



U.S. GENERAL SERVICES ADMINISTRATION
Office of Inspector General

June 14, 2011

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

Margaret A. Reinhold for

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

SUBJECT: Recovery Act Memorandum—Energy Retrofit for the
Ronald Reagan Federal Office Building, International
Trade Center, and Parking Garage
Review of PBS's Limited Scope and Small
Construction Projects Funded by the American
Recovery and Reinvestment Act of 2009
A090184-28/P/R

As part of our oversight of the National Capital Region's (NCR) limited scope and small construction American Recovery and Reinvestment Act¹ (Recovery Act) projects, we reviewed the contract award² for the energy retrofit project at the Ronald Reagan Federal Office Building, International Trade Center, and Parking Garage in the amount of \$16,629,771, 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 contract in accordance with the provisions of the Federal Acquisition Regulation (FAR).

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 was 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-YA-C-0121.

During our review, we identified some issues with the procurement process that we would like to bring to your attention. Specifically:

- A bid bond was initially incorrectly evaluated as acceptable;
- The price reasonableness determination was questionable because of the large variance between the independent government estimate (IGE) and the bid and award amounts; and
- An inconsistent naming of some energy conservation measures (ECM) could result in the wrong service being provided or a misapplication of funding.

Bid Bond Deemed Acceptable but Later Found to be Nonresponsive

The bid bond of the lowest bidder within the competitive range (lowest bidder)³, was deemed technically acceptable by the Technical Evaluation Board (Board), and then later deemed nonresponsive, resulting in award to the second lowest bidder in the competitive range. The Board reviewed bidders' technical proposals against four evaluation factors: (1) experience of proposed design build team, (2) past performance of design build team, (3) key personnel, and (4) bonding capacity. The Board report states that the "...contracting officer confirmed that the contractor submitted sufficient information to support bonding capacity." Based on this input from the contracting officer, and without independent verification, the Board concluded that the lowest bidder was technically qualified, including bonding capacity.

Subsequently, the lowest bidder was not selected for award. Upon inquiry, contracting personnel stated that the lowest bidder was not selected because its bid bond was deemed nonresponsive. This condition was not discussed in the Price Negotiation Memorandum (PNM) or elsewhere in the contract files. Only after our inquiry did another contracting officer prepare a memo to the file explaining that the bid bond lacked a raised seal, named the wrong principal, was not signed by the principal, referenced the wrong solicitation number, and provided conflicting information about the teaming arrangement. We confirmed several of these bid bond deficiencies. The original contracting officer explained that he did not identify the deficiencies during his initial review of the bond, only upon a subsequent review. As a result of these deficiencies, the award was made to the second lowest bidder within the competitive range.

Management Comments

PBS concurred with the audit finding.

³ There was another bid below the competitive range. However, this bid was nonresponsive upon submission as it was not submitted with a bid bond. This bidder is not discussed further in this memorandum and lowest bidder will refer to the lowest bidder in the competitive range.

Price Reasonableness Determination Questionable

A significant difference between the IGE, the overall bid, and the base award calls into question the accuracy of the IGE and/or the reasonableness of the proposed price. Contracting officers use IGEs to determine whether an offeror's proposed price is fair and reasonable and reflects an understanding of the project requirements. For this contract, the PNM states that the price reasonableness was determined both by the competitive range of bidders and through a comparison with the IGE.⁴ Although the winning bidder was within the competitive range of bids, the overall bid and base award amounts far exceeded the IGE. However, the IGE itself may have been flawed, as it was significantly below all offers within the competitive range.

The PNM acknowledged that the awardee's total bid amount for all 28 potential line items in the contract is 37 percent higher than the IGE total. Furthermore, the 14 ECMs in the base award were 81 percent higher than their IGE amounts. The Government may use various price analysis techniques to ensure a fair and reasonable price, including the use of an IGE. It is possible that the IGE was inaccurate, as it is significantly lower than all price proposals within the competitive range. The lowest bidder's offer, which was deemed technically unacceptable, was 30 percent higher than the IGE total. The PNM acknowledges, but does not address, the significant difference between the IGE and award.

Additionally, the IGE for this award was not signed. In this case, the estimate worksheet did not include a signature line, which may have contributed to this oversight. GSA guidelines prescribe that IGEs need to be signed by a qualified government employee whose major responsibility is creating or approving cost estimates. PBS took action to provide a signed IGE after we brought the issue to its attention; however, the IGE should be signed prior to negotiations since it is used to establish prenegotiation objectives and/or used as the basis for commitment of funds before issuing the solicitation per FAR 15.406-1.

Management Comments

In its May 24, 2011, response to our draft memorandum, PBS disagreed that the price reasonableness determination was based in part upon the IGE, and noted that the IGE was determined to be unreliable.

⁴ The PNM cited FAR 15.404-1(b)(2)(v) Comparison of proposed prices with independent government cost estimates in establishing price reasonableness.

Office of Inspector General Response

The price reasonableness determination was based upon both the competitive range of bidders and through a comparison with the IGE, and the PNM does not mention that the IGE was unreliable. Section IV of the PNM, Basis for Price Reasonableness, states “The government’s price was established at \$12,173,000.00 based on the Independent Government Estimate provided...The Government established a competitive range of the offers prices between \$15,794,528.00 to \$17,461,259.00. Based on the results of the competitive range [awardee] price of \$16,629,771.00 is deemed to be fair and reasonable and to the best interest of the Government. Therefore, the proposed award price is determined to be fair and reasonable in accordance with **FAR 15.404-1(b)(2)(v) Government Cost Estimate.**”

Inconsistent Naming of Energy Conservation Measures

This energy retrofit project includes 28 potential ECMs valued at \$16,529,771. ECMs to replace the pneumatic compressor (ECM 102), upgrade occupancy sensors (ECM 416), add daylight harvesting control (ECM 423), and re-circuit/zone parking garage dock lighting (ECM 432) were not consistently named and numbered between the award document, the LSAR, and the energy study.⁵ Such discrepancies could result in the wrong service being provided or a misapplication of funding.

Management Comments

Our draft memorandum included additional findings related to ECMs 430 and 431. In its May 24, 2011, response to our draft memorandum, PBS provided further explanation related to these ECMs.

Office of Inspector General Response

We have subsequently removed the findings related to ECMs 430 and 431.

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.

⁵ An energy study is performed to identify estimated savings, as well as payback for ECMs. This information is incorporated in the LSAR, which is reviewed by the National Recovery Project Management Office prior to award.

**Recovery Act Memorandum—
Energy Retrofit for the Ronald Reagan Federal Building
Review of PBS’s Limited Scope and Small Construction Projects
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)

Deputy Assistant Inspector General for Investigations (JI)