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LIMITED SCOPE REVIEW OF
SOUTHERN MARYLAND COURTHOUSE
ANNEX PROJECT
REPORT NUMBER A110717/P/R/R11011
AUGUST 18, 2011

GENERAL SERVICES ADMINISTRATION OFFICE OF INSPECTOR GENERAL

**Limited Scope Review of
Southern Maryland Courthouse Annex Project
Audit Number A110171/P/R/R11011**

August 18, 2011



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U.S. GENERAL SERVICES ADMINISTRATION
Office of Inspector General

Date: August 18, 2011

Reply to: (b) (6)
Attn of: Audit Manager
Real Property Audit Office (JA-R)

Subject: Limited Scope Review of
Southern Maryland Courthouse Annex Project
Audit Number A110171/P/R/R11011

To: Cathleen C. Kronopolus
Regional Commissioner
National Capital Region, Public Buildings Service (WP)

This is to inform you that, we identified several matters that require your attention during our review of Solicitation Number GS11P10MKC0050 for architect-engineer (A-E) services for the design of an annex to the Southern Maryland Courthouse in Greenbelt, Maryland. The General Services Administration's (GSA) Public Buildings Service (PBS) Office of Project Delivery in the National Capital Region issued this Solicitation to acquire pre-design, design development, construction phase, and post-construction services for the project. In order to expedite the work, PBS issued a separate letter contract for the pre-design services (Contract Number GS-11P-11-MK-C-0031)¹ to the A-E firm selected for the overall design effort.² Our review disclosed that:

- The use of a letter contract in this case was improper;
- The letter contract was awarded prior to a determination of financial responsibility; and
- If the award proceeds without a reduction in price, all work under the solicitation will violate the Brooks Act's 6 percent limitation on design costs and will exceed appropriated funding.

¹ On February 28, 2011, GSA awarded a sole-source contract for pre-design services associated with the Site Analysis and Preliminary Concepts Phase for the Southern Maryland Courthouse Annex Project.

² We have completed a preaward audit of this contractor's proposal. See Report A110132/P/R/X11068.

Improper Use of a Letter Contract

PBS's use of letter contract GS-11P-11-MK-C-0031 for the pre-design services at the Southern Maryland Courthouse Annex project was inappropriate because:

1. Award Was Made as a Sole-Source Procurement

The letter contract was not procured competitively, as required by Federal Acquisition Regulation (FAR) 16.603-3(b). PBS considered the letter contract to be a competitive procurement because the pre-design services included in the letter contract were included in the scope of the original competitive procurement for the project's overall design effort. However, PBS awarded the letter contract to the A-E firm that was selected for the project's overall design effort, without competition specific to the letter contract. A solicitation was not issued and a competition was not held for the letter contract procurement.

2. Inadequate Justification for Use of a Letter Contract

PBS's justification for using a letter contract did not meet FAR requirements. FAR 16.603-3 states that a letter contract may be used only after the head of the contracting activity or a designee determines in writing that no other contract is suitable. Per FAR 16.603-2(a), a letter contract may be used when: (1) the Government's interests demand that the contractor be given a binding commitment so that work can start immediately and (2) negotiating a definitive contract is not possible in sufficient time to meet the requirement. PBS's justification for awarding a letter contract did not address either of these requirements.

On February 25, 2011, the Director of Contracts Division, Office of Project Delivery signed a determination stating:

The SoMDCT Annex Project is a politically sensitive project with strong congressional interests in which GSA's upper level management is involved. Due to the tight project schedule, per FAR 16.603-1, I hereby determine that a letter contract is the only viable contract vehicle that is suitable for the Pre-design Services for the Southern Maryland Courthouse Annex Project.

This determination provides no explanation as to why (1) the work needed to start immediately or (2) it was not possible to negotiate a definitive contract in sufficient time to meet the requirement.

Additionally, the determination was not made at the appropriate level. As stated above, the head of the contracting activity or a designee must make the determination. The letter contract in question was approved by the Director of PBS's Contracts Division, to whom that authority has not been delegated.

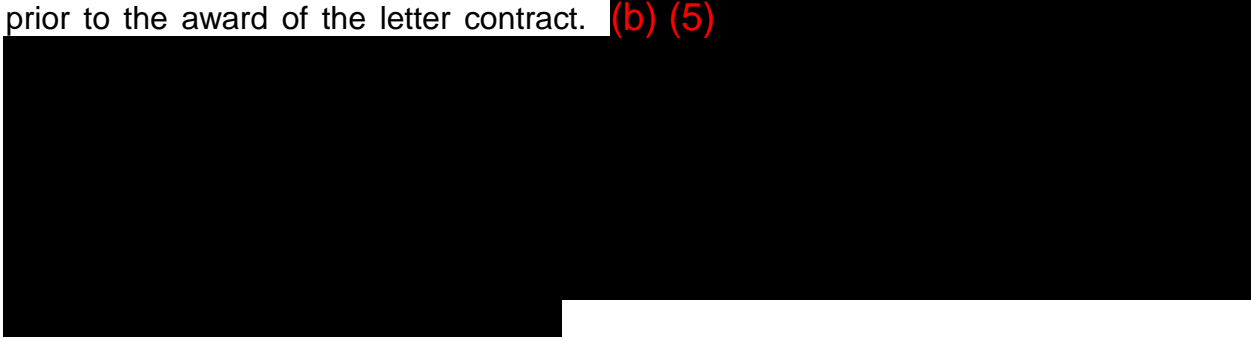
3. Omission of FAR 52.216-23

Letter contracts should incorporate FAR 52.216-23, the Execution and Commencement of Work clause, in accordance with FAR 16.603-4(b)(1). This letter contract failed to include this required clause.

Letter Contract Awarded Prior to Financial Responsibility Determination

PBS violated FAR Part 9 by awarding the letter contract before a determination of financial responsibility was completed. FAR 9.103(b) provides, "No purchase or award shall be made unless the contracting officer makes an affirmative determination of responsibility." According to FAR 9.104-1(a), responsibility means the potential contractor possesses adequate financial resources to perform the contract, or the ability to obtain them.

In attempting to expedite work, PBS did not complete a responsibility determination prior to the award of the letter contract. (b) (5)



Potential for Brooks Act and Funding Violations

If the A-E design services fee is not reduced, PBS may face a violation of the Brooks Act. The Brooks Act limits the design cost for a project to 6 percent of the Estimated Cost of Construction at Award (ECCA). The ECCA for this project is \$101,650,600; therefore, the fee limitation would be approximately \$6.1 million. According to the most recent price proposal submitted by the selected A-E firm, the A-E services will cost the Government \$14,473,437. In our analysis, we reduced the fee by deducting certain costs that are typically excluded from the 6 percent fee limitation³ and conservatively estimate that \$9,159,320 (9 percent of the ECCA) of the A-E fee proposed would be for design costs.

Additionally, the current proposal exceeds the project's funding. The contractor proposed \$14.5 million for the project's overall A-E services; however, the appropriated funding for the project is only \$10 million.

³ There are design costs such as travel costs, surveying, and site selection that are excluded from the 6 percent statutory fee limitation.

Conclusion

We conclude that PBS violated certain provisions of the FAR and PBS policy during the award of the letter contract. PBS is also advised that, as proposed, the price for A-E services will lead to a violation of the Brooks Act and exceed appropriated funding. Given the issues identified in this report, PBS should reassess its approach to this project as problems identified at this stage of the project may be exacerbated in future stages.

Recommendations

We recommend that the Regional Commissioner, National Capital Region, Public Buildings Service:

- 1) Obtain a full legal review of the procurements for the Southern Maryland Courthouse Annex Project.
- 2) Reassess the current project approach to address actual and potential violations of the FAR and PBS policy as identified in this report and resulting from any legal review.

Management Comments

The Regional Commissioner's comments are included in their entirety in Appendix A. The Regional Commissioner agreed with the audit report and will implement its recommendations.

We appreciate the support that was provided throughout this review. If you have any questions about this report, please contact me at (b) (6).

(b) (6)

Audit Manager
Real Property Audit Office (JA-R)

**Limited Scope Review of
Southern Maryland Courthouse Annex Project
Audit Number A110171/P/R/R11011**

Management Comments



GSA National Capital Region

AUG 11 2011

MEMORANDUM FOR (b) (6)
AUDIT MANAGER
REAL PROPERTY AUDIT OFFICE (JA-R)

FROM: *fa* CATHLEEN C. KRONOPOLUS *Kronopolus*
REGIONAL COMMISSIONER
PUBLIC BUILDINGS SERVICE (WP)

SUBJECT: LIMITED SCOPE REVIEW OF
SOUTHERN MARYLAND COURTHOUSE ANNEX PROJECT
AUDIT NUMBER A110171/P/R

This is in response to your email of July 8, 2011, regarding the above-referenced project. In your review of Solicitation No. GS11P10MKC0050, your office identified a separate contract, Contract No. GS11P11MKC0031, which was issued for pre-design services to the A-E firm selected for the overall design effort. Your review of the pre-design services contract identified possible procurement process concerns and made the following recommendations:

1. Obtain a full legal review of the procurements for the Southern Maryland Courthouse Annex Project.
2. Reassess the current project approach to address actual and potential violations of the FAR and PBS policy as identified in this report and resulting from any legal review.

We appreciate the review and support your office has provided in making these recommendations and will obtain a full legal review of the procurements for the Southern Maryland Courthouse Annex Project and reassess the current project approach as recommended by your office.

If you have any questions or need additional information, please feel free to contact me at (b) (6) or (b) (6) Director, Office of Project Delivery, at (b) (6) (b) (6)

cc: (b) (6) (WA)

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Southern Maryland Courthouse Annex Project
Audit Number A110171/P/R/R11011**

Background, Objective, Scope, and Methodology

Background

In February 2011, the General Services Administration's Public Buildings Service (PBS) Office of Project Delivery in the National Capital Region requested a preaward audit of a proposal for architect-engineer (A-E) services under Solicitation Number GS11P10MKC0050. The solicitation called for A-E services for the design of an annex to the existing Southern Maryland Courthouse in Greenbelt, Maryland. During the course of the preaward audit of the contractor's A-E price proposal, it came to our attention that PBS awarded a letter contract to the contractor for select work included in the A-E solicitation under Contract Number GS-11P-11-MK-C-0031. As a result, we initiated a limited scope review of the Southern Maryland Courthouse Annex Project to identify any issues related to this project.

Objective

Our objective was to identify issues with the Southern Maryland Courthouse Annex Project.

Scope

We performed the fieldwork for this report throughout June 2011.

Methodology

To accomplish the objective we reviewed the contract file and other pertinent project documents, met with project staff, and reviewed applicable guidance and regulations.

We conducted this performance audit in accordance with generally accepted government auditing standards except as noted below. 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 objective.

This review is limited in scope to issues discovered while reviewing the Southern Maryland Courthouse Annex Project.

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Report Distribution

Regional Commissioner, National Capital Region, Public Buildings Service (WP)

Regional Administrator, National Capital Region (WA)

Public Buildings Service Commissioner (P)

Director, Internal Control and Audit Division (BEI)

Assistant Inspector General for Auditing (JA)

Deputy Assistant Inspector General for Investigations (JI)