

GENERAL SERVICES ADMINISTRATION OFFICE OF INSPECTOR GENERAL

**Recovery Act Report –
GT “Mickey” Leland Federal Building Renovation
Project: Construction Contract
Audit of PBS’s Major Construction and Modernization
Projects Funded by the American Recovery and
Reinvestment Act of 2009
Audit Number A090172/P/R/R11013**

August 19, 2011





U.S. GENERAL SERVICES ADMINISTRATION
Office of Inspector General

Date: August 19, 2011

Reply to: R. Nicholas Goco
Attn of: Deputy Assistant Inspector General
for Real Property Audits (JA-R)

Subject: Recovery Act Report – GT “Mickey” Leland Federal Building
Renovation Project: Construction Contract
Audit of PBS’s Major Construction and Modernization Projects Funded by
The American Recovery and Reinvestment Act of 2009
Audit Number A090172

To: Robert A. Peck
Commissioner, Public Buildings Service (P)

During our audit of the construction contract for the GT “Mickey” Leland Federal Building (Leland) renovation project¹ we identified an issue that warrants your attention. PBS awarded the contract using a statement of work template that incorporated a pricing structure not intended for the project delivery method used.

The construction contract for the Leland project was awarded as a Design Build with Bridging (DBB) contract. This type of contract is a fusion of traditional and design build project delivery methods, whereby PBS produces limited drawings (bridging documents) and the DBB firm finalizes the design. The DBB firm then constructs the project. DBB contracts are generally awarded at a firm-fixed price for both the design and construction services.

PBS awarded the Leland project using the Guaranteed Maximum Price² (GMP) with a shared savings incentive³ for the construction delivery phase of the contract template. This pricing structure was not intended for use with the DBB project delivery methodology; it was developed by PBS for use in Construction Manager as Constructor (CMc) contracts. PBS has acknowledged this distinction, and removed the GMP template from its website. However, the contracting officer for the Leland project had already obtained a copy from the Office of Design and Construction website and used it, believing she was acting in accordance with the policy for design build bridging.

¹ We conducted this audit as part of our oversight of the General Services Administration’s American Recovery and Reinvestment Act projects.

² GMP includes the estimated cost of construction, construction contingency allowance, and fixed fee. It is the maximum amount the Government will pay for construction and is set at the time of contract award.

³ If the actual cost of performance agreed to between PBS and the contractor (sum of the cost of work and fee) was less than the GMP set forth in the contract, the contractor would be awarded 50 percent of the difference as its share of the savings.

While GMP pricing may be legally permissible for DBB contracts, there are several key differences between CMc and DBB contracts that make this pricing structure inappropriate for the DBB delivery method.

- ***Design Responsibility*** - In the CMc delivery method, a separate firm develops the project design. The CMc contractor is hired to provide design-related services,⁴ but is not responsible for actual project design. Since contract award is made before design documents are completed, construction phase services are included as a contract option with an adjustable price based on actual costs incurred. The GMP is established to set a ceiling price for the construction phase.

In DBB contracts, the same firm is responsible for both design and construction. Since this responsibility rests with a single entity, DBB contractors have greater control over the project. Due to this clearer responsibility, these contracts can be awarded at an enforceable fixed price. Hence, a GMP ceiling price is not necessary in a DBB contract.

- ***Contingency Allowance*** - Since errors by the design firm may result in increased construction costs, CMc contracts include a construction contingency allowance as part of the GMP. The GMP is adjusted for changes related to design errors, omissions, and constructability only after the contingency allowance is exhausted. This shifts the financial risk to the CMc contractor.

In contrast, DBB contracts are awarded at fixed prices with no contingency allowance. These firms are responsible for project design and, therefore, design errors. PBS should not provide a contingency allowance to compensate the DBB contractor for cost increases resulting from its own design errors.

- ***Reliance on Contractor Records*** - Since DBB contracts are generally priced on a competitively bid fixed price basis, they do not call for Cost Accounting Standards (CAS) audits. CMc contracts include a clause requiring CAS audits because PBS must be able to rely on the contractor's financial records to determine actual project costs and calculate shared savings. Additionally, Public Law 100-679 (41 U.S.C. 422) requires that nonexempt contracts⁵ exceeding \$50 million fully comply with CAS.

In this instance, the contract was awarded for \$77.3 million but did not include a CAS clause. Since the contract value exceeds \$50 million and is nonexempt, a CAS audit should have been required. Subsequent to our audit of this contract and our discussions with PBS, the Greater Southwest Region issued a modification to incorporate CAS clauses.

⁴ Design phase services include providing the design concept and design development submissions, providing the cost estimate and budget breakdowns, conducting design workshops and team meetings, and developing the construction work sequencing.

⁵ The Federal Acquisition Regulation exempts contracts from CAS if they are fixed price contracts for which the reliability of a contractor's accounting systems is not expected to affect the determination of a contractor's compensation.

Since the Leland contract used a pricing structure not intended for DBB contracts, PBS should audit this contract to ensure that it meets all legal requirements and accounts for any potential business risk.

Recommendations

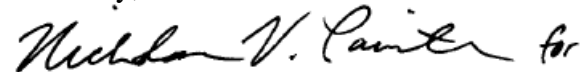
We recommend that the Commissioner of the Public Buildings Service review the Leland contract award to identify any further contract deficiencies and mitigate the risks that the Government has assumed by awarding this contract using an inappropriate statement of work template.

Management Comments

In its response to the draft report, PBS concurred with the OIG findings and accepted the report recommendation. PBS's response is included in its entirety as Attachment A to this report.

We appreciate the support provided to us throughout this audit. If you have any questions about this report, please contact me at (202) 219-0088.

Sincerely,



R. Nicholas Goco
Deputy Assistant Inspector General for Real Property Audits (JA-R)

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Management Comments



GSA Greater Southwest Region

August 2, 2011

MEMORANDUM FOR: R. NICHOLAS GOCO
DEPUTY ASSISTANT INSPECTOR GENERAL FOR
REAL PROPERTY AUDITS (JA-R)

FROM: ROBERT PECK *Peck*
COMMISSIONER
PUBLIC BUILDINGS SERVICE (P)

THRU: *J. Weller*
JIM WELLER *J. Weller*
REGIONAL COMMISSIONER
PUBLIC BUILDINGS SERVICE (7P)

SUBJECT: REVIEW OF THE GREATER SOUTHWEST REGION
PUBLIC BUILDINGS SERVICE PROCUREMENT OF
GT “MICKEY” LELAND FEDERAL BUILDING
RENOVATION PROJECT FUNDED BY THE AMERICAN
RECOVERY AND REINVESTMENT ACT OF 2009

AUDIT NUMBER A090172

The Public Buildings Service (PBS) appreciates the opportunity to review and comment on the subject draft audit report. The report recommends PBS audit this contract to ensure it meets all legal requirements and accounts for any potential business risks. In addition, the report recommended the Commissioner of PBS review the award to identify any further contract deficiencies and mitigate the risks the Government has assumed by awarding the contract using an inappropriate statement of work template.

In response to the aforementioned, the Greater Southwest Region requested an Inspector General (OIG, JA-7) audit, on July 21, 2011 (attached), for the conversion of the Guaranteed Maximum Price (GMP) contract to a Firm-Fixed Price contract. The Greater Southwest Region will also request an OIG audit for the award of the contract to identify any further contract deficiencies. Additionally, PBS has issued a Design/Build (D/B) solicitation and agreement template to ensure future D/B contracts are awarded in accordance with applicable requirements. The templates were made mandatory after the award of the subject contract on May 7, 2010, and can be found at the website <http://insite.pbs.gsa.gov/pbsacqpolicy>. These actions are being accomplished in accordance with the draft audit report recommendation.

U.S. General Services Administration
819 Taylor Street
Fort Worth, TX 76102-5185
www.gsa.gov

Thank you for your assistance. If you have any questions regarding this matter, you may contact Dianna Henderson, Acting, Acquisition Management Division Director, at 817.978.2260.

Attachment



July 21, 2011

MEMORANDUM FOR RODNEY J. HANSEN
GENERAL SERVICES ADMINISTRATION
OFFICE OF AUDITS (JA-7)

FROM: DIANNA L. HENDERSON *Dianna L. Henderson*
ACTING DIRECTOR
ACQUISITION MANAGEMENT DIVISION (7PQ)

SUBJECT: Contract Conversion Audit for ARRA Contract No.
GS-07P-09-UY-C-0008, Design/Build Bridging Renovations,
Leland Federal Building, Houston, TX

Your office is requested to perform an audit for the conversion of the above referenced contract, from Guaranteed Maximum Price (GMP) to Firm-Fixed Price (FFP). This memo is also to inform you the Office of Audits in Region 9 (JA-9) is performing the Cost Accounting Standards audit for this same contract. Please notify the Contracting Officer, Carrie Haman, of the date you anticipate commencing the audit. You may reach her at 817-978-6163 or carrie.haman@gsa.gov.

If you have any questions, please do not hesitate to contact me at 817-978-2260.

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Background, Objective, Scope, and Methodology

Background

The American Recovery and Reinvestment 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 mandated that \$5 billion of the funds 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.

The Leland Federal Building renovation project existed prior to the Recovery Act. Design funding was provided in fiscal year 2006. However, as a result of the Recovery Act, the design and construction of the Leland Federal Building renovation was changed from a Construction Manager as Constructor delivery project to a Design Build delivery project. The renovation project includes replacement of the building’s window system, heating/ventilation/air conditioning modernization, as well as upgrades to the building lobby, plaza, and garage. PBS awarded the design build construction contract on March 30, 2010, for \$77.3 million.

Objective

The objective of the OIG’s Recovery Act oversight is to determine if PBS is planning, awarding, and administering contracts for major construction and modernization projects in accordance with prescribed criteria and Recovery Act mandates.

Scope and Methodology

To accomplish this objective we conducted fieldwork in the Greater Southwest Region, reviewed the contract file and other pertinent project documents, met with project staff, and reviewed applicable guidance and regulations. The work for this report was performed between February 2011 and May 2011 while evaluating the award for the construction of the Leland Federal Building project in Houston, Texas.

We conducted this performance audit in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions

based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

The planning for this audit is based on the audit plan for oversight of the Recovery Act projects as well as audit guidance being applied to all Recovery Act projects. A separate audit guide was not prepared for this project.

As this work was performed under the continuing oversight of all GSA Recovery Act projects, management controls are currently under assessment. Only those management controls discussed in the report have been assessed.

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Report Distribution

Commissioner, Public Buildings Service (P)

Regional Commissioner, Public Buildings Service (9P)

Director, Internal Control and Audit Division (BEI)

Assistant Inspector General for Auditing (JA, JAO)

Special Agent in Charge (JI-9)

Regional Inspector General for Audits (JA-9)

Assistant Inspector General for Investigations (JI)