



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

Audit of the GSA Public Buildings Service's Use of Construction Management Services

Report Number A150028/P/4/R20009
September 4, 2020

Executive Summary

Audit of the GSA Public Buildings Service's Use of Construction Management Services

Report Number A150028/P/4/R20009

September 4, 2020

Why We Performed This Audit

We included this audit in our *Fiscal Year 2015 Audit Plan* due to concerns over the GSA Public Buildings Service's (PBS's) use of construction managers on its construction projects. We identified these concerns during prior audits of construction claims. Our audit objectives were to determine whether PBS has effective internal controls to: (1) prevent construction management firms from performing inherently governmental or prohibited services as defined by Office of Management and Budget policy and the Federal Acquisition Regulation and (2) avoid organizational conflicts of interest that may bias a construction management firm's judgement or provide an unfair competitive advantage.

What We Found

Since 1986, PBS has used construction managers to fulfill many functions and responsibilities within its construction program. However, PBS has become excessively reliant on construction managers. PBS allowed construction managers to perform inherently governmental functions that are reserved for federal employees, including developing independent government estimates, assessing contractor proposals on source selection boards, negotiating contracts, and accepting project deliverables. In some cases, PBS allowed construction managers to play a role in extending their own contracts. We also found that PBS gave construction managers access to sensitive information, including competitors' proprietary information and government data, without mitigating conflicts of interest or ensuring data security. Finally, we found that PBS had construction managers perform prohibited design services and construction work that exceeded the scope of work of their contracts, circumvented competition, and deprived other vendors of potential opportunities.

What We Recommend

Based on our findings, we made several recommendations to PBS. These recommendations include strengthening controls over construction management contracts to ensure that government personnel perform inherently governmental functions and qualified PBS personnel are participating in and performing the required review and approval of contractor tasks. We also recommend that PBS take steps to properly address organizational conflicts of interest and limit access to proprietary data to government personnel whose access requires knowledge of such information. Lastly, we recommend that PBS implement controls to prevent the award of prohibited construction management services through GSA's Professional Engineering Services Schedule.

The PBS Commissioner agreed with our recommendations. PBS's written comments are included in their entirety in **Appendix C**.

Table of Contents

| | |
|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------|
| Introduction | 1 |
| Results | |
| <i>Finding 1 – PBS allowed construction managers to perform inherently governmental functions that are reserved for federal employees.</i> | 4 |
| <i>Finding 2 – PBS gave construction managers access to sensitive information, including competitors’ proprietary information and government data, without mitigating conflicts of interest or ensuring data security.</i> | 13 |
| <i>Finding 3 – PBS contracted with construction managers to perform services prohibited under GSA’s Professional Engineering Services Schedule, which circumvented competition.</i> | 16 |
| Conclusion | 18 |
| <i>Recommendations</i> | 18 |
| <i>GSA Comments</i> | 20 |
| <i>OIG Response</i> | 20 |
| Appendixes | |
| Appendix A – Scope and Methodology | A-1 |
| Appendix B – Summary of Findings for Contract Actions | B-1 |
| Appendix C – GSA Comments | C-1 |
| Appendix D – Report Distribution | D-1 |

Introduction

We performed an audit of the GSA Public Buildings Service's (PBS's) use of construction management (CM) services to support its capital construction program.

Purpose

We included this audit in our *Fiscal Year 2015 Audit Plan* due to concerns over PBS's use of construction managers on its construction projects. We identified these concerns during prior audits of construction claims. This audit focused on whether PBS has effective internal controls when using the services of CM firms for its capital construction program.

Objectives

Our audit objectives were to determine whether PBS has effective internal controls to: (1) prevent CM firms from performing inherently governmental or prohibited services as defined by Office of Management and Budget (OMB) policy and the Federal Acquisition Regulation (FAR) and (2) avoid organizational conflicts of interest that may bias a CM firm's judgement or provide an unfair competitive advantage.

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

Background

PBS is the landlord for the civilian federal government and acquires space on behalf of its tenants through new construction and leasing. PBS's Office of Design and Construction manages GSA's design and delivery of public buildings in new construction, major modernizations, and other capital projects, from pre-planning through commissioning.¹ As of the beginning of Fiscal Year 2020, PBS reported 111 active capital construction projects, with aggregate contract values of more than \$6.7 billion.

Historical Use of Construction Managers

Construction managers are private firms that act as advisors or consultants to PBS during the execution of construction projects. PBS started using construction managers in 1971 for its construction projects. PBS concluded that construction managers would provide objective advice to its staff during a construction project. Construction managers worked with the architect to ensure that the design could be built within the project budget, controlled project scheduling, managed the procurement effort, and inspected construction. Construction

¹ Capital construction projects are projects that exceed the prospectus threshold and require congressional approval. Prospectus threshold amounts fluctuate. The current prospectus threshold for construction projects is \$3.095 million.

managers also acted as construction superintendents and were responsible for the operations of the construction site.

In 1986, PBS initiated a new construction management program, the Construction Quality Management Program. Under this program, PBS used construction managers to perform project oversight and construction superintendent activities. At the time, PBS believed it no longer had adequate in-house staff to manage its construction projects. Because its construction workload was irregular, PBS believed using construction managers provided greater flexibility to handle fluctuations.

In 1990, under GSA Order PBS 3425.12A, *Project Management in the Public Buildings Service*, PBS established guidance on its use of construction managers. The order specifies that the use of construction managers enables PBS employees to perform inherently governmental functions, which include project management, scope development, contract administration, quality assurance, regulatory oversight, and professional consultation. It adds that construction managers can assist GSA employees to carry out daily administrative, technical, and quality control activities. Construction managers also can provide a wide variety of other services such as estimating, value engineering, network scheduling, and serving as expert witnesses.

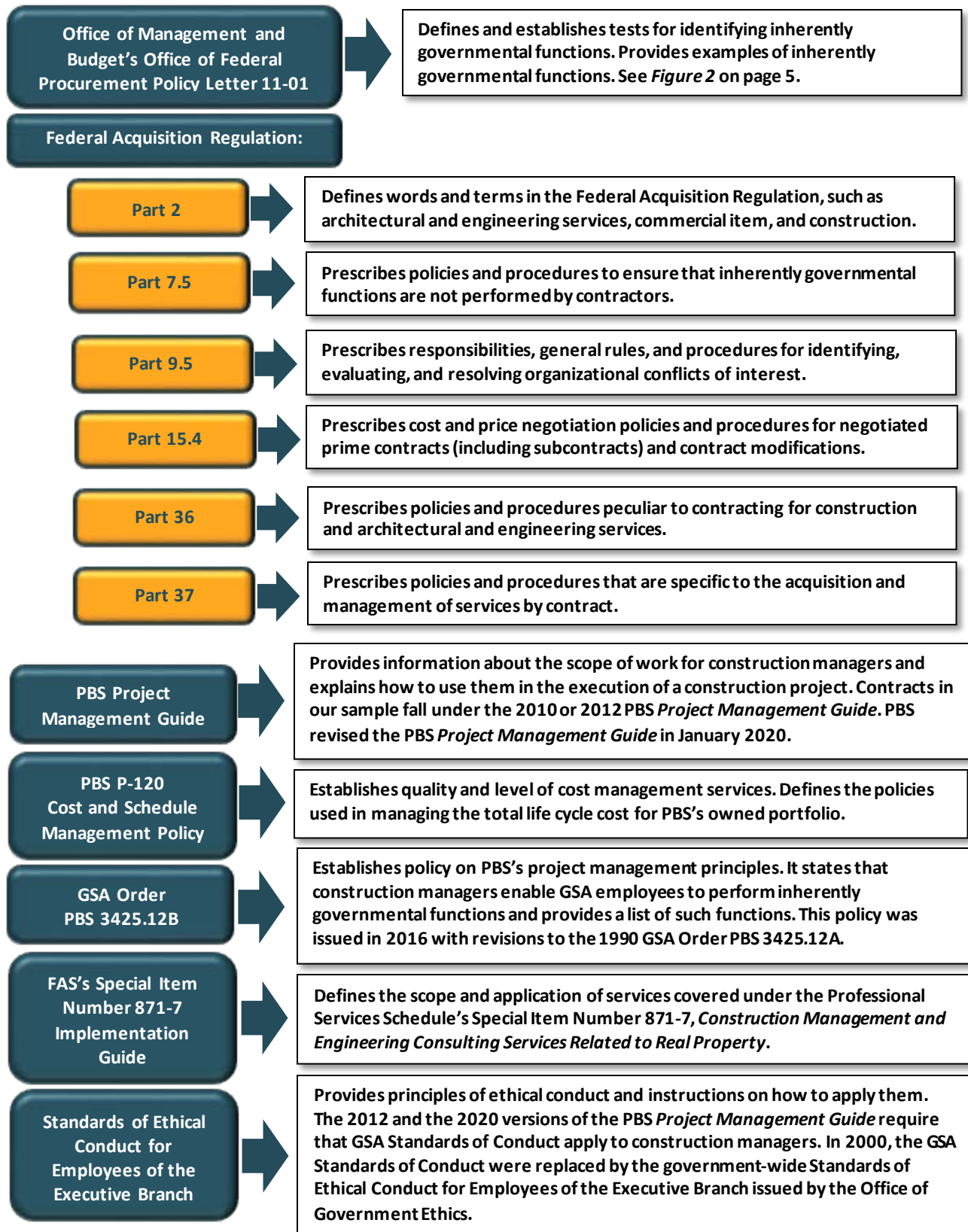
Current Use of Construction Managers

Today, the PBS *Project Management Guide* requires the use of construction managers for its capital construction projects. Though not required, PBS also uses construction managers for smaller projects and lease administration. Construction managers are involved in design, procurement, administration, closeout, and even the claims process of construction projects. They hold positions such as architects, engineers, project managers, scope developers, planning managers, cost estimators, inspectors, budget analysts, and contract specialists.

PBS uses construction managers both onsite at project locations and in-house alongside PBS employees in government offices. Onsite construction managers perform construction project oversight. In-house construction managers are either “program managers” who assist with oversight of major programs, such as GSA’s American Recovery and Reinvestment Act work, or “acquisition support” who assist PBS with procuring and administering contracts. Construction managers have become an integral part of PBS’s culture and how the agency conducts business.

PBS relies on a number of regulations and guidance to manage its use of construction managers. These are described in *Figure 1* on the next page.

Figure 1 – Regulations and Guidance Related to PBS’s Use of Construction Managers



Results

Since 1986, PBS has used construction managers to fulfill many functions and responsibilities within its construction program. The construction managers under contract to PBS provide management, technical, and administrative assistance to PBS staff in managing design and construction projects.

However, PBS has become excessively reliant on construction managers. Construction managers have become so ingrained within the PBS construction program that in many cases PBS allowed them to perform inherently governmental functions that are reserved for federal employees. In addition, PBS overlooked conflicts of interest in allowing construction managers access to proprietary data and has allowed construction managers to exceed the scopes of their contracts.

We found that PBS allowed construction managers to perform many acquisition activities that are inherently governmental, including developing independent government estimates, assessing contractor proposals on source selection boards, negotiating contracts, and accepting project deliverables. In some cases, PBS has even allowed construction managers to play a role in extending their own contracts. We also found that PBS provided construction managers with access to sensitive information, including competitors' proprietary information and government data, without mitigating conflicts of interest or ensuring data security. Finally, we found that PBS had construction managers perform duties (including architectural and engineering services and construction work) that exceeded the scope of work of their contracts.

Finding 1 – PBS allowed construction managers to perform inherently governmental functions that are reserved for federal employees.

Federal law, OMB policy, and the FAR define and identify inherently governmental functions that can only be performed by federal employees. These functions include procurement activities that require the exercise of government authority, value judgements on behalf of the government, and control over acquisitions.

For example, the Federal Activities Inventory Reform Act of 1998 defines an inherently governmental function as one that is “so intimately related to the public interest as to require performance by Federal Government employees.”² In addition, OMB’s Office of Federal Procurement Policy (OFPP) Policy Letter 11-01, *Performance of Inherently Governmental and Critical Functions*, states that inherently governmental functions require the exercise of discretion in applying government authority or the formation of value judgments in making decisions for the government.

² P.L. 105-270.

OMB’s OFPP Policy Letter 11-01 also establishes that inherently governmental functions involve, among other things, exerting control over the acquisition, use, or disposition of real property, including disbursement of federal funds. OMB OFPP Policy Letter 11-01 provides a list of inherently governmental functions during acquisition planning, source selection, and contract management, as shown below in *Figure 2*.

Figure 2 – Inherently Governmental Functions During Acquisition Planning, Source Selection, and Contract Management

| Function | Inherently Governmental – Must be Performed by Federal Employees |
|----------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Acquisition Planning | (1) Determination of requirements; (2) Approval of a contract strategy, statement of work, incentive plans, and evaluation criteria; and (3) Independent determination of estimated cost based on input from either in-house or contractor sources or both. |
| Source Selection | (1) Determination of price reasonableness of offers; (2) Participation as a voting member on a source selection board; and (3) Awarding of contracts. |
| Contract Management | (1) Ordering of any changes required in contract performance or contract qualities; (2) Determination of whether costs are reasonable, allocable, and allowable; (3) Participation as a voting member on performance evaluation boards; (4) Approval of award fee determinations or past performance evaluations; and (5) Termination of contracts. |

Further, FAR 7.5, *Inherently Governmental Functions*, provides policies and procedures to ensure that inherently governmental functions are not performed by contractors. FAR 7.5 requires that contracting officers be provided written documentation with scopes of work that ensure none of the functions to be performed are inherently governmental. FAR 7.5 provides a list of examples of functions considered inherently governmental. In addition to the functions listed above in *Figure 2*, FAR 7.5 includes accepting or rejecting contractor products or services.

Contrary to federal law and policy, PBS allowed construction managers to perform acquisition activities that are inherently governmental and reserved for federal employees. We found that PBS allowed construction managers to develop independent government estimates, vote on source selection boards, and negotiate contracts and accept payments on behalf of the government. PBS even allowed construction managers to play an active role in modifying their own contracts. As a result, PBS allowed contractors to improperly use federal authority and discretion on PBS procurements. We describe these issues further below.

For detailed findings on the contracts we tested, see **Appendix B**.

Construction Managers Prepared Independent Government Estimates without PBS Review or Approval

PBS contracting officers awarded contract actions worth nearly \$250 million based on estimates that were developed by construction managers, but not reviewed or approved by PBS personnel. As a result, PBS cannot ensure that contracts and modifications were reasonably priced.

An independent government estimate (IGE) is the government's best estimate of a contract's potential cost. IGEs are a key means of determining whether pricing is fair and reasonable. An IGE should be prepared without bias or the potential offeror's input. The FAR requires IGEs for all construction contracts and requires a detailed IGE for all projects exceeding the simplified acquisition threshold.^{3,4}

PBS and OMB policy allow a contractor to prepare an IGE provided the estimate is reviewed and approved by a government employee. For example, the PBS P-120 *Cost and Schedule Management Policy* allows for a third-party estimate to serve as the IGE if it is signed and approved by a government employee whose major responsibility (on a full-time basis) is creating or approving estimates for GSA. This policy is consistent with OMB OFPP Policy Letter 11-01, which provides that:

Price reasonableness determinations are inherently governmental ... this includes approval of documentation cited as the government's independent cost estimate, which, by definition, must be the government's own final analysis. An agency is not precluded from using the services of a contractor to develop inputs for government cost estimates ... as long as whatever the government relies upon to determine price reasonableness has been reviewed and approved by a government employee.

OMB OFPP Policy Letter 11-01 further requires that the government official's review and approval must be meaningful—not just a “rubber stamp.” The government must not be completely dependent on the contractor's superior knowledge and should independently evaluate the contractor's input.

However, we found that PBS contracting officers awarded general construction (GC) and CM contracts based on IGEs that were prepared by construction managers, but not reviewed or approved by PBS personnel. We found that the IGEs for 136 of the 481 GC and CM contract actions we tested were prepared by a construction manager. Of these, 77 IGEs totaling nearly \$250 million were not reviewed or approved by PBS personnel. PBS contracting officers used these estimates as the government's own independent estimates to determine fair and

³ FAR 36.203, *Government Estimate of Construction Costs*.

⁴ The *simplified acquisition threshold* is the dollar amount below which a non-federal entity may purchase property or services using small purchase methods. It is periodically adjusted for inflation and is currently \$250,000.

reasonable pricing. *Figure 3* shows the breakdown of these contract actions for each region we tested.

Figure 3 – Contract Actions Having IGEs without PBS Personnel Review or Approval

| Region | IGEs Prepared by Construction Manager | Action Amount | IGEs without PBS Review or Approval | Action Amount without PBS Review or Approval |
|--------------|---------------------------------------|----------------------|-------------------------------------|----------------------------------------------|
| 7 | 33 | \$240,481,191 | 10 | \$55,023,377 |
| 9 | 37 | 63,978,740 | 34 | 62,014,192 |
| 11 | 29 | 348,095,436 | 12 | 88,412,960 |
| SPD | 37 | 46,431,823 | 21 | 44,003,076 |
| Total | 136 | \$698,987,190 | 77 | \$249,453,605 |

SPD = Special Programs Division

Below are examples of contract actions with IGEs that were prepared by construction managers and were not reviewed or approved by PBS personnel:

- For the \$50 million GC contract for the Land Port of Entry in Tornillo, Texas, in Region 7, the construction manager developed the IGE in collaboration with its cost-estimating sub-consultant. The contract file shows that the PBS project manager [government employee] asked for “help” from the construction manager to review the IGE. In requesting help, the project manager cited the provision in the P-120 *Cost and Schedule Management Policy* that a “qualified Government employee whose major responsibility is creating or approving estimates for GSA must sign and approve the IGE which serves as the basis for committing funds before the solicitation is issued.” However, neither the PBS project manager nor any other PBS employee reviewed and approved the IGE, as required. We also found that PBS personnel did not review or approve IGEs in six of the eight modifications we tested on this contract.
- For the \$22 million GC contract for the U.S. Federal Courthouse in Bakersfield, California, in Region 9, the construction manager prepared the conceptual construction cost estimate that was used as the IGE for the solicitation; however, no PBS employee reviewed or approved this estimate. In addition, PBS personnel did not review or approve three other IGEs that the construction manager prepared for modifications to this contract.
- For the \$52 million GC contract for the Lafayette Building in Washington, D.C., in Region 11, the construction manager developed an IGE when the project’s design was 100 percent complete. The construction manager reconciled this IGE to an estimate developed by the architect to produce the final IGE. PBS personnel did not review or approve either IGE. The PBS contracting officer used the IGE to exclude companies from

the competitive range during construction procurement. We also identified a \$3.6 million modification awarded based on an IGE that was developed by the construction manager and was not reviewed or approved by PBS personnel.

- For the \$25 million GC contract for the U.S. Diplomacy Center in Washington, D.C., in Region 11, the construction manager developed the IGE that the PBS contracting officer used to exclude companies from the competitive range during construction procurement. PBS personnel did not review or approve the IGE. After award and during contract administration, we found that the construction manager provided its IGEs to the general contractor to use in its proposal development and during negotiations in four of five modifications we tested for this contract.
- For the \$2.1 million CM contract for the U.S. Federal Courthouse in Bakersfield, California, in Region 9, PBS personnel did not review or approve the IGE prepared by another construction manager for the award of this contract.

We asked PBS officials why construction managers, rather than PBS personnel, develop IGEs. We were told that PBS does not have guidance on developing estimates, PBS project managers do not have experience developing estimates, and PBS does not have adequate resources to develop the estimates itself. We also asked why PBS personnel were not reviewing and approving estimates, despite knowing the requirement to do so. One PBS project manager told us that it is impossible to review all estimates developed by the construction manager due to the volume of work on a capital project.

PBS officials told us and our testing confirmed that construction managers made independent determinations of estimated costs without PBS personnel review or approval. As a result, PBS violated federal regulations by allowing construction managers to exercise government authority and discretion that are reserved for its government employees.

Construction Managers Voted on Source Selection Boards

The Special Programs Division violated the FAR and OMB policy by allowing construction managers to exercise government authority and discretion by participating as voting members on two source selection boards.

A source selection board is a group of government personnel, representing functional and technical disciplines, that is charged with evaluating proposals and developing summary facts and findings during the source selection for a procurement. FAR 7.503(c), *Policy* and OMB OFPP Policy Letter 11-01 classify participating as a voting member on a source selection board as an inherently governmental function.

However, we found that construction managers participated as voting members for the selection of other construction managers for the Land Port of Entry project in Nighthawk,

Washington, and for the Customs and Border Protection's Signage Program in 16 locations in Arizona, Maine, Michigan, New York, and Texas.

- For the Land Port of Entry in Nighthawk, Washington, the PBS project manager and two construction managers were on the proposal evaluation team. The PBS project manager was the only voting member. The two construction managers were designated as "nonvoting members" yet voted when they evaluated the technical aspects of the proposals and the proposed prices. The PBS contracting officer determined one proposal was technically unacceptable based on their evaluations.
- For the Customs and Border Protection's Signage Program, a construction manager was one of two voting members and represented 50 percent of the source selection decision. The other evaluation member was a PBS project manager [government employee]. The construction manager evaluated and rated five construction manager proposals, assessed strengths and weaknesses of the qualifications and experience of proposed personnel, and assessed how the proposed personnel from each firm would perform the CM services at multiple locations. PBS conducted an Agency meeting after releasing the new procurement at the project site, with the construction manager identified on the agenda as "GSA."

When we asked the PBS contracting officer for the Customs and Border Protection's Signage Program why a construction manager voted on a source selection board, we were told that the construction manager did not have the "final say in the final scores or the final decision of best value" and that "this decision was made by government employees." Specifically, the PBS contracting officer's final decision on this procurement is evidenced by their signature on the contract. However, federal law and policy define voting on a source selection board as an inherently governmental function, which cannot be performed by a non-government employee whether or not the government employee makes the final decision to award the contract.

Construction Managers Independently Negotiated on Behalf of the Government

PBS allowed construction managers to independently negotiate contract actions on behalf of the government in 4 of the 21 CM contracts and 5 of the 28 GC contracts we tested. While OMB OFPP Policy Letter 11-01 does not preclude a construction manager from drafting the price negotiations memorandum, agencies must ensure the construction manager's work does not expand to include decision-making. However, in the examples below, construction managers exercised government authority and decision-making by negotiating directly with contractors on behalf of the government without PBS personnel participation:

- In the Region 9 GC contract for the Federal Courthouse in San Diego, California, the construction manager negotiated two modifications (\$679,000 and \$518,000) without participation from PBS personnel. Price negotiation memorandums and email correspondence showed that negotiations about cost and scope were held without GSA

presence between the construction manager and the general contractor, and between the construction manager and an estimating consultant. The construction manager did not include PBS personnel (the project manager and contracting officer) on the emails until negotiations were finalized.

- In the Special Programs Division, PBS personnel did not participate in negotiations about cost and scope for all five modifications we tested for the GC contract for the Land Port of Entry in Nighthawk, Washington. The construction manager was listed as the “government” negotiator on meeting attendee lists. After the construction manager negotiated two of the modifications, the construction manager briefed another construction manager, rather than PBS personnel, on the results of the negotiations.
- For the \$8.3 million GC contract at the Land Ports of Entry in Montana, New York, North Dakota, and Washington, awarded by the Special Programs Division, PBS personnel did not participate in cost negotiations for four of the five modifications we tested. Negotiations were frequently performed by email between the construction manager and the general contractor. In one email to the PBS contracting officer’s representative [government employee], the construction manager wrote that “we have negotiated a final price.”
- During cost negotiations for the award of the \$450,000 CM contract for the Land Port of Entry in Nighthawk, Washington, awarded by the Special Programs Division, a construction manager held negotiations by phone with a prospective construction manager without including PBS personnel. The two also discussed weaknesses in the qualifications of the proposed CM personnel. After the CM contract was awarded, the construction manager who negotiated costs for the base award requested a proposal from the construction manager and then negotiated a daily rate for a modification to the CM contract. PBS personnel were not involved in the negotiations, and the PBS contracting officer awarded the modification for the exact amount negotiated by the construction manager.
- For the CM contract for the Land Ports of Entry in Montana, New York, North Dakota, and Washington, awarded by the Special Programs Division, the PBS contracting officer asked multiple construction managers to contact each general contractor about costs associated with a construction delay and said they could “feel free to negotiate a lower rate if [they] wish.” Proposed costs for the delays totaled \$507,000 for nine Land Ports of Entry.

We noted that seven of the nine CM and GC contracts in which construction managers conducted negotiations without PBS participation were assigned to the Special Programs Division. A construction manager [contractor] in the Special Programs Division confirmed that the CM staff perform the same duties as government contract specialists without PBS personnel participation. The construction manager told us that the CM staff did so because the Special Programs Division only had one PBS program manager [government employee] on staff

and that the CM staff worked with this PBS employee to manage the Land Port of Entry construction program.

PBS violated federal regulations by allowing construction managers to independently negotiate contract actions without proper involvement and oversight by PBS employees. As a result, construction managers improperly exercised authority and discretion reserved for government employees.

Construction Managers Accepted Work on Behalf of the Government

PBS violated federal regulations by allowing construction managers to accept construction work on behalf of the government.

In accordance with the PBS *Project Management Guide*, general contractors are required to submit invoices for payment based on the results of a monthly meeting with the government to inspect the work and substantiate progress. Invoices must be submitted to the PBS contracting officer's representative, often a PBS project manager, with a copy to the construction manager. The PBS project manager must confirm that the invoice reflects the agreed-upon amounts and percentages before preparing a payment package for approval by the PBS contracting officer. The PBS *Project Management Guide* also states that it is "advantageous" if the construction manager works "informally with the general contractor before the invoice is prepared, so that both parties agree on the amount of work completed and the correct amount of the invoice" and adds that the payment amount must be approved by the PBS contracting officer's representative or PBS contracting officer.

The FAR and OMB policy require that these invoices must be approved by government employees. According to FAR 7.503(c)(12)(v), non-government personnel may not accept or reject contractor products or services. Additionally, OMB OFPP Policy Letter 11-01 provides that the determination of whether costs are reasonable, allocable, and allowable is an inherently governmental function under contract management.

However, we found that PBS did not follow the FAR, OMB policy, or the PBS *Project Management Guide*. For the Land Port of Entry in Santa Teresa, New Mexico, in Region 7, the construction manager independently inspected work and prepared the payment package. No PBS employee signed the payment package to authorize payment; only the construction manager signed the documents. PBS personnel were not present during the monthly site inspection.

Further, interviews with PBS personnel indicated that construction managers were accepting work on behalf of the government as discussed below:

- A Region 11 PBS project manager [government employee] told us that construction managers recommend GC contract invoice payment amounts, and then the PBS project

manager reviews and verifies the amount. However, the PBS project manager told us that it is impossible to review all invoices due to the heavy workload.

- A construction manager [contractor] in the Special Programs Division told us that the program manager [construction manager in the Special Program Division based in Denver, Colorado] visited construction managers at the construction sites to make sure they were “doing their job” when verifying GC invoices against project completion. PBS personnel did not attend the site visits.

In both cases, it appears that only the construction manager is on the construction site during monthly site inspections evaluating the project’s progress and determining if the general contractor’s invoice is acceptable for payment. Accordingly, PBS has violated federal regulations by allowing construction managers to accept construction work on behalf of the government.

Construction Managers Were Involved in Modifying Their Own Contracts

We found that construction managers were involved in modifications to their own contracts in Region 11 and the Special Programs Division. In these cases, PBS is not only allowing construction managers to perform inherently governmental functions by creating PBS’s proprietary government information, but also creating conflicts of interest, as discussed below:

- In Region 11’s CM contract for the Department of State’s Harry S. Truman Building in Washington, D.C., the PBS project executive [government employee] directed the construction manager to prepare the GSA purchase request, scope of work, IGE, and record of negotiation for an extension to the construction manager’s own contract. The work had already been completed. The PBS project executive negotiated with the construction manager for a lower cost than the estimate that was prepared by the construction manager. Neither the PBS project executive nor the PBS contracting officer reviewed or approved the supporting documentation for the modification.
- In the Special Programs Division’s CM contract for the Land Ports of Entry in Montana, New York, North Dakota, and Washington, the construction manager sent PBS’s client agency its statement of work and cost for modifying its current contract. The construction manager also requested approval from PBS’s client agency for the additional cost. The PBS program manager [government employee] approved funding for the identical amount that the construction manager requested from the client agency. PBS personnel were not included in the construction manager’s request to the client agency.

As demonstrated above, PBS is allowing construction managers to perform inherently governmental functions as well as creating clear conflicts of interest by having contractors prepare the government’s contract documents for their own contracts.

In sum, PBS's extensive use of construction managers has exposed weaknesses in the Agency's internal controls to ensure that contractors do not perform inherently governmental functions. By allowing construction managers to perform these functions, PBS violated federal regulations and policies and created conflicts of interest. Accordingly, PBS should implement controls to ensure that construction managers and other non-government personnel are not performing these functions.

Finding 2 – PBS gave construction managers access to sensitive information, including competitors' proprietary information and government data, without mitigating conflicts of interest or ensuring data security.

In many cases, PBS gave construction managers access to sensitive information, including competitors' proprietary information and government data. However, PBS did not identify, manage, or mitigate the resulting conflicts of interest or ensure the security of the data.

We found that multiple construction managers had access to proprietary information belonging to their competitors. Although this information could be used to gain an unfair advantage when the construction managers compete for contracts, PBS did not take steps to mitigate the conflicts of interest.

Furthermore, we found that construction managers were given access to sensitive PBS data. In one instance, a construction manager retained sensitive project records, including personally identifiable and sensitive but unclassified information, at their home even after they were no longer working on the project.

Access to Proprietary Competitor Information

Construction managers are responsible for, among other things, reviewing technical and pricing proposals and subcontractor agreements, which are submitted by architects and engineers, general contractors, and their subcontractors. As shown in the examples below, this creates an environment where construction managers have access to competitors' proprietary or source selection information, creating organizational conflicts of interest that could give construction managers an unfair competitive advantage:

- As discussed in *Finding 1*, construction managers developed IGEs to determine fair pricing for contracts with their competitors. This occurred in 10 of the 21 CM contracts we tested. For example, for the \$2.1 million award of the Region 9 CM contract for the U.S. Federal Courthouse in Bakersfield, California, PBS tasked another construction manager with developing the IGE. PBS solicited proposals from its regional indefinite-delivery, indefinite-quantity (IDIQ) CM contract holders.⁵ The construction manager that

⁵ IDIQ contracts provide for an indefinite quantity of services for a fixed time. PBS uses IDIQ contracts when it cannot determine precise quantities during a contract period. For services such as CM, competed dollar amounts are specified in the IDIQ contract. PBS places task orders against an IDIQ contract for individual requirements.

developed the IGE had access to the competed hourly rates in the regional IDIQ contracts—proprietary information that provided the construction manager with a window into their competitors’ pricing.

- PBS provided construction managers in the Special Programs Division with access to their competitors’ hourly, overhead, and profit rates. This occurred when, as discussed in *Finding 1*, construction managers served as voting members on two CM source selection boards for competitors’ contracts and negotiated changes to these contracts without government participation.
- In the Region 11 CM contract for the Lafayette Building in Washington, D.C., PBS tasked the construction manager to review the architecture firm’s fee proposal for a modification to its contract. However, the architecture firm for the Lafayette Building served as the construction manager on another contract we tested for the Consumer Financial Protection Bureau Building in Washington, D.C., and was a potential direct competitor of the construction manager on the Lafayette Building project.

In accordance with FAR 9.5, *Organizational and Consultant Conflicts of Interest*, PBS contracting officers are required to identify and mitigate potential conflicts of interest before contract award and during contract administration. Under FAR 9.505-4, *Obtaining Access to Proprietary Information*, a construction manager that gains access to other companies’ proprietary information must enter into an agreement with the other companies to:

- Protect their information from unauthorized use or disclosure for as long as it remains proprietary; and
- Refrain from using the information for any purpose for other than that for which it was furnished.

PBS contracting officers must obtain agreements between the construction manager and the other companies and ensure that such agreements are properly executed.

However, PBS contracting officers did not comply with these FAR requirements for all 12 CM contracts with conflicts of interest we identified during our testing. This occurred because PBS contracting officers failed to recognize that the conflicts of interest existed. As a result, PBS contracting officers did not implement mitigation plans or obtain agreements between construction managers and other companies as required, and construction managers were granted access to proprietary competitor information that could have been used and could still be used to undermine competition.

Access to Proprietary Government Information

PBS allowed construction managers to have excessive access to proprietary government information, which could provide an unfair competitive advantage.

For example, in the Region 11 CM contract for the Department of State's Harry S. Truman Building in Washington, D.C., the construction manager had access to its project budget in PBS's electronic financial systems. The contract file includes a discussion between the construction manager and a Department of State [government] employee about increasing the costs of its contract. The construction manager recommended that additional funding be used from a specific Reimbursable Work Authorization.⁶ The construction manager confirmed that funding was available by accessing GSA's electronic financial system used to track such agreements. By providing access to this system, PBS inappropriately provided the construction manager with proprietary budgetary information on the source of funds and amount remaining for its current contract. This provided the construction manager with an unfair competitive advantage during negotiations in that modification, in future modifications for its current contract, and in future CM solicitations for the project.

In other discussions with PBS officials about possible conflicts of interest, we were told that GSA addresses conflicts of interest with its employees through use of nondisclosure statements. However, it is more difficult to address conflicts of interest with construction managers because they are employees of private companies.⁷ A GSA Office of General Counsel attorney told us that in addition to conflicts of interest that have been discovered—including access to competitor information or inside information on future government work—construction managers could have spouses or other family members who hold positions that could create conflicts of interest. A division director stated that construction managers are part of PBS's culture. A supervisory contracting officer and a contracting officer's representative told us that the lines of authority on construction projects are unclear.

Sensitive Information Placed at Risk

In the course of performing their duties, construction managers are often given access to sensitive government information that should be safeguarded. As discussed below, we identified a general construction contract in Region 11 in which this information was placed at risk of unauthorized exposure. However, to date, GSA and PBS have not taken appropriate actions to protect the data and notify affected individuals.

We found that a former construction manager employee for the Department of State's Harry S. Truman Building retained PBS general construction contract files containing personally identifiable information, sensitive but unclassified information, and proprietary information after leaving the firm. These files, which the former employee maintained at his residence, included certified payrolls containing partial social security numbers and home addresses, and modifications with employee rates of pay and company profit and overhead rates. PBS

⁶ A Reimbursable Work Authorization is a formal agreement between GSA and a customer whereby GSA agrees to provide goods and services and the customer agrees to reimburse GSA's costs. GSA includes costs for construction management services in Reimbursable Work Authorizations.

⁷ GSA employees are required to adhere to the Standards of Ethical Conduct for Employees of the Executive Branch.

personnel were aware of this, but did not take steps to retrieve the files. We alerted Region 11 PBS senior leadership of the situation, and the Region 11 PBS contracting officer sent a letter to the former construction manager's firm concerning its responsibility to secure project information. However, PBS took no action to retrieve the files from the former construction manager. The GSA Office of Inspector General (OIG) Office of Investigations retrieved the documentation and returned it to PBS.

According to GSA Order 2180.2 CIO, *GSA Rules of Behavior for Handling Personally Identifiable Information*, and GSA Order 9297.2C CIO CHGE 1, *GSA Information Breach Notification Policy*, PBS should have followed GSA's procedures to determine whether a breach notification was required, assess the level of impact, and provide notification to the individuals affected. A former PBS official acknowledged that this was not done.

As discussed above, the PBS contracting officer failed to identify and mitigate organizational conflicts of interest on the project and violated the FAR. PBS also failed to follow its procedures for handling a breach of sensitive information. To address these deficiencies, PBS should establish controls to ensure that PBS contracting officers identify, evaluate, and mitigate potential organizational conflicts of interest before contract award and during contract performance. PBS should also take action to ensure that access to competitor or government proprietary data is limited to government personnel with a valid need to know. In accordance with the *GSA Information Breach Notification Policy*, PBS should report the unauthorized disclosure and notify all affected individuals.

Finding 3 – PBS contracted with construction managers to perform services prohibited under GSA's Professional Engineering Services Schedule, which circumvented competition.

PBS violated federal regulations and circumvented competition by awarding contracts for real property services prohibited under GSA's Professional Engineering Services Schedule to construction managers.

GSA's Professional Engineering Services Schedule includes offerings for CM and engineering consulting, which are types of services typically performed by construction managers. However, its use is reserved for commercial item services, which as defined in FAR 2.101 does not apply to real property.

Because architectural and engineering (i.e., design) services and construction are associated with real property, *FAS's Construction Management and Engineering Consulting Services Related to Real Property Implementation Guide* stipulates that CM consultants cannot participate in the design and construction of real property.⁸

⁸ FAR 36, *Construction and Architect-Engineer Contracts*, discusses professional services associated with real property.

We tested CM contracts that were awarded through GSA's Professional Engineering Services Schedule and found that architectural and engineering and construction services were improperly performed under the following three contracts:

- In the Mariposa Land Port of Entry in Nogales, Arizona, the construction manager provided and installed door locksets.
- The construction manager provided both architectural and engineering and construction services by performing geotechnical testing, providing furniture space plans, and installing webcams at the 50 United Nations Plaza in San Francisco, California.
- The construction manager provided and installed digital signage and telecom services at the Lafayette Building in Washington, D.C.

When asked about CM scopes of work, PBS officials pointed to high workload and experience gaps between new and senior PBS employees. Adding prohibited services to current active contracts reduces PBS officials' administrative burden of soliciting for such services in a separate solicitation. While we found that construction managers generally subcontracted for the prohibited architecture, engineering, and construction services, doing so exceeded the scope of work of their contracts, circumvented competition, and deprived other vendors of potential opportunities. Additionally, construction managers who accepted work prohibited under their contract violated the terms of their contracts.

In sum, PBS violated federal regulations and circumvented competition by awarding prohibited services to construction managers under GSA's Professional Engineering Services Schedule. PBS should implement controls to ensure that its construction managers are not performing prohibited services. To accomplish this, PBS should provide training to PBS personnel, implement controls, and review current CM services awarded under GSA's Professional Engineering Services Schedule and their related GC contracts.

Conclusion

PBS has become excessively reliant on construction managers. Construction managers have become so ingrained within the PBS construction program that PBS violated federal regulations in using them. PBS allowed construction managers to perform acquisition activities that are inherently governmental functions and reserved for federal employees. In addition, PBS overlooked conflicts of interest by allowing construction managers access to proprietary and government data and has allowed construction managers to exceed the scopes of their contracts.

We found that PBS allowed construction managers to perform many acquisition activities that are inherently governmental, including developing IGEs, assessing contractor proposals on source selection boards, negotiating contracts, and accepting project deliverables. In some cases, PBS even allowed construction managers to play a role in extending their own contracts. We also found that PBS gave construction managers access to sensitive information, including competitors' proprietary information and government data, without mitigating conflicts of interest or ensuring data security. Finally, we found that PBS allowed construction managers to perform duties (including architectural and engineering and construction work) that exceeded the scope of work of their contracts and circumvented competition.

While construction managers fill an important role for PBS, it is imperative that proper controls are in place to ensure that their use complies with applicable laws and regulations and protects taxpayer dollars. Accordingly, PBS should strengthen controls to ensure: (1) that construction managers are not performing inherently governmental functions and prohibited services and (2) its employees are properly identifying and mitigating conflicts of interest.

Recommendations

We recommend that the PBS Commissioner:

1. For all current CM and GC contracts, perform a review and take corrective actions to ensure that:
 - a. Qualified PBS personnel are performing the required review prior to approving government estimates prepared by non-government personnel, estimates are prepared before receipt and independent of proposals, and access to estimates is granted only to government personnel whose official duties require knowledge of the estimates.
 - b. Non-government personnel do not perform inherently governmental functions, such as voting on source selection boards, accepting services on behalf of the government, and conducting negotiations without meaningful involvement, review, and approval from government personnel.
 - c. PBS contracting officers identify, evaluate, and mitigate potential organizational conflicts of interest before contract award and during contract performance.

- d. Access to competitors' proprietary information and government data is limited to government personnel whose official duties require knowledge of the information. PBS should conduct a comprehensive assessment to identify:
 - i. Sensitive information, as described in *Finding 2*, including personally identifiable information and sensitive but classified information, which was placed at risk by the failure of the construction manager's former employee to return general construction contract files. In accordance with the *GSA Information Breach Notification Policy*, PBS should report the unauthorized disclosure and notify all affected individuals.
 - ii. Companies that have access to competitors' proprietary information. PBS should obtain copies of agreements between construction managers and other companies to ensure knowledge is protected, and ensure that such agreements are properly executed.
 - e. PBS personnel do not award services prohibited under the GSA's Professional Engineering Services Schedule.
2. For future CM and GC contracts, implement controls to ensure that:
- a. Qualified PBS personnel are performing the required review prior to approving government estimates prepared by non-government personnel, estimates are prepared before receipt and independent of proposals, and that access to estimates is granted only to government personnel whose official duties require knowledge of the estimates.
 - b. Non-government personnel do not perform inherently governmental functions, such as voting on source selection boards, accepting services on behalf of the government, and conducting negotiations without meaningful involvement, review, and approval from government personnel.
 - c. PBS contracting officers identify, evaluate, and mitigate potential organizational conflicts of interest before contract award and during contract performance and obtain copies of agreements between construction managers and other companies to ensure knowledge is protected and ensure that such agreements are properly executed.
 - d. Access to competitors' proprietary information and government data is limited to government personnel whose official duties require knowledge of the information.
 - e. PBS personnel do not award services prohibited under the GSA's Professional Engineering Services Schedule.

GSA Comments

The PBS Commissioner agreed with our recommendations.

According to the PBS Commissioner, PBS has already initiated measures to address our recommendations and to enable proper oversight of CM activities. The PBS Commissioner wrote that these measures include improvements to PBS policy governing project management and the adoption of CM statement of work templates that provide greater detail and clarity about the roles and responsibilities of the construction manager during the design and construction phases of a project. The PBS Commissioner also asserted that PBS has taken steps to ensure that electronic contract file documentation is properly maintained in PBS's acquisition system and clarified and reinforced contracting officer's representatives' responsibilities.

In his response, the PBS Commissioner noted that the audit "was conducted over the course of 5 ½ years and while the OIG adjusted the audit scope in 2017, a vast majority of contract actions referenced were initiated in 2014 or earlier." The PBS Commissioner also noted that PBS provided extensive technical comments and an overview of internal controls implemented to address the audit findings and recommendations, which were not reflected in the report.

PBS's written comments are included in their entirety in **Appendix C**.

OIG Response

While we appreciate the steps to improve controls and oversight of CM and corresponding construction contracts that are described in the PBS Commissioner's response, these steps do not address the specific deficiencies identified in our report. We encourage PBS to continue to strengthen its controls to ensure that PBS personnel do not direct CMs to perform inherently governmental functions and prohibited services, and to ensure that PBS staff properly identify and mitigate conflicts of interest.

With respect to the PBS Commissioner's comment on the audit timeframes, additional perspective is necessary. The audit initially began in November 2014, but was suspended in May 2015 because the audit team was reassigned to conduct the audit of PBS's decisions to vacate and renovate the leased federal courthouse in Pensacola, Florida.⁹ The CM audit was restarted in October 2016; however, the audit team continued to devote resources to the resolution of the Pensacola audit through October 2017. Due to the extensive interruption of the audit work, the audit team updated the sample of contracts for testing. We believe that our testing of this

⁹ This audit work resulted in two audit products: *Management Alert: PBS Lacks Support for Its Decision to Vacate the Leased Federal Courthouse in Pensacola, FL* (Audit Memorandum Number A150132, September 23, 2015); and *GSA's Decisions to Vacate and Renovate the Leased Federal Courthouse in Pensacola Are Based on Faulty Premises* (Report Number A150132/P/4/R17001, October 25, 2016).

sample provides sufficient and appropriate evidence to serve as the basis for our findings and conclusions based on our audit objectives.

Finally, we reviewed PBS's technical comments and overview of internal controls implemented to address the audit findings; however, we determined that the information provided did not affect our findings and conclusions.

Audit Team

This audit was managed out of the Southeast Sunbelt Region Audit Office and conducted by the individuals listed below:

| | |
|---------------------|-----------------------------------------|
| Nicholas V. Painter | Regional Inspector General for Auditing |
| Valerie R. Smith | Audit Manager |
| Renee E. Davis | Auditor-In-Charge |
| Alenda J. Blackwell | Management Analyst |
| Wesley C. Zehms | Management Analyst |

Appendix A – Scope and Methodology

Our audit scope consisted of a judgmental sample of five CM contracts in Region 7, Region 11, and the Special Programs Division and six CM contracts in Region 9 that were awarded to support PBS's capital construction program. Our sample also included all the GC contracts that corresponded to the sampled CM contracts and other CM contracts that may have supported the capital project. The sample was selected to include multiple GSA regions in an effort to analyze consistency across regions and project teams.

To accomplish our objectives, we:

- Reviewed OMB policy, the FAR, and PBS national and regional guidance on inherently governmental functions and organizational conflicts of interest;
- Reviewed FAS's *Construction Management and Engineering Consulting Services Related to Real Property Implementation Guide* for prohibited services;
- Reviewed PBS construction management and project management program guidance;
- Tested CM contracts and corresponding GC contracts, as well as related program management and acquisition staff support contracts; and
- Interviewed PBS leadership, project staff, and CM staff.

We sampled 21 CM contracts totaling \$99 million, along with their corresponding 28 GC contracts, totaling \$1.5 billion, to review construction managers' involvement in PBS's capital construction program. We also reviewed the scopes of work for in-house contractors (program management, acquisition/contract specialists, project managers, estimators, etc.) used to support the sampled projects to determine if the actions performed by in-house contractors mirrored actions described in CM scopes of work. In cases where the scopes were similar, we classified staff under these contracts as construction managers and included these contracts in our analysis.

We tested the base contracts and modifications. For the CM contracts, we tested all modifications. For the GC contracts, our sample included all modifications above \$750,000 plus an additional 5 percent of the remaining modifications based on the highest dollar. If that resulted in less than five modifications, we judgmentally chose five modifications.

Initially, we chose Region 7, Region 9, and Region 11 for our sample because they are geographically dispersed throughout the nation. When we pulled the data for Region 7, we found employees reporting to Central Office's Special Programs Division. The Special Programs Division is based in Denver, Colorado, and reports directly to the Assistant Commissioner for Project Delivery in Washington, D.C. The majority of the 37 people assigned to the Special Programs Division are physically located in Region 8; 23 of those 37 people are non-governmental personnel (construction managers).

We conducted the audit between December 2014 and May 2015, and between October 2016 and March 2019 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.

Internal Controls

Our assessment of internal controls was limited to those necessary to address the objectives of the audit.

Report Qualification

We did not have access to a number of CM and GC contract actions in our sample. PBS personnel either could not locate the files or many of the files we requested were incomplete. Our sample contained \$99 million in CM contracts. Our sample also contained \$1.545 billion in GC contract actions. We tested \$933 million in contracts. We chose our sample based on the available files, and were generally able to test the base GC contract award and a minimum of five corresponding modifications.

Appendix B – Summary of Findings for Contract Actions

| Note | Contract Number | Project Title | Contract Value | Finding (Note 1) |
|-------------|----------------------------------|-------------------------------------------------------------------------------------------------------------|-----------------------|-------------------------|
| 2 | GS07P07HHD0106 GSP0710UY5013 | Land Port of Entry, Santa Teresa, NM Construction Management | \$914,389 | 2 |
| | GS07P09HHD0008A GSP0710UY5014 | Land Port of Entry, Santa Teresa, NM General Construction | \$10,205,822 | 1A |
| 3 | GS10F0013U GSP0709HH0006 | Land Port of Entry, Tornillo, TX Construction Management | \$7,519,436 | N/A |
| | GS07P11HHC0003 | Land Port of Entry, Tornillo, TX General Construction | \$58,948,376 | 1B |
| | GS07P99HHD0067 GSP0715HH5017 | Land Port of Entry, Tornillo, TX General Construction | \$5,523,748 | 1C |
| | GS07P09HHC0035 | Land Port of Entry, Tornillo, TX General Construction | \$211,756 | N/A |
| 4 | GS23F0111K GSP0709UY0003 | San Antonio Hipolito F. Garcia U.S. Post Office - Courthouse, San Antonio, TX Construction Management | \$3,852,812 | N/A |
| | GS07P09UYC0007 | San Antonio Hipolito F. Garcia U.S. Post Office - Courthouse, San Antonio, TX General Construction | \$50,713,423 | 1B |
| 5 | GS23F0111K GSP0710UY0004 | GT “Mickey” Leland Federal Building, Houston, TX Construction Management | \$5,275,729 | N/A |
| | GS07P09UYC0008 | GT “Mickey” Leland Federal Building, Houston, TX General Construction | \$88,169,712 | N/A |
| 6 | GS07P11HHD0038G SP0714HH5045 | Columbus Land Port of Entry, Columbus, NM Construction Management | \$727,455 | N/A |
| | GS07P15HHD7027 GSP0717HH0006 | Columbus Land Port of Entry, Columbus, NM General Construction | \$67,934,268 | N/A |
| 7 | GS10F09LPA0013 GSP0910KT0024 | 50 United Nations Plaza, San Francisco, CA Construction Management | \$5,690,185 | 3 |
| | GS09P09KTC0065 | 50 United Nations Plaza, San Francisco, CA General Construction | \$114,307,680 | 1B |
| 8 | GS10F09LPA0011 GSP0910KT0018 | Mariposa Land Port of Entry, Nogales, AZ Construction Management | \$8,748,143 | 1B, 3 |
| | GS09P10KTC0005 | Mariposa Land Port of Entry, Nogales, AZ General Construction | \$148,466,609 | 1B |
| 9 | GS09P03KTC0150 | San Ysidro Land Port of Entry, San Diego, CA Construction Management | \$14,912,843 | N/A |

Appendix B – Summary of Findings for Contract Actions (cont.)

| Note | Contract Number | Project Title | Contract Value | Finding (Note 1) |
|-------------|---------------------------------|-----------------------------------------------------------------------------------------------|-----------------------|-------------------------|
| 9 | GS07F020JW GS09P12KTC0011 | San Ysidro Land Port of Entry, San Diego, CA Construction Management | \$63,227 | N/A |
| | GS09P08KTC0081 | San Ysidro Land Port of Entry, San Diego, CA General Construction | \$1,905,006 | 1B |
| | GS09P09KTC0091 | San Ysidro Land Port of Entry, San Diego, CA General Construction | \$12,225,765 | 1B |
| | GS09P10KTC0027 | San Ysidro Land Port of Entry, San Diego, CA General Construction | \$182,370,357 | 1B |
| | GS09P11KTC0002 | San Ysidro Land Port of Entry, San Diego, CA General Construction | \$2,463,200 | 1B |
| | GS09P12KLC0007 | San Ysidro Land Port of Entry, San Diego, CA General Construction | \$1,311,744 | 1B |
| 10 | GS09P09KSD0069 GSP0909KT5038 | U.S. Federal Courthouse, Bakersfield, CA Construction Management | \$2,209,534 | 1B |
| | GS09P09KTC0077 | U.S. Federal Courthouse, Bakersfield, CA General Construction | \$24,904,957 | 1B |
| 11 | GS09P03KTC0004 | Federal Courthouse, San Diego, CA Construction Management | \$10,326,147 | N/A |
| | GS09P08KTC0089 | Federal Courthouse, San Diego, CA General Construction | \$299,739,780 | 1B, 1C |
| 12 | GS00P10CYD0125 GSP1114MK0083 | U.S. Diplomacy Center, Washington, D.C. Construction Management | \$1,628,600 | 2 |
| | GS11P11MKC0052 | U.S. Diplomacy Center, Washington, D.C. General Construction | \$29,903,180 | 1B |
| 13 | GS23F0035P GSP1106MK0036 | Lafayette Building, Washington, D.C. Construction Management | \$17,435,400 | 1B, 2, 3 |
| | GS11P10MKC0061 | Lafayette Building, Washington, D.C. General Construction | \$123,259,533 | 1B |
| 14 | GS00P10CYD0120 GSP1114MK5021 | Consumer Financial Protection Bureau Washington, D.C., Construction Management | \$5,680,701 | 2 |
| | GS11P14MKC0023 | Consumer Financial Protection Bureau Washington, D.C., General Construction | \$121,021,558 | 1B |
| 15 | GS11P08MKC0038 | Department of State, Harry S. Truman Building, Washington, D.C. Construction Management | \$6,916,677 | 1B, 2 |
| | GS11P14MKC0058 | Department of State, Harry S. Truman Building, Washington, D.C. General Construction | \$82,086,028 | 1B |

Appendix B – Summary of Findings for Contract Actions (cont.)

| Note | Contract Number | Project Title | Contract Value | Finding (Note 1) |
|-------------|----------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------|-----------------------|-------------------------|
| 15 | GS11P14MKC0064 | Department of State, Harry S. Truman Building, Washington, D.C. Construction Management | \$3,723,345 | 2 |
| | GS11P10MKC0004 | Department of State, Harry S. Truman Building, Washington, D.C. General Construction | \$50,729,504 | 2 |
| | GS11P08MKC0062 | Department of State, Harry S. Truman Building, Washington, D.C. General Construction | \$20,057,055 | N/A |
| 16 | GS00P10CYD0123 GSP0711HH5020 | Customs and Border Protection’s Signage Program, 16 locations in Arizona, Maine, Michigan, New York, and Texas Construction Management | \$434,676 | 1B, 1C, 1D, 2 |
| | GS07P03HHD0159 GSP0711HH5019 | Customs and Border Protection’s Signage Brownsville, TX, General Construction | \$1,026,880 | N/A |
| | GS07P03HHD0160 GSP0712HH5047 | Customs and Border Protection’s Signage Detroit Windsor Tunnel Land Port of Entry General Construction | \$678,127 | N/A |
| 17 | GS07P10HHD0011 GSP0711HH5108 | Customs and Border Protection’s Field Operations Facilities and Land Border Integration Office, Construction Management | \$1,595,184 | 2 |
| | GS07P09HHD0107 GSP0012CY5030 | Land Ports of Entry, 27 buildings in Arizona, California, New Mexico, and Texas General Construction | \$20,223,668 | 1B |
| 18 | GS23F0054S GSP0710HH0031 | Land Port of Entry, Morgan, MT Construction Management | \$456,454 | 1B, 1C, 2 |
| | GS07P09HHD0007 GSP0009CYD0146 | Land Port of Entry, Morgan, MT General Construction | \$8,765,999 | 1B, 1C |
| 19 | GS00P10CYC0293 | Land Port of Entry, Nighthawk, WA Construction Management | \$575,515 | 1B, 1C, 1D, 2 |
| | GS07P08HHD0111 GS00P10CYD0088 | Land Port of Entry, Nighthawk, WA General Construction | \$8,291,470 | 1B, 1C |
| 20 | GS10F09LPA0007 GSP0710HH0030 | Land Port of Entry, Montana, New York, North Dakota, and Washington Construction Management | \$459,550 | 1B, 1C, 2 |
| | GS07P09HHD0007 GSP0009CY0145 | Land Ports of Entry, Montana, New York, North Dakota, and Washington General Construction | \$9,333,306 | 1B, 1C |

Appendix B – Summary of Findings for Contract Actions (cont.)

Notes:

1. This column identifies the finding(s) related to the sampled construction project. The findings are as follows:
 - Finding 1 – PBS allowed construction managers to perform inherently governmental functions that are reserved for federal employees:
 - 1A – Accepting work on behalf of the government;
 - 1B – Developing IGEs;
 - 1C – Negotiating on behalf of the government; and
 - 1D – Voting member of a source selection board.
 - Finding 2 – PBS gave construction managers access to sensitive information, including competitors' proprietary information and government data, without mitigating conflicts of interest or ensuring data security.
 - Finding 3 – PBS contracted with construction managers to perform services prohibited under GSA's Professional Engineering Services Schedule, which circumvented competition.

2. Region 7, Land Port of Entry, Santa Teresa, New Mexico
 - GS07P07HHD0106/GSP0710UY5013, Construction Management, Hartman and Majewski Design Group: We found a conflict of interest on this contract. Construction managers had access to PBS's electronic systems and internal shared drives that could provide access to proprietary information belonging to competitors or the government.
 - GS07P09HHD0008A/GSP0710UY5014, General Construction, Tetra Tech EC, Incorporated: We found that the construction manager performed an inherently governmental function of certifying payment for contract invoices.

3. Region 7, Land Port of Entry, Tornillo, Texas
 - GS10F0013U/GSP0709HH0006, Construction Management, Coast and Harbor Associates, Incorporated: We found no reportable issues under this contract in the context of our audit objectives.
 - GS07P11HHC0003, General Construction, Turner Construction Company: We found that the construction manager performed an inherently governmental function by preparing IGEs. We tested IGEs developed by the construction manager for the contract award and seven modifications. There was no PBS review of the IGEs for the award or five of the seven modifications.

Appendix B – Summary of Findings for Contract Actions (cont.)

3. Region 7, Land Port of Entry, Tornillo, Texas (cont.)

- GS07P99HHD0067/GSP0715HH5017, General Construction, Jim Cooley Construction LLC: We found that the construction manager performed inherently governmental functions by negotiating contract actions without PBS personnel participation. The construction manager held initial negotiations with the general contractor without PBS personnel participation for a modification.
- GS07P09HHC0035, General Construction, White Construction Company: We found no reportable issues under this contract in the context of our audit objectives.

4. Region 7, San Antonio Hipolito F. Garcia U.S. Post Office - Courthouse, San Antonio, Texas

- GS23F0111K/GSP0709UY0003, Construction Management, Jacobs Technology Inc.: We found no reportable issues under this contract in the context of our audit objectives.
- GS07P09UYC0007, General Construction, HC Beck, LTD: We found that the construction manager performed an inherently governmental function by preparing IGEs. We tested the estimates developed by the construction manager for the award and 12 modifications. There was no PBS review of the IGEs for four of the modifications.

5. Region 7, GT “Mickey” Leland Federal Building, Houston, Texas

- GS23F0111K/GSP0710UY0004, Construction Management, Jacobs Technology Inc.: We found no reportable issues under this contract in the context of our audit objectives.
- GS07P09UYC0008, General Construction, Gilbane Building Company: We found no reportable issues under this contract in the context of our audit objectives.

6. Region 7, Columbus Land Port of Entry, Columbus, New Mexico

- GS07P11HHD0038/GSP0714HH5045, Construction Management, Studio Collaboration, LLC: We found no reportable issues under this contract in the context of our audit objectives.

Appendix B – Summary of Findings for Contract Actions (cont.)

6. Region 7, Columbus Land Port of Entry, Columbus, New Mexico (cont.)

- GS07P15HHD7027/GSP0717HH0006, General Construction, Hensel Phelps Construction Company: We found no reportable issues under this contract in the context of our audit objectives.

7. Region 9, 50 United Nations Plaza, San Francisco, California

- GS10F09LPA0013/GSP0910KT0024, Construction Management, Jacobs Technology Inc.: We found that the construction manager performed prohibited engineering (geotechnical testing) and construction services (installing webcams).
- GS09P09KTC0065, General Construction, Hathaway Dinwiddle Construction Company: We found that the construction manager performed an inherently governmental function by preparing IGEs. We tested the IGEs developed by the construction manager for the award and four modifications. There was no PBS review for the IGEs in all modifications.

8. Region 9, Mariposa Land Port of Entry, Nogales, Arizona

- GS10F09LPA0011/GSP0910KT0018, Construction Management, Heery International, Inc.: We found that a construction manager performed an inherently governmental function by preparing an IGE for this construction management contract. We also found that this construction manager performed prohibited construction services (moving furniture and re-coring key sets).
- GS09P10KTC0005, General Construction, Hensel Phelps Construction Company: We found that the construction manager performed an inherently governmental function by preparing IGEs. We tested two modifications with IGEs developed by the construction manager and found no PBS review.

9. Region 9, San Ysidro Land Port of Entry, San Diego, California

- GS09P03KTC0150, Construction Management, URS Corporation: We found no reportable issues under this contract in the context of our audit objectives.
- GS07F020JW/GS09P12KTC0011, Construction Management, URS Group, Inc.: We found no reportable issues under this contract in the context of our audit objectives.

Appendix B – Summary of Findings for Contract Actions (cont.)

9. Region 9, San Ysidro Land Port of Entry, San Diego, California (cont.)

- GS09P08KTC0081, General Construction, Hernandez Construction Corporation: We found that the construction manager performed an inherently governmental function by preparing an IGE. We tested the IGE developed by the construction manager for a modification and found no PBS review.
- GS09P09KTC0091, General Construction, Clark Construction Group: We found that the construction manager performed an inherently governmental function by preparing IGEs. We tested the estimates developed by the construction manager for the award and four modifications and found no PBS review.
- GS09P10KTC0027, General Construction, Hensel Phelps Construction Company: We found that the construction manager performed an inherently governmental function by preparing IGEs. We found no PBS review for IGEs developed by the construction manager for three modifications.
- GS09P11KTC0002, General Construction, Hugo Alonso, Inc.: We found that the construction manager performed an inherently governmental function by preparing IGEs. We tested IGEs developed by the construction manager for the award and two modifications and found no PBS review.
- GS09P12KLC0007, General Construction, Nordic Construction and Design: We found that the construction manager performed an inherently governmental function by preparing an IGE. We tested an IGE developed by the construction manager for the award and found no PBS review.

10. Region 9, U.S. Federal Courthouse, Bakersfield, California

- GS09P09KSD0069/GSP0909KT5038, Construction Management, APSI Construction Management: We found that the construction manager performed an inherently governmental function by preparing an IGE. We found that the IGE for the award of this construction management contract was developed by another construction manager and found no PBS review.

Appendix B – Summary of Findings for Contract Actions (cont.)

10. Region 9, U.S. Federal Courthouse, Bakersfield, California (cont.)

- GS09P09KTC0077, General Construction, Gilbane Building Company: We found the construction manager performed an inherently governmental function by preparing IGEs. We tested IGEs developed by the construction manager and found no PBS review for the award and three modifications.

11. Region 9, Federal Courthouse, San Diego, California

- GS09P03KTC0004, Construction Management, Jacobs Facilities, Inc.: We found no reportable issues under this contract in the context of our audit objectives.
- GS09P08KTC0089, General Construction, Hensel Phelps Construction Company: We found that the construction manager performed inherently governmental functions by preparing IGEs and negotiating on behalf of the government. We found two modifications with IGEs prepared by a U.S. District Court's outside consultant with no PBS review. We found seven modifications with IGEs prepared by the construction manager with no PBS review. We found that the construction manager held negotiations with the general contractor without PBS personnel involvement on two modifications.

12. Region 11, U.S. Diplomacy Center, Washington, D.C.

- GS00P10CYD0125/GSP1114MK0083, Construction Management, Heery International, Inc.: We found a conflict of interest on this contract. Construction managers had access to PBS's electronic systems and internal shared drives that could provide access to proprietary information belonging to competitors or the government.
- GS11P11MKC0052, General Construction, Gilbane Building Company: We found that the construction manager performed an inherently governmental function by preparing IGEs. We found IGEs developed by the construction manager for the award and a modification with no PBS review. We also found that the construction manager provided their IGEs to the general contractor during negotiations in four modifications.

Appendix B – Summary of Findings for Contract Actions (cont.)

13. Region 11, Lafayette Building, Washington, D.C.

- GS23F0035P/GSP1106MK0036, Construction Management, Hill International, Inc.: We found that the construction manager performed an inherently governmental function by preparing an IGE. The construction manager developed an IGE for a modification to their own contract with no PBS review. This condition represents a conflict of interest. This construction manager provided prohibited construction services under two contract modifications (providing and installing digital signage and telecom services).
- GS11P10MKC0061, General Construction, Grunley Construction Company, Inc.: We found that the construction manager performed an inherently governmental function by preparing IGEs. We found IGEs prepared by the construction manager for the award and one modification with no PBS review.

14. Region 11, Consumer Financial Protection Bureau, Washington, D.C.

- GS00P10CYD0120/GSP1114MK5021, Construction Management, AECOM Services, Inc.: We found a conflict of interest on this contract. Construction managers had access to PBS's electronic systems and internal shared drives that could provide access to proprietary information belonging to competitors or the government.
- GS11P14MKC0023, General Construction, Grunley Construction Company, Inc.: We found that the construction manager performed an inherently governmental function by preparing IGEs. We tested an IGE developed by the construction manager for a modification and found no PBS review.

15. Region 11, Department of State's Harry S. Truman Building, Washington, D.C.

- GS11P08MKC0038, Construction Management, Jacobs Project Management Company: We found that the construction manager performed an inherently governmental function by preparing IGEs. We found that the construction manager developed IGEs for modifications to their own contract. The construction manager also had access to government electronic financial systems. These conditions represent conflicts of interest. Access to government proprietary information is a conflict of interest and could provide the construction manager with a competitive advantage in negotiations on this contract.

Appendix B – Summary of Findings for Contract Actions (cont.)

15. Region 11, Department of State’s Harry S. Truman Building, Washington, D.C. (cont.)

- GS11P08MKC0038, Construction Management, Jacobs Project Management Company (cont.): Additionally, we found that a former employee of this construction management firm retained PBS’s general construction contract files containing personally identifiable information, sensitive but unclassified information, and proprietary information after leaving the firm. Such information was at risk of unauthorized exposure.
- GS11P14MKC0058, General Construction, Clark Construction, LLC: We found that the construction manager performed an inherently governmental function by preparing an IGE. We tested an IGE developed by the construction manager for a modification and found no PBS review.
- GS11P14MKC0064, Construction Management, Heery International, Inc.: We found a conflict of interest on this contract. Construction managers had access to PBS’s electronic systems and internal shared drives that could provide access to proprietary information belonging to competitors or the government. We found that the construction manager also had their own internal server that contained government project information, but PBS employees did not have access to the information on this server.
- GS11P10MKC0004, General Construction, Forrester Construction Company: We found that a former construction manager employee retained PBS’s general construction contract files for this project containing personally identifiable information, sensitive but unclassified information, and proprietary information after leaving the firm. Such information was at risk of unauthorized exposure.
- GS11P08MKC0062, General Construction, Alutiiq International Solutions, LLC: We found no reportable issues under this contract in the context of our audit objectives.

Appendix B – Summary of Findings for Contract Actions (cont.)

16. Special Programs Division, Customs and Border Protection’s Signage Program, 16 locations in Arizona, Maine, Michigan, New York, and Texas

GS00P10CYD0123/GSP0711HH5020, Construction Management, Baker Project Consulting, LLC: We found that the construction manager performed inherently governmental functions by preparing an IGE, voting on a source selection board, and negotiating on behalf of the government. Another construction manager voted on the source selection board for the award of this construction management contract. This presents a conflict of interest. PBS gave the construction manager access to their competitors’ proprietary information (e.g., labor, overhead and profit rates) that could provide a competitive advantage in future solicitations. We also found a second conflict of interest on this contract. Two construction managers (from different firms) negotiated with this construction manager for a contract modification. There was no PBS personnel participation in the negotiations. Both construction managers had access to a competitor’s proprietary information that could provide a competitive advantage in future solicitations.

- GS07P03HHD0159/GSP0711HH5019, General Construction, Brasfield and Gorrie, LLC: We found no reportable issues under this contract in the context of our audit objectives.
- GS07P03HHD0160/GSP0712HH5047, General Construction, MCC Construction Corporation: We found no reportable issues under this contract in the context of our audit objectives.

17. Special Programs Division, Customs and Border Protection's Field Operations Facilities and Land Border Integration Office

- GS07P10HHD0011/GSP0711HH5108, Construction Management, Parsons Infrastructure and Technology Group: We tested the scope of work for this program management contract, determined that the scope was similar to construction management scopes of work, and classified staff under this contract as construction managers. We found a conflict of interest on this contract. This construction manager negotiated rates with another construction manager. Even though a PBS employee was involved, the construction manager had access to proprietary information (e.g., rates, overhead, and profit) of the other construction manager that could provide a competitive advantage in future solicitations.

Appendix B – Summary of Findings for Contract Actions (cont.)

17. Special Programs Division, Customs and Border Protection's Field Operations Facilities and Land Border Integration Office (cont.)

- GS07P09HHD0107/GSP0012CY5030, General Construction, Science Applications International Corporation: We found that the construction manager performed an inherently governmental function by preparing IGEs. We found IGEs developed by the construction manager for the award and four modifications had no PBS review.

18. Special Programs Division, Land Port of Entry, Morgan, Montana

- GS23F0054S/GSP0710HH0031, Construction Management, Analytical Planning Services, Incorporated: We found that the construction manager performed inherently governmental functions by preparing an IGE and negotiating on behalf of the government. We also found a conflict of interest on this contract.

We found that a modification under this contract was awarded based on an IGE prepared by another construction manager, with no PBS review. We found this construction manager negotiating with another construction manager for a modification with no PBS personnel participation. The conflict of interest arose by allowing this construction manager to rate proposals for the source selection of another construction manager. This construction manager was a non-voting member; that does not constitute an inherently governmental function. However, having access to proprietary source selection information (e.g., organizational plan, rates, overhead, and profit) of the other construction manager could provide a competitive advantage in future solicitations.

- GS07P09HHD0007/GSP0009CYD0146, General Construction, MCC Construction Corporation: We found that the construction manager performed inherently governmental functions by preparing IGEs and negotiating on behalf of the government. We found an IGE developed by the construction manager for the award with no PBS review. We also found that the construction manager negotiated with the general contractor on five modifications with no PBS involvement.

19. Special Programs Division, Land Port of Entry, Nighthawk, Washington

- GS00P10CYC0293, Construction Management, JDD, Incorporated: We found that the construction manager performed inherently governmental functions by preparing IGEs, voting on a source selection board, and negotiating on behalf of the government. We also found a conflict of interest on this contract.

Appendix B – Summary of Findings for Contract Actions (cont.)

19. Special Programs Division, Land Port of Entry, Nighthawk, Washington (cont.)

- GS00P10CYC0293, Construction Management, JDD, Incorporated (cont.): We found that another construction manager developed the IGE for the award on this construction management contract with no PBS review. Also, two construction managers voted on the source selection board for this construction management contract. Also on the source selection, we found that another construction manager negotiated with a JDD, Incorporated construction manager on JDD Incorporated's proposal. Access to a competitor's proprietary information is a conflict of interest and could provide the construction managers a competitive advantage in future solicitations.
- GS07P08HHD0111/GS00P10CYD0088, General Construction, Randolph Construction Services, Incorporated: We found that the construction manager performed inherently governmental functions by preparing IGEs and negotiating on behalf of the government. We tested the IGEs for the award and four modifications and found no PBS review. We also found that the construction manager negotiated with the general contractor for five modifications with no PBS personnel participation.

20. Special Programs Division, Land Port of Entry, Montana, New York, North Dakota, and Washington

- GS10F09LPA0007/GSP0710HH0030, Construction Management, Cooper Zietz Engineers, Incorporated: We found that the construction manager performed inherently governmental functions by preparing an IGE and negotiating on behalf of the government. We also found conflicts of interest. Another construction manager developed the IGE for a modification to this contract with no PBS review. Another construction manager negotiated a modification with this construction manager with no PBS involvement. Access to competitors' proprietary information and government data is a conflict of interest and could provide a competitive advantage in current and future solicitation.
- GS07P09HHD0007/GSP0009CY0145, General Construction, MCC Construction Corporation: We found that the construction manager performed inherently governmental functions by preparing IGEs and negotiating on behalf of the government. We tested the IGEs developed by the construction manager for the award and five modifications and found no PBS review. We also found that the construction manager negotiated with the general contractor in four modifications with no PBS personnel participating.

Appendix C – GSA Comments


DocuSign Envelope ID: 1AFD556D-F374-4565-B2D6-376B7DE39729



Public Buildings Service

July 31, 2020

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

FROM: DANIEL W. MATHEWS
COMMISSIONER 
PUBLIC BUILDINGS SERVICE (P)

SUBJECT: Response to the Office of Inspector General (OIG) Draft
Audit Report entitled *Audit of the GSA Public Buildings
Service's Use of Construction Management Services,
(A150028)*

The Public Buildings Service (PBS) appreciates the opportunity to review and comment on the subject audit report from the GSA, Office of Inspector General Audit Plan for FY 2015. PBS agrees with both recommendations set forth in the report and has already begun implementing controls, processes, and tools to address these recommendations. PBS has reviewed these procedures and is taking necessary corrective action.

This study was conducted over the course of 5 ½ years and while the OIG adjusted the audit scope in 2017, a vast majority of the contract actions reviewed or referenced were initiated in 2014 or earlier. PBS provided the OIG with extensive technical comments, as well as an overview of internal controls that have been implemented to address the findings and recommendations to leverage the oversight of Construction Managers (CM); however, these comments and controls were not reflected in the report.

PBS considers CMs an integral part of project delivery just as architectural and construction contractors are integral to the process. Over the course of time this study was conducted, PBS has made significant enhancements to the organizational structure and control processes to leverage the oversight of CMs.

Internal controls have been established to enable proper oversight of CM activities such as:

- The implementation of the Project Management Order, which governs the use of project management principles as well as the assignment of project managers to PBS projects.
- CM Statement of Work templates have been created to provide greater detail and clarity as to the roles and responsibilities of the CM during the design and construction of a project.

1800 F Street, NW
Washington, DC 20405-0002
www.gsa.gov

Appendix C – GSA Comments

DocuSign Envelope ID: 1AFD556D-F374-4565-B2D9-376B7DE39729

- The development of the Electronic Acquisition System Integration (EASi) for contract files and data management. EASi includes components to ensure contract documents are stored correctly.
- Contracting Officer Representative's responsibilities have been clarified and reinforced with the use of certification requirements and tools to enable consistency.

PBS will review these recommendations along with existing controls and take necessary corrective action as needed.

Thank you for the opportunity to provide a response to the draft report. If you have any questions, please contact Andrew (Andy) Young at (202) 264-9907.

Appendix D – Report Distribution

GSA Administrator (A)

GSA Deputy Administrator (AD)

Commissioner (P)

Deputy Commissioner (PD)

Chief of Staff (PB)

Deputy Chief of Staff (PB)

Acting Chief Architect (PCA)

Assistant Commissioner (PM)

Regional Commissioner (7P, 9P, 11P)

Chief Administrative Services Officer (H)

Audit Management Division (H1EB)

Assistant Inspector General for Auditing (JA)

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