



U.S. GENERAL SERVICES ADMINISTRATION  
Office of Inspector General

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November 30, 2011

MEMORANDUM FOR JAMES S. WELLER  
REGIONAL COMMISSIONER, PBS  
GREATER SOUTHWEST REGION (7P)

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

SUBJECT Award and Administration of Contract for Construction  
Services in Support of the American Recovery and  
Reinvestment Act of 2009<sup>1</sup> at the Federal Building in  
Batesville, Arkansas  
Memorandum Number A090184-46

As part of our oversight of the General Services Administration's American Recovery and Reinvestment Act (Recovery Act) projects, we identified three issues related to the subject project that warrant your attention. First, a Federal Acquisition Service (FAS) multiple award schedule (MAS) contract should not have been used for this procurement. Second, the contractor's certified payrolls did not comply with contract requirements. Finally, there is no assurance the Buy American provisions of the Recovery Act were met.

PBS awarded this project to Ars Mechanical, LLC (Ars) on September 18, 2009, in the amount of \$373,562. The project called for the replacement of a steam boiler and two chillers at the Federal Building in Batesville, Arkansas. According to payroll documentation, the work was completed in June, 2010.

### **Misuse of Multiple Award Schedule**

PBS awarded the project to Ars under its Facilities Maintenance and Management schedule contract number GS-21F-0080U. This schedule served as the basic procurement vehicle used to obtain these construction services. However, it was not the

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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 is conducting oversight of the projects funded by the Recovery Act. One objective of this oversight is to determine if PBS is awarding and administrating contracts for limited scope and small construction and modernization projects in accordance with prescribed criteria and Recovery Act mandates.

appropriate procurement vehicle for this type of project. Due to the project's complexity, PBS should have acquired these services via a competitively awarded contract rather than as commercial services under a schedule contract.

Our review showed PBS limited competition to those contractors offering specific services listed on the schedule.<sup>2</sup> Further, because the solicitation requested lump sum pricing, the costs of the components and services could not be tied to the underlying schedule pricing, making it impossible to determine if these costs were fair and reasonable. Therefore, the Government has no assurance it received the best value for the project.

Although Federal Acquisition Regulation (FAR) Part 12 allows the use of commercial procurement vehicles to obtain construction services the Office of Management and Budget's Office of Federal Procurement Policy (OFPP) has directed<sup>3</sup> that: "FAR Part 12 ... should rarely, if ever, be used for new construction activities or non-routine alteration and repair services." OFPP recommends that, "...In accordance with long-standing practice, agencies should apply the policies of FAR Part 36<sup>4</sup> to these acquisitions."

The statement of work (SOW) for this project called for the complete removal and replacement of two chillers and one boiler, along with all associated pumps, motors, and piping. The contractor was to furnish all supervision, labor, materials, supplies, tools, and equipment. The SOW also required a design submittal. None of these activities could reasonably be classified as "routine."

Furthermore, PBS requested lump sum pricing in the solicitation, which is contrary to the proper use of a schedule. The MAS program is based on placing item by item orders against an FAS approved pricelist covering items included in the schedule. Items on the MAS schedule have been negotiated by FAS to be fair and reasonable. PBS should not have accepted lump sum pricing, which comingles many different items and services into one overall price. Since a schedule was used, PBS should have analyzed the pricing to determine that the proposed prices reflected schedule contract prices. However, the lump sum bidding rendered this comparison impossible. PBS, therefore, had no assurance that the proposed price was based upon the underlying schedule, which had previously been determined to be fair and reasonable.

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<sup>2</sup> These services are classified as Special Item Number (SIN) 811 005. Schedule 03FAC Facilities Maintenance and Management defines SIN 811 005 (Refrigeration, Heating, Ventilation, Air Conditioner (HVAC), Boiler and Chiller HVAC Maintenance) as: "Services related to providing heating and ventilation services. Services could include, but are not limited to, cleaning; air balancing; restoration, and de-contamination of HVAC systems or any combination of providing plant equipment; materials; tools; transportation; supervision; labor to perform all repairs; periodic preventative maintenance; and emergency service work calls to ensure continual operations of refrigeration; heating; ventilation; air conditioner; boiler; Geothermal heat pump systems; renewable energy systems; and boiler and chiller systems."

<sup>3</sup> Applicability of FAR Part 12 to Construction Acquisitions, dated July 3, 2003.

<sup>4</sup> FAR Part 12 addresses Acquisition of Commercial items; FAR Part 36 addresses Construction and Architect-Engineer Contracts.

PBS responded to the draft memorandum as follows:

Upon review of the task order it appears that Schedule 56 was a more appropriate schedule for awarding this project. We do believe that GSA Schedules are considered an acceptable procurement method for this type of action.

The procedures in FAR 8.405-2 were used for this acquisition, not FAR 12. As allowed under FAR 8.405-2, RFQs were sent out requesting lump sum proposals to all known Schedule contractors designated as ARRA participants at that time. Seven (7) contractors were solicited and three (3) proposals were received thereby meeting adequate competition requirements. Competition was the primary method used to determine the price as fair and reasonable. However, in addition to using competition, the contracting officer also compared the prices to the Independent Government Estimate which was created utilizing industry standards pricing (RS MEANS).

Although Schedule 56 (Buildings and Building Materials / Industrial Services and Supplies) may have been more a more appropriate schedule than 03FAC, we maintain that the use of MAS contracts is not the most efficient procurement vehicle for non-routine construction services because it restricts competition to schedule holders and requires the furnishing of components and services which are not covered by the MAS. Further, FAR 8.405-2 does not make an allowance for a lump sum proposal. It only allows for the preparation of an RFQ that is to be based on the FAS schedule and the contractor's pricelist.

### **Certified payrolls are incomplete and inconsistent**

The prime contractor's certified payrolls did not comply with contract requirements. Ars' submitted payrolls did not specify labor categories. Also, payroll information did not agree with corresponding contract documents. For example, the contractor stated in its May 2010 payrolls "No Payroll," indicating that none of the contractor's employees were working at that time; however, the file showed the Contracting Officer's Representative interviewed two employees on May 15, 2010. In addition, the submitted payrolls did not match the sign-in sheets. Names on the payrolls do not appear on the sign-in sheets; at the same time, names on the sign in sheets do not appear on the payrolls.<sup>5</sup> Without certified payrolls, PBS could not have determined if Ars was compliant with the Davis-Bacon Act. By not requiring timely submission of certified payrolls, PBS did not provide adequate contract administration and did not properly monitor compliance with wage regulations.

PBS responded to the draft memorandum as follows:

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<sup>5</sup> Although the payroll and sign-in sheets were inconsistent, we found no security issues – all employees listed on either record were escorted or had security clearances.

In review of your comments it was determined that errors were made with regards to verifying the contractor's payrolls. Upon receipt of the first set of payrolls from the contractor it was evident that they were inexperienced with the proper submission of the required forms. Attempts were made by the contracting officer to coach the contractor on submission of the forms to include the correct job classifications that performed the work with the classification on the wage determination. Eventually they were able to work out the discrepancies. With regards to the payroll information not agreeing with the contract documents; the current procedures for reviewing payrolls do not include reviewing building sign in sheets to verify contractor employees to payrolls and periods of non work, which resulted in these errors. The contractor submitted payrolls on three employees: [names removed].

After the performance of the project it was discovered that the services provided under the Federal Supply Schedule Number 03FAC, SIN 811 005 do not apply to Davis-Bacon and should not have been enforced for this award.

The Davis-Bacon Act wage determinations are established by law and should be included and enforced on all construction contracts in excess of \$2,000 per FAR 22.407, no matter what procurement vehicle (or Schedule) is used. The solicitation that was incorporated into the award for this project appropriately included Davis-Bacon Act wage rates. The certified payroll records and wage interviews are required provisions of the contract.

### **PBS did not ensure compliance with the Buy American Act**

Section 1605 of the Recovery Act requires that "manufactured goods used as construction material in the project be produced in the United States." However, the contractor could not demonstrate that it complied with this requirement.

The SOW called for the "replacement of two chillers, one steam boiler, piping, and associated equipment." Ars proposed installing Trane chillers, a Hurst boiler, PACO pumps, suction diffusers, triple duty valves, and a Neptune filter feeder. A certificate of origin was provided for the Hurst boiler and Trane chillers; however, we were unable to determine exactly where the PACO pumps, suction diffusers, triple duty valves, and Neptune filter feeder were made. We examined the filter feeder and could find no labels indicating the country of origin. The pumps and diffusers were inaccessible. We repeatedly asked for certificates of origin, however, the contractor was unable or unwilling to provide them.

PBS responded to the draft memorandum as follows:

All certifications for Buy American Act provisions were provided with the exception of the PACO pumps and the Neptune Feeder. In a review of the supplier's profile it was discovered that PACO pumps are manufactured and tested in Brookshire, Texas by Grudnfos CBS, Inc.

The Neptune Feeder is manufactured by the Neptune Chemical Pump Co., Inc. Neptune is a premier manufacturer of chemical metering pumps, chemical feed systems and peripheral products. The company is based in North Wales, PA.

Both companies are U.S. Manufactures/Suppliers and fulfill the requirements outlined in the Buy American Act.

The fact that a company is a U.S. Manufacturer/Supplier does not necessarily meet the ARRA Buy American provisions. To meet the standards, the product must be assembled or manufactured in the United States, not just produced by a U.S.-based company. An affirmative certification that the actual manufacturing was performed in the United States, such as the certifications provided for the boiler and chillers provides the government more assurance of compliance and an avenue of relief if discrepancies are identified.

PBS concluded:

With the options presented the procurement team performed adequate market research, competed the project to an acceptable amount of contractors to promote competition and utilized proper selection criteria and conducted proper technical/price analysis to determine price fairness and reasonableness.

Procedural errors were made during the solicitation and performance of the project that the contracting officer and the project team now understand and will utilize this review as a guide for future procurements of this type.

We appreciate the support that has been provided throughout this review. If you have questions regarding this memorandum, please call me at (312) 353-0500 or Audit Manager John Langeland at (312) 353-6691.

## **Report Distribution**

Regional Commissioner, Public Buildings Service (7P)

Regional Administrator (7A)

Regional Recovery Executive (7P)

Chief of Staff, PBS Office of Construction Programs (PCB)

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