

LIMITED REVIEW OF THE
CONTRACT ADMINISTRATION
OF THE U.S. COURTHOUSE PROJECT IN
CAPE GIRARDEAU, MISSOURI
REPORT NUMBER A080186/P/6/R10002
MARCH 17, 2010



U.S. GENERAL SERVICES ADMINISTRATION
Office of Inspector General

Date : March 17, 2010

Reply to

Attn of : Heartland Region Field Audit Office (JA-6)

Subject : Limited Review of the Contract Administration of the
U.S. Courthouse Project in Cape Girardeau, Missouri
Report Number A080186/P/6/R10002

To : Mary A. Ruwwe,
Regional Commissioner, Public Buildings Service (6P)

This report presents the results of our limited review of the administration of Contract Number GS06P07GYD0017 for the "gap work" at the Rush H. Limbaugh, Sr., United States Courthouse in Cape Girardeau, Missouri.

We initiated the review primarily because of concerns raised in numerous newspaper articles. These articles addressed various issues encountered during the later stages of the project and the resulting length of time that it took to complete the courthouse project.

This review focused on the third and final contract in a series of contracts related to work done at the subject courthouse. Our office had previously reviewed the first two construction contracts (Contract Numbers GS06P02GZC0518 with PCL Construction Services, Inc., and GS06P05GZC0009 with Tarlton Corporation). This contract dealt with the gap work (i.e., all of the work that was not included in the other two contracts).

Background

On June 2, 2003, the General Service Administration (GSA), Heartland Region's (Region 6) Public Buildings Service (PBS) awarded Contract Number GS06P02GZC0518 for \$44 million to PCL Construction Services, Inc., to design and build the Rush H. Limbaugh, Sr., United States Courthouse in Cape Girardeau, Missouri. However, on November 5, 2004, GSA issued a Notice of Partial Termination to the contractor because of concerns that the tenant improvement work for the project would exceed the budgeted amount.

Subsequently, on September 29, 2005, Region 6 PBS awarded Contract Number GS06P05GZC0009 for \$4,402,995 to Tarlton Corporation to construct approximately 100,000 gross square feet of tenant space inside the newly constructed core and shell

courthouse. The tenant improvement work included construction of walls, ceilings, access floor, lighting, HVAC, security devices, etc.

Finally, to correct the gaps in the work which were omitted from the previous contracts, Region 6 PBS awarded Contract Number GS06P07GYD0017 on September 26, 2007, to J.E. Novack Construction Company. The original contract award amount was for \$215,000; however, after the execution of twenty contract change orders, the final contract amount exceeded \$2.3 million, of which \$977,023 was to replace the roof of the subject courthouse.

Objective, Scope and Methodology

The objective of our review was to determine if the contract was administered in accordance with applicable procedures and regulations. Our review focused on the change orders issued under the contract which would have impacted the timing and associated costs of the construction project.

In order to accomplish the audit objective, we: (1) reviewed the file for Contract Number GS06P07GYD0017 including contract award documentation, general requirements, contract specifications, correspondence, and inspection and progress payment records; (2) evaluated applicable Federal Acquisition Regulation (FAR) and General Services Administration Acquisition Manual (GSAM) requirements; (3) examined all contract change order files including award documents, proposals, Government estimates, findings of fact, and records of negotiations; and (4) held discussions with regional PBS personnel on various aspects of the construction project. We also performed a limited review of the prior PBS contract (GS06P05GZC0009 with Tarlton Corporation) for work performed on the Cape Girardeau Courthouse project after the initial contract with PCL Construction Services, Inc., was terminated.

The review was conducted in accordance with generally accepted Government auditing standards. The 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.

Results of Review

Our review identified a separation of duties and conflict of interest issue related to project management staff approval of contract change orders. In addition, we determined that the contract change order files were not properly documented.

Findings

Finding 1 – Separation of Duties/Conflict of Interest

PBS's overall goal for the completion of construction projects is to procure quality construction that is completed on time and within budget. On the gap work contract for the Cape Girardeau Courthouse, the PBS project manager was responsible for the oversight of the construction and the timely completion of the project. This was of particular importance because this project was already criticized for being behind schedule and having identified deficiencies.

The PBS project manager was also appointed as the Contracting Officer's Representative (COR) on the project with authority to conduct negotiations and execute contract modifications of \$25,000 or less. For change orders over \$25,000, the project manager had authority to conduct negotiations and to prepare a negotiation memorandum for the PBS Contracting Officer (CO) but the authority to execute the contract modification remained with the CO. In addition, the PBS project manager for this contract has independent warranted CO authority of up to \$100,000.

Our review identified two change orders (P-11 for \$18,726 and P-12 for \$48,782) where the CO would not approve the amount of the change order work because the CO was not satisfied with the contract file documentation. In both of these instances, the change order amounts were approved by the project manager. Although P-11 did not exceed the project manager's COR limit, P-12 did. We further noted that the CO's letter granting the project manager COR authority was dated March 4, 2008, the same date both change orders were executed.

PBS contracting officials advised us that they refused to approve the change orders because there was no scope of work specifically identified and some referenced specifications were not part of the contract. In addition, the documents from the architect/engineer were not signed and clearly stated that they were "not for construction."

Our review of the documentation in the two change order files determined that, in our opinion, there were ambiguities of what was specifically required of the contractor. For example, change order P-11 stated, in part, for line item 2-NI13A that the contractor was to "provide and install security upgrades for elevators per 100% pricing drawings dated October 16, 2007 and 100% pricing specifications dated October 15, 2007." However, the file did not contain either the drawings or specifications. Change order P-

12 had similar ambiguities and, while referencing the same drawings and specifications as P-11, it also did not contain any of the referenced documents.

We believe that this situation occurred because the Region 6 PBS project management personnel were primarily concerned with project completion as this project was already very far behind schedule. As a result, the project management was upset at the acquisition personnel's requirements because the project management believed these requirements were further delaying the completion of the construction work.

In addition, it should be noted that, (1) both PBS acquisition and project management personnel work in the Region 6 PBS Project Management Division and (2) the gap work contract project manager was a higher grade level than the contracting personnel assigned to the project. Accordingly, contracting personnel concerns were subrogated to project management concerns. Also, contracting personnel are currently in a position where their oversight role is compromised because their rating officials may give poor evaluations or take other action against contracting officials based on factors other than those directly related to determinations for executing contracting actions. For example, it has been reported to our office that high grade program managers have reported contracting officials for not being "team players" in an attempt to get administrative action taken against the contracting officials.

Separation of duties is one of the key concepts of internal control processes for the prevention of fraud and errors. Specifically, functions are separated so that no one person can perform all of the procurement steps and thereby commit fraud or have an undetected error. As it relates to construction projects, the PBS personnel who are responsible for the monitoring and oversight of construction projects should not also have the authority to modify the contract without additional review. In the case of change orders P-11 and P-12, the project manager initiated the change order work, determined the scope of the work, and awarded the work. This creates a situation where a person could commit fraud (such as accepting a bribe in exchange for an inflated contract price) or commit an error (such as incorrectly adding amounts) and this activity would not be detected.

In addition to the improper separation of duties, the execution of the construction change orders by the gap work project manager could be a conflict of interest. The project manager for the Cape Girardeau gap work contract was under pressure to complete the construction work as quickly as possible because of the problems associated with this project. By executing the two construction change orders over the CO's objections, the question could be raised as to whether the project manager was diligent in protecting the taxpayers' interests. This problem is especially significant in that the project manager approved the two construction change orders because PBS contracting personnel refused to do so and the project manager was subsequently granted a cash performance award for his "diligence, resilience and creative work" on the Cape Girardeau Courthouse project.

Accordingly, in order to ensure proper separation of duties in the procurement process on construction projects, we advised PBS management that Region 6 PBS construction

project managers should not have warranted CO authority on construction projects to which they have been assigned. In addition, we discussed with Regional PBS management the possibility of establishing separate divisions for project management and construction acquisition.

In response to our discussions on our preliminary findings, Regional PBS management agreed that project managers should not have contracting authority. In addition, PBS management stated that CORs generally should not have contracting authority for the same reasons as project managers. PBS management informed us that they are rescinding contracting warrants for project managers and most CORs.

Also in response to our preliminary audit findings and discussions, PBS management explained that they believe a separate management/supervisory structure was needed for project management and acquisition but separate divisions were not necessary. Specifically, PBS management stated that personnel have been reassigned and currently, the Heartland Region has separate branches for project management and acquisition. In addition, PBS management has suggested a conflict resolution process that addresses our concerns.

Accordingly, because PBS management has already taken action to address the issues raised during our review, no audit recommendations are warranted.

Finding 2 – Inadequate Documentation of Contract Change Order Files

In accordance with the FAR, Subpart 4.801, documentation in Government contract files

“. . .shall be sufficient to constitute a complete history of the transaction for the purpose of (1) providing a complete background as a basis for informed decisions at each step in the acquisition process; (2) supporting actions taken; (3) providing information for reviews and investigations; and (4) furnishing essential facts in the event of litigation or congressional inquiries."

Additionally, FAR Subparts 4.802 and 4.803 as well as GSAM, Subpart 504.802 and 504.803, specify what the contract files should consist of and list numerous examples of the records normally contained in the contract files.

Our review of the contract change order files determined that the file documentation did not always adequately explain the actions taken by PBS personnel. Specifically, we determined that the file documentation oftentimes did not demonstrate or explain how the final negotiated change order amount was established. For example, records of negotiations were sometimes inadequate (e.g., no explanation of why some costs were accepted, missing proposals, etc.), contractor's proposals did not always include detailed breakdowns of the individual costs, referenced drawings and specifications were sometimes not included in the change order file, work items were sometimes

deleted or added to the change order scope of work without explanation, and Government estimates did not address all change order costs.

We believe that this situation occurred because (1) some PBS project management personnel were unaware of the FAR and GSAM requirements for file documentation and (2) the Cape Girardeau project management's focus on the completion of the construction project. For example, one of the CORs for the Cape Girardeau project advised us in an e-mail that, "Typically we do not ask for a line item breakdown (number of hours) for all the contractor costs when the contractor's proposal is considered to be fair and reasonable as it was in this case(s)." In an e-mail from another one of the project's CORs to the construction contractor, the COR advised the contractor how to propose the costs for some requested roof work and further stated, "This will be a lump-sum proposal." Another example is change order P-4, where the CO was requested to finalize the contract modification before the revised specification had been issued. In an e-mail to one of the project's CORs, the CO responded:

The only problem here is that -- to the best of my knowledge, Novack [the project contractor] has yet to receive a modified humidification [specification] from SFSA [the project architect/engineer]. They need to have the correct [specification] in order to provide us with proper pricing. We're getting ahead of ourselves because we have been told to hurry.

Detailed change order proposals are required by the Equitable Adjustments clause of the contract and without the required detail, it is difficult to ensure that negotiations were properly conducted and that the procurement is free from errors in price and/or scope. Also, while we recognize the need to conduct procurements quickly and effectively, obtaining detail information helps to ensure that procurements are transparent and error free and is required by regulation. Further, in order to expedite work, contract actions may have been taken prior to having the necessary documentation. This could put the project in jeopardy of error or loss and could put the Government in a compromised position in the event of claims or other problems on the project.

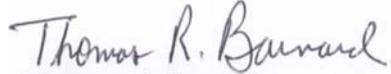
Not only is proper documentation a requirement (pursuant to FAR and GSAM citations above) but, more importantly, the documentation establishes the appropriateness of the actions taken on the construction project. Appropriate documentation also protects the Government, as well as the employees assigned to the construction project, in the event of any subsequent litigation or investigations. We, therefore, believe that Regional PBS management should ensure that PBS employees comply with the appropriate regulations that require adequate contract file documentation.

In response to our preliminary findings, Regional PBS management informed us that it is implementing training for project teams regarding file documentation requirements and is going to have Branch Chiefs review files to ensure that the files are documented properly. Accordingly, because PBS management has already taken action to address the issues related to file documentation, no audit recommendation is necessary.

Internal Controls

The internal controls over the administration of the Cape Girardeau Courthouse, Contract Number GS06P07GYD0017, were inadequate to the extent as described in the body of this audit report.

If you have any questions regarding the review results, please contact Katina Beach or me at 926-7052.



Thomas R. Barnard
Audit Manager
Heartland Region Field Audit Office

APPENDIX

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