



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

DATE: December 2, 2016

TO: Mary Gibert
Regional Commissioner
Public Buildings Service
National Capital Region (WP)

FROM: Marisa A. Roinestad 
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Real Property and Finance Audit Office (JA-R)

SUBJECT: Review of the Proposed Change Order for Site Excavation at the
DHS Headquarters Consolidation at St. Elizabeths
Audit Memorandum Number A150048-3

During our monitoring of the Department of Homeland Security (DHS) Headquarters consolidation at the St. Elizabeths West Campus, we became aware that Public Buildings Service (PBS) National Capital Region (NCR) staff were preparing to award a change order in violation of the Competition in Contracting Act of 1984 (CICA) and the Federal Acquisition Regulation (FAR). After notifying management of our concerns, PBS NCR halted the procurement. Accordingly, no laws or regulations were violated. However, PBS NCR acquisition personnel's failure to stop the procurement before we notified them of our concerns is troubling.

Although the change order was not awarded in this instance, this matter is similar to a finding included in our March 2016 audit report on a contract for services at the St. Elizabeths West Campus.¹ In that audit, we found that PBS NCR did not comply with federal competition requirements when awarding the contract, thereby denying opportunities to other contractors and eliminating price competition.

Taken together, these instances indicate that PBS NCR must strengthen the controls over its acquisition program to ensure, among other things, compliance with CICA and FAR competition requirements.

¹ *Limited Scope Audit – Operations and Maintenance Services Contract at St. Elizabeths* (Report Number A150048/P/R/R16001, March 2, 2016).

Background

The DHS Headquarters consolidation is an effort to reduce DHS's real estate costs, as DHS currently leases more than 50 facilities across the Washington, D.C., area. The consolidation is also expected to provide a more unified, secure campus that brings together DHS executive leadership and operational management. This is expected to facilitate more efficient incident management responses and command-and-control operations.

GSA's PBS NCR is managing the multi-phased consolidation. Current work includes the design, selective demolition, remediation, and construction of the historic Center building, which will house the DHS Secretary and staff. The Center building is scheduled to be completed in fiscal year 2017. Additional DHS senior staff will be housed in the adjacent West Addition building, which was originally scheduled to be completed after the Center building. PBS initially planned to competitively bid the West Addition building's design/build construction contract in fiscal year 2016, with construction to be completed in fiscal year 2019. However, at the request of DHS, PBS is expediting construction of the West Addition building so that it is completed at the same time as the Center building.

PBS NCR Attempted to Award a Change Order without Adhering to Competition Requirements

On July 28, 2016, the PBS project team advised us of its plan to issue a change order to the Center building's general contractor for excavation services for the West Addition building. We were concerned that this planned change order would violate the competition requirements of CICA and FAR 6.3 – *Other Than Full and Open Competition*. The scope of work for the Center building's contract did not include excavation services for the West Addition building since the West Addition building was to be a stand-alone project. Had PBS NCR acquisition personnel awarded the out of scope sole source change order for excavation services to the Center building's contractor, they would have again denied other contractors the opportunity to bid on a multi-million dollar procurement and eliminated price competition.

On August 11, 2016, we discussed our concerns regarding the planned change order with the PBS project team. PBS personnel stated that they planned to award the change order because DHS requested the expedited construction of the West Addition building to coincide with the completion of the Center building. Since the area to be excavated for the West Addition building was within the Center building's general contractor's work area (including space for equipment, supplies, office trailers, and employee parking), the project team concluded that it could award a change order without the need for full and open competition. Also, the project team did not believe it would be efficient to have two general contractors working at the same site simultaneously. According to the project team, a change order would allow excavation of the site while PBS proceeded with the solicitation for the design and construction of the West Addition building. A project official added that the walls in the area where the

West Addition building will connect to the Center building are very fragile. PBS personnel expressed concern that a separate contractor, unaware of the fragile state of the walls, might harm the stability of the Center building.

The reasons the project team gave us for the planned change order do not justify the lack of competition for the procurement. CICA requires that contracts be entered into after “full and open competition through the use of competitive procedures” unless certain circumstances exist, such as an unusual or compelling urgency or national security need, that would permit agencies to use noncompetitive procedures. However, none of these circumstances applied to this potential change order.

Furthermore, FAR 6.3 prescribes the policies and procedures for contracting without full and open competition. If other than full and open competition is warranted, FAR 6.303 requires the contracting officer to:

- (1) Justify the use of such actions in writing;
- (2) Certify the accuracy and completeness of the justification; and
- (3) Obtain the appropriate approval based on the contract value.

However, the project team was not able to provide us with an acceptable written, certified, and approved justification for the planned change order.

Shortly after we alerted PBS of our concern, PBS decided against awarding the change order to the Center building’s general contractor. The project team now plans to include the excavation services in the design/build construction contract for the West Addition building and solicit the contract on the open market.

Need for Improved Internal Controls Surrounding PBS NCR Acquisitions

Although PBS avoided violations of CICA and FAR 6.3 requirements by abandoning the planned change order, we are concerned by the similarity of the planned action to the finding in our *Limited Scope Audit – Operations and Maintenance Services Contract at St. Elizabeths* (Report Number A150048/P/R/R16001, March 2, 2016). In that audit, we found that PBS failed to comply with federal competition requirements in its procurement of operations and maintenance services for the St. Elizabeths West Campus, thus denying opportunities to other contractors and eliminating price competition.

In our report, we recommended that the Regional Commissioner, PBS NCR institute the necessary management controls to ensure that procurements for the DHS Headquarters consolidation comply with CICA and the FAR. PBS’s corrective action plan addressing our recommendations outlined two controls to prevent competition violations on the St. Elizabeths DHS Headquarters consolidation project. The first control states that acquisition personnel involved in the violation identified in that audit will be reminded of their responsibilities under CICA. The second control requires that all future procurements for the DHS Headquarters consolidation be reviewed by the

Director, Construction Division, PBS, NCR Office of Acquisition, to ensure compliance with CICA and the FAR.

These controls failed to prevent the proposed change order for noncompetitive excavation services at the West Addition building. When this issue came to our attention, the same contracting staff responsible for the CICA and FAR competition violations identified in our prior audit had already negotiated the proposed change order's price with the Center building's general contractor. Additionally, the budget office was in the process of certifying funds so the contracting officer could award the change order. Consequently, less than five months after we issued our prior audit report and less than two months after we accepted the corrective action plan addressing the competition violations identified in that audit, PBS NCR was well on the way toward committing another significant breach of competitive contracting requirements.

We reassert our recommendation that the Regional Commissioner, PBS NCR institute the necessary management controls to ensure that procurements for the DHS Headquarters consolidation comply with CICA and FAR 6.3.

Conclusion

Despite the findings and recommendations in our March 2016 audit report, PBS NCR acquisition personnel on the DHS Headquarters project at St. Elizabeths were again preparing to make a procurement that would violate CICA and FAR competition requirements. These recurring deficiencies indicate that PBS NCR's current policies and procedures are not working effectively to ensure compliance with laws and regulations. To fulfill its responsibility to ensure compliance with laws and regulations, PBS NCR management should strengthen controls surrounding contract award and administration to ensure compliance with applicable laws and regulations, including the competition requirements set forth in CICA and the FAR.

GSA Comments

In a memo dated November 7, 2016, the Regional Commissioner, PBS NCR, provided the following comments on our draft memorandum:

NCR's Contracting Officer (CO) for the DHS Headquarters Consolidation understands the Competition in Contracting Act (CICA) requirements. The CO held conversations with our Office of Design and Construction project team and advised that a change order under the contract was not appropriate and the action needed to be competed prior to the IG being notified of the potential change. Our August 11, 2016 meeting with the IG to discuss the issue, solidified the CO's recommendation to the project team.

To clarify the reference [*sic*] audit from March 2016, the scopes of change orders for construction contracts have different rules than those under

service contracts. The error identified in the previous audit occurred because construction change order contract rules were applied to a service contract item. NCR believes these two findings are not related.

NCR's PBS Office of Acquisition (OOA) will conduct training on CICA requirements and change orders for our Office of Design and Construction. The training will include training on what is considered an in-scope change to a construction contract and what violates CICA.

Specific to this audit, the CO will appoint a new Contracting Officer's Representative and will update the delegation letter to include additional guidance for initiating change orders to avoid CICA issues in the future.

The current delegation of authority letter gives the project executive the ability to request formal proposals for contemplated changes under the "Changes Clause" contained in the contract. The letter explicitly requires the project executive to identify changes outside the intent/scope of the work and submit to the CO the request for authorization including the required necessary documentation (i.e. justification for other than full and open competition). The authority to request formal proposals for contemplated changes will be removed from the delegation letter. The CO will issue requests for proposals for change orders.

Additionally, for all change orders over \$500,000, NCR's PBS Office of Acquisition will initiate new controls that require the OOA Capital Construction Division Director to sign off on the change order before an RFP is issued. This process will be formalized in a letter issuance to our Office of Design and Construction on this change in methodology for the reviews by the NCR OOA Capital Construction Division Director.

OIG Response

PBS NCR's response notes the contracting officer for the excavation services change order advised the project team that the change order was not appropriate and the work needed to be competed. None of the written or oral information we gathered during this review identified any contracting officer objections to the potential change order, even though the proposed change order had advanced to the point of budget certification. Furthermore, the change order's progress was not halted by the control PBS NCR planned to implement after our prior audit, "that all future procurements for the DHS Headquarters consolidation be reviewed by the Director, Construction Division, PBS, NCR Office of Acquisition, to ensure compliance with CICA and the FAR." PBS NCR's response recognizes that additional controls are needed and proposes new controls and guidance.

PBS NCR's response also states NCR believes the findings in this review and the March 2016 audit are not related. The response notes that the "scopes of change

orders for construction contracts have different rules than those under service contracts.” We are aware of the different rules, but disagree that the two findings are unrelated. In each instance, PBS NCR’s contracting actions violated, or almost violated, the competition requirements under CICA and the FAR.

I would like to thank you and your staff for your assistance during this review. If you have any questions regarding this audit memorandum, please contact Susan P. Hall, Audit Manager at (202) 501-2073, or me at (202) 273-7241.

Memorandum Distribution

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