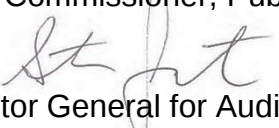




Office of Audits
Office of Inspector General
U.S. General Services Administration

DATE: December 6, 2017

TO: Darren Gomez
Acting Regional Commissioner, Public Buildings Service (2P)

FROM: Steven Jurysta 
Regional Inspector General for Auditing, Northeast and Caribbean
Region Audit Office (JA-2)

SUBJECT: Assessment of Hotline Complaint
Mechanical Operations and Maintenance Contract for
Four New Jersey Federal Buildings
Audit Memorandum Number A160121

This memorandum identifies management and procurement issues that require your attention. We assessed the validity of a hotline complaint regarding GSA Contract Number GS-02P-04-PEC-4001 for mechanical operations and maintenance (O&M) services at four federal buildings located in New Jersey. The complaint alleged that the O&M contract, the contractor's general liability insurance, and contractor employees' security clearances had expired although services were still being provided; and that temporary contract extensions exceeded allowable limits.

We determined that two allegations were valid. Specifically, we found that:

- The contract was extended in excess of the limits permissible by the Federal Acquisition Regulation (FAR); and
- The contractor provided O&M services after the contract had expired and, in some instances, without authorized funding.

We also determined that the other two allegations were not valid. We found that:

- The contractor, and its subcontractor, maintained general liability insurance throughout the period in which the work was performed; and
- All contractor and subcontractor employees maintained proper security clearances and credentials while services were provided.

Background

GSA awarded Contract Number GS-02P-04-PEC-4001 to Fedcap Rehabilitation Services, Inc. (Fedcap) on September 1, 2004, to provide necessary recurring O&M services for four federal buildings located in New Jersey.¹ The contract covered a 3-year base period with two, 3-year option periods, due to expire on August 31, 2013. Prior to expiration, the contracting officer modified the contract to temporarily extend performance for the 6-month period ended February 28, 2014, due to ongoing negotiations for the follow-on contract. From March 1, 2014, to December 31, 2016, the contracting officer temporarily extended the contract ten more times, using nine 3-month extensions and one 7-month extension. The follow-on contract was eventually awarded, effective on January 1, 2017.

On June 10, 2016, the Office of Inspector General received a hotline complaint from a confidential source alleging that the contract has been granted “several illegal extensions per the FAR allowances.” The complaint also alleged that Fedcap was performing without a contract, with expired liability insurance, and using employees who may have expired Homeland Security Presidential Directive (HSPD-12) Personal Identity Verification (PIV) cards.

GSA violated the Federal Acquisition Regulation by extending the contract past the 6-month limit.

GSA improperly extended the contract on ten separate occasions for a total of 34 months, despite the FAR provision that limits the total extension of performance to 6 months. Therefore, the contractor was providing services without actual contractual authority.

The original contract incorporated FAR clause 52.217-9 - *Option to Extend the Term of the Contract*, which states that “the total duration of this contract, including the exercise of any options under this clause, shall not exceed 9 years.” Since the contract commenced on September 1, 2004, the original performance period ended on August 31, 2013.

On August 27, 2013, 4 days prior to expiration, the contracting officer temporarily extended the contract (Modification PS30) for the 6-month period ended February 28, 2014. The authority for this extension, FAR 52.217-8 – *Option to Extend Services*, prescribes that:

The Government may require continued performance of any services within the limits and at the rates specified in the contract. These rates may be adjusted only as a result of revisions to prevailing labor rates provided by the Secretary of Labor. The option provision may be exercised more than once, **but the total**

¹ Peter W. Rodino, Jr. Federal Building; Martin Luther King, Jr. Courthouse; and the Veterans Administration Federal Building, all in Newark, New Jersey; and the Robert A. Roe Federal Building in Paterson, New Jersey.

extension of performance hereunder shall not exceed 6 months. [emphasis added]

We examined the original contract file and found that FAR 52.217-8 was incorporated by reference, thereby limiting the total extension of performance to 6 months. Therefore, after all options and the permissible 6-month extension, the contract's performance period ended on February 28, 2014. At that point, the original contract was not valid, and therefore, could not be extended any further.

From the period March 1, 2014, to December 31, 2016, the contract was improperly extended on ten separate occasions for a total of 34 months despite the FAR provision that limits the total extension of performance to 6 months. Hence, the actual duration of 12 years and 4 months in which work was performed exceeded the contract's 9½-year limit by almost 3 years.

According to the contracting officer, she awarded the extensions for the O&M services due to delays in the procurement of the follow-on contract. She stated that she determined that it was in the best interest of the Government to continue to temporarily extend the contract until the follow-on contract was awarded.²

In summary, GSA improperly extended the contract beyond the permissible FAR limit. The original contract allowed one temporary extension per FAR 52.217-8, represented by Modification PS30. After PS30 expired on February 28, 2014, the original contract ceased to exist. Thus, all temporary extensions granted after PS30 were in violation of the FAR, confirming the validity of the hotline complaint.

The contractor provided O&M services after the contract had expired and, in some instances, without authorized funding.

As discussed in the prior section, the contract with Fedcap should have expired on February 28, 2014, and as such, the O&M services should have stopped. However, the contracting officer issued a series of modifications that improperly extended the contract through December 31, 2016, and the contractor continued to provide the O&M services after the contract's true expiration on February 28, 2014.

Not only was the contractor allowed to work under the improper extensions, but at times it also provided services although no funding had been authorized for the contract. In particular, the contractor worked from March 1 through June 20, 2016, although no funding was authorized for the contract.

One of the improper extensions provided funding for the contract through February 29, 2016. However, when that extension and that funding expired on February 29, 2016, Fedcap continued to provide O&M services although the contracting officer had not issued a new modification.

² The original contract expired on February 28, 2014, while the new contract (awarded on December 15, 2016) did not become effective until January 1, 2017.

Funding for the O&M services was not authorized until the contracting officer issued another improper contract extension under Modification PC49 on June 21, 2016. Modification PC49 authorized funding for the 7-month period from March 1 through September 30, 2016; however, the contracting officer improperly provided a lump sum, retroactive payment of approximately \$1.3 million for the 3-month period ended May 31, 2016. Modification PC49 includes the following summary:

This award is a fixed price incrementally funded building service contract. The certification of funding reflects only one month of funding in the amount of \$421,705.69 for the Period of Performance March 1, 2016 to September 30, 2016. Funds for March, April and May have been obligated for a lump sum payment of \$1,265,147.07.

So essentially, the contract was retroactively extended from March 1 through September 30, 2016, and also provided for a retroactive payment for the first 3 months. Further, it should be noted that since the extension modification was not signed until June 21, the funding for June's payment was not properly authorized in advance either.

We noted Fedcap performed work under two other improper contract extensions that were signed by the contracting officer over a month after their respective effective dates:

- Modification PS42, covering the period of December 1, 2014, to February 28, 2015, was not executed by the contracting officer until January 6, 2015. Therefore, there was no authorized funding for the work performed December 1, 2014, until January 6, 2015.
- Modification PS48, covering the period of December 1, 2015, to February 29, 2016, was not executed by the contracting officer until January 7, 2016. Therefore, there was no authorized funding for the work performed by Fedcap from December 1, 2015, until January 7, 2016.

Given the above, we confirm the validity of the complaint that the contractor provided O&M services after the contract had expired.

Fedcap and its subcontractor maintained general liability insurance throughout the period in which the work was performed.

We verified from certificates of general liability insurance, that Fedcap and its subcontractor; ISS Facility Services, Inc. (ISS) maintained general liability insurance for the entire period of July 1, 2014, through September 30, 2017. ISS is further insured through January 1, 2018. Therefore, the portion of the hotline complaint specific to liability insurance is not valid.

Fedcap and ISS employees maintained proper security clearances and credentials while services were provided.

The GSA Office of Mission Assurance, who maintains a list of all contractor employees with PIV cards, verified for us that all 7 Fedcap and all 18 subcontractor employees working in the New Jersey federal buildings maintained active PIV cards during the dates of the allegations stated in the hotline complaint. Therefore, the portion of the hotline complaint specific to expired PIV cards is not valid.

Conclusion

After an assessment of issues identified in a hotline complaint on the subject O&M contract, we found that two of the allegations were valid. Specifically, we found that from the period March 1, 2014, to December 31, 2016, the contracting officer improperly extended the O&M contract on ten separate occasions for a total of 34 months, despite the FAR provision that limits the total extension of performance to 6 months. Therefore the contractor was providing services without actual contractual authority. The actual duration of work performed of 12 years and 4 months exceeded the contract's 9½-year limit by almost 3 years. Hence, the hotline complaint allegation that the contract was extended beyond allowable limits was valid.

In addition, Fedcap was allowed to work after the contract expired; at times it also provided services although no funding had been authorized. One of the improper extensions provided funding for the contract through February 29, 2016. When that extension expired, Fedcap continued to provide O&M services even though the contracting officer had not issued a new modification. Therefore, funding was not authorized until the contracting officer issued another improper extension on June 21, 2016. In addition to this instance, we noted Fedcap performed work under two other improper contract extensions that were signed by the contracting officer over a month after their respective effective dates. We confirm the validity of the complaint that the contractor provided O&M services without authorized funding.

Management has a responsibility to ensure that its operations are effective and efficient and that it complies with laws and regulations. However, in this case, the regional operations were not effective and efficient and did not comply with laws and regulations. In light of this, PBS Regional Management should review the breakdowns that caused the deficiencies noted in this memo.

During discussions with GSA personnel, they identified a number of factors that contributed to the breakdowns, including:

- American Recovery and Reinvestment Act projects that were in process and that would affect the O&M requirements;
- Difficulties in developing building equipment lists for the acquisition package leading to frequent and significant changes in the listing; and
- Loss of senior acquisition personnel to oversee the contracting staff.

Regional management should look into these issues as well as others in an effort to avoid similar problems in the future.

This assessment was managed out of the Northeast and Caribbean Region Audit Office and conducted by the individuals listed below:

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