



U.S. GENERAL SERVICES ADMINISTRATION
Office of Inspector General

September 14, 2012

MEMORANDUM FOR: JOHN SMITH
REGIONAL COMMISSIONER
PUBLIC BUILDINGS SERVICE (PBS)
SOUTHEAST SUNBELT REGION (4P)

A handwritten signature in blue ink that reads "James M. Corcoran".

FROM: JAMES M. CORCORAN
REGIONAL INSPECTOR GENERAL FOR AUDITING
MID-ATLANTIC REGIONAL FIELD AUDIT OFFICE (JA-3)

SUBJECT: Purchase and Install – Boiler Replacement at the Peachtree Summit Federal Building Funded by the American Recovery and Reinvestment Act of 2009¹
Memorandum Number A090184-60

Our review of the subject procurement identified areas of concern that we would like to bring to your attention. Specifically, the Public Buildings Service (PBS) in the Southeast Sunbelt Region (Region 4): (1) awarded a sole source procurement under an areawide contract without following appropriate justification requirements and approval procedures for “other than full and open competition”; (2) did not develop an adequate price reasonableness determination; and (3) did not obtain a bid bond as required by Federal Acquisition Regulation (FAR) Subpart 28.101.

The work in question involved the replacement of boilers at the Peachtree Summit Federal Building, in Atlanta, Georgia. To accomplish the project, Region 4 issued a task order against the Areawide Public Utility Contract held by AGL Resources, Inc., using Utility Energy Service Contract (UESC) procedures. The task order was awarded to Atlanta Gas Light Company², a subsidiary of AGL Resources, Inc., on March 22, 2010, for \$677,780.

¹ The American Recovery and Reinvestment Act of 2009 appropriated \$5.55 billion for the 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 Task order number GS-04P-10-BV-C-0026, under Areawide Public Utility Contract for Natural Gas and Energy Management Services, contract number GS-00P-05-BSD-0362. The contract is between the United States of America and AGL Resources, Inc., a holding company organized and existing under the laws of the State of Georgia and acting on behalf of its operating subsidiaries, including Atlanta Gas Light Company.



Appropriate justification requirements and approval procedures were not followed for other than full and open competition procurement using an areawide contract.

This task order was awarded as a sole source procurement without the justification and written approval requirements that are prescribed by FAR 6.303, *Justifications*, and FAR 6.304, *Approval of the justification*. According to FAR 6.303-1(a)(3), *Requirements*, the contracting officer needs to obtain "...the approval required by 6.304." FAR 6.304(a) and (a)(2) states that justification for other than full and open competition shall be approved in writing by the competition advocate for the procuring activity for a proposed contract over \$500,000.

The contract files included a letter signed and dated by both the contracting officer and project manager which indicated justification for other than full and open competition. However, since the award amount (\$677,780) exceeded \$500,000, the contracting officer was required to obtain written approval from the competition advocate - this was not done.

When we asked the contracting officer to provide support for the justification and approval (J&A) for other than full and open competition, the contracting officer said:

At the time of award, based on our research and the guidance we had available at the time, and the minimal amount of regional experience with Areawide Contracts, we did not believe a justification and authorization was required in order to issue a task order against this IDIQ (Indefinite Delivery Indefinite Quantity) contract. Based on further research and having worked more with UESC contracts since then and having attended some Areawide contract webinars recently, I would agree that a J&A is required for a UESC task order....

In addition, the lack of justification is not in conformance with GSA policy. The Acquisition Plan for this project states, "(2) Basis for Justification for other than Full and Open: No Justification required for Area Wide procurements." However, GSA policy, as outlined in "*Procuring Energy Management Services with the GSA Utility Areawide Contract*," maintains:

Once you determine that the Areawide Contract will provide the best value to the government in response to the need for energy management services, you must document your decision through the justification and approval process, Federal Acquisition Regulation, Subpart 6.303, for the use of other than full and open competition....

It is our position that the award should not have been made until all appropriate justification and written approval requirements were met.

The price reasonableness determination was inadequate.

As prescribed by FAR 15.404-1(b)(2)(v), the basis for the price reasonableness determination was the Independent Government Estimate (IGE), which is used by contracting officers to assess whether an offeror's proposed price is fair and reasonable and to obtain an understanding of the project requirements. But in this case, the IGE was flawed.

According to the price memorandum,³ the proposed offer was considered fair and reasonable based on the "Comparison of the proposed price with Independent Government Estimate." However, the IGE included an estimated cost for two boilers, while the project called for the installation of four smaller, more energy efficient boilers.⁴ When we asked if the IGE was ever updated or if another IGE was prepared, the contracting officer responded that neither was done.

As required by FAR 15.406-3(a) and (a)(7), *Documenting the negotiations*, the Price Negotiation Memorandum (PNM) shall document the negotiation, and accurately reflect the negotiation objectives. In addition, the PNM should also be based, among other things, on the IGE. However, the PNM simply stated that the existing boilers would be replaced with energy efficient boilers and did not address the difference between the number of boilers addressed in the IGE and awarded project. This difference calls into question the comparability of the IGE and the proposal and is a strong indication that the price determination is unreliable.

Bid guarantee not obtained as required by FAR Subpart 28.101.

The contracting officer did not request a bid guarantee (bid bond) for the boiler replacement project, as required by FAR 28.101 *Bid guarantees*. A bid guarantee is a form of security assuring that the bidder will not withdraw a bid, and will execute a written contract and furnish the required bonds. FAR 28.101-1, *Policy on use*, states,

- (a) A contracting officer shall not require a bid guarantee unless a performance bond or a performance and payment bond is also required....
- (b) All types of bid guarantees are acceptable for supply or service contracts (see annual bid bonds...)....
- (c) The chief of the contracting office may waive the requirement to obtain a bid guarantee when a performance bond or a performance and payment bond is required if it is determined that a bid guarantee is not in the best interest of the Government.... Class waivers may be authorized by the agency head or designee.

³ The Price Memorandum is the same as a Price Negotiation Memorandum.

⁴ The IGE included an estimated cost of \$666,856 based on the procurement of two boilers. The project award was for four smaller boilers totaling \$677,780.

Region 4 contracting officials obtained payment and performance bonds for this project, but not a bid guarantee (bid bond). Therefore, we asked the contracting officer at the task order level to provide either the bid guarantee or a waiver.

However, according to the contracting officer, there was no bid bond since "...it was procured via Request for Proposal (RFP), [sic] bid bonds are typically only required on competitive Invitation for Bids...." He also stated that he never required a bid bond on a non-competitive RFP for a task order against an IDIQ type contract. He later contacted the contracting official for the areawide utility contract (an areawide utility contract is a type of IDIQ contract), who informed him "...that they did not require a bid bond...."

The contracting official for the areawide utility contract advised us that "The bid guarantee is not required by a utility service contract and would be the responsibility of the Contracting Officer of the delivery order since the work is construction related." The task order contracting officer did not comment on this point.

In addition, the contracting officer at the task order level said that he was not able to locate a waiver, but stated that "In future procurements, I certainly will either require a bid bond or seek appropriate waivers if such are required, based on the procurement." The Region 4 Section Chief, Acquisition Division, also provided his comment, stating that the UESC contracting officer should have asked for a bid bond or executed a waiver at the time the base UESC contract was awarded.

On March 28, 2012, the contracting officer at the task order level provided a memorandum (unsigned and not dated)⁵ from the Region 4 Regional Administrator to the Senior Procurement Executive (MV), seeking approval of a "Class Deviation" from FAR Subpart 28.101, *Bid guarantees*, to waive obtaining a bid guarantee whenever performance bonds and/or performance and payment bonds are required. Later, the PBS Office of Acquisition Management & Policy Division informed us neither their office nor the Office of the Chief Acquisition Officer could find any proof of a class deviation to FAR 28.101.

Under these circumstances, Region 4 contracting officials should have obtained a bid guarantee (bid bond) prior to the project's award.

In his August 15, 2012, response, the Regional Commissioner concurred with our findings. In addition, he stated that,

...we lacked experience in the UESC contracts when we procured them. We have since been trained on them. We're working on several fronts within the region to overhaul our acquisition division and processes (all divisions). We have an internal audit team reviewing and we are reconstituting our contract review board members who will also have access to this report. I appreciate the report and the specificity of the

⁵ The contracting officer told us that he would try to locate the signed copy but could not.

findings as it will be used to further augment our training efforts to ensure we're compliant in the future.

We appreciate the support that has been provided throughout this review. If you have any questions, please contact me at (215) 446-4846 or Mr. Gregory P. Pasqualone at (215) 446-4842.

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