



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

PBS Did Not Support Scope Changes and Pricing for Contract Modifications on the Mariposa Land Port of Entry Recovery Act Project

*Report Number A120174/P/R/R14005
September 25, 2014*



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

REPORT ABSTRACT

OBJECTIVE

Our objective was to ensure that the corrective actions taken by the Public Buildings Service (PBS) in response to our alert report were sufficient to identify and correct improper obligations of Recovery Act funds.

*Program Audit Office
(JA-R)
1800 F Street, NW
Room 5215
Washington, DC 20405
(202) 219-0088*

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WHAT WE FOUND

We identified the following during our audit:

Finding - PBS did not fully define scope changes nor ensure the price reasonableness of contract modifications on the project.

WHAT WE RECOMMEND

Based on our audit finding we recommend that the Regional Commissioner, PBS, Pacific Rim Region:

1. Perform a review of Modification PSB2 to determine if:
 - a. The scope of work is sufficiently defined to form a binding contract, and
 - b. Remedial action is necessary to address duplicative work in the modifications.
2. Ensure that the modification files incorporating the Memorandum of Understanding include either documentation supporting fair and reasonable pricing or a written determination by the head of contracting authority identifying the award as in the best interest of the Government.

MANAGEMENT COMMENTS

PBS, Pacific Rim Region, acknowledged our audit finding and has taken action on the recommendations in the report. Management comments are included in their entirety in **Appendix B**.



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

DATE: September 25, 2014

TO: Michael McCormick
Regional Commissioner
Public Buildings Service
Pacific Rim Region (9P)

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

SUBJECT: PBS Did Not Support Scope Changes and Pricing for Contract
Modifications on the Mariposa Land Port of Entry Recovery Act
Project
Report Number A120174/P/R/R14005

This report presents the results of our audit of corrective actions taken by PBS in response to our alert report on invalid obligations of Recovery Act funds. Our finding 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:

Susan P. Hall Audit Manager susan.hall@gsaig.gov 202-501-2073

Gary W. Vincent Auditor-In-Charge gary.vincent@gsaig.gov 415-522-2747

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

On October 24, 2012, we issued an alert report to the Public Buildings Service (PBS) and Office of the Chief Financial Officer.¹ The alert report addressed invalid obligations of American Recovery and Reinvestment Act (Recovery Act) funds for purposes of contingencies.² In the corrective action plan responding to the alert report, PBS committed to review Recovery Act projects to identify and correct improper obligations of Recovery Act funds.

In its review of contract files for the Mariposa Land Port of Entry renovation project, PBS determined that corrective action was necessary for Modification PS96. PBS awarded Modification PS96 in September 2012 to incorporate a Memorandum of Understanding (MOU) that included a comprehensive settlement of outstanding change order requests (COR). The MOU lists 62 “Change Order Requests Previously Submitted” and 15 “Pending Change Order Requests Not Yet Submitted” – none of which included an associated dollar value.

PBS determined that Modification PS96 lacked the documentation necessary to support the price and scope of work. PBS issued Modification PSB2 in December 2012 to clarify the MOU. Modification PSB2 added Exhibit A to specify the scope of work referenced in the MOU, expanding the number of work items in Modification PS96 from 77 to 143. Under Modification PSB2, the comprehensive settlement was funded by reallocating \$7.4 million from the cancellation of the photovoltaic system, the remaining balances from three prior modifications, and the remaining balance of the security allowance.

The Federal Acquisition Regulation permits global settlements as a vehicle for settling outstanding contract issues.³ Regional PBS officials noted the project had encountered numerous difficulties. They considered the MOU and modifications beneficial to the Government and necessary to prevent the construction project from coming to a halt before project completion.

Objective

Our objective was to ensure that the corrective actions taken by PBS in response to our alert report were sufficient to identify and correct improper obligations of Recovery Act funds.

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

¹ *Alert Report: Limited Scope Audit of Invalid Obligations and Contingency Funding for Recovery Act Projects*, A120174/P/R/W13001.

² Funding for construction projects typically includes contingency funds to cover unforeseen conditions, design deficiencies, and other changes during a project.

³ Federal Acquisition Regulation 15.405 states “fair and reasonable price does not require that agreement be reached on every element of cost” and “the contracting officer’s primary concern is the overall price the Government will actually pay.”

Results

Finding – PBS did not fully define scope changes nor ensure the price reasonableness of contract modifications on the project.

PBS did not fully define the scope of work for Contract Modification PSB2 nor ensure price reasonableness. PBS issued Modification PSB2 to clarify the scope of work included in Modification PS96. The information to clarify the scope of work was included as Exhibit A of Modification PSB2. However, Exhibit A did not adequately define the complete scope of work or add the pricing support needed to clarify Modification PS96. As such, the modification potentially constitutes an invalid obligation to the extent that the scope of work was not completely defined. Further, the files for Modifications PS96 and PSB2 did not contain documentation to substantiate the \$7.4 million price as reasonable.

Lack of definite scope of work. We reviewed the contract files for Modification PS96, Modification PSB2, and eight COR files listed in Exhibit A for evidence of a defined scope of work. We found the following:

- Modification PSB2 - Exhibit A categorizes the CORs as either “COR in MOU,” “CORs Negotiated,” “CORs to be Negotiated,” or “Potential Issues.” COR 589, identified as a “Potential Issue” in Exhibit A, consists of an unsigned, one-page proposal from the contractor dated January 3, 2013 – 4 days after the modification was issued on December 30, 2012. Since the contractor’s proposal was received after the modification was issued, the scope of work could not have been properly agreed to, and defined, by PBS and the contractor.
- Three of the CORs listed in Exhibit A were awarded under separate modifications, totaling in excess of \$2 million. As a result, the General Services Administration (GSA) contracted for the same work twice. Specifically:

COR	Modification Number	Date Issued	COR Description of work	Contract Amount
208	PS95	8/30/12	Phase 3 Security Rooms	\$925,000
208	PSB2	12/30/12	Phase 3 Security Rooms	\$1,033,164
304	PSA3	11/9/12	CBP Security System Design and Construction	\$982,035
304	PSB2	12/30/12	CBP Security System Design and Construction	\$1,275,704
304.1	PSB5	1/28/13	CBP Security System Design and Construction (general conditions)	\$115,614
304.1 ⁴	PSB2	12/30/12	CBP Security System Design and Construction (general conditions)	\$124,584

⁴ Exhibit A of PSB2 lists COR 131.1 in the “COR to be Negotiated” category for \$124,584 for CBP Phase 2 security. PBS provided a file labelled COR 304.1 for this work item. This COR is a follow on to COR 304 to provide general conditions costs.

At the time of audit fieldwork completion, the contract files did not reflect that the scope of work in the MOU was sufficiently defined, resulting in potential invalid obligations and duplicative modifications for the same work.

Lack of price reasonableness determination. We found no evidence to support that the contracting officer met the requirement to determine fair and reasonable pricing, as required by Subpart 15.402 of the Federal Acquisition Regulation. The files for Modifications PSB2 and PS96 did not contain documentation to substantiate price reasonableness, such as an independent government estimate, price negotiation memorandum, pre-negotiation position, determination for required cost or pricing data, or other documentation to support fair and reasonable pricing. Given the lack of a definitive scope of work, as well as a lack of price support, PBS has no assurance that the pricing for the modification was fair and reasonable.

Recommendations

We recommend that the Regional Commissioner, PBS, Pacific Rim Region:

1. Perform a review of Modification PSB2 to determine if:
 - a. The scope of work is sufficiently defined to form a binding contract, and
 - b. Remedial action is necessary to address duplicative work in the modifications.
2. Ensure that the modification files incorporating the Memorandum of Understanding include either documentation supporting fair and reasonable pricing or a written determination by the head of contracting authority identifying the award as in the best interest of the Government.

Management Comments

PBS acknowledged our audit finding and has taken action on the recommendations in the report. Management comments are included in their entirety in **Appendix B**.

Conclusion

We do not question the use of a Memorandum of Understanding to incorporate numerous change orders in a single settlement. Rather, our audit finding is focused on the lack of a defined scope of work and price reasonableness determination. PBS reallocated \$7.4 million in Recovery Act funds to the contract to settle outstanding contract issues. However, PBS did not sufficiently define the complete scope of work for these services, thereby creating the potential for partially invalid obligations and duplicative work. Also, PBS did not demonstrate that the pricing for the work was reasonable.

The complexity and size of the Mariposa Land Port of Entry renovation may have been a factor in the issues identified in this report. Mariposa is the third busiest land port in the United States and had to remain open during construction. The project included multiple phases of demolition and new construction work from November 2009 to August 2014. In addition, the project was GSA's third costliest Recovery Act project with total construction costs of \$187 million, including \$173 million in Recovery Act funds.

Appendix A – Purpose, Scope, and Methodology

Purpose

In its corrective action plan to our alert report, PBS stated that it would review Recovery Act projects to identify any potentially invalid contract modifications. PBS committed to take corrective actions where necessary to correct improper obligations, record proper obligations, or de-obligate improperly obligated funds.

We performed this audit to ensure PBS's corrective actions were sufficient to identify and correct improper obligations of Recovery Act funds.

We initiated this audit with the understanding that these funds, if not properly obligated, were to be rescinded on December 31, 2012, in accordance with the Dodd-Frank Wall Street Reform and Consumer Protection Act. However, GSA has provided guidance that these funds were not subject to rescission as they had expired before the date of the rescission.

Scope

The audit scope is limited to modifications to the construction contract for the Recovery Act project to renovate the Mariposa Land Port of Entry.⁵

We initially reviewed eight modifications, totaling \$8,397,284, identified by PBS as potentially improper or invalid obligations. This sample included Modification PS96, which PBS identified as lacking documentation supporting price reasonableness and a fully defined scope.

Since PBS issued Modification PSB2 to clarify the scope of PS96, we added this modification to our sample. Modification PSB2 incorporated a revised list of 143 CORs as Exhibit A. We selected eight of these CORs for review, choosing some from each of the four categories of COR in Exhibit A and focusing on the larger dollar amounts.

During the review of the eight sampled CORs, we noted that three of them were funded by separate modifications, despite the fact they were listed in Exhibit A of Modification PSB2. We also added these three modifications to our review.

Methodology

To accomplish our objective, we:

- Reviewed and analyzed contract modification files for 12 modifications for the Mariposa Land Port of Entry project;
- Reviewed the corrective actions that PBS completed for Mariposa modifications;

⁵ Contract Number GS-09P-10-KT-C-0005 for pre-construction and construction services.

- Judgmentally selected 8 CORs, totaling \$3,394,516, from the 143 items in Exhibit A of Modification PSB2, to determine the support for pricing and scope;
- Interviewed PBS contracting and project staff; and
- Reviewed applicable guidance and regulations.

We conducted the audit from October to November 2013 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 finding and conclusions based on our audit objective.

Internal Controls

As this audit 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.

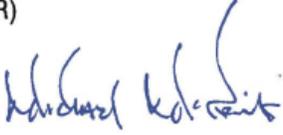
Appendix B – Management Comments



GSA Pacific Rim Region

September 8, 2014

MEMORANDUM FOR MARISA A. ROINESTAD
Associate Deputy Assistant Inspector General for Auditing
Program Audit Office (JA-R)

FROM: MICHAEL MCCORMICK 
Regional Commissioner
Public Buildings Service
Pacific Rim Region (9P)

SUBJECT: Draft Audit Report
PBS Did Not Support Scope Changes and Pricing for
Contract Modifications on the Mariposa Land Port of Entry
Recovery Act Project
Report Number A120174

The Public Buildings Service (PBS), Pacific Rim Region (9P) appreciates the opportunity to comment on the draft report. The draft report contains the following recommendations for the Regional Commissioner, PBS, Pacific Rim Region:

- 1) *Perform a review of Modification No. PSB2 to determine if:*
 - a. *The scope of work is sufficiently defined to form a binding contract, and*
 - b. *Remedial action is necessary to address duplicative work in the modifications.*

- 2) *Ensure that the modification files incorporating the Memorandum of Understanding include either documentation supporting fair and reasonable pricing or written determination by the head of contracting authority identifying the award as in the best interest of the Government.*

U.S. General Services
Administration
450 Golden Gate Avenue
San Francisco, CA 94102-3434
www.gsa.gov

Over the past several months, R9 management conducted reviews and discussed findings with the OIG representatives. We determined that the scope of work as documented in the Global Settlement is sufficient to form a binding contract and that the contracting files now include the necessary fair and reasonable determination.

We have further addressed each recommendation below.

Modification Number PSB2

In the first draft recommendation, the OIG requests that management review Modification PSB2 to ensure that the scope of work was sufficiently defined to form a binding contract and whether any remedial action was necessary. We confirm that the R9 management review is complete.

For purposes of providing some context, we will summarize the facts and circumstances surrounding the issuance of Modification PSB2 as following: On September 14, 2012, the OIG issued Alert Report: *Limited Scope of Invalid Obligations and Contingency Funding for Recovery Act Projects*, Report Number A120014/P/R. The Report suggested that PBS may have created invalid obligations by creating contract obligations to preserve ARRA project funds. The report recommended that PBS take immediate corrective action to identify past reporting of ARRA obligations that may have been inaccurate. PBS undertook a review and subsequently identified Mariposa Modifications Nos. PC12, PS37, PS66 and PS96 as requiring corrective action. Modification PSB2 was issued on December 30, 2012 to correct these earlier modifications in response to the Audit Alert. Modification PSB2 clarified the language of the global settlement originally provided for in PS96, deobligated the balances in Modifications PC12, PS37 and PS66 and correctly issued an upward adjustment, and definitized the allowance for the fire pump and changes in ASI 44.

On March 6, 2014, the OIG issued a *Summary of Findings: PBS Did Not Support the Pricing and Scope of Recovery Act Modifications for the Mariposa Land Port of Entry*, Audit Number A120174-4. In response, PBS Deputy Regional Commissioner Patricia Chang-Lynn and Contracting Officer Beverly Chin met with representatives from the Audit Staff representatives Marisa Roinestad, Susan Hall, Hilda Garcia, and Gary Vincent on April 3, 2014. At that meeting, Ms. Lynn provided a brief summary of the project and the challenges to completing the work. Specifically, she outlined the history and difficulties encountered by the parties and the necessity of this Global Settlement to resolve outstanding issues and refocus the parties on completing the remaining work to achieve the substantial completion date of August 20, 2014. Ms. Lynn and Ms. Chin agreed that the agency had not provided adequate

documentation in support of Modification PS96 as corrected by Modification PSB2, and that some of the CORs noted on the attachment were duplicative. Ms. Chin and Ms. Lynn further explained that Modification PS96, as corrected by Modification PSB2, was a global settlement of all outstanding issues unless specifically excluded. Thus, the duplication, although an error, did not result in a duplication of payment or the ordering of services. Rather, this was part of the rationale for what the Global Settlement was intended to cover. At the conclusion of this meeting, GSA agreed to provide the requested information.

On April 18, 2014, Ms. Lynn and Ms. Chin met at 50 United Nations Plaza with Audit Manager Hilda Garcia and Staff Auditor Gary Vincent. At that meeting, Contracting Officer Chin provided the Audit Staff with a detailed *Memorandum to File, Justification in Support of Modification 96 as corrected by Modification PSB2*, dated April 17, 2014, along with an updated spreadsheet. Ms. Lynn and Ms. Chin stated that the revised spreadsheet was corrected and correlated with the Memo to File. The correction also noted that duplicate entries although unfortunate were included to provide context and did not result in an overpayment. At the meeting, GSA also produced supporting documents within a binder for review and examination by the OIG. The Memo to File, spreadsheet, and binder of supporting documents all support the global settlement originally reflected in Modification PS96 and corrected by PSB2. Ms. Lynn and Ms. Chin acknowledged that the modification should have adequately documented the Global Settlement when it was first issued. The agency has put in place new contract review procedures to ensure that this mistake would not occur again.

Global Settlement was Fair and Reasonable

With respect to the second recommendation, Contracting Officer Chin acknowledges that the file should have included a fair and reasonable determination. She has amended the April 17, 2014 to include a statement that the Global Settlement reflected in Modification PS96 and corrected in Modification PSB2 was fair and reasonable.

GSA thanks the OIG for bringing these issues to our attention. We have taken steps over the past several months to document and address the OIG concerns. The files remain available for review and inspection by the OIG.

Appendix C – Report Distribution

Commissioner, PBS (P)

Deputy Commissioner, PBS (PD)

Chief of Staff, PBS (P)

Regional Recovery Executive, PBS, Pacific Rim Region (9P2PT)

National Program Office ARRA Executive (PCB)

Chief of Staff, PBS Office of Construction Programs (PCB)

Regional Administrator, Pacific Rim Region (9A)

Regional Commissioner, PBS, Pacific Rim Region (9P)

Regional Counsel, Pacific Rim Region (LD9)

Branch Chief, GAO/IG Audit Response Branch (H1C)

Strategic Program Manager, PBS Program Mgmt. & Support Div. (PCBF)

Analyst, PBS Program Mgmt. & Support Div. (PCBF)

Audit Liaison, PBS (BCP)

Audit Liaison, PBS, Pacific Rim Region (BPAA)

Assistant Inspector General for Auditing (JA)

Director, Audit Planning, Policy, and Operations Staff (JAO)

Deputy Assistant Inspector General for Investigations (JID)

Director, Office of Internal Operations (JI-I)

Executive Assistant, Office of Investigations (JI)