U.S. GENERAL SERVICES ADMINISTRATION
Office of Inspector General

March 16, 2011

MEMORANDUM FOR: JIM WELLER
REGIONAL COMMISSIONER, PBS
GREATER SOUTHWEST REGION (7P)

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

SUBJECT: Procurement of Window Replacement for the Boulder Federal Building (Tulsa, Oklahoma) — a PBS Limited Scope Construction Project Funded by the American Recovery and Reinvestment Act (ARRA) of 2009[1]
Audit Memorandum Number A090184-14

Our review of the subject contract identified two areas of concern related to the procurement process which we believe should be brought to your attention. First, the contract was a sole source award, which is contrary to the Recovery Act's mandate of favoring competition. Second, the project was delayed, a problem which the independent oversight normally provided by a Construction Manager (CM) could possibly have mitigated.

On July 27, 2009, the Greater Southwest Region awarded Contract Number GS-07P-09-UY-C-0003 to C3, LLC (C3) of Broken Arrow, Oklahoma, for $2,699,903. This sole-source contract was awarded under section 8(a) of the Small Business Act. C3 is a Small Business Administration-certified, minority-owned small business located in an area designated as a HUBZone[2]. The purpose of the contract was to replace existing windows at the Boulder Federal Building in Tulsa with those of a more energy efficient design which also meet current safety standards. GSA did not hire a CM to oversee the

[1]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. ,

[2] FAR 19.1301 states "The Historically Underutilized Business Zone (HUBZone) Act of 1997 (15 U.S.C. 631 note) created the HUBZone Program. The purpose of the HUBZone Program is to provide Federal contracting assistance for qualified small business concerns located in historically underutilized business zones, in an effort to increase employment opportunities, investment, and economic development in those areas."

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performance of the contractor and protect the Government's interests in developing the plans and specifications for the new windows.

Lack of competition

The Recovery Act provides that "to the maximum extent practicable, contracts using Recovery Act funds shall be awarded as fixed-price contracts using competitive procedures." By awarding an 8(a) sole-source contract, the Region lost any benefits competition could have provided. In addition, the Region did not adhere to the Federal Acquisition Regulation (FAR) requirement for competition within the HUBZone family of 8(a) contractors.

The Contracting Officer (CO) recommended several procurement vehicles in the Acquisition Plan, dated May 7, 2009, including competitive indefinite delivery, indefinite quantity (IDIQ) design/build, SBA 8(a) set aside, and open market. The CO also indicated that the PBS Oklahoma Service Center had recommended awarding the project to C3 on a sole-source basis as early as March 26, 2009. E-mails from the CO dated June 2 and 3, 2009, indicated a desire to switch back to a competitive IDIQ strategy. Nevertheless, on June 3, 2009, the CO requested award to C3 as a sole source procurement under the SBA 8(a) program.

In GSA's offer letter to the SBA, the work to be done was defined as "Commercial and Institutional Building Construction."[3] A search of the SBA website showed that there were five companies in the Tulsa area and five in nearby Oklahoma City that were classified as having the bonding capacity of $3,000,000 or higher and the ability to perform this type of work. Of these companies, four in Tulsa and one in Oklahoma City were HUBZone Certified.[4] An SBA official for the Oklahoma District Office recommended that GSA consider two firms other than C3 in an email dated May 6, 2009. However, the PBS Oklahoma Service Center intervened and expressed concerns about these two firms. Subsequently, on June 3, 2009, the CO, based on a recommendation from the PBS Oklahoma Service Center, requested that the award be made to C3 and the SBA agreed. The CO then made a sole source award to C3.

Section 8(a) firms located in a HUBZone receive priority consideration for awards over other 8(a) contractors. FAR 19.1306 provides that a sole source award to a HUBZone-certified contractor is to be made only when the CO has a reasonable expectation that two or more offers would not be received. The files we reviewed and the discussions

[3] This phrase represents the North American Industry Classification System (NAICS) code found on the letter. , An agency must notify SBA of the NAICS code for the "principal nature of the acquisition" as per FAR 19.804-2(a)(3).
[4] FAR 19.800(e) states that "If the acquisition is offered to the SBA, SBA regulations (13 CFR 126.607(b)) give first priority to HUBZone 8(a) concerns."

we had with the SBA and the CO yielded no evidence to support a conclusion that competition could not be achieved.

Based on our review, it is not clear why the project was not competed on the open market, or within the family of 8(a) HUBZone contractors. Such competition could have benefited the Government in the form of better pricing and could have better met the Recovery Act's competition objective.

In response to our concerns, the Region cited OMB Memo M-09-10, Initial Implementing Guidance for the American Recovery and Reinvestment Act of 2009, on page 40, para. 6.1 (6) "Agencies may take advantage of any authorized small business contracting program." The Region also cited FAR Case 2006-034, Socioeconomic Program Parity, as referenced in the Federal Register, Vol. 73, No. 47, March 10, 2008, which states the FAR rule is intended to make it clear that there is no order of precedence among the 8(a), HUBZone, or SDVOSB Programs. Therefore, GSA PBS Region 7 felt it did not violate any rulings mandated by the Recovery Act as it relates to competition.

We have reviewed the documentation referenced above. We believe that setting aside the procurement to the 8(a) program was not the main issue, but rather the sole-source nature of the set-aside. FAR 19.1306 provides that a sole source award to a HUBZone-certified contractor is to be made only when the CO has a reasonable expectation that two or more offers would not be received. We did not find evidence in the file to support this decision.

In addition, there were five HUBZone-certified contractors total in the Tulsa and nearby Oklahoma City Metropolitan Statistical Areas (MSAs[5]) with a bonding capacity of $3 million or higher. Including non-HUBZone and HUBZone-certified contractors with a bonding capacity of $3 million or more in these two MSAs, the total number of eligible contractors is ten. Competition within the 8(a) family of contractors rather than a sole-source set-aside could have been a better procurement decision for the Government.

Completion of project's design phase was delayed

The design phase of the project, which was originally scheduled to be completed on November 24, 2009, was not actually complete until June 15, 2010, or nearly seven months later. The statement of work included in the award package provided for updating an earlier 2001 design to incorporate energy savings and blast proof standards for the replacement windows that are to be compatible with the historical design of the building. Also, more windows were included for replacement than in the 2001 design. In a design/build contract such as this, the awardee chooses its own design firm. The architect/engineering firm C3 selected had not worked on the 2001 design; therefore,

[5] A metropolitan statistical area (MSA) refers to a geographical region with a relatively high population density at its core and close economic ties throughout the area. MSAs are defined by the U.S. Office of Management and Budget only, and used by the U.S. Census Bureau and other U.S. government agencies for statistical purposes only.

some additional time for updating the design was to be expected. However, the 95% drawings, which were to be submitted to GSA by September 22, 2009, were not delivered until May 24, 2010, eight months late. The current scheduled project completion date is now June 23, 2011, not March 1, 2011, as originally proposed. The CO, in an email at the time, indicated the need to reduce that time frame.

A CM would have provided the appropriate technical expertise to monitor the awardee's progress and administer the contract during the design phase of the project. The presence of a CM may also have mitigated the delay during the design phase.

The Region concurred with our finding, and authorized additional funds to hire a CM. An award for contract management services for $62,529 was made on March 3, 2011.

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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