



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

# Audit of the Public Buildings Service's Compliance with Fee Limitations for Architect/Engineering Contracts

*Report Number A090172/P/4/R13004*  
*March 29, 2013*



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

## REPORT ABSTRACT

### OBJECTIVE

Our objective was to determine if the Public Buildings Service (PBS) has adequate controls in place to ensure Architect/Engineering (A/E) contracts comply with the 6 percent fee limitation imposed by Federal Acquisition Regulation (FAR) Part 15.404-4(c)(4)(i)(B).

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### **Audit of the Public Buildings Service's Compliance with Fee Limitations for Architect/Engineering Contracts**

Report Number Report A090172/P/4/R13004  
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### **WHAT WE FOUND**

We identified the following during our audit:

Finding – PBS lacks adequate guidance to determine compliance with the 6 percent fee limitation imposed by the FAR.

### **WHAT WE RECOMMEND**

Based on our audit findings, we recommend that the Commissioner of the Public Buildings Service:

1. Implement clarifying guidance on applying the 6 percent fee limitation to A/E contracts.
2. Develop and implement controls to ensure compliance with the fee limitation imposed by FAR Part 15.404-4(c)(4)(i)(B).
3. Revise Forms 2630 and 2631 to require the A/E's estimator and the independent government estimator to identify and separate services included in and excluded from the fee limitation.

### **MANAGEMENT COMMENTS**

*Management agreed with the audit finding and concurred with the recommendations. Management's comments are included in Appendix B.*




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

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DATE: March 29, 2013

TO: Dorothy Robyn  
Commissioner, PBS (P)

FROM:   
Nicholas V. Painter  
Regional Inspector General for Auditing  
Southeast Sunbelt Region Field Audit Office (JA-4)

SUBJECT: Audit of the Public Buildings Service's Compliance with  
Fee Limitations for Architect/Engineering Contracts  
*Report Number A090172/P/4/R13004*

This report presents the results of our audit of the Public Buildings Service compliance with the 6 percent fee limitation imposed by the FAR. Our findings 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:

Nicholas Painter	Regional Inspector General For Auditing	<a href="mailto:nicholas.painter@gsaig.gov">nicholas.painter@gsaig.gov</a>	404-331-5520
Michael Sinclair	Audit Manager	<a href="mailto:michael.sinclair@gsaig.gov">michael.sinclair@gsaig.gov</a>	404-331-0382
LaTasha Smith	Auditor-in-Charge	<a href="mailto:latasha.smith@gsaig.gov">latasha.smith@gsaig.gov</a>	404-331-0381

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***

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The American Recovery and Reinvestment Act (Recovery Act) provided the Public Buildings Service (PBS) with \$5.55 billion for its Federal Buildings Fund 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 those funds be obligated by September 30, 2010, and the remaining funds by September 30, 2011.

PBS used Recovery Act funding to procure Architect/Engineering (A/E) services that included the production and delivery of designs, plans, drawings, and specifications. Federal Acquisition Regulation (FAR) Part 15.404-4(c)(4)(i)(B) limits the estimated cost and fee for these services to 6 percent of the estimated cost of construction.

### **Results in Brief**

PBS did not consistently apply the 6 percent FAR limitation because it lacks adequate guidance to distinguish services related to the production and delivery of designs, plans, drawings, and specifications from other services.

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## Results

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### **Finding – PBS lacks adequate guidance to determine compliance with the 6 percent fee limitation imposed by the FAR.**

PBS lacks adequate guidance to ensure compliance with the 6 percent statutory A/E fee limitation imposed by FAR Part 15.404-4(c)(4)(i)(B). The PBS Project Management Guide (PM Guide) refers to PBS Manual 3420.1 (P3420.1) to identify costs and services for the production and delivery of designs, plans, drawings, and specifications. However, varying regional interpretations of this guidance have led to inconsistent analyses of costs and determinations of FAR compliance.

The PM Guide instructs contractors to submit cost proposals to the General Services Administration (GSA) on Forms 2630 and 2631.<sup>1</sup> These forms capture the cost components (*i.e.*, direct salary, consultant, other direct, and overhead) related to each stage of design required to complete an A/E contract's scope of work. However, the forms do not differentiate between costs included in or excluded from the limitation.

PBS uses two principal methods to evaluate proposals for compliance with the fee limitation: evaluation by (1) design stage or (2) basic/other services. Region 5 uses the design stage approach and typically takes the sum of all costs for the concept design, design development, and construction document stages (less reimbursable costs) and divides it by the estimated cost of construction at award (ECCA). The resulting ratio must not exceed 6 percent. This method may include costs that should be excluded from the limitation, overstate the ratio, and cause a compliant contract to appear non-compliant.

Using a chart from P3420.1, Regions 4 and 9 separate basic services (items included in the limitation) from other services (items excluded from the limitation). The sum of basic services is divided by the ECCA and the resulting ratio is used to determine compliance with the statute. However, inclusion or exclusion of items from the calculation is at the discretion of individual project teams. Consequently, excluding services that should be included in the calculation may cause a non-compliant contract to appear compliant. Conversely, including services that should be excluded may cause a compliant contract to appear non-compliant.

The PM Guide requires that PBS identify the specific services and costs excluded from the limitation in a Price Negotiation Memorandum (PNM). It further provides that an A/E must resubmit the proposal if the design fee exceeds 6 percent. Of nine contracts we sampled in Regions 4, 5, and 9, we found only one instance in which PBS identified the excluded services in the PNM. PBS combined design services in all other cases and did not perform additional analysis or require further action from the A/E. For the Prince Jonah Kuhio Kalaniana'ole Federal Building and U.S. Courthouse in Region 9, the initial

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<sup>1</sup> GSA Form 2630 is the Architect/Engineering Cost Estimate and GSA Form 2631 is the Architect/Engineering Cost Estimate Summary.

award amount appears to significantly exceed the 6 percent limitation. The PNM did not address evaluation of the 6 percent limitation and the contracting officer did not respond to requests for clarification. Given the lack of specific guidance, we were unable to independently verify PBS's calculations or compliance for this contract or our other sampled contracts.

In 2011, PBS drafted a Procurement Instructional Bulletin to "provide information and policy on the services and costs that are legally chargeable and those reasonably excluded under the statutory limitation for A/E services." The draft was informally shared throughout PBS, but as of January 2013, it remains unofficial.

In addition to this audit, the GSA Office of Government wide Policy (OGP) conducted a similar review in fiscal year 2012. OGP found that contracting officers did not always apply the limitation on design services correctly; PNMs did not address the fee limitation; and contingency costs were included in calculations. In some instances, OGP was unable to determine how the evaluation was conducted.

### **Management Comments**

In its response dated March 26, 2013, PBS management concurred with the audit findings and recommendations.

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## **Conclusion**

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PBS lacks adequate guidance to evaluate Architect/Engineering contract compliance with the 6 percent statutory limitation imposed by FAR. The regions reviewed have varying interpretations of the available guidance, resulting in inconsistent methods to determine which specific services and costs to include in the limitation. These methods yield results that can distort compliance or non-compliance with the statute.

## **Recommendations**

We recommend that the Commissioner of the Public Buildings Service:

1. Implement clarifying guidance on applying the 6 percent fee limitation to Architect/Engineering contracts.
2. Develop and implement controls to ensure compliance with the fee limitation imposed by FAR Part 15.404-4(c)(4)(i)(B).
3. Revise Forms 2630 and 2631 to require the Architect/Engineering's estimator and the independent government estimator to identify and separate services included in and excluded from the fee limitation.



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## ***Appendix A – Purpose, Scope, and Methodology***

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### **Purpose**

This audit is part of the Office of Inspector General's oversight of General Services Administration's American Recovery and Reinvestment Act projects.

### **Scope**

Our audit was based on a review of sampled contracts/projects selected from Regions 4, 5, and 9. The properties selected for testing were chosen because the projects' total initial Architect/Engineering award amounts appeared to exceed 6 percent of the estimated costs of construction at award.

### **Methodology**

To accomplish our objectives, we:

- Reviewed policies, procedures, and guidance from sources such as the Project Management Guide; PBS Insite; Federal Acquisition Regulation; General Services Administration Acquisition Manual; the Brooks Act; acquisition policy memos; Procurement Information Bulletins; and
- Conducted interviews with regional management, project managers, contracting officers, and other project staff to determine if/how PBS tracks compliance with the fee limitation for each project.

We conducted the audit between June 2012 and October 2012 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 Recovery Act projects, as well as audit guidance being applied to all Recovery Act projects. A separate guide was prepared for this audit.

### **Internal Controls**

We limited our assessment of internal controls to those related to PBS compliance with the 6 percent fee limitation imposed by FAR. We reviewed PBS policies and procedures, performed audit procedures to assess the effectiveness of the controls, and made recommendations to strengthen and improve the controls discussed in the results section of this report.


## Appendix B – Management’s Comments



GSA Public Buildings Service

MAR 26 2013

MEMORANDUM FOR NICHOLAS PAINTER  
REGIONAL INSPECTOR GENERAL FOR AUDITING  
SOUTHEAST SUNBELT FIELD AUDIT OFFICE (JA-4)

FROM: DOROTHY ROBYN   
COMMISSIONER (P)  
PUBLIC BUILDINGS SERVICE

SUBJECT: Audit of the Public Buildings Service's Compliance with Fee  
Limitations for Architect/Engineering Contracts (A090172-23)

The Public Buildings Service (PBS) appreciates the opportunity to comment on the subject draft report. The report recommends that the PBS Commissioner take the following actions:

1. Implement clarifying guidance on applying the six percent fee limitation to architecture/engineering (A/E) contracts;
2. Develop and implement controls to ensure compliance with the fee limitation imposed by FAR Part 15.404-4(c)(4)(i)(B); and
3. Revise GSA Form 2630, Architect-Engineer Cost Estimate, and Form 2631, Architect-Engineer Cost Estimate Summary, to require the A/E's estimator and the independent government estimator to identify and separate services included in and excluded from the fee limitation.

PBS concurs with the report's finding and recommendations. The PBS Office of Acquisition Management is issuing clarifying guidance on the six percent fee limitation and establishing controls to ensure compliance. In addition, the Office of Design and Construction is revising Forms 2630 and 2631 to distinguish the basic and other services that are included in or excluded from the limitation.

If you have any questions, please contact William Guerin, PBS Assistant Commissioner for Project Delivery, on (202) 208-0445.

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## ***Appendix C – Report Distribution***

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Commissioner, PBS (P)

Acting Deputy Commissioner, PBS (PD)

PBS Chief of Staff (PB)

Senior Accountable Official for Recovery Act Activities (PCB)

Regional Recovery Executive (4PC1P)

Regional Recovery Executive (5PN)

Regional Recovery Executive (9P2PT)

National Program Office ARRA Executive, PBS (PCB)

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

Acting Regional Administrator (4A)

Regional Administrator (5A)

Regional Administrator (9A)

Regional Commissioner (4P)

Regional Commissioner (5P)

Acting Regional Commissioner (9P)

Division Director, GAO/IG Audit Response Division (H1C)

Audit Liaison, PBS (BCP)

Audit Liaisons, PBS (BCPA)

Audit Liaison, PBS (BPAA)

Assistant Inspector General for Auditing (JA)

Deputy Assistant Inspector General for Investigations (JID)