



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

**Recovery Act Report – Improper Obligation of
Construction Funds for the 1800 F Street
Modernization Project
Audit of PBS’s Major Construction and
Modernization Projects Funded by the American
Recovery and Reinvestment Act of 2009**

*Report Number A090172/P/R/ R12006
March 30, 2012*



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

DATE: March 30, 2012

TO: Cathy Kronopolus
Regional Commissioner, Public Buildings Service (WP)

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

SUBJECT: Recovery Act Report – Improper Obligation of Construction Funds for the 1800 F Street Modernization Project
Audit of GSA's Major Construction and Modernization Projects Funded by the American Recovery and Reinvestment Act of 2009
Report Number A090172/P/R/ R12006

During our oversight of the American Recovery and Reinvestment Act (Recovery Act) projects, administered by the General Services Administration (GSA), we identified issues related to the subject project that warrant your attention. PBS improperly recorded an obligation for a contract modification that did not satisfy the specificity requirements of the Recording Statute. In addition, the modification was not fully priced prior to execution as required by the Federal Acquisition Regulation (FAR). Lastly, the modification was inappropriately funded using the Building Operations funds.

Contract Modification Violated Recording Statute and Federal Acquisition Regulation Requirements

On September 29, 2011, GSA's Public Buildings Service (PBS) issued an \$8,272,249 modification¹ to the construction contract for the 1800 F Street building modernization project in the National Capital Region. This modification established an "allowance fund" for the project, but did not provide specific scope or pricing information. Therefore, PBS's obligation of funds for this modification was improper because it did not meet the specificity requirements of the Recording Statute. Additionally, the modification did not meet FAR pricing requirements.

¹ Modification PS12

PBS issued this modification to cover three Contract Line Item Numbers (CLINs), including information technology system components, security cameras and hardware, and audio visual equipment. According to the modification:

Each Allowance CLIN issued by this mod may not be utilized by Whiting-Turner Walsh² until they provide full detailed proposals for each work item that is to be charged against the allowance fund. Once an agreement for scope and pricing is established for each work item, the work item will be fully definitized by contract modification to establish the cost for the work.

However, to incur an obligation, the Recording Statute states that an agency must have documentary evidence of a binding agreement between the agency and a vendor for *specific* goods or work services to be provided. Additionally, FAR 43.102 (b) requires that all contract modifications, including change orders, be priced before they are executed unless doing so would adversely affect the interests of the Government.

As the modification requires an agreement on scope and pricing to be reached at a later date, neither of these requirements were met. As a result, the obligation is invalid and the modification violates FAR pricing requirements.

PBS Inappropriately Used Building Operations Funds on the Modification

PBS funded this contract modification using Building Operations funds, and as a result, may need to notify Congress about the use of the funds.

PBS funded this modification using \$8,272,249 from the Building Operations budget account from the Federal Buildings Fund. However, according to the GSA Budget Administration Handbook, Building Operations funds are primarily for the operational costs of owned and leased buildings and the management and administration of PBS programs. According to PBS Policy on Budget Activity Use for the Federal Buildings Fund, the funds can only be used on construction projects for limited activities, such as planning and feasibility studies, prior to receiving line item funding,³ and for in-house management costs of the project. As such, Building Operations funds would normally not be used to directly fund a construction contract.⁴

Further, PBS project personnel indicated that the purpose of this modification is to provide above standard tenant improvements for the 1800 F Street modernization project; and that these funds were used in accordance with GSA Pricing Policy. Per GSA Pricing Policy, tenant agencies are required to fund any build-out costs above the

² Whiting-Turner Walsh is the construction contractor for this project.

³ Line item projects have estimated costs exceeding a statutory threshold that require prospectuses (authorization), and are individually budgeted.

⁴ Typically, PBS would fund construction contracts using Minor Repair and Alterations funds for projects below the prospectus threshold and the Major Repair and Alterations funds for line item projects above the prospectus threshold. However, as a Recovery Act modernization project above the prospectus threshold, neither of these sources should be used.

tenant improvement allowance.⁵ The information technology and audio visual equipment appear to qualify as tenant improvements. However, in this instance, the improvements appear to be for all of GSA, as the tenant agency, and not just PBS. As a result, Building Operations funds are being used to fund the costs of other GSA components rather than solely for the management and administration of PBS programs.

Finally, the modification included security costs priced at \$2,126,400. These security costs include security cameras and hardware as well as lobby security such as turnstiles. According to PBS's Pricing Implementation for Project Management, these security costs should be considered capital expenditures rather than tenant improvements. As such, they would be budgeted and funded as a project cost under PBS's capital program, not using the Buildings Operations funds.

Given these circumstances, the use of these funds may be interpreted as a reprogramming of funds and PBS may need to notify the appropriate Congressional committees and obtain their approval to use these funds on this modification.

Conclusion

The Office of Audits informed PBS of these issues on January 19, 2012. Subsequently, on February 7, 2012, PBS deobligated the \$8,272,249 via contract modification. In addition, in response to the GSA OIG Recovery Act Report – Improper Obligation of Construction Contingency Funds, PBS will be performing a review of contract modifications to ensure that funds have been obligated properly.

Recommendations

As PBS has taken corrective action on this contract modification and will be taking corrective actions related to a prior report, no recommendations are being made at this time.


Management Comments

In its response to the draft report, PBS management generally concurred with the audit findings. PBS's response is included in its entirety as **Attachment A** to this report.

⁵ The tenant improvement allowance is the funding source that enables the space to be built out for occupancy to meet a tenant agency's specific requirements.

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

Sincerely,

A handwritten signature in black ink, appearing to read "Nicholas V. Painter". The signature is fluid and cursive, with a prominent initial "N" and a long, sweeping underline.

Nicholas Painter
Audit Manager (JA-4)

Appendix A – Management's Comments

Report Number A090172/P/R/R12006



GSA National Capital Region

MAR 28 2012

MEMORANDUM FOR NICHOLAS PAINTER
AUDIT MANAGER, OFFICE OF INSPECTOR GENERAL
SOUTHEAST SUNBELT REGION FIELD AUDIT OFFICE (JA-4)

FROM:


CATHLEEN C. KRONOPOLUS
REGIONAL COMMISSIONER
PUBLIC BUILDINGS SERVICE (WP)

SUBJECT:

Recovery Act Report—Improper Obligation of Construction Funds
for the 1800 F Street Modernization Project.
Audit of PBS's Major Construction and Modernization Projects
Funded by the American Recovery and Reinvestment Act of
2009
Report Number A090172/P/R/XXXXX

This is in response to your memorandum of March 2, 2012, regarding the above-referenced project. During your oversight of the General Services Administration's (GSA) American Recovery and Reinvestment Act (Recovery Act) projects, you identified a matter that warranted our attention. This is in response to that report.

Findings/Responses

Finding #1, in part states: PBS improperly recorded an obligation for a contract modification that did not satisfy the specificity requirements of the Recording Statute. In addition, the modification was not fully priced prior to execution as required by the Federal Acquisition Regulation (FAR). Lastly, the modification was inappropriately funded using the Building Operations funds.

Response #1: Your office informed PBS of these issues on January 19, 2012. Subsequently on February 7, 2012, PBS deobligated the \$8,272,249 via contract modification. In addition, in response to the GSA OIG Recovery Act Report – Improper Obligation of Construction Contingency Funds, PBS will be performing a review of contract modifications to ensure that funds have been obligated properly. As noted, the National Capital Region has already taken corrective action on this contract modification and will be taking corrective actions related to a prior report.

U.S. General Services Administration
301 7th Street, SW
Washington, DC 20407-0001
www.gsa.gov

We appreciate the support that has been provided by your review of PBS's limited scope and small construction projects funded by the ARRA.

If you have any questions or need additional information, please feel free to contact me at (202) 708-5891.

Appendix B – Objective, Scope, and Methodology

Report Number A090172/P/R/R12006

Background

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

Objective

The objective of the OIG's Recovery Act oversight is to determine if GSA is planning, awarding, and administering contracts for major construction and modernization projects in accordance with prescribed criteria and Recovery Act mandates. The work for this report was performed while evaluating modifications to the 1800 F Street building modernization project.

Scope and Methodology

To accomplish the objective, we conducted fieldwork in the National Capital Region, 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. 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 review guidance being applied to all Recovery Act projects. A separate 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 C – Report Distribution

Report Number A090172/P/R/R12006

Regional Commissioner, PBS (P)
Regional Recovery Executive (11P2)
Regional Administrator (11A)
Regional Counsel (11L)
Division Director, GAO/IG Audit Response Division (H1C)
Audit Liaison (PFF)
Assistant IG for Auditing (JA)
Director, Audit Planning, Policy, and Operations Staff (JAO)
Deputy Assistant IG for Investigations (JID)
Director, Office of Internal Operations (JI-I)
Investigator, Office of Internal Operations (JI-I)