



OIG

Office of Inspector General

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Office of Audits

March 2018

**Management Assistance Report:
Contract Administration Practices
Involving the Construction of the New
Office Compound Taipei, Taiwan, Require
Attention**

MANAGEMENT ASSISTANCE REPORT

Summary of Review

This Management Assistance Report communicates supplementary findings that the Office of Inspector General (OIG) identified during its recent audit of the Bureau of Overseas Buildings Operations' (OBO) management of construction materials destined for controlled access areas. Specifically, this report focuses on contract administration deficiencies identified during audit fieldwork at the New Office Compound in Taipei, Taiwan. This is a design-build project executed using two separate design-build contracts. The design-build contract for the New Office Compound Taipei Phase 1 was awarded on March 20, 2009. Phase 2, which is the focus of this report, was awarded to American International Contractors (Special Projects), Inc. (AICI-SP) on September 26, 2012.

According to the terms of New Office Compound Taipei Phase 2 contract, the Contracting Officer would issue Limited Notices to Proceed (LNTP) at various stages of design and construction and then issue a final Notice to Proceed (NTP) to complete construction. Although the Contracting Officer issued five LNTPs following the award of the contract in September 2012, the issuance of the final NTP was significantly delayed. Specifically, AICI-SP first submitted a request to the Contracting Officer for a final NTP in May 2014 and then submitted a second request in July 2015. However, according to the Contracting Officer, the final NTP was not issued until August 2017 because the Contracting Officer's Representative (COR) did not recommend that the final NTP be executed when the first or second request was received. The contractor, however, continued to perform work from 2014 until 2017. As a result, the contractor performed construction work for more than 3 years without a final NTP, which placed additional risk on both the Department and AICI-SP. For example, the Department could have been responsible for costs incurred as a result of idle hours had AICI-SP stopped work. In addition, AICI-SP bore additional risk because permanent features installed without a final NTP could have required removal or replacement because of design packages at later stages of work. The associated costs of these changes would be borne by AICI-SP. Furthermore, both the Department and AICI-SP bore additional risk as removal and replacement operations could delay the project completion and occupancy of the facilities.

Additionally, the Federal Acquisition Regulation (FAR) "requires contractor performance evaluations be prepared, at least annually, and at the time the work under a contract or order is completed." Because the contract award date was September 2012, AICI-SP's performance should have been recorded and approved in the Contractor Performance Assessment Reporting System (CPARS) on five occasions (through September 2017), with the first evaluation recorded in September 2013. However, the COR (acting as the Assessing Official Representative in CPARS) only recorded one performance evaluation for AICI-SP, which was approved by the Contracting Officer (acting as the Assessing Official) in June 2016. This failure to ensure that AICI-SP's performance was recorded annually in CPARS and approved by the Contracting Officer occurred, in part, because the Department's Office of Acquisitions Management does not have a process to notify Contracting Officers and CORs when evaluations must be recorded and approved in CPARS depending on the contract award date. This deficiency should be corrected because the timely recording of contractor performance

information in CPARS is essential to ensuring that other U.S. Government agencies have all available information necessary to make informed decisions about procurement source selections.

OIG made two recommendations to the Office of Acquisitions Management to address the contract administration deficiencies identified in this report. On the basis of responses received from the Office of Acquisitions Management to a draft of this report, OIG considers all recommendations resolved pending further action. A synopsis of management's comments and OIG's reply follow each recommendation in the Audit Results section of this report, and management's comments are reprinted in their entirety in Appendix A.

BACKGROUND

The New Office Compound Taipei project is being executed by the Department of State (Department), using two separate design-build contracts. The Phase 1 contract was awarded to Weston Solutions, Inc., on March 20, 2009. Phase 2, which is the focus of this report, was awarded to AICI-SP on September 26, 2012. The Phase 2 contract was awarded as a firm-fixed-price design-build contract (SAQMMA-12-C0220) that includes the design and construction of a New Office Building (NOB) in Taipei, Taiwan.

The Department awarded the Phase 2 contract for \$121,788,000, which includes all labor, materials, overhead insurance and fees, profit, and all costs for project general requirements. According to the contract, the project duration was not to exceed 30 months from date of issuance of the initial LNTP for Design. Construction could not commence until the issuance of a subsequent LNTP, which specified what features of work could be initiated. The Project Execution Schedule, which the contractor submits to the Department, shows the dates and time periods within which the contractor contemplates starting and completing the various portions of the work. Upon acceptance by the Department, this schedule is binding upon the contractor. The Project Execution Schedule is also used by the Government to track the contractor's progress. The contract time may be extended only by a written contract modification, change order, or supplemental agreement signed by the Contracting Officer.

Notice to Proceed for Design and Construction

According to the contract terms and conditions, the Contracting Officer would issue LNTPs, which incrementally authorize various stages of design and construction, and ultimately a final NTP, which authorizes construction of all features of work on the project. When multiple LNTPs are issued by the Government to allow certain features of work to commence prior to the completion of the project's design, this is known as "fast track" construction. The principal advantage of a fast track construction project is the reduced time needed to complete the project because construction may proceed as soon as the design for each package has been

completed and accepted by the Government.¹ However, executing a fast track construction project places additional risks on both the Government and the contractor because the design packages for later stages of the work could require changes to previously submitted and approved design packages and require rework or demolition of previously completed activities.

Contractor Performance Evaluation Requirements

The FAR requires the Department to prepare contractor performance evaluations (referred to in CPARS guidance as contractor performance assessment reports) at least annually as well as at the time the work under a contract or order is completed. Performance information should be entered into the CPARS, the Government-wide evaluation reporting tool for all past performance reports on contracts and orders.² The primary purpose of CPARS is to ensure that current, complete, and accurate information on contractor performance is available for use in procurement source selections.³ A performance evaluation should: (1) include a clear, non-technical description of the principal purpose of the contract; (2) be tailored to the type, size, content, and complexity of the contractual requirements; (3) include relevant information that accurately depicts the contractor's performance; and (4) be based on objective facts.⁴ Annual evaluations are required⁵ at least once every 12 months throughout the contract's entire period of performance.

According to the Foreign Affairs Handbook (FAH), the Contracting Officer is responsible for ensuring that the performance evaluations are completed, but the COR may be assigned the task of evaluating the contractor's performance.⁶ The CPARS evaluation process begins when the Assessing Official Representative (here, the COR) enters in CPARS the proposed ratings and narrative that reflect the contractor's performance during the rating period. When the Assessing Official Representative forwards the evaluation to the Assessing Official (here, the Contracting Officer), CPARS sends the Assessing Official an automatic email notification. The Assessing Official reviews the proposed ratings and verifies that the narrative is comprehensive, accurate, and supported by objective evidence. The Assessing Official signs the evaluation and sends it to the contractor through CPARS, which generates an email notification to the contractor. The contractor provides comments on the evaluation, indicating whether it concurs or does not concur, and sends the evaluation to the Assessing Official. If the contractor concurs with the evaluation, the Assessing Official closes it. If the contractor does not concur, a Reviewing Official provides comments, signs, and closes the evaluation.

¹ OBO Construction Management Guidebook (2016), Part 2, Section 2.4.2.

² FAR 42.1502 – Policy; (a) General.

³ Guidance for the Contractor Performance Assessment Reporting System (CPARS) (August 2017), Section A, Subsection 1.2 "Purpose."

⁴ Ibid at Subsection 1.4 "CPAR Evaluation Methodology."

⁵ FAR 24.1502 – Policy; (a) General.

⁶ 14 FAH-2 H-572 "Final Evaluation," Section e.

Purpose of this Management Assistance Report

The purpose of this Management Assistance Report is to communicate supplementary findings that OIG identified during its recent audit of OBO's management of construction materials destined for controlled access areas.⁷ Specifically, this report focuses on contract administration deficiencies identified during audit fieldwork at the New Office Compound in Taipei, Taiwan. The New Office Compound in Taipei is one of four locations where OIG conducted audit fieldwork during the aforementioned audit, which is a classified report issued in January 2018. OIG is reporting the deficiencies identified in this Management Assistance Report in accordance with generally accepted government auditing standards and believes that the evidence obtained provides a reasonable basis for the conclusions and recommendations presented.

RESULTS

The Contracting Officer Failed to Issue a Timely Final NTP

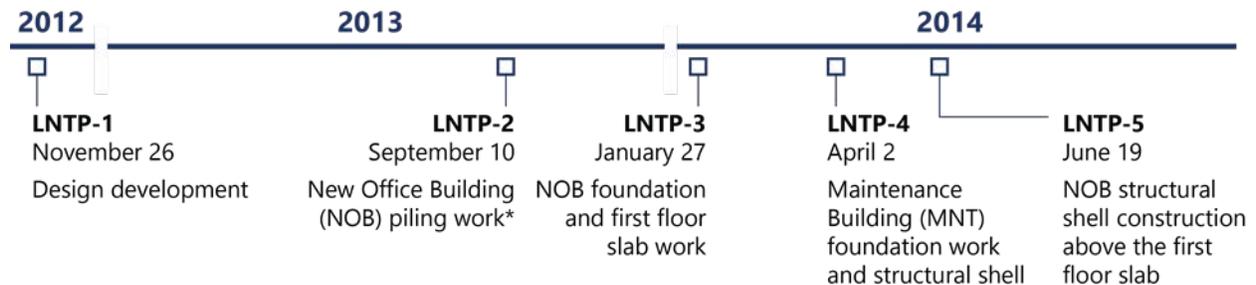
According to the terms of the New Office Compound Taipei Phase 2 contract, the Contracting Officer was to issue LNTPs at various stages for the design and construction and then issue a final NTP to complete construction.⁸ Although the Contracting Officer issued five LNTPs following the award of the contract in September 2012, the issuance of the final NTP was significantly delayed until August 2017. All LNTPs noted that authorization was only for "the specific tasks identified" and that notices authorizing further performance would be issued at the U.S. Government's discretion.

As shown in Figure 1, the Contracting Officer issued five LNTPs to AICI-SP between November 26, 2012, and June 19, 2014.

⁷ OIG, *Audit of the Bureau of Overseas Buildings Operations' Management of Construction Materials Destined for Controlled Access Areas* (AUD-SI-18-22, January 2018).

⁸ The Phase 2 project consists of the design and construction of a 16,860-square-meter, 5-level NOB; a 3,861 square-meter, 3-level maintenance building; a 339-square-meter main compound access control facility; and portions of a compound for the American Institute in Taipei.

Figure 1: Timeline of LNTPs Authorizing AICI-SP to Proceed



*A pile is a long cylinder of a strong material, such as concrete, that is pushed into the ground to act as a steady support for structures built on top of it.

Source: OIG generated from LNTPs provided by the Office of Acquisitions Management.

AICI-SP first submitted a request to the Contracting Officer for a final NTP in May 2014 and then submitted a second request in July 2015. However, according to the Contracting Officer, the final NTP was not issued until August 2017 because the COR did not recommend that the final NTP be executed when the first or second request by AICI-SP was received. Additionally, the Contracting Officer failed to formally reply to AICI-SP's two requests for issuance of the full NTP.

During audit fieldwork at the New Office Compound in Taipei in May 2017, OIG found that construction of the NOB was in the finish work⁹ stage—that is, construction had proceeded beyond the structural shell authorized by LNTP-5. However, as of May 2017, the Contracting Officer had not issued a final NTP authorizing such work. The final NTP for full execution of the contract, including changes discussed with the contractor during a meeting in Taipei, was eventually issued on August 25, 2017—more than 3 years after the contractor first requested a final NTP.

The Contracting Officer stated that he chose not to issue the final NTP in 2015 because the COR, who also served as the New Office Compound Taipei Project Director (PD) and is physically located at the construction site, did not recommend that the final NTP be executed. The PD/COR acknowledged that he did not recommend to the Contracting Officer that the final NTP be executed and explained that this was due to various issues related to the AICI-SP design submittals for the air handling units. However, the Contracting Officer did not follow Department protocols to notify AICI-SP in writing that the final NTP was being withheld.

For situations in which the contractor has requested the issuance of an LNTP or a final NTP but has not complied with all the administrative and technical requirements, the Contracting Officer should promptly notify the contractor in writing that the requested LNTP or final NTP is not

⁹ Finish work is the installation of any element or material, such as partitions, plaster, ceilings, studwork, paneling, flooring, insulation, electrical, plumbing, heating, ventilating, and air conditioning systems.

being issued.¹⁰ As a best practice, this notification should include the reasons why the issuance is being withheld and actions that the contractor must complete before the issuance can be granted.

As noted previously, notwithstanding the absence of a final NTP, construction continued on the site. According to the PD/COR, no documents or verbal statements from any Department official authorized the construction work to continue beyond LNTP-5. However, the PD/COR stated that, although the Department did not issue a final NTP, this "did not mean they [AICI-SP] should not continue their work." He stated that OBO's focus was on ensuring that the project kept moving forward. This approach raises a number of concerns. Although OBO may have intended to permit construction to proceed, notwithstanding the absence of a final NTP, the FAH states, "The U.S. Government has an obligation not to interfere with or unreasonably delay the contractor in the performance of the contract."¹¹ It was therefore important that the Contracting Officer either issue the final NTP requested by AICI-SP or notify AICI-SP in writing that it would not be issued. Moreover, as a best practice, the Office of Acquisitions Management should have included the reasons why the final NTP was being withheld and the actions that AICI-SP needed to complete before issuance could be granted.

In this instance, AICI-SP performed construction work on Phase 2 of the New Office Compound Taipei project for more than 3 years without a formal authorization to proceed, placing additional risk on both the Department and AICI-SP. For example, the Department could have been responsible for costs incurred as a result of idle hours had AICI-SP stopped work. AICI-SP bore additional risk because permanent features installed without a final NTP could have required removal or replacement because of design packages for later stages of work. The associated costs of these changes would be borne by AICI-SP. Additionally, both the Department and AICI-SP bore additional risk as removal and replacement operations could delay the project completion and occupancy of the facilities.

Recommendation 1: OIG recommends that the Office of Acquisitions Management develop a plan to issue an annual reminder to Contracting Officers that, if a contractor requests the issuance of a Limited or final Notice to Proceed, the Contracting Officer should consult with the Contracting Officer's Representative and formally respond to the contractor's request by either authorizing the construction project to proceed or notify the contractor in writing the reasons why the Notice to Proceed is being withheld and the actions the contractor needs to complete before the Notice to Proceed can be granted.

¹⁰ Overseas Contracting and Simplified Acquisition Guidebook – Eighteenth Edition, October 2016, Chapter 7, Contract Administration, Exhibit 7-3, Contract Administration Checklist, Contracting Officer Duties ("Promptly review, refer to appropriate source, and answer contractor correspondence").

¹¹ 14 FAH-2 H-564, "Obligation Not To Interfere with the Contractor's Performance."

Management Response: The Office of Acquisitions Management concurred with the recommendation, stating that it will include a discussion of LNTPs and NTPs in a required annual training session.

OIG Reply: On the basis of the Office of Acquisitions Management's concurrence with the recommendation and planned actions, OIG considers the recommendation resolved pending further action. This recommendation will be closed when OIG receives and accepts documentation demonstrating that a discussion of LNTPs and NTPs has been included in the required annual training session.

The Department Failed to Document AICI-SP's Performance

The FAR¹² requires "contractor performance evaluations be prepared at least annually and at the time the work under a contract or order is completed." Considering the contract award date of September 2012, the COR (acting as the Assessing Official Representative) should have documented AICI-SP's performance in CPARS on five occasions with the first entry in September 2013. However, OIG found that the COR had prepared only two performance evaluations for AICI-SP and, as of November 2017, only one had been recorded and approved by the Contracting Officer (acting as the Assessing Official) in CPARS.

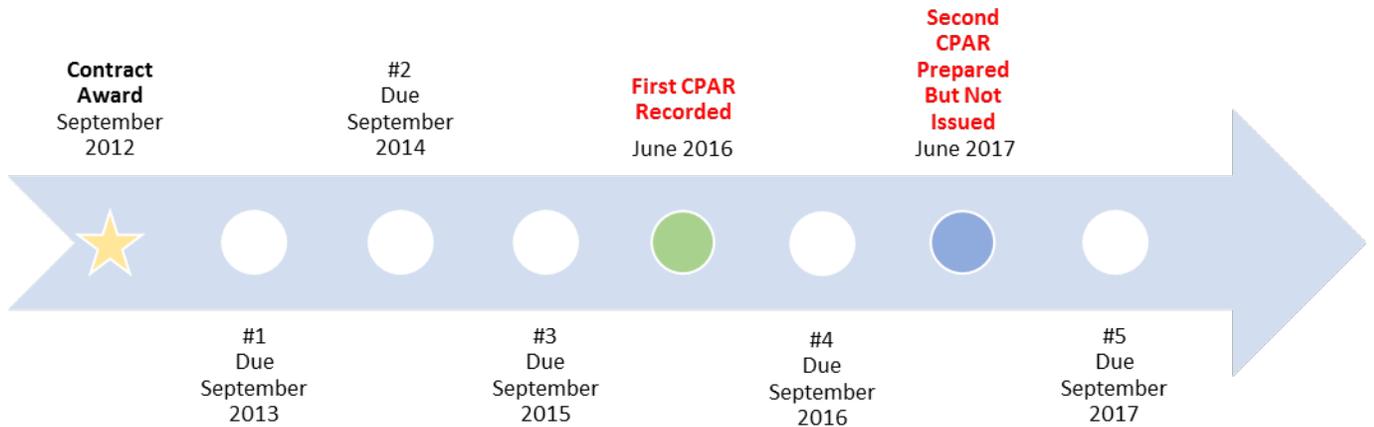
The Contracting Officer said he relied on the PD/COR to prepare performance evaluations and email notifications from CPARS to inform him that the performance evaluation was ready for his review and approval. The PD/COR explained that he delayed preparing the first evaluation because of litigation between AICI-SP and the Department. Specifically, in February 2014, an attorney in the Department's Office of the Legal Adviser advised the PD/COR "to hold off on the evaluation due to being in the midst of negotiations" with AICI-SP. The attorney stated to OIG that he mistakenly thought the PD/COR's inquiry was related to the Phase 1 contractor, Weston Solutions, Inc. Therefore, his advice to "hold off" did not pertain to AICI-SP's evaluation. Nonetheless, AICI-SP's performance was not recorded in CPARS and signed by the Contracting Officer until June 2016, almost 4 years after the contract was awarded. The failure to record the first three performance evaluations can be attributed, in part, to the misunderstanding in February 2014 between the COR and an attorney in the Department's Office of the Legal Adviser. However, this explanation does not explain why AICI-SP's performance was not recorded in CPARS in September 2016 or September 2017.

The COR did prepare a second performance evaluation of AICI-SP in June 2017 on the basis of a request from the Government Accountability Office. As of November 2017, though, the evaluation had not been recorded in CPARS and approved by the Contracting Officer. In this instance, the COR did not record the evaluation in CPARS because he was instructed by an OBO official to submit it as soon as possible via email in order to respond to the Government Accountability Office's request. The COR emailed this second performance evaluation to OBO

¹² FAR 42.1502 – Policy; (a) General.

officials and to an Office of Acquisitions Management official (not the Contracting Officer). Figure 2 illustrates the timeline for AICI-SP’s expected performance evaluations in CPARS.

Figure 2: AICI-SP’s Performance Evaluations for the New Office Compound Taipei Phase 2 Construction Project



Source: OIG generated from the contract award date of the New Office Compound Taipei Phase 2 project and the FAR requirement that contractor evaluation reports shall be prepared annually and recorded in CPARS.

The Contracting Officer and the COR failed to fulfill their annual responsibility to document AICI-SP’s performance in CPARS. This failure occurred, in part, because the Department’s Office of Acquisitions Management does not have a process to notify Contracting Officers and CORs when evaluations must be recorded and approved in CPARS on the basis of the contract award date. Although the Government-wide CPARS has a process to notify the Assessing Official by email when a performance evaluation has been recorded in CPARS and is awaiting review and approval, the Department has not implemented a process to ensure evaluations are prepared and recorded annually in accordance with the FAR. That is, the person who prepares the evaluation in the first place receives no reminder. It is important to correct this deficiency because the timely recording of contractor performance information in CPARS is essential to ensuring that other U.S. Government agencies have all available information necessary to make an informed decision about procurement source selections.

Recommendation 2: OIG recommends that the Office of Acquisitions Management develop and implement a process that notifies Assessing Officials and Assessing Official Representatives when contractor performance evaluations are due and ensures the

evaluations are recorded and approved in the Contractor Performance Assessment Reporting System in accordance with the Federal Acquisition Regulation.

Management Response: The Office of Acquisitions Management concurred with the recommendation, stating that it is in the process of developing an automated reminder.

OIG Reply: On the basis of the Office of Acquisitions Management's concurrence with the recommendation and planned actions, OIG considers the recommendation resolved pending further action. This recommendation will be closed when OIG receives and accepts documentation demonstrating that the implemented process notifies Assessing Officials and Assessing Official Representatives when contractor performance evaluations are due and ensures the evaluations are recorded and approved in the Contractor Performance Assessment Reporting System in accordance with the Federal Acquisition Regulation.

RECOMMENDATIONS

Recommendation 1: OIG recommends that the Office of Acquisitions Management develop a plan to issue an annual reminder to Contracting Officers that, if a contractor requests the issuance of a Limited or final Notice to Proceed, the Contracting Officer should consult with the Contracting Officer's Representative and formally respond to the contractor's request by either authorizing the construction project to proceed or notify the contractor in writing the reasons why the Notice to Proceed is being withheld and the actions the contractor needs to complete before the Notice to Proceed can be granted.

Recommendation 2: OIG recommends that the Office of Acquisitions Management develop and implement a process that notifies Assessing Officials and Assessing Official Representatives when contractor performance evaluations are due and ensures the evaluations are recorded and approved in the Contractor Performance Assessment Reporting System in accordance with the Federal Acquisition Regulation.

APPENDIX A: THE BUREAU OF ADMINISTRATION, OFFICE OF LOGISTICS MANAGEMENT RESPONSE



United States Department of State

Washington, D.C. 20520

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March 12, 2018

MEMORANDUM

TO: OIG/AUD – Norman P. Brown

FROM: A/LM – Jennifer A. McIntyre 

SUBJECT: Draft Report – *Management Assistance Report: Contract Administration Practices Involving the Construction of the New Office Compound Taipei, Taiwan, Require Attention* (AUD-SI-18-XX)

Thank you for the opportunity to provide our comments on the subject draft OIG Management Assistance Report.

Recommendation 1: OIG recommends that the Office of Acquisitions Management develop a plan to issue an annual reminder to Contracting Officers that, if a contractor requests the issuance of a Limited or final Notice to Proceed, the Contracting Officer should consult with the Contracting Officer's Representative and formally respond to the contractor's request by either authorizing the construction project to proceed or notify the contractor in writing the reasons why the Notice to Proceed is being withheld and the actions the contractor needs to complete before the Notice to Proceed can be granted.

Management Response to Draft Report (03/12/2018): The Bureau of Administration, Office of Logistics Management, Office of Acquisitions Management (A/LM/AQM) concurs with the recommendation. A/LM/AQM will include a discussion of Limited and Final Notice to Proceed (NTP) in a required annual training session conducted by A/LM/AQM's Business Operations Division (A/LM/AQM/BD).

Recommendation 2: OIG recommends that the Office of Acquisitions Management develop and implement a process that notifies Assessing Officials and Assessing Official Representatives when contractor performance evaluations are due and ensures the evaluations are recorded and approved in the Contractor Performance Assessment Reporting System in accordance with the Federal Acquisition Regulation.

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Management Response to Draft Report (03/12/2018): A/LM/AQM concurs with the recommendation. A/LM/AQM is in process of developing an automated reminder and will be able to provide additional information on the implementation plan during Fiscal Year 2018 Quarter 3.

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