response to the draft memorandum that the final revised proposal was not provided to the auditor. Our records indicate that we were provided with two proposals (the original and a revision, which was called a final revision) and were told that we had all proposal revisions. We note that the contractor did not submit invoices in accordance with terms and conditions of the contract. The Regional Commissioner did not address this issue.

### **Employees paid below prevailing wage**

Four employees listed as Pipefitter Plumber were paid wages below the Department of Labor wage determination for Ada County<sup>7</sup> in violation of the Davis-Bacon Act. All four employees worked for the same subcontractor. Most payrolls, for weeks in which work was performed by the subcontractor, listed one or more of these employees as earning less than the prevailing wage. This indicates a lack of contract administration by the contracting officer and denies these workers monies due them while working on a Federally-funded construction project.

The PBS Regional Commissioner responded to our draft memorandum that the contractor provided documentation indicating that the difference between the paid rate and the prevailing wage could be accounted for in a contribution to a local pension fund. The contracting officer will issue a clarification letter to the contractor requesting that the contractor direct the subcontract firm to resubmit corrected copies of the certified payrolls including the supplemental contributions. GSA will then make a determination as to the subcontractor's compliance.

### **Security status unknown for several subcontractor employees**

We reviewed the background investigations for all contractor and subcontractor employees associated with ARRA construction projects at the subject building.<sup>8</sup> We could not determine the security status for seven subcontractor employees. Two of the

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<sup>7</sup> Boise is located in Ada County.

<sup>8</sup> A second task order from an Eastern Service Center IDIQ for general construction services existed; this was task order number GS-P-10-10-LT-5030, issued to C-2 Construction, Inc. The seven subcontractor employees noted were covered by this order.

employees appear on the certified payrolls on multiple weeks and five of the employees appear on the certified payrolls for one week. In accordance with Region 10 policy, term of employment and the employee's work area determines the type of background investigation required. Generally, contract employees requiring access to Federally-controlled space for more than 10 days require a law enforcement check, at a minimum, for unescorted access to non-public space. Background checks on repair and alteration projects are not required if the contract employees can be segregated from tenant-occupied areas of the building and have separate entrances/exits.<sup>9</sup>

The subject employees do not appear on the Building Security Clearance Roster maintained by the building manager. The Regional Security Manager for Region 10 also had no record of a clearance for the employees. We concluded that no security records existed for these employees. If contract employees are allowed to work on a project without a record of personal identity verification or security status, it places the building, its occupants, and the public at risk.

The PBS Regional Commissioner responded that he determined that, of the seven employees in question, five employees worked completely outside of the building and two short-term employees were provided fully-adjudicated escorts. We agree with the Commissioner's interpretation of regional policy, which we concluded was compliant with HSPD-12 and ARRA. At the time of our on-site review in Boise, we could not determine the security status of the seven employees based on available records.

If you have any questions about this memorandum, please contact Audit Manager John Langeland at 312-353-6691 or me at 312-353-0500.

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<sup>9</sup> The security policy guidance referenced and provided to ARRA contractors is the Security Clearance Desk Guide; U.S. General Services Administration; Northwest/Arctic Region (ARRA Contractors).

## **Distribution List**

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