



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

PBS NCR Potomac Service Center Violated Federal Regulations When Awarding and Administering Contracts

*Report Number A130112/P/R/R15004
March 27, 2015*



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

REPORT ABSTRACT

OBJECTIVE

Our objective was to determine whether the PBS National Capital Region's (NCR) Potomac Service Center followed current procurement regulations and policies for ordering and accepting goods and services.

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WHAT WE FOUND

We identified the following during our audit:

Finding 1 – PBS NCR violated procurement regulations by awarding two contracts for personal services.

Finding 2 – PBS NCR awarded sole source contract modifications in violation of competition requirements.

Finding 3 – PBS NCR did not properly coordinate contractor employees' security clearance information among contracting and property management staff, thus raising the risk of unsuitable individuals having access to government buildings.

Finding 4 – PBS NCR awarded a commercial facilities management contract without final contract prices, possibly contributing to poor contractor performance.

WHAT WE RECOMMEND

Based on our audit findings, we recommend that the Regional Commissioner, Public Buildings Service, National Capital Region develop, implement, and maintain the management controls necessary to ensure that:

1. PBS NCR is not procuring or participating in personal services contracts.
2. Contract extensions are handled in accordance with Federal Acquisition Regulation 52.217-8 and contract modifications are handled in accordance with Federal Acquisition Regulation Part 6, including appropriate justifications for other than full and open competition and approval by the competition advocate for awards over \$650,000.
3. All contractor employees accessing GSA facilities have proper security clearances prior to site access and background check information is shared with and retained by contract and project management staff.
4. Contract prices are finalized timely to reduce the risk of contractor performance issues.

MANAGEMENT COMMENTS


The Regional Commissioner, Public Buildings Service, National Capital Region acknowledged the four findings. Management's written comments to the draft report are included in their entirety as **Appendix B**.



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

DATE: March 27, 2015

TO: Darren J. Blue
Regional Commissioner, Public Buildings Service
National Capital Region (WP)

FROM: Susan P. Hall 
Audit Manager, Program Audit Office (JA-R)

SUBJECT: PBS NCR Potomac Service Center Violated Federal Regulations
When Awarding and Administering Contracts
Report Number A130112/P/R/R15004

This report presents the results of our audit of the PBS NCR Potomac Service Center. Our findings and recommendations are summarized in the Report Abstract. Instructions regarding the audit resolution process can be found in the email that transmitted this report.

Your written comments to the draft report are included in **Appendix B** of this report.

If you have any questions regarding this report, please contact me or any member of the audit team at the following:

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On behalf of the audit team, I would like to thank you and your staff for your assistance during this audit.

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Introduction

A PBS Service Center is responsible for ensuring that tenant needs are met efficiently and economically in GSA owned and leased buildings. This responsibility includes the operation, maintenance, repair, alteration, and improvement of GSA-controlled space. Potomac is the largest of the five National Capital Region (NCR) Service Centers with 240 buildings in its inventory¹ totaling 28.7 million square feet. In fiscal year 2013, the Potomac Service Center had an operating and expense budget of \$54,121,402.

The Potomac Service Center, working with NCR's Facilities Program Support Division's contracting staff, awards and administers contracts for services such as operation and maintenance, custodial services, elevator maintenance, professional services,² commercial facilities management, and preventative maintenance.

Objective

Our objective was to determine whether the PBS NCR's Potomac Service Center followed current procurement regulations and policies for ordering and accepting goods and services.

See **Appendix A** – Purpose, Scope, and Methodology for additional details.

¹ The inventory includes 86 federally owned, 6 owned/delegated, and 148 leased buildings.

² Professional services include management and marketing consulting, facilities maintenance and management, and professional engineering services.

Results

The PBS NCR Potomac Service Center violated procurement regulations for ordering and administering contracts. PBS NCR violated prohibitions against personal services contracts, limited competition, raised the risk of unsuitable individuals having access to government buildings, and possibly contributed to poor contractor performance. Specifically, PBS NCR awarded prohibited personal services contracts, awarded sole source contract modifications without following competition requirements, did not coordinate security clearance information among contracting and property management staff, and awarded a contract without final contract prices.

Finding 1 – PBS NCR violated procurement regulations by awarding two contracts for personal services.

PBS NCR awarded two personal services contracts in violation of federal regulations. Federal Acquisition Regulation (FAR) 37.104, Personal Services Contracts, notes the government is normally required to obtain its employees by direct hire under competitive appointment or other procedures required by civil service laws. Obtaining personal services by contract, rather than by direct hire, circumvents those laws unless Congress has specifically authorized acquisition of the services by contract. PBS NCR was not authorized to award these two personal services contracts.

FAR 37.104 cites several elements of a personal services contract, including services performed at a government site and comparable services being performed using civil service personnel. Most significantly, the FAR notes the key question in determining whether a contract is for personal services is, “Will the Government exercise relatively continuous supervision and control over the contractor personnel performing the contract.” These two contracts had elements of a personal services contract, including government personnel providing direct supervision per the contracts’ award documents and Scopes of Work (SOW). Further, PBS NCR officials acknowledged that government personnel would continually assign tasks directly to the contractor employees.

PBS NCR awarded the first contract (GS-11P-12-MA-C-0013) on January 12, 2012. The contract provided preventative maintenance and operations support services for a 1-year period with 4 option years for one HVAC³ journeyman mechanic and three general maintenance mechanics. The contract contained elements of a personal services contract: (1) the work was performed at a government site, (2) comparable services are performed using civil service personnel, and (3) a government employee exercised supervision and control over the contractor employees. The SOW lists general duties for maintenance mechanics but also states that the mechanics “assist maintenance Mechanics and Engineers in the performance of their work as directed by the Chief Engineer and/or Project Manager.” According to PBS NCR personnel, this language refers to the PBS NCR chief engineer who assigned work directly to the contractor employees each morning. Also, the PBS NCR chief engineer approved

³ Heating, Ventilation, and Air Conditioning.

contractor employees' vacation requests prior to the requests being sent to the contractor's office. FAR 37.104 notes that a personal services contract is characterized by the employer-employee relationship it creates between the government and the contractor's employees. Having a PBS NCR supervisor direct the contract mechanics' daily tasks, while they work alongside the GSA mechanics they are assisting, indicates such an employer-employee relationship.

PBS NCR awarded the second contract (GS-P-11-11-MA-0141) on October 3, 2011. The contract provided for 1-year of professional program support services⁴ and included the same elements of a personal services contract as the first contract, except that PBS NCR also pre-selected the contractor employees. A GAO decision⁵ states the government dictating individual employees is not permissible and could imply the existence of a prohibited personal services contract. The procurement request and award document⁶ for the task order specified an individual contractor employee's name for each position,⁷ implying that this was a personal services contract.

The procurement request and award document for the second contract also specified the names of the PBS NCR personnel that would assign tasks directly to the contractor employees and review their deliverables.⁸ During the contract performance, these PBS employees also approved the contractor's *Time and Attendance Approval Report* to confirm the hours worked by the contract employees. Certification of time shows control and supervision over the contractor.

On June 27, 2012, PBS NCR issued new guidance, NCR Acquisition Alert 2012-1, *Contractor Timecards/Timesheets*, to highlight the importance of separation of duties between government employees and contractor employees. It stated government employees, such as contracting officers and project managers, should not certify/verify whether contractor timecards/timesheets are accurate. The contracting officers who provided us this guidance said that GSA certification of time is prohibited because it gives the contract the appearance of a personal services contract.

Although a contract may state that a contractor employee should not be supervised by GSA personnel, the actual practice dictates if a personal services contract is in effect. PBS NCR needs to ensure that all new and existing services contracts clearly define supervisory roles so that contracts are not in violation of federal regulations.

Recommendation 1

We recommend that the Regional Commissioner, PBS, National Capital Region develop, implement, and maintain the management controls necessary to ensure that PBS NCR is not procuring or participating in personal services contracts.

⁴ This task order was awarded against a FAS Mission Oriented Business Integrated Services contract.

⁵ *Science Applications, Inc., B-197099, 1980 WL 16579 (May 20, 1980)*.

⁶ GSA Form 49 and GSA 300.

⁷ The positions included a procurement analyst, a contract specialist, two program analysts I, a project manager, a program assistant II, and three program analysts II.

⁸ These personnel were titled program manager support in the contract.

Management Comments

The Regional Commissioner, Public Buildings Service, National Capital Region acknowledged our finding. Management's written comments to the draft report are included in their entirety as **Appendix B**.

Finding 2 – PBS NCR awarded sole source contract modifications in violation of competition requirements.

PBS NCR violated FAR competition requirements by extending a 4-month contract for 26 months through sole source contract modifications. FAR 6.1, Full and Open Competition, notes that "contracting officers shall promote and provide for full and open competition in soliciting offers and awarding Government contracts." PBS NCR intended to award a new contract through the competitive process. However, due to continued delays in the solicitation package, it awarded several sole source extensions to the incumbent's contract instead. This denied other qualified contractors the opportunity to compete for the work and PBS NCR the opportunity to obtain a competitive price.

PBS NCR planned to award a new 5-year elevator maintenance contract (base year plus 4 option years) through a competitive 8(a) acquisition⁹ in early November 2011. However, the SOW for this solicitation was delayed. Instead of awarding a new contract, PBS NCR extended the incumbent's contract for 12 months using FAR 52.217-8, Option to Extend Services, until October 31, 2011, to accommodate the solicitation process.

The solicitation package was still not ready at the end of the 12-month extension. Since PBS NCR decided the incumbent contract could not be extended again, PBS NCR awarded a new sole source contract (GS-11P-12-MA-D-0016) to the incumbent for \$471,296. This contract provided elevator maintenance for the 4-month period, November 1, 2011, to February 29, 2012, to allow sufficient time between the expiration of the incumbent's 12-month contract extension and the effective date of the new, competitive 8(a) contract. The contract did not include any option periods or an option to extend the contract under FAR 52.217-8.

The contract's Justification for Other than Full and Open Competition cited FAR 6.302-1 "only one responsible source and no other supplies or services will satisfy agency requirements." The justification noted it was "impractical to attempt to bring another firm on board to perform the services because there is insufficient time for a new company to prepare a proposal for the required work, to hire the staff required to man the buildings, and to commence contract performance." However, the solicitation package was delayed again, so PBS NCR was unable to complete the new 8(a) solicitation during the 4-month period. Consequently, PBS NCR continued to extend the 4-month

⁹ According to FAR 19.800, "Section 8(a) of the Small Business Act (15 U.S.C. 637(a)) established a program that authorizes the Small Business Administration (SBA) to enter into all types of contracts with other agencies and let subcontracts for performing those contracts to firms eligible for program participation." A contract awarded under this program is often referred to as an "8(a) acquisition."

contract through nine modifications. These modifications ultimately extended the contract for 26 months at a total cost of \$3.4 million.¹⁰

Additionally, \$2 million of the \$3.4 million in contract modifications did not have a written justification for awarding the work without full and open competition, as required by the FAR. FAR 6.303-1(a) and 6.301(b), Other than Full and Open Competition, note that a contracting officer may not award a contract without providing for full and open competition unless the contracting officer prepares a written justification citing an authorized basis. Further, Modification PS05 for \$773,718 and Modification PC11 for \$781,402 did not have justifications for other than full and open competition, or approval by the competition advocate. FAR 6.304(a)(2) states that the contracting officer may not approve sole source awards exceeding \$650,000. For a proposed contract over \$650,000, a competition advocate for the procuring activity must approve the justification. Since the sole source contract modifications were above \$650,000, the justifications needed to be approved by a competition advocate.

The rationale for awarding the 4-month contract without competition was that the incumbent contractor was the only source that could provide the services within such a restrictive timeframe. While a new elevator contract was eventually awarded to a different contractor, PBS NCR's actions ultimately delayed the start of the new, competitive, 8(a) contract for a total of 30 months at a sole source price of approximately \$4.7 million. Better planning by all parties involved in the solicitation process might have produced a timely solicitation package, negating the need for 26 months of extensions.

Recommendation 2

We recommend that the Regional Commissioner, Public Buildings Service, National Capital Region develop, implement, and maintain the management controls necessary to ensure that contract extensions are handled in accordance with FAR 52.217-8 and contract modifications are handled in accordance with FAR Part 6, including appropriate justifications for other than full and open competition and approval by the competition advocate for awards over \$650,000.

Management Comments

The Regional Commissioner, Public Buildings Service, National Capital Region acknowledged our finding. Management's written comments to the draft report are included in their entirety as **Appendix B**.

¹⁰ The total contract cost was \$4,654,547. This included general work such as fire alarm elevator testing, preventative maintenance being performed after normal business hours, and a task order to remove and replace hydraulic valves.

Finding 3 – PBS NCR did not properly coordinate contractor employees’ security clearance information among contracting and property management staff, thus raising the risk of unsuitable individuals having access to government buildings.

PBS NCR’s process for coordinating security clearance information resulted in contracting and property management staff not having current security status information on contractor employees. For example, we identified a person the GSA Chief Security Office¹¹ listed as “unfavorable”¹² on a list of current employees for a custodial contract. This increases the risk that unsuitable individuals may be able to access the building, putting people and property at risk.

PBS NCR staff needs to have access to the security clearance statuses of all contractor employees who work at government sites. According to GSA Policy and Procedure CIO P 2181.1, *Homeland Security Presidential Directive-12 [HSPD-12] Personal Identity Verification [PIV] and Credentialing*:

All employees and those long-term contractors requiring routine access to GSA facilities and/or IT systems must have a personnel investigation appropriate for their job responsibilities in order to be issued a PIV card. The agency must initiate a minimum of a National Agency Check with Written Inquiries (NACI) and must have received favorable results on the FBI fingerprint check before a PIV card can be issued and access to GSA facilities granted.

We obtained a list of the 110 contractor employees that worked, or were working, under our six sample contracts.¹³ We reviewed the contract files for security information since FAR 4.803, Content of Contract Files, notes evidence of required security clearances are examples of records normally contained in contract files. After PBS NCR advised that security clearance information would not be maintained in the contract files due to privacy concerns, we requested the information from the GSA Chief Security Office.

We identified one current contract employee who had been evaluated as “unfavorable” on the list provided by the GSA Chief Security Office and promptly alerted the Potomac Service Center Director. PBS NCR placed the individual on a “Do Not Admit” status at the Regional Office Building. PBS NCR later stated that this individual was a temporary contractor employee under the GSA contract. However, the individual was a full-time employee under another agency’s contract and that agency had issued the individual

¹¹ The Office of Mission Assurance Chief Security Office includes the Identity, Credentialing, and Access Management Branch.

¹² GSA policy requires all long-term contractors must be issued a Personal Identity Verification card. Issuance of a Personal Identity Verification card requires favorable results on the FBI fingerprint check and the initiation of a personnel security investigation at the level of the National Agency Check with Written Inquiries or higher. The Personal Identity Verification card must be withheld or revoked if job suitability decisions are unfavorable.

¹³ We judgmentally selected 6 contracts from a PBS NCR list of 23 service contracts active in fiscal year 2013. The sample included one contract from six different categories of services: custodial, operations and maintenance, professional services, preventative maintenance and operation support, elevator maintenance, and commercial facilities management.

HSPD-12 credentials.¹⁴ The GSA Chief Security Office noted that GSA will accept HSPD-12 credentials from another agency. In this case, a new Contractor Information Worksheet¹⁵ should have been submitted to include this updated information in the GSA database but it was not.

Additionally, we could not confirm the security clearance status for 27 sampled contractor employees (25 percent), as the GSA Chief Security Office had no security clearance records for these individuals. Without current security clearance information, there is the risk of unsuitable individuals having access to federal buildings.

Moreover, some of the security information we received was not current. During our building site visits, we observed four individuals with government identification credentials who the GSA Chief Security Office stated had no security clearance records. The GSA Chief Security Office later stated that one individual originally on the “no records” list, actually had a NACI but the information had not been updated in the system.

There was limited evidence of coordination among the GSA Chief Security Office, contracting officers, building managers, and contracting officer representatives concerning security clearance statuses. PBS NCR should have a process in place to ensure collaboration among the parties to prevent security risks due to unsuitable individuals accessing federal buildings and databases. We raised this issue to PBS NCR in our prior audit reports.¹⁶ We are reiterating our recommendation from those prior reports.

Recommendation 3

We recommend that the Regional Commissioner, Public Buildings Service, National Capital Region develop, implement, and maintain the management controls necessary to ensure that all contractor employees accessing GSA facilities have proper security clearances prior to site access and background check information is shared with and retained by contract and project management staff.

Management Comments

The Regional Commissioner, Public Buildings Service, National Capital Region acknowledged our finding. Management’s written comments to the draft report are included in their entirety as **Appendix B**.

¹⁴ The GSA Security Office noted that an individual with an unfavorable adjudication can resubmit for a favorable adjudication.

¹⁵ A Contractor Information Worksheet must be completed by the contractor and submitted to GSA as part of the HSPD-12 credentialing process.

¹⁶ *Recovery Act Report-Contract Administration for Group 10 Review of PBS’s Limited Scope and Small Construction Projects Funded by the American Recovery and Reinvestment Act of 2009*, Report Number A090184/P/R/R12008, dated June 13, 2012; and *Implementation Review of Corrective Action Plan Contract Administration for Group 10 Recovery Act Limited Scope and Small Construction Projects* Report Number A090184/P/R/R12008, dated June 13, 2012, Assignment Number A130130, March 28, 2014.

Finding 4 – PBS NCR awarded a commercial facilities management contract without final contract prices, possibly contributing to poor contractor performance.

PBS NCR awarded a performance-based commercial facilities management contract without finalized prices. This may have contributed to the poor contractor performance cited in the contract file. The file included two performance improvement plans (a 30-day and a 90-day) and deductions for nonperformance from payments due the contractor. FAR 15.405(b), Price Negotiation, specifies that “The contracting officer’s objective is to negotiate a contract of a type and with a price providing the contractor the greatest incentive for efficient and economical performance.” FAR 37.6, Performance-Based Contracting, notes that “performance-based contracting methods are intended to ensure that required performance quality levels are achieved and that total payment is related to the degree that services performed or outcomes achieved meet contract standards.” Awarding a performance-based contract without finalized prices may have reduced the contractor’s incentive to perform efficiently and economically.

PBS NCR awarded the contract on May 6, 2010. The contract states, “Pending completion of negotiations, the [*incumbent*] and GSA have tentatively agreed to the following amounts for the base period, effective 04/01/2010 thru 12/31/2010. Negotiations to establish a final price for the base and FOY¹⁷ periods will be completed by 05/31/2010.” The tentative price agreed to for the base period was \$2.3 million.

Months after contract award, the contractor and PBS NCR were still discussing prices related to the base year contract. September 2010 email records indicate the contractor was seeking clarification regarding certain costs related to the base contract. Email records dated June to July 2011 indicate that final negotiations for the base award never took place and that no modification was issued to finalize the base year contract price.

The lack of a finalized contract price may have contributed to poor contractor performance. The contractor’s monthly invoices cited deductions for work that PBS NCR had to pay another contractor to complete as a result of the contractor’s non-performance. These included \$117,398 to replace equipment and \$250,000 to replace valves because the contractor failed to perform the required preventative maintenance.

The uncertainty of operating the contract without finalized prices may have impacted the contractor’s performance. PBS NCR must be timely in finalizing prices for performance-based contracts to provide the incentive to maximize contractor performance.

Recommendation 4

We recommend that the Regional Commissioner, Public Buildings Service, National Capital Region develop, implement, and maintain the management controls necessary to ensure that contract prices are finalized timely to reduce the risk of contractor performance issues.

¹⁷ Follow-on year

Management Comments

The Regional Commissioner, Public Buildings Service, National Capital Region acknowledged our finding. Management's written comments to the draft report are included in their entirety as **Appendix B**.

Conclusion

A PBS Service Center is responsible for ensuring that tenant needs are met efficiently and economically in GSA owned and leased buildings. Our audit found that PBS NCR needs to improve the contracting actions supporting this mission. PBS NCR violated federal regulations and Agency policy by awarding prohibited personal services contracts, awarding sole source contract modifications without the appropriate justifications, not coordinating security clearance information among contracting and property management staff, and awarding a contract without final contract prices.

PBS NCR officials stated they have started taking corrective action on the issues identified during our review. To prevent these matters from occurring in the future, PBS NCR needs to establish and implement management controls to improve awareness of, and adherence to, procurement regulations and policy.

Accordingly, we recommend the Regional Commissioner, Public Buildings Service, National Capital Region develop, implement, and maintain the management controls necessary to ensure that: (1) PBS NCR is not procuring or participating in personal services contracts; (2) contract extensions and contract modifications are handled in accordance with the FAR; (3) all contractor employees accessing GSA facilities have proper security clearances prior to site access and background check information is shared with and retained by contract and project management staff; and (4) contract prices are finalized timely to reduce the risk of contractor performance issues.

Appendix A – Purpose, Scope, and Methodology

Purpose

Audits of PBS's Property Management Service Centers¹⁸ were included in the Office of Inspector General Fiscal Years 2013 and 2014 Audit Plans. The audits were to examine the economy and efficiency of the Service Centers through reviews focused on their procurements.

Scope and Methodology

Our audit focused on six Potomac service contracts that were active in fiscal year 2013. We judgmentally selected our sample from a list of 23 Potomac service contracts totaling \$45.9 million, provided by the PBS NCR. We selected the six service contracts by choosing the highest dollar value contract in each service category.¹⁹ The combined value of the six contracts was \$24.5 million or 53 percent of the contract universe. The contracts included a professional services contract, an elevator maintenance service contract, a preventative maintenance and operations support services contract, an operation and maintenance service contract, and a commercial facilities and maintenance service contract.

To accomplish our objective, we:

- Reviewed prior audit reports related to PBS's property management practices;
- Reviewed six judgmentally selected contract files including the contract modifications, scopes of work, security clearance requirements, PBS NCR Quality Assurance Surveillance Plans, and the contractors' Quality Control Plans;
- Met and corresponded with contracting officers, contracting officer representatives, contract specialists, building managers, and Security Office personnel;
- Reviewed PBS's customer satisfaction surveys to determine if tenants expressed any concerns that could be due to contractor performance;
- Reviewed GSA Policy and Procedure CIO P 2181.1, *Homeland Security Presidential Directive-12 Personal Identity Verification and Credentialing*, the GSA Acquisition Manual, and the Federal Acquisition Regulation;
- Reviewed contractor service logs and inspection reports to identify non-compliance issues, the actions taken to correct them, and timeliness of corrective action; and
- Conducted four building inspections to determine compliance with custodial and operation and maintenance contract requirements.

¹⁸ In the National Capital Region, a Property Management Service Center is referred to as a Service Center.

¹⁹ We excluded the Ronald Reagan Building's service contracts since other Office of Inspector General audits have reviewed contracts related to this building.

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

We conducted the audit between July 2013 and June 2014 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.

Internal Controls

We evaluated internal controls over PBS NCR's Service Center procurement processes to the extent necessary to answer the audit objective. Related internal control issues are discussed in the context of the audit findings.

Appendix B – Management Comments



MAR 18 2015

GSA National Capital Region

MEMORANDUM FOR NICHOLAS GOCO
PRINCIPAL DEPUTY ASSISTANT INSPECTOR
GENERAL FOR REAL PROPERTY

FROM: DARREN J. BLUE *DJ Blue*
REGIONAL COMMISSIONER (WP)
PUBLIC BUILDINGS SERVICE
NATIONAL CAPITAL REGION

SUBJECT: PBS NCR Potomac Service Delivery Center
Violated Federal Regulations when Awarding and
Administering Contacts---Audit Report # A130112

PBS/NCR appreciates the opportunity to comment on the draft audit report and acknowledges the four audit findings. All of these findings occurred before the creation of the new Office of Acquisition, which has been established to develop and implement management controls to address such issues. Regarding Finding 3, that PBS NCR did not properly coordinate contractor employees' security clearance information, we note that PBS NCR has already initiated a corrective action plan which addresses this finding in response to audit report A090184.

The new Office of Acquisition has been proactive in correcting conditions that contributed to the findings in this draft audit report and has been directed to further identify specific management controls to address these concerns. These management controls will be included in our corrective action plan.

If you or your staff have any additional questions or concerns, please do not hesitate to contact Vince Matner at 202-708-4617.

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Appendix C – Report Distribution

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