



**Office of Audits
Office of Inspector General
U.S. General Services Administration**

**Recovery Act Report – Region 5 Construction
Manager as Constructor Contracts
Audit of PBS’s Major Construction and
Modernization Projects Funded by the American
Recovery and Reinvestment Act of 2009**

*Report Number A090172/P/R/R12007
May 10, 2012*



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Office of Inspector General
U.S. General Services Administration**

DATE: May 10, 2012

TO: Linda Chero
Acting Commissioner, Public Buildings Service (P)

FROM: Nicholas Painter
Audit Manager, Office of Inspector General
Southeast Sunbelt Region Field Audit Office (JA-4)

SUBJECT: Recovery Act Report – Region 5 Construction Manager as
Constructor Contracts Audit of PBS's Major Construction and
Modernization Projects Funded by the American Recovery and
Reinvestment Act of 2009
Audit Number A090172/P/R/R12007

During our oversight of the General Services Administration's (GSA) major modernization and new construction projects funded by the American Recovery and Reinvestment Act (Recovery Act), we noted significant procurement concerns in the Great Lakes Region (Region 5) that warrant your attention. The Public Buildings Service (PBS) awarded eight Construction Manager as Constructor (CMc) contracts without adequate price competition, thereby violating Federal Acquisition Regulation (FAR) and Competition in Contracting Act (CICA) requirements. As a result, PBS did not have an adequate basis to establish price reasonableness.

GSA Provided Bidders with Pricing Information and Violated Competition Requirements

In soliciting for the CMc contracts, PBS provided pricing information to bidders, thereby violating FAR and CICA competition requirements, as well as FAR disclosure restrictions.

In general, a CMc contract is awarded for design phase services¹ at a firm-fixed price with an option for construction phase services at a Guaranteed Maximum Price (GMP). The GMP is supposed to act as a ceiling price for the construction option. The GMP,

¹Design phase services include activities such as ensuring the design complies with applicable regulations, codes, and standards, as well as ensuring the constructability of the design.

which is comprised of the Estimated Cost of Work (ECW), the Construction Contingency Allowance (CCA),² and the contractor's fee for construction,³ should be proposed by prospective bidders. Total pricing for design services and construction phase options should be evaluated jointly as part of the selection process.

We reviewed the CMc procurements for ten major Recovery Act modernization projects in the Great Lakes Region and found that for eight, PBS provided the prospective bidders with pricing information during the solicitation process. As shown below, PBS provided the ECW and CCA for six contracts and the entire GMP for two.

Project	Pricing Elements Provided by PBS	Total Pricing from PBS	GMP at Base Contract Award	Percent of Construction Phase Pricing from PBS
Major General Emmett J. Bean Center (Bean) - <i>Option 1</i>	ECW, CCA*	\$20,374,640	\$20,674,640	98.5%
Major General Emmett J. Bean Center - <i>Option 2</i>	ECW, CCA*	50,732,240	51,732,240	98.1%
John C. Kluczynski Federal Building and U.S. Loop Post Office Facility (Kluczynski)	ECW, CCA*	66,950,000	68,121,625	98.3%
South State Street – 10 West Jackson (South State Street)	ECW, CCA*	17,121,600	17,626,687	97.1%
Anthony J. Celebrezze Federal Building (Celebrezze)	ECW, CCA*	96,720,000	98,695,000	98.0%
Chicago Federal Center	ECW, CCA*	18,200,000	18,593,750	97.9%
Bishop Henry Whipple Federal Building (Whipple)	ECW, CCA*	85,646,000	87,497,238	97.9%
Minton Capehart Federal Building (Minton Capehart)	GMP	35,500,000	35,500,000	100.0%
Birch Bayh U.S. Courthouse (Birch Bayh)	GMP	37,450,000	37,450,000	100.0%

* The CCA was provided as 4 percent of the ECW.

By providing this pricing information, PBS eliminated cost or pricing as an evaluation factor for nearly the entire price of these contracts' construction phase options; thereby violating FAR and CICA competition requirements. Further, in providing this pricing

² The CCA covers costs incurred by the contractor for the performance of construction work in excess of the ECW.

³ The contractor's fee covers indirect costs and profit.

information, PBS could not effectively evaluate option pricing in accordance with FAR Subpart 17.207(f).⁴

In addition, PBS violated FAR restrictions regarding the type of information that may be disclosed in a solicitation. FAR 36.204 prohibits disclosing exact pricing data. It states, “advance notices and solicitations shall state the magnitude of the requirement in terms of physical characteristics and **estimated price range**” (emphasis added).

For the majority of the projects, PBS did not initially provide the ECW or GMP figures to the prospective bidders. However, Regional officials ultimately deemed it necessary when bidders indicated they did not have sufficient information to price the projects because the project designs were incomplete. PBS believed that providing this pricing data was allowable based on draft General Services Administration Manual (GSAM) guidance. Specifically, the draft of GSAM 536.214-2 “Special Guidance for CMc Contracts” stated:

...the CCA is established as a government-defined percentage of the ECW. Solicitations for a CMc contract may establish a target ECW, in which case the only pricing information required in offers is a fixed price for Design Phase Services and the contractor’s Fee.

While this guidance would allow solicitations for a CMc contract to establish a target ECW, it does not appear to authorize the disclosure of the Government’s estimated GMP. Further, this draft guidance was not officially adopted into the GSAM. On the contrary, current PBS guidance on CMc contracting encourages developing design to maximize pricing competition. It states:

The [Request for Proposals] is issued when design requirements have been developed to a sufficient degree of specificity to permit competing of offers with meaningful pricing for reliable differentiation, and also early enough in design to maximize the value of the CMc’s Design Phase services. The CMc should be competed on the basis of a complete program and final design concepts.

This CMc policy was issued subsequent to the Region 5 CMc contract awards; however, it underscores the importance of design development in attaining meaningful price competition.

The process used by Region 5 for these procurements did not allow for such competition. For instance, when bidders for the Whipple contract indicated during the solicitation process that it was impossible to establish a GMP because of a lack of specific design information, PBS provided the ECW and CCA at \$85.6 million; approximately 98 percent of the awarded \$87.5 million GMP. Then as funding became

⁴ Subpart 17.207(f) requires that the Government evaluate option pricing as part of the initial contract competition.

available, PBS continued to expand the project’s scope. PBS was aware of the potential for this additional work at the time of initial contract award; however, this work was specifically excluded from the contract (bidders did not propose pricing). Eventually, the Whipple GMP increased by nearly 73.8 percent to \$152.1 million; largely as a result of scope revisions. As a result, PBS awarded the base contract and all modifications on a non-competitive basis.

Price Reasonableness Determinations Were Inadequate

PBS did not make adequate determinations of price reasonableness for these eight CMc contracts. In general, price reasonableness for construction contracts can be established through price competition and/or through a cost comparison using an independent government estimate (IGE). While the contracting officers performed some price evaluation for the initial contract awards based on the bids received and comparisons to the IGEs, there was no meaningful price competition for the majority of the work.

Although PBS used a competitive bid process, pricing for the construction options was not based on competition. PBS received multiple bids for each project; however, proposed pricing was virtually identical for each respective project because PBS provided bidders with specific pricing information in the respective solicitations. By doing this, PBS limited price competition to minor portions of the contracts. This negated price competition as a factor in establishing price reasonableness. As depicted in the following chart, PBS-provided pricing represented, on average, approximately 98 percent of the total awarded contract values for these eight procurements.

Project	PBS-Provided Pricing	Total Awarded Contract Value*	Percent of Pricing from PBS
Bean (Options 1 & 2)	\$71,106,880	\$72,594,500	98.0%
Kluczynski	66,950,000	68,338,625	98.0%
South State Street	17,121,600	17,772,810	96.3%
Celebrezze	96,720,000	98,970,000	97.7%
Chicago Federal Center	18,200,000	18,685,250	97.4%
Whipple	85,646,000	87,858,243	97.5%
Minton Capehart	35,500,000	35,545,700	99.9%
Birch Bayh	37,450,000	37,688,000	99.4%

**Total Awarded Contract Value includes design phase services and the GMP for construction.*

In one instance, a bidder initially proposed an ECW that was lower than the amount in the solicitation, but was subsequently instructed by PBS to submit a revised proposal using the PBS-provided ECW to ensure consistency amongst all bids. Ultimately, PBS awarded the contract to that bidder at a higher ECW than was originally proposed.

Conclusion

PBS's procurement methodology for these CMC contracts essentially eliminated price competition. This practice violated competition requirements, and calls into question the reasonableness of the contract pricing. To ensure that PBS meets competition requirements and achieves reasonable pricing, PBS should adhere to current CMC procurement policy for future CMC contracts.

Recommendations

As PBS has been developing and implementing management controls for CMC contracts in response to prior audit reports, we are making no additional recommendations at this time.

Management Comments

In its response to the draft report, PBS concurred with our findings and accepted the report recommendations. PBS's response is included in its entirety as **Attachment B** to this report.

We appreciate the support that has been provided throughout this audit. If you have any questions concerning this report, please contact me at (404) 331-5520.

Sincerely,



Nicholas Painter
Audit Manager (JA-4)

Appendix A – Objective, Scope, and Methodology

Background

The American Recovery and Reinvestment Act of 2009 (Recovery Act) provided 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 were to be obligated by September 30, 2010, and that the remaining funds were to be obligated by September 30, 2011. The GSA Office of Inspector General is conducting oversight of the projects funded by the Recovery Act.

Objective

The objective of the Office of Inspector General'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

Our audit work for this report was performed between August 2010 and April 2011 in the Great Lakes Region. The scope of our audit included CMc contracts for ten major Recovery Act modernization projects in the Great Lakes Region, including:

- Minton Capehart Federal Building
- Birch Bayh U.S. Courthouse
- Major General Emmett J. Bean Center
- John C. Kluczynski Federal Building and U.S. Loop Post Office Facility
- South State Street – 10 West Jackson
- Anthony J. Celebrezze Federal Building
- Chicago Federal Center
- Bishop Henry Whipple Federal Building
- John W. Peck Federal Building; and
- Patrick V. McNamara Federal Building.

Methodology

To accomplish the objective we conducted fieldwork in the Great Lakes Region, reviewed contract files and other pertinent project documents, met with PBS regional management and project staff, and reviewed applicable guidance and regulations.

Appendix A – Objective, Scope, and Methodology (cont.)

Except as noted below, 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.

Internal Controls

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.

Appendix B – Management Comments



MAY 02 2012

GSA Public Buildings Service

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

FROM LINDA CHERO *Linda C. Chero*
ACTING COMMISSIONER (P)
PUBLIC BUILDINGS SERVICE

Recovery Act Report – Region 5 Construction Manager as
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Reinvestment Act of 2009 - Audit Number A090172

PBS appreciates the opportunity to comment on the draft audit report. The report
identified two findings:

1. GSA provided bidders with pricing information and violated competition requirements, and
2. Price reasonableness determinations were inadequate.

PBS concurs with the audit findings and has been developing and implementing management controls for Construction Manager as Constructor (CMc) contracts in response to prior audit reports. Regional contracts were awarded before the new management controls were issued. Region 5 PBS employees who work with CMc contracts have completed the "Construction Manager as Constructor (CMc) Project Delivery Method - Policy Overview" training through GSA Online University and will follow the new management controls and PBS procurement policy.

If you or your staff have any additional questions or concerns, please do not hesitate to contact Christine Kelly at (202) 501-9081.

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Appendix C – Report Distribution

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Acting Deputy Commissioner, PBS (P)

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