GENERAL SERVICES ADMINISTRATION
OFFICE OF INSPECTOR GENERAL

Recovery Act Report –
Richard H. Poff and Huntington Building
Modernization Projects
Review of PBS's Major Construction and Modernization
Projects Funded by the American Recovery and
Reinvestment Act of 2009
Audit Number A090172/P/R/R11003

November 17, 2010

U.S. General Services Administration
Office of Inspector General

Date: November 17, 2010

Reply to Attn of: R. Nicholas Goco
Deputy Assistant Inspector General
For Real Property Audits (JA-R)

Subject: Recovery Act Report – Richard H. Poff and Huntington Building Modernization Projects
PBS's Major Construction and Modernization Projects Funded by the American Recovery and Reinvestment Act of 2009
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To: Robert A. Peck
Commissioner, Public Buildings Service (P)

As part of our oversight of the General Services Administration's (GSA) American Recovery and Reinvestment Act (Recovery Act) projects, we noted a matter which we believe warrants your attention. We found that GSA awarded construction services for the Richard H. Poff and Huntington Building modernization projects without adequate price competition. GSA disclosed the Guaranteed Maximum Price in the Request for Proposals, thereby setting the bid amounts for prospective bidders and effectively eliminating price competition for construction services.

Construction Services Were Awarded Without Adequate Price Competition

The contracts for the Richard H. Poff and Huntington Building modernization projects were awarded as Construction Manager as Constructor (CMc) contracts with a Guaranteed Maximum Price. This type of contract is initially awarded for pre-construction services[1] at a firm fixed price with an option for construction phase services at a Guaranteed Maximum Price. The Guaranteed Maximum Price is established at the time of contract award, and total pricing, for both pre-construction and construction services, should be evaluated during the selection process.

When the Requests for Proposals were posted to FedBizOpps in July 2009, GSA included the Guaranteed Maximum Prices. The Guaranteed Maximum Price for the Poff project was $42,000,000 and the Huntington Guaranteed Maximum Price was $12,500,000. (The Guaranteed Maximum Price for the Poff project was later reduced to $39,000,000 via an amendment to the request for proposals.) However, the pricing had limited support, as GSA did

[1] Pre-construction 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.

not get an independent government estimate for the construction of either project as required by the Federal Acquisition Regulation (FAR) 36.203. The Guaranteed Maximum Price for the Poff project was based on an internal budget estimate using the feasibility study estimate of $28.9 million, and the Guaranteed Maximum Price for the Huntington project was based on opinions of the engineering staff.

Although GSA used a competitive bid process, pricing for the construction options was not based on competition. GSA received ten bids on the Poff modernization project, and four bids on the Huntington project. The bids for pre-construction varied among the bidders; however the bids for construction services were identical ($39,000,000 and $12,500,000, respectively). The bids differed only with regard to how the total amount was allocated between the price components of the Guaranteed Maximum Price[2].

In November 2009, GSA awarded the contracts for both projects to the contractors with proposals in the technical competitive range who had the lowest bids for pre-construction services. However, pre-construction services comprise less than one percent of each overall contract value. The CMc contract on the Poff project was awarded with a firm-fixed-price of $225,000 for pre-construction services and a total value, including all options, of $51,430,910. The contract for the Huntington project was awarded at a firm fixed price of $109,900 for pre-construction services and a total contract value of $27,839,900. After further negotiations with the two winning contractors, GSA exercised construction options for the Poff and Huntington modernization projects in June 2010 for $39,900,000 and $14,851,219, respectively. Additional options for both projects have yet to be exercised.

The price reasonableness memoranda for both contracts indicate that the technical proposals were of greater importance than price. However, achieving fair and reasonable pricing is an invariable requirement of Government contracting. The FAR Part 15, which governs contracting by negotiation, notes that "normally, price competition establishes price reasonableness." Since the Guaranteed Maximum Price was not set through price competition, GSA has no assurance that a fair and reasonable price was achieved.

Although a competitive process was used to select the contractors for these projects, the pricing for the construction services was not based on competition and as a result, the contract awards for the two projects were not in compliance with competition requirements. By establishing the Guaranteed Maximum Price in the Request for Proposals, GSA eliminated cost or price as an evaluation factor for substantial portions of the contract. As a result, GSA violated the Competition in Contracting Act (CICA). In addition, GSA exceeded the FAR limits on project price that may be provided in the solicitation. FAR 36.204 states, "advanced notices and solicitations shall state the magnitude of the requirement in terms of physical characteristics and estimated price range." However, in this case, GSA provided the exact Guaranteed Maximum Prices for the construction services options.

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[2] A Guaranteed Maximum Price has three price components: an estimated cost of work, the contingency for the cost of work, and the contractor's fee.

Conclusion

Given this situation, we have concluded that GSA cannot exercise additional options on the Poff and Huntington construction contracts without further violating CICA. Both projects include additional options with pricing established by GSA. The Poff project has options for security improvements at $7,632,168 and building code and life safety improvements at $4,573,742. The Huntington project has options for additional Recovery Act work at $5,000,000, improvements to interior finishes at $3,500,000, and for security improvements at $6,730,000. In addition, GSA needs to establish management controls to ensure CMc contracts meet competition requirements.

Recommendation

We recommend that the Commissioner of the Public Buildings Service:

1) Refrain from exercising the remaining options on the Poff and Huntington modernization projects unless compliance with applicable laws is assured; and

2) Develop and implement a system of management controls to ensure that contracts using the Construction Manager as Constructor (CMc) methodology meet competition requirements.

Management Comments

In its comments, management acknowledged the audit findings and concurred with the recommendations (see Appendix A).

We appreciate the support that has been provided throughout this review. If you have any questions about this memorandum, please contact me on (202) 219-0088.

Sincerely,

R. Nicholas Goco

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Deputy Assistant Inspector General for Real Property Audits (JA-R)

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Management Comments

GSA

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GSA Public Buildings Service

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

FROM: ROBERT A. PECK
COMMISSIONER
PUBLIC BUILDINGS SERIVCE (P)

SUBJECT: Draft Recovery Act Report – Richard H. Poff and Huntington Building Modernization Projects PBS's Major Construction and Modernization Projects Funded by the American Recovery and Reinvestment Act of 2009 Audit Number A090172

The Public Buildings Service (PBS) appreciates the opportunity to comment on the subject draft audit report.

Both the Poff and Huntington modernization projects were awarded under the American Recovery and Reinvestment Act and are meeting the intent of the Act in putting people back to work and strengthening the economy. In addition, these projects are meeting energy conservation goals as required by the Act.

We agree with the report determination that a competitive process was used to select the successful contractors on both projects. We would like to add that the competition was a transparent process with the bidding community and resulted in the selection of contractors that provided the strong qualifications needed to deliver the complexities and schedules of the projects. We acknowledge the report finding that construction services were awarded without adequate price competition. We would like to add that both contracts require price competition at the sub-contract level and open book accounting. PBS contract administration and contract enforcement will ensure these contract requirements are met.

The draft report includes two recommendations:

1) Refrain from exercising the remaining options on the Poff and Huntington modernization projects unless compliance with applicable laws is assured; and

2) Develop and implement a system of management controls to ensure that contracts using the construction manager as constructor (CMc) methodology meet competition requirements.

In response to Recommendation 1, should PBS determine that the additional work envisioned under the options is necessary, PBS will take action to award that work in accordance with applicable laws.

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Management Comments

With respect to Recommendation 2, PBS has developed and is currently implementing a corrective action plan in response to similar concerns raised in recent audit reports on the Austin Courthouse and 50 UN Plaza renovation projects. This corrective action plan as designed by PBS management and approved by your office is intended to strengthen the system of internal control surrounding the CMc delivery method so that the actions noted in these audit reports are not repeated. Accordingly, we believe the actions set forth in this plan will satisfy Recommendation 2.

Please note that a more comprehensive response may follow upon issuance of the final audit report or as further information comes to our attention. Should you or your staff have any questions, please contact Jennifer Smith on (202) 501-4994.