U.S. GENERAL SERVICES ADMINISTRATION
Office of Inspector General

October 27, 2011

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

R. Nicholas Goco

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

SUBJECT: Recovery Act Memorandum—Design/Build Services for the Winder Building
Review of PBS's Limited Scope and Small Construction Projects Funded by the American Recovery and Reinvestment Act of 2009
Audit Number A090184-47/P/R

As part of our oversight of the National Capital Region's limited scope and small construction American Recovery and Reinvestment Act[1] (Recovery Act) projects, we reviewed the contract award for the design/build services[2] for the Winder Building in the amount of $7,836,966, including options. 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).

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

1. The contracting officer could not rely on the independent government estimate (IGE) due to the significant difference between the IGE and award amount;
2. PBS failed to retain critical documentation in the project's contract file;

[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 are 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] Contract number GS-11P-10-NW-C-0135 for lighting; heating, ventilation, and air conditioning; and high-performance building tune-up.

3. An incomplete assessment of the base and five energy conservation measures (ECMs) circumvented management controls established to ensure ECMs meet greening strategy goals; and
4. The acquisition plan was not approved at the appropriate level.

In addition to these issues, we would also like to bring a future concern to your attention:

5. PBS has indicated that if options are exercised in the future, it may use renegotiated prices, rather than using the awarded firm-fixed price.

The Contracting Officer Could Not Rely on the IGE Due to the Significant Difference Between the IGE and Award Amount

Contracting officers use IGEs to determine whether an offeror's proposed price is fair and reasonable and reflects an understanding of the project requirements. A significant difference between the IGE referenced in the Price Negotiation Memorandum (PNM)[3] and the overall bid calls into question the accuracy of the IGE and/or the reasonableness of the proposed price.

In this case, the $5,135,880 IGE was 53 percent lower than the award amount of $7,836,966, including options. As a result, the contracting officer could not rely on the IGE as a tool for assuring price reasonableness. Since the price reasonableness determination was based in part on FAR 15.404-1(b)(2)(v), *Comparison of proposed prices with independent Government cost estimates*, the variance between the IGE and successful offer should have been further analyzed.

<u>Management Comments</u>

In its September 29, 2011, response to our draft memorandum, PBS explained that price competition established a fair and reasonable price. PBS stated that, "While the Price Negotiation Memorandum (PNM) notes that both techniques were conducted, the lower IGE does not undermine the conclusion that pricing was deemed reasonable on the basis of the proposed prices submitted by the offers."

<u>Office of Inspector General Response</u>

We do not take exception to the fact that PBS used price competition to establish a fair and reasonable price. However, the PNM states that PBS also based price reasonableness on a comparison with the IGE. The large variance between the IGE and successful offer indicates that the IGE, as a management control in the

[3] There was a detailed IGE created for this project, which included markups for subcontract commission and bond premiums. The PNM referenced amounts from this IGE, but excluded the markups for subcontract commission and bond premiums. For our purposes, we are referring to the IGE amount without markups, because this was relied upon by PBS, as evidenced by its inclusion in the PNM.

procurement process, could not be relied on and management should be concerned with this on this and future procurements.

Inadequate Contract File Documentation

During our review of this project, PBS was unable to locate a complete Technical Evaluation Board (Board) report. FAR 4.8 requires documentation providing a complete background of the contract to be maintained in the contract file. FAR 4.803(a)(13) specifically requires inclusion of source selection documentation in the contract file. The Board report represents source selection documentation and without its inclusion in the contract file, the contract history is unclear.

Management Comments

PBS concurred in the audit finding.

Energy Conservation Measures Not Approved by Program Management Office

The Winder Building design/build services project includes the base and 17 potential ECMs valued at $7,836,966. The base and 5 ECMs listed below, which make up 90 percent of the award total, were not vetted through the proper approval process:

- Base bid, new fan coil units and four pipe conversion, for $6,100,000;
- ECM 2, paint undisturbed walls and ceiling in offices, for $50,000;
- ECM 3, replace office suite carpeting, for $85,000;
- ECM 4, air handler unit replacement and associated duct modifications, for $500,000;
- ECM 5, lighting control upgrades, for $85,000; and
- ECM 6, lighting fixture upgrades, for $200,000.

The proper process to approve an ECM begins with the creation of an energy study that identifies estimated savings and payback for ECMs. This information would then be incorporated in the Limited Scope Approval Request (LSAR), which is reviewed by the National Recovery Program Management Office (PMO). While energy studies were performed for the base, which at the time included ECMs 1 through 6, none of these items were incorporated into an LSAR or reviewed by the PMO. ECM 8 and ECM 14 were also reviewed by energy studies, and were included on an LSAR. However, these two ECMs were not recommended by the LSAR. This lack of LSAR review and approval circumvents the management controls established to ensure that PBS only awards energy measures that meet GSA’s greening strategy goals. All line items on the Standard Form 1442 award document have the potential to be awarded and should therefore be reviewed centrally.

Management Comments

PBS provided comments on an item by item basis as shown below:

- Base bid—PBS stated that the base ECM was approved via discussions between the PMO and Regional Recovery Executive before the LSAR was developed as an approval vehicle.
- ECM 1—PBS provided additional information supporting the approval of ECM 1.
- ECM 2—PBS concurred in the audit finding.
- ECM 3—PBS concurred in the audit finding.
- ECM 4—PBS stated that this ECM was approved in the initial LSAR.
- ECM 5—PBS explained that ECM 5 was included in the award document "in case there was financial merit in pursuing this energy conservation measure with PMO approval—thereby eliminating a future modification to the contract. As it turns out, ECM 5 was not financially viable, taken out of the SOW, and therefore was not awarded."
- ECM 6— PBS explained that ECM 6 was included in the award document "in case there was financial merit in pursuing this energy conservation measure with PMO approval—thereby eliminating a future modification to the contract. As it turns out, ECM 6 was not financially viable, taken out of the SOW, and therefore was not awarded."
- ECM 8—PBS provided a revised LSAR supporting the approval of ECM 8.
- ECM 14—PBS provided a revised LSAR supporting the approval of ECM 14.

Office of Inspector General Response

The following is our assessment of management comments:

- Base bid—Once the LSAR was established as the approval vehicle for ARRA ECMs, this base ECM should have been included.
- ECM 1—We removed the audit finding based on additional information provided by PBS.
- ECM 4—We disagree that the initial LSAR included approval for ECM 4 and find it without PMO approval.
- ECM 5—We disagree; ECM 5 was awarded when it was included as an option on the Standard Form 1442. Although the option was not exercised, it should not have been awarded unless approved in the LSAR.
- ECM 6—We disagree; ECM 6 was awarded when it was included as an option on the Standard Form 1442. Although the option was not exercised, it should not have been awarded unless approved in the LSAR.
- ECM 8—We removed the audit finding based on additional information provided by PBS.
- ECM 14—We removed the audit finding based on additional information provided by PBS.

Acquisition Plan Not Properly Approved

The acquisition plan for this procurement was not approved at the appropriate level.

The purpose of acquisition planning is to ensure that the Government meets its needs in the most effective, economical, and timely manner. According to GSA Acquisition Letter V-09-01, acquisition plans for projects with dollar amounts over $5.5 million to, and including $20 million, should be approved by the contracting director. The acquisition plan for this project was not approved by an individual at or above the level of contracting director.

Management Comments

PBS concurred in the audit finding.

Potential Issue for Contract Administration: Exercise of Options at Renegotiated Prices

A member of the project team indicated that optional line items may be exercised in the future at renegotiated prices that could be significantly higher than those originally awarded. The winning bidder is attempting to renegotiate prices for options because there is a clause in the Agreement stating, "Unless otherwise specified, all options may be exercised within 120 days of Contract award." We do not agree that this clause is a limitation on when an option could be exercised or a statement regarding option pricing. It is our position that the options should not be exercised at prices different from the firm-fixed price awarded. We consider the 120-day clause in the Agreement to be simply a notification to the contractor that all options could be exercised in the short term. Numerous clauses within the Agreement, SF1442 award document, and contractor's revised price proposal specify that the option prices may be exercised and include no timeframe limitation.

Additionally, if PBS is considering the option pricing to be void after 120 days, a new procurement, rather than renegotiation, would be necessary to establish line item pricing and to preclude a sole source procurement. At the time of our review, no options were exercised. Nevertheless, PBS should be aware of the possibility that an issue will arise in the future if these options are exercised at renegotiated prices.

Management Comments

PBS understands the concerns raised and will take this issue under advisement.

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.

Recovery Act Memorandum—
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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)

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