



INSPECTOR GENERAL

JULY 29, 2022

Multi-Million-Dollar Construction Projects' Contract Provisions Comply with Federal Guidance, AOC Policies and Industry Standards Although Improvements Can Be Added

Report No. OIG-AUD-2022-07

MISSION

The OIG promotes efficiency and effectiveness to deter and prevent fraud, waste and mismanagement in AOC operations and programs. Through value added, transparent and independent audits, evaluations and investigations, we strive to positively affect the AOC and benefit the taxpayer while keeping the AOC and Congress fully informed.

VISION

The OIG is a high-performing team, promoting positive change and striving for continuous improvement in AOC management and operations. We foster an environment that inspires AOC workforce trust and confidence in our work.



Results in Brief

Multi-Million-Dollar Construction Projects' Contract Provisions Comply with Federal Guidance, AOC Policies and Industry Standards Although Improvements Can Be Added

July 29, 2022

Objective

Prior audits of the Architect of the Capitol's (AOC's) construction projects resulted in findings and recommendations related to the AOC's management and administration of construction contracts (see Appendix F for a list of prior audits). As a follow-up on findings and recommendations resulting from audits of AOC's construction contracts, the AOC Office of Inspector General (OIG) contracted with Cotton & Company Assurance and Advisory, LLC (Cotton) to assess AOC's contract provisions for multi-million-dollar construction projects to determine their compliance and/or alignment with federal laws, regulations, AOC policies and procedures, and industry standards, as well as their consistency across AOC jurisdictions.

Cotton's policy requires that it obtain a management representation letter associated with the issuance of a performance audit. It requested a management representation letter from the AOC on June 16, 2022, a copy of which is included in this report as Appendix C. AOC management refused to sign the management representation letter that was provided and instead provided a letter, included as Appendix D, stating that the information provided for the audit was complete and accurate.

Findings

Cotton determined that overall, the AOC's contract provisions for multi-million-dollar construction projects were compliant and aligned with federal laws, regulations, AOC policies and procedures and industry standards consistently across AOC jurisdictions. However, we did identify a few enhancements to AOC's construction contracts that

Findings (cont'd)

the AOC should consider, as well as areas for improvement related to the AOC's process of ensuring that the proper clauses are included in its construction contracts. In addition, Cotton performed a follow-up review on two prior OIG reported findings related to construction contract clauses and requirements and determined AOC's responses to those findings were adequate and do not require further action.

Specifically, we found the AOC procures the majority of its construction projects using firm-fixed-price (FFP) contracts; however, guaranteed maximum price (GMP) contracts for some larger construction projects are also used. In addition, we reviewed a hybrid GMP contract awarded and administered by the AOC for one of the GMP contracts. The AOC entered into a fixed-price agreement with the general contractor for subcontractor-performed work, then reimbursed the general contractor for the remaining General Condition/General Requirement (GC/GR) work on a cost-reimbursable basis with a guaranteed maximum ceiling.

Hybrid approaches to GMP contracts are not unusual; however, in commercial construction projects, it is more typical to award the GC/GR work as FFP—or convert it to FFP before the work commences—and reimburse the subcontractor work on a cost-reimbursable basis up to the GMP. This assists both the owner and the contractor by alleviating the administrative burden of tracking, invoicing, and reviewing the actual costs for GC/GR, particularly as GC/GR costs usually involve a large number of transactions, many of which have a small dollar value.



Results in Brief

Multi-Million-Dollar Construction Projects' Contract Provisions Comply with Federal Guidance, AOC Policies and Industry Standards Although Improvements Can Be Added

Findings (cont'd)

Additionally, based on our review of the four contracts sampled for this audit, we determined that the AOC omitted 14 contract clauses from these contracts, which were required by internal policies. The AOC omitted applicable contract clauses from the sampled contracts for two main reasons: (1) oversights that occurred at the time the AOC awarded the contract, or (2) an applicable contract clause was issued after contract award, but the AOC did not issue a modification to incorporate the clause into the contract. The omission of required contract clauses could create risk for the AOC. We determined the risk to the AOC for omitting the clauses from the contracts ranged from no risk to moderate risk.

Similarly, during our review of sampled contracts, we determined that the AOC erroneously included four inapplicable contract clauses. The inclusion of inapplicable contract clauses could create risk for the AOC. We determined the risk to the AOC for incorrectly including the clauses in the contracts ranged from no risk to low risk.

Finally, we understand that like other federal government agencies, buildings under the AOC's jurisdiction are self-insured by the federal government and should any of these buildings suffer catastrophic damage during construction it could lead to significant costs for the government. However, the AOC may increase its protection for certain projects by requiring its contractors to purchase builder's risk insurance.

Recommendations

We made the following seven recommendations to address the identified areas of improvement. We recommend the following:

1. The AOC consider structuring future GMP contracts as 1) fixed-price amounts for general conditions and general requirements, and 2) cost reimbursement for subcontracts that are fixed-price amounts between the general contractor and subcontractors, to assist in alleviating the AOC's administrative burden in properly administering the contract.
2. The AOC issue contract modifications for the sampled contracts to include any applicable clauses that the AOC did not include in the contract at the time of award or in any modifications already issued, if the AOC determines that it is feasible to do so.
3. The AOC update the format of the Matrix Checklist to allow Contracting Officers to more easily filter, sort and select applicable construction contract clauses.
4. When the AOC revises its contract formulation requirements, it formalize its process for updating existing contracts, including documenting its rationale for cases in which it determines that new contractual requirements are not applicable to existing contracts.
5. The AOC issue contract modifications to remove the inapplicable clauses included in the contract, if the AOC determines that it is beneficial and feasible to do so.



Results in Brief

Multi-Million-Dollar Construction Projects' Contract Provisions Comply with Federal Guidance, AOC Policies and Industry Standards Although Improvements Can Be Added

Recommendations (cont'd)

6. As a part of the AOC annual review of active contracts to determine whether any contract modifications are necessary, the AOC incorporate a review to identify (1) applicable clauses erroneously omitted during the formulation of the contract, (2) applicable contract clauses issued after contract award and (3) inapplicable contract clauses.
7. The AOC consider requiring its contractors to carry builder's risk policies on a project-by-project basis, based on an evaluation of the risks that each project poses to the AOC.

Management Comments

The AOC was provided an opportunity to comment in response to this report.

The AOC provided comments on July 8, 2022, see Appendix E. AOC management agreed with the conclusion that overall, the AOC's contract provisions for multi-million-dollar construction projects were compliant and aligned with federal laws, regulations, AOC policies and procedures and industry standards consistently across AOC jurisdictions. However, the report does identify a few enhancements to AOC's construction contracts that AOC should consider, as well as areas for improvement related to the AOC's process of ensuring that the proper clauses are included in its construction contracts. AOC management concurred with the AOC OIG's seven recommendations.

Please see the Recommendations Table on the following page.



Office of Inspector General
Fairchild Bldg.
499 S. Capitol ST., SW, Suite 518
Washington, D.C. 20515
202.593.1948

www.aoc.gov

UNITED STATES GOVERNMENT

MEMORANDUM

Recommendations Table

Management	Recommendations Unresolved	Recommendations Resolved	Recommendations Closed
Office of the Chief Engineer	NONE	1, 2, 3, 4, 5, 6 and 7	NONE

The following categories are used to describe agency management’s comments to individual recommendations:

- **Unresolved** – Management has not agreed to implement the recommendation or has not proposed actions that will address the recommendation.
- **Resolved** – Management agreed to implement the recommendation or has proposed actions that will address the underlying finding that generated the recommendation.
- **Closed** – The AOC OIG verified that the agreed upon corrective actions were implemented.



Office of Inspector General
Fairchild Bldg.
499 S. Capitol ST., SW, Suite 518
Washington, D.C. 20515
202.593.1948
www.aoc.gov

UNITED STATES GOVERNMENT

MEMORANDUM

DATE: July 29, 2022

TO: J. Brett Blanton
Architect of the Capitol

FROM: Christopher P. Failla, CIG
Inspector General 

SUBJECT: Multi-Million-Dollar Construction Projects' Contract Provisions Comply with Federal Guidance, Architect of the Capitol (AOC) Policies and Industry Standards Although Improvements Can Be Added (Report No. OIG-AUD-2022-07)

The AOC Office of Inspector General (OIG) is transmitting Cotton & Company Assurance and Advisory, LLC's (Cotton's) final audit report on the Contract Provisions for Multi-Million-Dollar Construction Projects (OIG-AUD-2022-07). Under contract AOC19A3002-T009 monitored by my office, Cotton, an independent public accounting firm, performed the audit in accordance with auditing standards generally accepted in the United States of America. In connection with the contract, we reviewed Cotton's report and related documentation and inquired of its representatives. Although Cotton is responsible for the report dated July 29, 2022, and the conclusions expressed in the report, our review disclosed no instances where Cotton did not comply, in all material respects, with generally accepted government auditing standards.

AOC management has agreed with the conclusion that overall, the AOC's contract provisions for multi-million-dollar construction projects were compliant and aligned with federal laws, regulations, AOC policies and procedures and industry standards, as well as their consistency across AOC jurisdictions. However, the report does identify a few enhancements to the AOC's construction contracts that the AOC should consider, as well as areas for improvement related to the AOC's process of ensuring that the proper clauses are included in its construction contracts.

In our review of AOC's Management Comments, we determined that the proposed corrective actions do meet the intent of our recommendations. The next step in the audit resolution process is for AOC management to issue a Notice of Final Action



Office of Inspector General
Fairchild Bldg.
499 S. Capitol ST., SW, Suite 518
Washington, D.C. 20515
202.593.1948
www.aoc.gov

UNITED STATES GOVERNMENT

MEMORANDUM

that outlines the actions taken to implement the agreed upon recommendations. This notice is due one year from the date of report finalization, July 28, 2023.

We appreciate the courtesies extended to the staff during the audit. Please direct questions to Sharmaine Carter, Senior Auditor, at 202.538.1830 or sharmaine.carter@aoc.gov.

Distribution List:

Peter Bahm, Chief of Staff

Mary Jean Pajak, Deputy Chief of Staff

Chere Rexroat, Chief Engineer

Jerrold Whittington, Chief, Acquisition of Architectural, Engineering and Construction Services Division

Contents

RESULTS IN BRIEF	I
OBJECTIVE	I
FINDINGS	I
RECOMMENDATIONS	II
MANAGEMENT COMMENTS.....	III
RECOMMENDATIONS TABLE	IV
INTRODUCTION	1
OBJECTIVE	1
BACKGROUND.....	2
INTERNAL CONTROLS	3
CRITERIA	4
AUDIT RESULTS	6
RECOMMENDATIONS.....	12
FINDING A	13
APPLICABLE CONTRACT CLAUSES OMITTED FROM MULTI-MILLION-DOLLAR CONSTRUCTION CONTRACTS	13
CONCLUSION.....	20
RECOMMENDATIONS.....	21
FINDING B	23
MULTI-MILLION-DOLLAR CONSTRUCTION CONTRACTS INCLUDED INAPPLICABLE CONTRACT CLAUSES	23
CONCLUSION.....	25
RECOMMENDATIONS.....	25
OTHER MATTERS	27
POTENTIAL FOR UNFORESEEN COSTS IN THE EVENT OF CATASTROPHIC DAMAGE ON CONSTRUCTION PROJECTS.....	27
CONCLUSION.....	28
RECOMMENDATION	29
APPENDIX A	31
SCOPE AND METHODOLOGY	31
REVIEW OF INTERNAL CONTROLS	32
USE OF COMPUTER-PROCESSED DATA.....	33
APPENDIX B	34
ANNOUNCEMENT MEMORANDUM.....	34
APPENDIX C	35
COTTON & COMPANY’S MANAGEMENT REPRESENTATION LETTER	35
APPENDIX D	37
AOC’S MANAGEMENT REPRESENTATION LETTER.....	37
APPENDIX E	38
AOC’S MANAGEMENT COMMENTS	38

APPENDIX F	41
PRIOR AUDITS OF AOC’S CONSTRUCTION CONTRACTS.....	41
APPENDIX G	43
CONSTRUCTION CONTRACTS IN EXCESS OF \$5 MILLION AWARDED SINCE 2015.....	43
APPENDIX H	44
CONSTRUCTION-SPECIFIC CONTRACT CLAUSES	44
ACRONYMS AND ABBREVIATIONS	48

Introduction

Objective

This report presents the results of our performance audit of the AOC's contract provisions for multi-million-dollar construction projects. Prior audits of the AOC's construction projects resulted in findings and recommendations related to the AOC's management and administration of construction contracts (see Appendix F for a list of prior audits). As a follow-up on findings and recommendations resulting from audits of AOC's construction contracts the objective of this audit was to assess the AOC's contract provisions to determine their compliance and/or alignment with federal laws, regulations, AOC policies and procedures, and industry standards, as well as their consistency across AOC jurisdictions.

We conducted this performance audit in Washington, D.C. from October 2021 through April 2022, in accordance with Generally Accepted Government Auditing Standards (per the 2018 revision of the Government Accountability Office's [GAO's] *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.

We required the AOC to provide a management representation letter associated with the issuance of a performance audit report citing Generally Accepted Government Auditing Standards. The letter is intended to confirm representations, both oral and written, made to us during the audit. We requested a management representation letter from the AOC on June 16, 2022. A copy of this letter is included in this report as Appendix C. AOC management refused to sign the management representation letter that was provided and instead provided a letter, included as Appendix D, stating that the information provided for the audit was complete and accurate.

See Appendix A for a discussion of the scope and methodology, review of internal controls, and Appendix F for prior audit coverage related to the audit objective.

Background

Purpose of the Audit

The OIG has conducted multiple audits of AOC construction projects. These audits focused on the AOC's administration, and the contractors' execution of the contracts for these projects. Appendix F contains a list of these audits, and a summary of the audit results. Although these audits did not focus on the contract formulation process, certain findings and recommendations involved clauses and provisions contained in the projects' contracts.

In order to determine whether findings and recommendations identified during those prior audits were caused due to the structure or formulation of construction contracts, the OIG made the determination to conduct an audit of the AOC's contract formulation process. To achieve this objective, this audit focused on assessing AOC's internal controls related to the contract formulation process and determining whether the contract vehicles and clauses used by the AOC for its construction contracts were in compliance and/or alignment with federal laws, regulations, the AOC's policies and procedures and industry standards, as well as their consistency across AOC jurisdictions.

AOC Contract Formulation

The Office of the Chief Engineer (OCE) oversees the planning, design, construction and maintenance of facilities on behalf of the AOC. The OCE has several divisions that manage various aspects of construction projects for all AOC jurisdictions; however, our audit focused on the roles and responsibilities of the Design and Construction Acquisition Division (DCAD) and the Project Management Division (PMD). The DCA chief has the authority to enter into and administer contracts for the AOC, and DCA contract specialists, including Contracting Officers (COs), assist with acquisition planning and formulation of contracts for construction and related services. The PMD manages the design and construction projects carried out by contractors, and its responsibilities include providing staff for project management, contract management, acquisition strategy, construction quality, safety assurance and constructability services.

The AOC's Contracting Manual (CM) prescribes the policies and procedures for the acquisition of supplies, services and construction. In addition, the DCAD's Acquisition Policy Branch has developed a Matrix Checklist that provides guidance regarding contract clauses that the AOC should incorporate into construction contracts. As an office under the legislative branch, the AOC is not required to follow

Federal Acquisition Regulations (FAR), however, the Acquisition Policy Branch developed this checklist by reviewing the clauses used by executive-branch agencies and adopting those clauses that the Acquisition Policy Branch determined to be applicable to the AOC. The DCAD has been using the Matrix Checklist since 2008 and periodically updates it to incorporate new and updated clauses that are relevant to the AOC. The Matrix Checklist includes 124 construction specific contract clauses. As noted, the AOC is not required to follow the FAR, however, 81 (or 65 percent) of the construction specific contract clauses are FAR provisions and the remaining 43 (or 35 percent) contract clauses are issued by the AOC.

The DCAD works closely with PMD to develop the contractual requirements for each project. The DCAD CO uses PMD's input to determine the contract type and contract thresholds, which in turn dictate the clauses that DCAD incorporates. In addition to the contract clauses prescribed in the Matrix Checklist, DCAD may also incorporate certain contract terms and conditions through the requirement documents. These documents are generally either (1) specifications and drawings that the AOC's Architect/Engineers developed, if the requirement is for a construction project or (2) a Statement of Work (SOW) if the requirement is for other services. The DCAD and PMD developed a SOW template; however, they may modify this template based on the project and technical requirements. Relevant technical experts review and approve the SOW using the Task Leader Sign-Off process.

Once the CO has selected the contract clauses and the requirement document has been finalized, the contract undergoes the contract review board process, consistent with the requirements of the CM. The contract review board process generally includes a peer review, after which the contract is submitted to the DCAD associate branch chief, branch chief and/or the Office of General Counsel (OGC) for review and approval. The CM prescribes the contracting thresholds that direct the review and approval process; however, the CO may elect to submit any document to the branch chief and/or OGC for review.

Internal Controls

We reviewed the AOC's policies and procedures related to the procurement and contract formulation process, including the CM and Matrix Checklist. We also interviewed personnel from OCE, DCAD and PMD to gain an understanding of the contract formulation process and the role that the various AOC divisions play in this process. We determined that the AOC's policies and procedures adequately identified the contract clauses that were required and applicable for construction contracts. However, as discussed in Findings A and B, the sampled contracts did not contain all of the required contract clauses, and they contained some contract clauses that were

not applicable under the AOC's policies and procedures. Despite this, we determined that the AOC's internal controls over the contract formulation process were implemented appropriately and performed adequately.

As with any internal control design, there is room for improvement. Specifically, we noted that the AOC should formalize its process for updating existing contracts when it revises its contract formulation requirements. The AOC should also document its rationale for cases in which it determines that new contractual requirements are not applicable to existing contracts.

Criteria

To assess the AOC's contract provisions for multi-million-dollar construction projects and to determine the AOC's compliance and alignment with federal laws, regulations, AOC policies and procedures, and industry standards, as well as consistency across AOC jurisdictions, we relied upon relevant criteria from the following sources:

- Order 34-1 Contracting Manual, revised January 29, 2020 (effective as of May 12, 2020).
- Matrix Checklist, dated November 4, 2021
 - Construction-specific contract clauses identified in the Matrix Checklist are listed in Appendix H of this report.
- FAR Part 52—Solicitation Provisions and Contract Clauses
 - We reviewed the definitions and criteria for construction-specific FAR clauses identified in the Matrix Checklist dated November 4, 2021.
- Master Clauses & Prescriptions, dated November 4, 2021
 - The document contains definitions and criteria for AOC-issued contract clauses.
- Industry standards such as sample contracts issued by the American Institute of Architects (AIA).

To determine whether the AOC applied its contract provisions consistently across AOC jurisdictions¹, we sampled and tested contracts and related modifications against the AOC's policies and procedures. The four sampled contracts and related modifications listed below are projects within the House Office Buildings, Senate Office Buildings, and Capitol Visitor Center jurisdictions:

¹ Acquisition planning and formulation of construction services contracts for all AOC jurisdictions is handled centrally by the DCAD, therefore, project jurisdiction was not used as the main criteria for our sampling of contracts.

- Contract No. AOC13C2002, including Modification No. 001 through Modification No. 098: Contract awarded to Clark/Christman, A Joint Venture, on October 25, 2012, for Construction Management as Constructor (CMc) services for the Cannon House Office Building Renewal (CHOBr) Project.

- Contract No. AOC16C2010, including Modification No. 001 through Modification No. 040: Contract awarded to Restoration East, LLC on August 16, 2016, for the Rayburn Garage Interior Rehabilitation Project.

- Contract No. AOC16C3008, including Modification No. 001 through Modification No. 005: Indefinite Delivery/Indefinite Quantity (IDIQ), Multi-Award Construction Contract (MAcc) awarded to Turner Construction Company on September 25, 2015, for various construction projects.
 - Contract No. AOC16C3008-002, including Modification No. 001 through Modification No. 054: Task order awarded to Turner Construction Company on March 23, 2017, for the Senate Underground Garage Renovations and Landscape Restoration.

 - Contract No. AOC16C3008-003, including Modification No. 001 through Modification No. 054: Task order awarded to Turner Construction Company on December 3, 2018, for the U.S. Capitol Visitor Center (CVC) Exhibition Hall Renovation.

Audit Results

To assess the AOC's contract provisions for multi-million-dollar construction projects and determine compliance and/or alignment with federal laws, regulations, AOC policies and procedures, and industry standards, as well as consistency across AOC jurisdictions, we (1) considered the types of contract vehicles that the AOC uses (2) findings that the OIG had previously identified, and (3) reviewed contracts for compliance with the AOC's policies and procedures. Although our performance audit identified some minor issues and other matters for the AOC's consideration, we determined that overall, the AOC's contract provisions for multi-million-dollar construction projects were compliant and aligned with federal laws, regulations, AOC policies and procedures, and industry standards and consistent across AOC jurisdictions.

Contract Vehicles

The AOC procures the majority of its projects using FFP contracts; however, it also uses GMP contracts for some larger construction projects. Based on our review of the sampled FFP and GMP contracts, the contract vehicles that the AOC uses are generally consistent with contracts commonly used in the construction industry.

For the purposes of our audit, we reviewed construction contracts in excess of \$5 million that the AOC had awarded since 2015. As of December 2021, the AOC identified 20 contracts that met the criteria, with a cumulative contract value of approximately \$496 million. Of these contracts, 19 were FFP and one was GMP. (See Appendix G for a listing of contracts awarded since 2015.) We judgmentally selected 42 percent of the \$496 million population, which represents three contracts from this population (two FFP contracts and the one GMP contract).

In addition, we selected the CHOBr Project's CMc contract awarded in 2012, which was outside of the initial scope of 2015, because the CMc contract represents the largest active AOC construction contract. As of December 2021, the CMc contract amount was in excess of \$530 million and is structured as a hybrid GMP contract. The AOC and the CMc agree to fixed-price amounts for work performed by the CMc's subcontractors, which accounts for the majority of the contract amount; and

the AOC reimburses the remaining GC/GR on a cost-reimbursable basis, up to the GMP.²

The terms and conditions contained in the two AOC FFP and GMP contracts that we reviewed were consistent with those included in standard FFP and GMP contracts used in the construction industry. While we find the hybrid approach to GMP contracts is not unusual, in commercial construction projects, it is more typical to award the GC/GR work as FFP—or convert it to FFP before the work commences—and reimburse the subcontractor work on a cost-reimbursable basis³ up to the GMP. This assists both the owner and the contractor by alleviating the administrative burden of tracking, invoicing and reviewing the actual costs for GC/GR, particularly as GC/GR costs usually involve a large number of transactions, many of which have a small dollar value. The contractor may also record non-reimbursable project costs as GC/GR. These non-reimbursable costs include items determined to be unallowable under FAR 31.2, contract terms, or negotiation items agreed to by the Government and the Contractor. Awarding the GC/GR work as cost-reimbursable means that the contractor must segregate the allowable costs from the unallowable costs, and that the owner must properly review the invoiced amounts to determine whether all of the costs are allowable. A prior audit⁴ of the CHOBr Project contract questioned cost-reimbursable GC/GR costs based on a sample of invoices. One of the report's recommendations was for the AOC to review additional cost-reimbursable transactions to determine whether the AOC should question any additional costs. In response, the AOC stated that it was "... evaluating the feasibility of identifying any additional transactions for unallowable cost types, including the time and level of effort required, the likelihood of identifying significant amounts of unallowable costs, and the legal and administrative challenges associated with recovering any unallowable costs that might be identified." The AOC's response reflects the administrative burden that reviewing actual GC/GR costs places on the owner. To help alleviate this burden on both the AOC and its contractors, the AOC could consider awarding future GMP contracts using a structure similar to that used on

² Contract No. AOC13C2002 CHOBr Project base contract for CMc services, awarded October 25, 2012.

³ Under this arrangement, the owner reimburses the general contractor for its actual costs for work performed by subcontractors. However, the subcontractors are not required to provide support for their actual costs. Rather, the general contractor and the subcontractors enter into fixed-price agreements to perform the work. The general contractor's actual costs reimbursed by the owner are simply the actual costs it pays to the subcontractors for the fixed-price work.

⁴ Report No. OIG-AUD-2021-04, "Audit of the Cannon House Office Building Renewal Project's Reimbursable Costs."

commercial construction projects—i.e., awarding the GC/GR portion of the contract as FFP and the subcontractor work as cost-reimbursable up to the GMP, with a fixed-price amount going to the general contractor.

Follow-Up on Prior OIG Findings

We performed a follow-up review on two prior OIG findings related to the AOC's construction contract clauses and requirements. Specifically, the OIG highlighted (1) AOC 52.215-11, *Examination of Costs*,⁵ and (2) Modification of the Definition of Costs for GMP Contracts.⁶

Cost and Pricing Certification Language

OIG's Management Advisory Letter for Project No. 2021-AUD-001-O noted concerns with the application of AOC 52.215-11, *Examination of Costs* part (b) certification language. The OIG suggested that:

The AOC consider the current limitations within its guidance and consider mitigating any potential risk to public funds by incorporating applicable FAR clauses in the future...the AOC should consider including the FAR clauses and language to correct the identified limitations.

The OIG's main concern was that AOC 52.215-11, *Examination of Costs*, may not provide sufficient protection against defective pricing. In its response to the OIG, the AOC noted that, as a legislative-branch agency, the AOC is not required to follow FAR provisions but does so when it is in the government's best interest. The AOC also identified several laws and provisions that it believes protect it from defective pricing, including the False Claims Act, the Contract Disputes Act, and the Federal Claims Collection Act.

⁵ Audit of Senate Underground Garage Renovations and Landscape Restoration Project's Contract Modifications and Audit of the Russell Senate Office Building Exterior Envelope Repair and Restoration, Seq. II (Phases 2 and 4) Contract Modifications.

⁶ Report No. OIG-AUD-2020-05, "Audit of the Cannon House Office Building Renewal Project's Contract Invoices" dated August 25, 2020, discovered that the original contract incorrectly defined costs. The CMc contract terms and conditions for the construction phases reflected a fully cost-reimbursable GMP; however, the CHOBr Project team administered the CMc contract as a hybrid cost-reimbursable/FFP GMP contract. In response to the audit, the AOC updated the contract language to reflect the hybrid intent. The AOC made a similar modification to the CVC Exhibition Hall Renovation contract (Contract No. AOC16C3008-T003), which is also a GMP contract.

We reviewed the contract clause and the associated correspondence between the OIG and the AOC. The cost certification required under AOC 52.215-11 (b) requires contractors to certify that the cost and pricing data submitted is “accurate and complete.” Although the contract clause does not explicitly identify consequences if a contractor fails to comply with the clause, we concur with the AOC’s conclusion that it can pursue damages against a contractor under the False Claims Act. Because the False Claims Act is not contingent upon the inclusion of any particular contract clause, we concluded that it provides the AOC with more protection against defective pricing or costs than an AOC or FAR-issued contract clause would.

Definition of Cost in GMP Contract

As noted earlier, our sample included two GMP contracts. One of these contracts, the Construction Manager – Cannon Renewal contract (Contract No. AOC13C2002), originally defined costs as:⁷

Allowable costs in accordance with Part 31 of the FAR in effect on the date of this Contract. Costs shall be the direct cost of amounts actually paid by a CMc to its subcontractors and vendors for work performed by subcontractors and contractor purchase orders. Said costs shall be invoiced at actual prices, including any available trade and quantity discounts.

The AOC intended to administer this as a hybrid GMP contract: compensating the CMc through fixed-price agreements for work completed by subcontractors and cost reimbursable agreements for general condition and general requirements portions of the contract, subject to a ceiling. However, as noted during our Audit of the CHOBr Project’s Contract Invoices (Report No. OIG-AUD-2020-05), the definition of costs did not align with the AOC’s intent and actual administration of the contract. The report recommended that the AOC review the terms and conditions of the CMc contract to ensure that the contract contains the appropriate terms and conditions for the CHOBr

⁷ The second GMP contract included in our sample was the CVC Exhibition Hall Renovation contract (Contract No. AOC16C3008-T003). The CVC Exhibition Hall Renovation contract included the same definition of costs that the Construction Manager – Cannon Renewal contract did, with General Contractor (GC) replacing “CMc.”

Project. The AOC initially modified the definition through Modification No. 77⁸ and again in Modification No. 97, to change the definition of costs to:⁹

Allowable costs in accordance with Part 31 of the FAR in effect on the date of this Contract. Costs shall be defined as the cost actually incurred and paid by the Prime Contractor in carrying out its self-performed work. CMc costs for subcontracted work shall be the direct cost of amounts actually paid by the AOC to the CMc for fixed-price work performed by subcontractors and contractor purchase orders. CMc costs for subcontracted work shall be determined based on the AOC's determination of the percentage of completion as compared to the executed fixed-price agreements between the CMc and its subcontractors and vendors.

As requested by the AOC, the OIG reviewed and provided feedback on the draft language of Modification No. 97; however, the final approved language reflected the bilateral agreement between the AOC and CMc. The audit recommendation was closed based on Modification No. 97.

Based on the current audit results, we are not recommending further modifications to the definition of costs, however, we believe that this modification contradicts the spirit of FAR Part 31, but perhaps not to the letter. FAR Part 31 defines the "total cost" of a project as "the direct and indirect costs allocable to the contract, incurred or to be incurred." The FAR definition does not state who must incur the cost for the cost to be allowable. The modification for the CHOBr project contract suggests that the AOC has

⁸ Modification No. 77 had changed the definition of costs to: *Allowable costs in accordance with Part 31 of the FAR in effect on the date of this Contract. The applicable subparts of Part 31 shall be used in the pricing of fixed-price contracts, subcontracts, and modifications to contracts and subcontracts, whenever (a) cost analysis is performed, or (b) a fixed-price contract clause requires the determination or negotiation of costs. However, application of cost principles to fixed-price contracts and subcontracts shall not be construed as a requirement to negotiate agreements on individual elements of cost in arriving at agreement on the total price. The final agreement accepted by the parties reflects agreement only on the total price.*

⁹ Our audit sample included another GMP contract (Contract No. AOC16C3008-T003 or CVC Exhibition Hall Renovation project), we noted that Modification No. 5 for Contract No. AOC16C3008-T003 also changed the definition of costs to: *Allowable costs in accordance with Part 31 of the FAR in effect on the date of this Contract. Costs for subcontractor performed work shall be the price paid by Turner in accordance with the contract agreement/invoice for labor, materials and equipment to its subcontractors and/or vendors for work performed by said subcontractor and/or vendor. Cost for GC performed work shall include all direct and indirect costs associated with the work.*

not incurred a subcontract cost until the AOC pays the cost, but that is not consistent with the entire purpose of FAR Part 31, which is to define which costs the government is required to pay. FAR Part 31 cannot be interpreted to state that the government determines allowability based on its decision whether or not to pay the cost. This modification is therefore inconsistent with the FAR’s purpose and application.

However, the modification can also be interpreted as benefitting the AOC because it limits the direct costs that the CMc can charge the AOC for subcontracted work to the amount paid by the AOC, while the CMc could ultimately incur—and therefore be responsible for—additional subcontractor costs that exceed the amount paid by the AOC.

Overall, although the modification creates some confusion regarding the definition of costs, we did not note this as an issue or make a recommendation because the modification on its own represents a relatively low risk to the AOC.

The AOC’s Policies and Procedures

Our review of the AOC’s policies and procedures included interviewing various departments involved in the contract formulation process and reviewing written policies and procedures. We selected the following contracts as a sample for review:

Contract No.	Jurisdiction	Description of Requirement	Design Build	Contract Type	Contract Amount
AOC13C2002	HOB ^a	CMc – Cannon Renewal Project	No	GMP	\$530,850,980
AOC16C2010	HOB ^a	Rayburn Garage Interior Rehabilitation Project	No	FFP	\$135,254,956
AOC16C3008-T002	SOB ^b	Senate Underground Garage (SUG) Renovations and Landscape Restoration	Yes	FFP	\$60,234,377
AOC16C3008-T003	CVC ^c	Capitol Visitor Center Exhibition Hall Renovation	No	GMP	\$12,705,490

^a House Office Buildings; ^b Senate Office Buildings; ^c Capitol Visitor Center

We tested the sampled contracts against the AOC's policies and procedures to determine whether the AOC consistently applied its policies and procedures to all contracts. Based on our testing, we concluded that overall, the AOC's internal controls performed adequately, with a few minor exceptions that resulted in two findings and seven recommendations. In addition, we identified one other matter for the AOC's consideration.

Conclusion

We determined that overall, the AOC's contract provisions for multi-million-dollar construction projects were compliant and aligned with federal laws, regulations, AOC policies and procedures, and industry standards consistently across AOC jurisdictions, with a few minor exceptions discussed below. Additionally, we suggest that the AOC consider structuring future GMP contracts to use negotiated fixed-price amounts for the GC/GR and cost-reimbursement for subcontractor work, with a fixed-price amount going to the general contractor.

Recommendations

Recommendation 1

We recommend that the Architect of the Capitol (AOC) consider structuring future Guaranteed Maximum Price contracts as 1) fixed-price amounts for general conditions and general requirements and 2) cost reimbursement for subcontracts that are fixed-price amounts between the general contractor and subcontractors, to assist in alleviating the AOC's administrative burden in properly administering the contract.

Recommendation 1 – AOC Comment

Prior to using the Guaranteed Maximum Price contract type on future procurements, we will evaluate best practices and lessons learned and update Contracting Officer guidance for the proper use of this contract type.

Recommendation 1 – OIG Comment

We recognize the AOC's concurrence with the recommendation. The AOC will update its Contracting Officer guidance for the proper use of the contract type. The AOC's actions appear to be responsive to the recommendation. Therefore, the recommendation is considered resolved but open. The recommendation will be closed upon completion and verification of the proposed actions.

Finding A

Applicable Contract Clauses Omitted from Multi-Million-Dollar Construction Contracts

The AOC properly included the majority of the “Required” and “Required When Applicable” clauses in the contracts that we reviewed. However, the omission of the clauses we identified demonstrates that there is the opportunity to improve the internal review process for construction contracts.

The AOC’s Matrix Checklist contains 124 construction-specific clauses. (See Appendix H for a complete list of these clauses.) The clauses are divided into two subsets, “Required” and “Required When Applicable.” The AOC must include all of the “Required” clauses in each of its construction contracts; however, selection of “Required When Applicable” clauses depend on the project requirements. The CO for each contract must review the project requirements to determine which, if any, of these clauses are applicable to the contract. Once the CO has selected the relevant contract clauses, the contract undergoes a peer-review process. If the contract meets the thresholds prescribed in the AOC’s CM, Section 1.9.1., *Contract Actions*, it is also subject to review by the branch chief(s) and the OGC.

The Acquisition Policy Branch periodically updates the Matrix Checklist to incorporate relevant clauses. COs may update active contracts as needed to incorporate any new or updated clauses that the Acquisition Policy Branch adds to the Matrix Checklist by issuing a contract modification.

We reviewed each of the sampled contracts to determine if they included all the applicable construction clauses. Based on our review, we determined that the AOC omitted the following applicable contract clauses from the sampled contracts:

CMc – Cannon Renewal Project (Contract No. AOC13C2002):

- FAR 52.222-26, *Equal Opportunity*
- FAR 52.249-2 Alternate I, *Termination for Convenience of the Government (Fixed-Price)*

- AOC52.204-7, *Executive Orders not Applicable to the AOC*
- AOC52.209-2, *Restrictions and Disclosures of Organizational and Personal Conflicts of Interest*
- AOC 52.215-10, *Examination of Records*
- AOC52.216-6, *Undefinitized Contract Actions*
- AOC 52.219-3, *Small Business Subcontracting Plan*
- AOC52.223-1, *Hazardous Material Identification and Material Safety Data - Supplement*
- AOC 52.228-2, *Insurance - Work on a Government Installation*
- AOC52.239-1, *Protection of AOC Information Technology Systems*
- AOC52.242-3, *Suspension of Work*
- AOC52.249-14, *Excusable Delays*

Rayburn Garage Interior Rehabilitation Project (Contract No. AOC16C2010):

- FAR 52.249-2 Alternate I, *Termination for Convenience of the Government (Fixed-Price)*

SUG Renovations and Landscape Restoration (Contract No. AOC16C3008-T002)

- FAR 52.236-26, *Pre-Construction Conference*
- FAR 52.249-2 Alternate I, *Termination for Convenience of the Government (Fixed-Price)*

CVC Exhibition Hall Renovation (Contract No. AOC16C3008-T003)

- FAR 52.236-26, *Pre-Construction Conference*

- FAR 52.249-2 Alternate I, *Termination for Convenience of the Government (Fixed-Price)*
- AOC52.223-11, *Contract Performance and Reporting Requirements during a Pandemic*
- AOC 52.249-14, *Excusable Delays*

The AOC omitted applicable contract clauses from the sampled contracts for two main reasons: (1) oversights that occurred at the time the AOC awarded the contract or (2) an applicable contract clause was issued after contract award, but the AOC did not issue a modification to incorporate this clause into the contract. The omission of applicable contract clauses could create risk for the AOC. We assigned a risk level to each omitted clause identified during our audit. The quantification of risk levels is subjective in nature; however, we based our analysis on our industry subject matter expertise and provided a narrative describing the potential risk related to each omitted clause.

Summary of Applicable Clauses Omitted from Sampled Contracts					
Contract Clause	Risk Level	CMc – Cannon Renewal Contract No. AOC13C2002	Rayburn HOB Garage Contract No. AOC16C2010	SUG Renovation Contract No. AOC16C3008-T002	CVC Exhibition Hall Renovation Contract No. AOC16C3008-T003
AOC52.239-1, Protection of AOC Information Technology Systems	Moderate	Omitted			
FAR 52.249-2 Alternate I, Termination for Convenience of the Government (Fixed-Price)	Low	Omitted	Omitted	Omitted	Omitted
AOC52.249-14, Excusable Delays	Low	Omitted			Omitted
FAR 52.222-26, Equal Opportunity	Low	Omitted			
AOC52.209-2, Restrictions and Disclosures of Organizational and Personal Conflicts of Interest	Low	Omitted			
AOC52.215-10, Examination of Records	Low	Omitted			
AOC52.216-6, Undefined Contract Actions	Low	Omitted			
AOC52.219-3, Small Business Subcontracting Plan	Low	Omitted			
AOC52.223-1, Hazardous Material Identification and Material Safety Data – Supplement	Low	Omitted			
AOC52.223-11, Contract Performance and Reporting Requirements during a Pandemic	Low				Omitted
AOC52.228-2, Insurance - Work on a Government Installation	Low	Omitted			
AOC52.242-3, Suspension of Work	Low	Omitted			
FAR 52.236-26, Pre-Construction Conference	None			Omitted	Omitted
AOC52.204-7, Executive Orders not Applicable to the AOC	None	Omitted			

As shown in the table above the AOC omitted some of these clauses from multiple contracts. We based our determination on the potential risk each clause presents to the AOC as a whole, rather than discussing the potential risk for each individual contract.

AOC52.239-1, Protection of AOC Information Technology Systems – Moderate Risk

This clause imposes substantial responsibility on the contractor. If the contracting entity does not include this clause in the initial contract and then requests that the contractor subsequently agree to the clause, the contractor may be entitled to an adjustment to the contract time, contract price or both.

Therefore, omission of this clause presents a moderate risk to the AOC. The AOC could lower its contractual risk by modifying the contract to incorporate this clause; however, the AOC should first evaluate the trade-off between lowering its contractual risk and potentially adding further costs or time to the contract.

FAR 52.249-2 Alternate I, Termination for Convenience of the Government (Fixed-Price) – Low Risk

Omission of FAR 52.249-2 Alternate I does not expose the AOC to material risk because the contracts sampled for our performance audit included FAR 52.249-2. However, in the absence of Alternate I, a terminated contractor may claim entitlement to certain “initial costs and preparatory expenses” associated with the contract.

AOC52.249-14, Excusable Delays – Low Risk

Omission of this clause presents low risk to the AOC because the clause primarily defines the circumstances under which a contractor’s failure to perform will be excused. In the absence of this clause, the contractor would need to rely on the industry standard or common law definition of an excusable delay caused by a force majeure event, which generally would be no broader or more generous to the contractor than the omitted clause would allow.

FAR 52.222-26, Equal Opportunity – Low Risk

Omission of this clause does not expose the AOC to significant risk because courts and boards would interpret the contract as if it contained the clause regardless of the omission as a result of the Christian doctrine.¹⁰ However, the

¹⁰ Christian doctrine provides that if a statute or a regulation with the “force and effect of law” mandates the inclusion of a clause in a government contract, the courts and boards will interpret the contract as if it contains the omitted clause. The doctrine was named after a 1963 Court of Federal Claims decision in *G.L. Christian & Assoc. v. United States*, 312 F.2d 418 (Ct. Cl. 1963). For years, that decision was broadly interpreted to require all contract provisions required by the FAR to be read into government contracts. However, in *Chamberlain Manufacturing Corp.*, ASBCA No. 18103, 74-1 BCA ¶ 10,368, the Armed Services Board of Contract Appeals restricted the Christian doctrine’s application to only those FAR requirements that constitute fundamental procurement policy. That interpretation was later adopted by the Federal Circuit in *General Engineering & Machine Works v. O’Keefe*, 991 F.2d 775 (Fed. Cir. 1993) and remains the law today.

omission raises the contractor's risk for non-compliance and may expose it to discrimination charges from its employees or subcontractors, which could result in the contractor's termination, suspension, or disbarment.

AOC52.209-2, Restrictions and Disclosures of Organizational and Personal Conflicts of Interest – Low Risk

The clause is required per the AOC's contracting policies and procedures; however, omission of AOC 52.209-2 does not expose the AOC to significant risk because Order 34-1 CM, Section 1.11.3, imposes similar requirements for contractors.

AOC52.215-10, Examination of Records – Low Risk

Omission of this clause may preclude the AOC from engaging in routine audits of the contractor and/or its subcontractor(s). Additionally, the AOC may not be able to unilaterally issue a litigation hold for contractor records. However, the risk to the AOC is relatively low because in the event of an actual dispute, the AOC may be able to obtain similar holds on records through litigation.

AOC52.216-6, Undefined Contract Actions – Low Risk

Omission of this clause presents a low risk to the AOC because the AOC can easily provide the provisions of this section to the contractor when or if an urgent or emergency situation arises. This clause primarily imposes obligations on the CO, which the AOC can achieve independent of the contract. The few obligations that the clause imposes on the contractor can be achieved by including this clause in the actual contract action, which itself is a contract modification or a separate agreement.

AOC52.219-3, Small Business Subcontracting Plan – Low Risk

Omission of this clause may expose the AOC to a potential claim from the contractor for an adjustment to the contract amount if the small business subcontracting plan's requirements are more onerous or require more work than the contractor could have reasonably anticipated. However, the AOC's risk is minimal for the omission noted in our audit because contract sections

C12.B.3 and C12.C.12, *Prepare and Maintain Subcontracting Plan*, included similar requirements.

AOC52.223-1, Hazardous Material Identification and Material Safety Data – Supplement – Low Risk

This clause requires the contractor to provide Material Safety Data Sheets, which can be critical for advising project participants regarding health and safety issues. In the absence of this clause, it is incumbent on the CO to request the Material Safety Data Sheets. Therefore, omission of this clause presents a low risk to the AOC as long as the CO appropriately manages these requests.

AOC52.223-11, Contract Performance and Reporting Requirements during a Pandemic – Low Risk

This clause imposes substantial responsibility on the contractor. If the contracting entity does not include this clause in the initial contract and then requests that the contractor subsequently agree to the clause, the contractor may be entitled to an adjustment to the contract time, contract price or both. The omission of this clause would have presented a high contractual risk during the height of the pandemic; however, the risk is much lower now that most Coronavirus Disease 2019 (COVID-19) related restrictions, even at the federal level, have been relaxed or rescinded. The AOC could lower its contractual risk by modifying the contract to incorporate this clause; however, the AOC should first evaluate the trade-off between lowering its contractual risk and potentially adding further costs or time to the contract.

AOC52.228-2, Insurance - Work on a Government Installation – Low Risk

Omission of insurance requirements could expose the AOC to significant risk. However, the AOC's risk for the omission noted during our audit was minimal because Section H.2. of the sampled contract included insurance requirements that were more robust than the requirements laid out in AOC 52.228-2.

AOC52.242-3, Suspension of Work, Low Risk

This clause outlines the actions that a contractor or CO may take that may lead to the suspension of work under the contract. It also prescribes the claim methodology for any compensation due to the contractor as a result of the suspension of work. We noted that the AOC suspended work on one of the contracts sampled for our audit. The modification used to suspend the work referenced AOC52.242-3, *Suspension of Work*; however, this clause was not included in the contract. The AOC identified it as a required clause after the contract had been issued and did not subsequently modify the contract to include the clause. In this instance, the AOC's contractual risk for not incorporating the clause was low because the omission did not prohibit the AOC from suspending the work and the contractor accepted the modification to suspend the work. However, had the contractor objected to the modification, the AOC and the contractor would have been required to rely on industry standards to determine any compensation resulting from the suspension of work. Depending on the industry standard used, the compensation due to the contractor could be higher or lower than the compensation due under the method prescribed in this clause.

FAR 52.236-26, Pre-Construction Conference – No Risk

The clause is required per the AOC's contracting policies and procedures; however, the omission of FAR 52.236-26 did not expose the AOC to any particular risk.

AOC52.204-7, Executive Orders not Applicable to the AOC – No Risk

Omission of this clause did not present any risk to the AOC because even in the absence of this clause, executive orders do not inherently apply to the AOC.

Conclusion

The AOC properly included the majority of the "Required" and "Required When Applicable" clauses in the contracts that we reviewed, however, the omission of the clauses we identified demonstrates that there is the opportunity to improve the internal controls over drafting, reviewing, and executing construction contracts. This will increase consistency across AOC construction contracts, and potentially decrease contractual risk to the AOC.

Recommendations

Recommendation 2

We recommend that the Architect of the Capitol (AOC) issue contract modifications for the sampled contracts to include any applicable clauses that the AOC did not include in the contract at the time of award or in any modifications already issued, if the AOC determines that it is feasible to do so.

Recommendation 2 – AOC Comment

We concur. The AOC will perform an analysis if it is feasible and or appropriate to perform contract modifications for the clauses in question.

Recommendation 2 – OIG Comment

We recognize the AOC's concurrence with the recommendation. The AOC will perform an analysis to determine whether it is feasible and appropriate to perform contract modifications for the contract clauses in question. The AOC's actions appear to be responsive to the recommendation. Therefore, the recommendation is considered resolved but open. The recommendation will be closed upon completion and verification of the proposed actions.

Recommendation 3

We recommend that the Architect of the Capitol (AOC) update the format of the Matrix Checklist to allow Contracting Officers to more easily filter, sort and select applicable construction contract clauses.

Recommendation 3 – AOC Comment

We concur. The AOC will publish an enhanced Matrix Checklist to allow Contracting Officers to more easily filter, sort and select applicable construction clauses.

Recommendation 3 – OIG Comment

We recognize the AOC's concurrence with the recommendation. The AOC will publish an enhanced Matrix Checklist to make it easier for Contracting Officers to select appropriate contract clauses. The AOC's actions appear to be responsive to the recommendation. Therefore, the recommendation is considered resolved but open.

The recommendation will be closed upon completion and verification of the proposed action.

Recommendation 4

We recommend when the Architect of the Capitol (AOC) revises its contract formulation requirements, it formalize its process for updating existing contracts, including documenting its rationale for cases in which it determines that new contractual requirements are not applicable to existing contracts.

Recommendation 4 – AOC Comment

We concur. The AOC will issue a Policy, Guidance and Interpretation in conjunction with newly drafted or modified contract clauses, which will provide instructions to Contracting Officers on the applicability to existing or future contracts.

Recommendation 4 – OIG Comment

We recognize the AOC's concurrence with the recommendation. The AOC will provide instructions to Contracting Officers regarding the applicability of newly drafted or modified contract clauses on existing and/or future contracts. The AOC's actions appear to be responsive to the recommendation. Therefore, the recommendation is considered resolved but open. The recommendation will be closed upon completion and verification of the proposed actions.

Finding B

Multi-Million-Dollar Construction Contracts Included Inapplicable Contract Clauses

As discussed in Finding A, we tested the sampled contracts to determine whether they included all of the applicable clauses. Conversely, we also tested the sampled contracts to ensure that they did not include any inapplicable clauses. Based on our review, we determined that the AOC had included the following inapplicable clauses in the sampled contracts:

CMc – Cannon Renewal Project (Contract No. AOC13C2002):

- FAR 52.214-29, *Order of Precedence – Sealed Bidding*
- AOC 52.232-5, *Invoicing and Payments for Small Purchases*
- AOC 52.246-2, *Inspection and Acceptance – Small Purchases*

Rayburn Garage Interior Rehabilitation Project (Contract No. AOC16C2010):

- FAR 52.227-14, *Rights in Data – General*

The AOC’s Matrix Checklist includes contract clauses that are classified as “Required When Applicable.” FAR and AOC-issued clauses provide criteria to assist in determining when the clauses are applicable; however, whether the AOC includes these clauses in a contract ultimately depends on the CO’s interpretation of the project requirements. We reviewed the criteria for the clauses included in the sampled contracts to determine whether the AOC consistently handled inclusion determinations for contract clauses in accordance with its policies and procedures. The AOC could potentially face risk if the inclusion of inapplicable clauses in a contract resulted in a wrongful contractor entitlement.

We assigned a risk level to each inapplicable clause identified during our audit. The quantification of risk levels is subjective in nature; however, we based our analysis on our industry subject matter expertise and provided a narrative describing the potential risk related to each omitted clause.

Summary of Inapplicable Clauses Included in Sampled Contracts			
Contract Clause	Risk Level	CMc – Cannon Renewal Contract No. AOC13C2002	Rayburn HOB Garage Contract No. AOC16C2010
FAR 52.214-29, Order of Precedence – Sealed Bidding	Low	Included	
FAR 52.227-14, Rights in Data – General	Low		Included
AOC52.232-5, Invoicing and Payments for Small Purchases	None	Included	
AOC52.246-2, Inspection and Acceptance – Small Purchases	None	Included	

As shown in the table above and discussed below, the inapplicable clauses included in the sampled contracts presented little to no risk to the AOC.

FAR 52.214-29, Order of Precedence – Sealed Bidding – Low Risk

The AOC’s Matrix Checklist identified this clause as “Required When Applicable.” FAR requirements state that this clause should be included in contracts resulting from Invitations for Bids (Sealed Bids); however, all of the sampled contracts resulted from Requests for Proposals (Negotiated Bids). This clause is therefore inapplicable for all of the sampled contracts. However, inclusion of this clause presents a low risk to the AOC because the applicable clause for negotiated bids (i.e., FAR 52.215-8, *Order of Precedence – Uniform Contract Format*) specifies the same order of precedence for resolving inconsistencies in solicitations or contracts as the inapplicable clause does. Specifically, both 52.214-29 and 52.215-8 state that the correct order of precedence for resolving any inconsistency in the solicitation or contract is (1) the schedule, (2) representations and other instructions, (3) contract clauses, (4) other documents, exhibits and attachments, and (5) specifications.

FAR 52.227-14, Rights in Data – General – Low Risk

This clause presents a low risk to the AOC because, although this clause purports to grant the contractor a copyright interest in certain data produced in the performance of the contract, the clause does not, on its face, apply to construction services and does not give the contractor any rights, or impose on the AOC any obligations, that would prejudice the AOC’s interests in the contract or on the project.

AOC52.232-5, Invoicing and Payments for Small Purchases – No Risk

This clause is inapplicable according to the AOC's contracting policies and procedures; however, the inclusion of this clause does not present any risk to the AOC.

AOC52.246-2, Inspection and Acceptance – Small Purchases – No Risk

This clause is inapplicable according to the AOC's contracting policies and procedures; however, the inclusion of this clause does not present any risk to the AOC.

Conclusion

The majority of contract clauses that the AOC included in the contracts we reviewed were appropriate. However, the inapplicable clauses we identified in the contracts demonstrate that there is the opportunity to improve the internal controls over drafting, reviewing and executing construction contracts. This will increase consistency across AOC construction contracts, and potentially decrease contractual risk to AOC.

Recommendations

Recommendation 5

We recommend that the Architect of the Capitol (AOC) issue contract modifications to remove the inapplicable clauses included in the contract, if the AOC determines that it is beneficial and feasible to do so.

Recommendation 5 – AOC Comment

We concur. The AOC will perform an analysis to determine if it is feasible and beneficial to perform contract modifications to remove inapplicable clauses.

Recommendation 5 – OIG Comment

We recognize the AOC's concurrence with the recommendation. The AOC will perform an analysis to determine whether it is feasible and appropriate to perform contract modifications for the contract clauses in question. The AOC's actions appear to be responsive to the recommendation. Therefore, the recommendation is

considered resolved but open. The recommendation will be closed upon completion and verification of the proposed actions.

Recommendation 6

As a part of the Architect of the Capitol (AOC) annual review of active contracts to determine whether any contract modifications are necessary, we recommend that the AOC incorporate a review to identify (1) applicable clauses erroneously omitted during the formulation of the contract, (2) applicable contract clauses issued after contract award, and (3) inapplicable contract clauses.

Recommendation 6 – AOC Comment

We concur. We will assess our resources and consider including this recommendation as part of our existing Contract Management Annual Review.

Recommendation 6 – OIG Comment

We recognize the AOC's concurrence with the recommendation. The AOC will evaluate its resources in order to determine whether the recommendation should be included in its existing Contract Management Annual Review. The AOC's actions appear to be responsive to the recommendation. Therefore, the recommendation is considered resolved but open. The recommendation will be closed upon completion and verification of the proposed actions.

Other Matters

Potential for Unforeseen Costs in the Event of Catastrophic Damage on Construction Projects

Like other federal government agencies, the AOC's buildings are self-insured. This means that, absent specific insurance policies held by the contractor, the federal government's self-insurance would likely be the primary option available to cover the loss of property if an AOC building suffered catastrophic damage resulting from a contractor's actions—or other events—during a construction project. In certain events, the contractor's Comprehensive General Liability (CGL) policy would also be a potential option to cover some of the damages. However, we suggest that the AOC consider obtaining builder's risk insurance.

Insurance on large projects is usually heavily negotiated, mostly regarding the types and amount of coverage needed. Several standard construction contract forms (such as the AIA's contract templates) contain insurance exhibits that have a checkbox for nearly any type of insurance the parties may desire. For major projects, the parties typically identify potential risks and then determine what insurance products each party must carry, and at what limits. The AOC operates in a similar manner and can negotiate insurance requirements on each of its contracts. The types of insurance that the AOC negotiates are laid out in contract clauses and are included in the contract. The AOC includes insurance requirements either because these requirements benefit the federal government or because they are required by law.

Although AOC construction contracts include numerous insurance requirements, they do not require the contractor to carry insurance that would insure work in place while the construction is ongoing, and there is no law or mandate requiring such coverage. For example, if a partially completed project gets struck by lightning, causing all the work in place to burn down, both the owner and contractor will suffer a loss; however, the loss will fall primarily on the owner, as title to work generally passes to the owner once the work is in place. Coverage against this type of event is typically obtained through a builder's risk policy. A builder's risk policy generally insures a party's insurable interest in materials, fixtures and equipment awaiting

installation (or after installation) during the construction or renovation of a building or structure, should those items sustain physical loss or damage from a covered loss. Importantly, there is no such thing as a “standard” builder’s risk policy - each policy is unique. Because the project’s owner is the party at primary risk of loss in these events, as noted above, most contracts require the owner to purchase and maintain the builder’s risk policy. However, there is no reason why the owner cannot require its contractors to purchase and maintain this policy instead.

The key to builder’s risk policies is understanding what events constitute a covered peril. Natural disasters are usually covered; however, accidents caused by others may not be. Another key to all construction insurance is that most insurance policies—whether a CGL policy or a builder’s risk policy—exclude coverage for defective work by a contractor or subcontractor.

Defective work is generally not considered to arise out of an “accident” (which usually triggers insurance coverage) but is instead considered more of a business risk. However, some insurance providers will sell riders that allow a contractor to insure against a subcontractor’s defective work. If the parties do not obtain this rider and the faulty work of a contractor or subcontractor causes a catastrophic loss to the overall project (e.g., through a fire), the builder’s risk policy would likely exclude the faulty work itself but would cover the loss resulting from the faulty work. For example, if faulty wiring work leads to a fire that damages part of a structure under construction, the actual faulty wiring would likely be excluded from the coverage; however, the policy would cover any fire damage to the structure, assuming fire is a covered peril under the policy.

Conclusion

If a contractor damaged an AOC building or facility during construction and did not carry insurance to cover the damage, the federal government’s self-insurance would be the primary option available to cover the loss of property. Depending on the severity of the damage, this could result in significant costs to the federal government. As discussed above, insurance on large projects is usually heavily negotiated, and a one-size-fits-all approach is not appropriate. Therefore, absent legal requirements, mandating specific requirements may not be a reasonable approach. However, we noted that the government may

benefit from requiring some of its contractors to hold builder's risk insurance policies. Some AOC contractors may already voluntarily carry builder's risk insurance on AOC construction projects (along with other insurance, such as CGL) to protect themselves. Such insurance would also protect the government. As such, requiring certain contractors to carry builder's risk insurance on a project, based on an analysis of the specific risks to which the AOC may be exposed on each project, could help protect the AOC.

Recommendation

Recommendation 7

We recommend that the Architect of the Capitol (AOC) consider requiring its contractors to carry builder's risk policies on a project-by-project basis, based on an evaluation of the risks that each project poses to the AOC.

Recommendation 7 – AOC Comment

We will consider requiring contractors to carry builder's risk policies on a project-by-project basis.

Recommendation 7 – OIG Comment

We recognize the AOC's concurrence with the recommendation. The AOC will consider requiring contractors to carry builder's risk insurance policy on a project-by-project basis. The AOC actions appear to be responsive to the recommendation. Therefore, the recommendation is considered resolved but open. The recommendation will be closed upon completion and verification of the proposed actions.

Audit Conclusion

Similar to the prior audits that focused on the administration and execution aspects of AOC construction contracts, this audit found that overall, the AOC is meeting its objectives as it relates to contract formulation. We determined that overall, the AOC's contract provisions for multi-million-dollar construction projects were compliant and aligned with federal laws, regulations, AOC policies and procedures,

and industry standards consistently across jurisdictions. However, we did identify areas that the AOC can improve its process and made recommendations that may strengthen its contracts.

COTTON & COMPANY ASSURANCE AND ADVISORY LLC

A handwritten signature in black ink, appearing to read 'J Boberg', with a stylized flourish extending to the right.

Jason Boberg, CPA, CFE
Partner
July 29, 2022

Appendix A

Scope and Methodology

The scope of this performance audit was the AOC’s contract provisions for multi-million-dollar construction projects. We conducted this performance audit in Washington, D.C., from October 2021 through April 2022, in accordance with Generally Accepted Government Auditing Standards (per the 2018 revision of GAO’s *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.

We reviewed the AOC’s documented policies and procedures related to the procurement and contract formulation processes, then discussed and documented the roles and responsibilities of the various divisions involved in the contract formulation process. To ensure that the performance audit results focused on providing insights into how the AOC could improve its current and future processes, we requested that the AOC identify all contracts awarded since 2015 that exceeded \$5 million. This resulted in a population of 20 contracts totaling approximately \$496 million. We selected a judgmental sample of three contracts, based on contract size and type. This sample represented approximately 15 percent of the contract population and 42 percent of the dollars awarded for the population identified. We also selected the CHOB Project’s CMc contract, awarded in 2012, because the size of that contract exceeded the combined size of all of the AOC’s other construction contracts awarded since 2015. The final sample for this audit included the following:

Contract No.	Description of Requirement	Design Build	Contract Type	Contract Amount
AOC13C2002	CMc – Cannon Renewal Project	No	GMP	\$530,850,980
AOC16C2010	Rayburn Garage Interior Rehabilitation Project	No	FFP	\$135,254,956
AOC16C3008-T002	SUG Renovations and Landscape Restorations	Yes	FFP	\$60,234,377
AOC16C3008-T003	CVC Exhibition Hall Renovation	No	GMP	\$12,705,490

We reviewed and tested the sampled contracts and related modifications against the AOC's policies and procedures to determine whether the AOC applied its policies and procedures consistently across all sampled contracts. Although we sampled construction projects within three AOC jurisdictions; DCAD is responsible for acquisition planning and formulation of construction services contracts across all AOC jurisdictions, therefore, project jurisdiction was not used as the main criteria for our sampling of contracts.

Construction and contract audits are included in the OIG's audit and evaluation plan.

Review of Internal Controls

Government Auditing Standards requires auditors to obtain an understanding of internal controls that are significant within the context of the audit objectives. For internal controls deemed significant within the context of the audit objectives, auditors should assess whether the internal control has been properly designed and implemented, as well as perform procedures designed to obtain sufficient and appropriate evidence to support their assessment regarding the effectiveness of those controls. Information system controls are often an integral part of an entity's internal control. The effectiveness of significant internal controls is frequently dependent on the effectiveness of information system controls. Thus, when obtaining an understanding of internal controls significant to the audit objectives, auditors should also determine whether it is necessary to evaluate information system controls.

We reviewed AOC policies and procedures related to the procurement and contract formulation process, including the CM and Matrix Checklist. We also interviewed personnel from OCE, DCAD and PMD to gain an understanding of the contract formulation process and the role that the various AOC jurisdictions play in this process. We determined that the AOC's policies and procedures adequately identified the contract clauses that were required and applicable for construction contracts. However, as discussed in Findings A and B, the sampled contracts did not contain all of the required contract clauses, and they contained some contract clauses that were not applicable under the AOC's policies and procedures. Despite this, we determined that the AOC's internal controls over the contract formulation process were implemented appropriately and performed adequately.

As with any internal control design, there is room for improvement. Specifically, we noted that the AOC should require COs to document and maintain records of their rationale for including or omitting "Required When Applicable" contract clauses. The

AOC should also formalize its process for updating existing contracts when it revises its contract formulation requirements and should require COs to document and maintain records of their rationale for cases in which they elect not to modify an existing contract to include any new contractual requirements.

Use of Computer-Processed Data

We did not use a material amount of computer-processed data to perform this audit.

Appendix B

Announcement Memorandum



Office of Inspector General
Fairchild Bldg.
499 S. Capitol St., SW, Suite 518
Washington, D.C. 20515
202.593.1948
www.aoc.gov

United States Government
MEMORANDUM

DATE: September 28, 2021

TO: J. Brett Blanton
Architect of the Capitol

FROM: Christopher P. Failla, CIG
Inspector General 

SUBJECT: Announcement Memorandum for the Audit of the Architect of the Capitol (AOC)
Contract Provisions for Multi-Million Dollar Construction Projects
(2021-AUD-012-A)

This memorandum serves as notification that the Office of Inspector General is working with the independent audit and accounting firm, Cotton & Company LLP, to initiate a construction audit of the AOC's contract provisions for large multi-million dollar construction projects. The objective of the audit is to assess AOC's contract provisions for multi-million dollar construction projects to determine compliance and/or alignment with federal laws, regulations, AOC policies and procedures, industry standards and consistency across AOC jurisdictions.

We will contact your office to set up an audit entrance conference in the next few weeks. If you have any questions, please contact Sharmaine Carter, Auditor at 202.538.1830 or sharmaine.carter@oc.gov.

Distribution List:

Peter Bahm, Chief of Staff
Mary Jean Pajak, Deputy Chief of Staff
Peter Mueller, Chief Engineer
Antonio Edmonds, Acting Chief of Operations
Jerrod Whittington, Chief, Acquisition of Architectural, Engineering and Construction Services Division

Appendix C

Cotton & Company's Management Representation Letter

Insert AOC letterhead

[Date of Report and Completion of the Performance Audit]

Christopher P. Failla
 Inspector General
 Architect of the Capitol
 Office of Inspector General
 499 S Capitol St. SW, Suite 518
 Washington, DC 20515

Attention: Mr. Failla

We are providing this representation letter in connection with Cotton & Company's performance audit of the Architect of the Capitol (AOC) contract provisions for multi-million-dollar construction projects.

Certain representations in this letter are described as being limited to matters that are significant. Significance is defined as the relative importance of a matter within the context in which it is being considered, including quantitative and qualitative factors. Such factors include the magnitude of the matter in relation to the subject matter of the audit, the nature and effect of the matter, the relevance of the matter, the needs and interests of an objective third party with knowledge of the relevant information, and the impact of the matter to the audited program or activity. Items are considered significant regardless of size if they involve an omission or misstatement of information that, in the light of surrounding circumstances, makes it probable that the judgment of a reasonable person relying on the information would be changed or influenced by the omission or misstatement. The term "significant" is comparable to the term "material" as used in the context of financial statement engagements.

We confirm that, to the best of our knowledge and belief, having made such inquiries as we considered necessary for the purpose of appropriately informing ourselves, as of [date of report]:

Our Responsibilities¹

- We acknowledge our responsibility for the sufficiency of the subject matter in achieving its objectives. Specifically, management is responsible for ensuring that contract provisions for multi-million-dollar construction projects are in compliance with federal laws, regulations, AOC policies and procedures, and consistency across AOC jurisdictions.

Information Provided

- We assert that the information provided to you for this audit is complete and accurate to the best of our knowledge.
- We assert that we have no knowledge of any information regarding fraud, instances of noncompliance with laws or regulations, or any pending or threatened litigation related to contract provisions included in contracts for multi-million-dollar construction projects.
- We assert that we are not aware of any matters that it believes would invalidate our conclusions.

¹ The responsibilities discussed in this section are based on the responsibilities included in our representation letter for financial audits, as GAGAS includes little discussion of management's responsibilities related to performance audits. The responsibilities discussed in this section also include language from Office of Management and Budget (OMB) Bulletin 19-03, even though that Bulletin applies only to financial statement audits.

- Upon information and belief all known deficiencies in the design or operation of internal controls were disclosed to you by management.

[Responsible Party and Title]
Architect of the Capitol

[Responsible Party and Title]
Architect of the Capitol

cc: Jason Boberg, Cotton & Company

Appendix D

AOC's Management Representation Letter



Architect of the Capitol
U.S. Capitol, Room SB-16
Washington, DC 20515
202.228.1793
www.aoc.gov

July 8, 2022

Christopher P. Failla
Inspector General
Architect of the Capitol
Office of Inspector General
499 S Capitol St. SW, Suite 518
Washington, DC 20515

Dear Mr. Failla:

The Architect of the Capitol (AOC) provides this letter as requested concerning the Office of Inspector General audit of Multi-Million-Dollar Construction Projects' Contract Provisions (Project No. 2021-AUD-012-A).

The information provided by the AOC as part of this audit is complete and accurate to the best of its knowledge.

Sincerely,

Chere Rexroat

Chere Rexroat
Chief Engineer

Doc. No. 220630-18-01

Appendix E

AOC's Management Comments



Architect of the Capitol
U.S. Capitol, Room SB-16
Washington, DC 20515
202.228.1793
www.aoc.gov

United States Government

MEMORANDUM

DATE: July 8, 2022

TO: Christopher P. Failla
Inspector General

FROM: J. Brett Blanton 
Architect of the Capitol

SUBJECT: Audit of Multi-Million-Dollar Construction Projects' Contract Provisions (Project No. 2021-AUD-012-A)

Thank you for the opportunity to review and comment on the Office of Inspector General's (OIG) official draft of the subject audit report.

The Architect of the Capitol (AOC) is pleased the OIG found that overall, AOC's contract provisions for multi-million-dollar construction projects were compliant with federal laws, regulations, AOC policies and procedures, and industry standards, and consistent across AOC jurisdictions. The following comments concerning the OIG's recommendations are provided.

Recommendation 1

We recommend the Architect of the Capitol (AOC) consider structuring future Guaranteed Maximum Price contracts as 1) fixed-price amounts for general conditions and general requirements and 2) cost reimbursement for subcontracts that are fixed price amounts between general contractor and subcontractors, to assist in alleviating the AOC's administrative burden in properly administering the contract.

AOC Response

Prior to using the Guaranteed Maximum Price contract type on future procurements we will evaluate best practices and lessons learned and update Contracting Officer guidance for the proper use of this contract type.

Recommendation 2

We recommend that the Architect of the Capitol (AOC) issue contract modifications for the sampled contracts to include any applicable clauses that the AOC did not include in the contract at the time of award or in any modifications already issued, if the AOC determines that it is feasible to do so.

AOC Response

We concur. The AOC will perform an analysis if it is feasible and or appropriate to perform contract modifications for the clauses in question.

Recommendation 3

We recommend that the Architect of the Capitol (AOC) update the format of the Matrix Checklist to allow Contracting Officers to more easily filter, sort and select applicable construction contract clauses.

AOC Response

We concur. The AOC will publish an enhanced Matrix Checklist to allow Contracting Officers to more easily filter, sort and select applicable construction contract clauses.

Recommendation 4

We recommend that, when the Architect of the Capitol (AOC) revises its contract formulation requirements, it formalize its process for updating existing contracts, including documenting its rationale for cases in which it determines that new contractual requirements are not applicable to existing contracts.

AOC Response

We concur. The AOC will issue a Policy, Guidance and Interpretation in conjunction with newly drafted or modified contract clauses, which will provide instructions to Contracting Officers on the applicability to existing or future contracts.

Recommendation 5

We recommend that the AOC issue contract modifications to remove the inapplicable clauses included in the contract, if the AOC determines that it is beneficial and feasible to do so.

AOC Response

We concur. The AOC will perform an analysis to determine if it is feasible and beneficial to perform contract modifications to remove inapplicable clauses.

Recommendation 6

As a part of the AOC annual review of active contracts to determine whether any contract modifications are necessary, we recommend that the AOC incorporate a review to identify (1) applicable clauses erroneously omitted during the formulation of the contract, (2) applicable contract clauses issued after contract award and (3) inapplicable contract clauses.

AOC Response

We concur. We will assess our resources and consider including this recommendation as part of our existing Contract Management Annual Review.

Recommendation 7

We recommend that the Architect of the Capitol (AOC) consider requiring its contractors to carry builder's risk policies on a project-by-project basis, based on an evaluation of the risks that each project poses to the AOC.

AOC Response

We will consider requiring contractors to carry builder's risk policies on a project-by-project basis.

Doc. No. 220630-18-01

Appendix F

Prior Audits of AOC's Construction Contracts

Report No.	Report Name	Audit Results
OIG-AUD-2020-04	Audit of the CHOBr Project's Contract Modifications	<p>We determined that overall, the contract modification process for the CHOBr Project was effective. The construction contract modifications and Potential Change Orders (PCOs) were generally 1) reasonable, necessary, and within the scope of the contract and 2) effectively awarded and administered by the CHOBr Project team. Our assessment included selecting a sample of PCOs and reviewing the sufficiency of the supporting documentation as well as the PCOs' accuracy, reasonableness and adherence to contractual requirements, policies and procedures.</p> <p>...While we determined that the CHOBr Project team had properly issued contract modifications and PCOs, we noted several instances in which the CHOBr Project team approved PCO proposals that included unallowable costs. In addition, we found that cost analysis documentation was not always retained.</p>
OIG-AUD-2020-05	Audit of the CHOBr Project's Contract Invoices	<p>We determined that the AOC's review and approval process for the CHOBr Project invoices for Option Periods 1 and 2 was adequate and the costs reviewed were allowable and supported and appeared to be reasonable. However, we determined that the AOC's review and approval process did not adhere to the CMc contract requirements.</p> <p>The CHOBr Project team is administering the CMc contract as a hybrid cost-reimbursable/firm-fixed-price GMP contract; however, the CMc contract terms and conditions for the construction phases reflected a fully cost-reimbursable GMP contract with an option to convert to a firm-fixed-price contract. The AOC originally planned to award the contract as a fully cost-reimbursable contract for both the CMc's self-performed work and the work performed by the subcontractors; however, it later decided that a hybrid cost-reimbursable/firm-fixed-price GMP would be the best type of contract for the project.</p>
OIG-AUD-2020-06	Audit of SUG Renovations and Landscape Restoration Project's Contract Modifications	<p>We determined that overall, the contract modification process for the SUG project was effective. The contract modifications and PCOs were generally 1) reasonable, authorized, supported and complied with contract requirements; and 2) effectively awarded and administered by the SUG project team. However, we determined that the SUG project team's review of PCO proposal costs could be improved. Our assessment included selecting a sample of modifications and PCOs and reviewing the sufficiency of the supporting documentation, as well as the PCOs' reasonableness and adherence to contractual requirements, policies and procedures.</p>

Report No.	Report Name	Audit Results
OIG-AUD-2020-07	Audit of the Russell Senate Office Building Exterior Envelope Repair and Restoration, Seq. II (Phases 2 and 4) Contract Modifications	We determined that overall, the contract modification process for the Exterior Envelope Repair and Restoration (ERR) project was effective. The contract modifications and PCOs were generally 1) reasonable, authorized, supported and complied with contract requirements; and 2) effectively awarded and administered by the ERR project team. However, we were unable to clearly determine how the Independent Government Cost Estimate was calculated for three Contract Line-Item Number within Modification 013.
OIG-AUD-2021-04	Audit of CHOBr Project's Reimbursable Costs	We determined that overall, the CMc billed, and the AOC paid, CHOBr Project Phase 1 and Phase 2 reimbursable costs in accordance with the CMc contract terms and conditions, and that the costs were generally allowable, allocable, supportable and reasonable. We also determined that the CHOBr Project team's review and approval process for reimbursable costs was adequate overall. However, we concluded that the CHOBr Project team needs to strengthen its review and approval process for these costs and ensure supporting documentation for all reimbursed costs is sufficient, maintained and readily available for examination
OIG-AUD-2021-05	Audit of the CHOBr Project's Subcontractor Bids and Awards	We determined that, overall, the subcontractors' Phase 1 and Phase 2 contracts: 1) were awarded in accordance with the solicitation requirements and the AOC's policies and procedures; 2) align with industry standards and 3) were supported by the subcontractors' bids. However, we concluded that the CHOBr Project team did not approve the CMc's subcontractors per a selection requirement of the contract and needs to improve its process for documenting subcontractor bid and award reviews.

Appendix G

Construction Contracts in Excess of \$5 Million Awarded Since 2015

Award Date	Contract No.	Contract Type	Contract Amount
9-Feb-15	AOC10C0310-T009	FFP	\$8,811,443.98
4-Aug-15	AOC10C0313-T010	FFP	\$13,537,637.23
3-Jun-16	AOC16C2007	FFP	\$64,530,003.76
16-Aug-16	AOC16C2010	FFP	\$135,254,955.51
3-Jan-17	AOC16C3008-T001	FFP	\$10,471,390.25
23-Mar-17	AOC16C3008-T002	FFP	\$60,234,376.87
11-Apr-18	AOC16C3007-T010	FFP	\$26,520,877.50
27-Apr-18	AOC16C3005-T014	FFP	\$11,140,144.97
20-Sep-18	AOC18C2004	FFP	\$26,423,715.13
3-Dec-18	AOC16C3008-T003	GMP	\$12,705,490.11
14-Dec-18	AOC16C3006-T022	FFP	\$29,331,366.05
21-Jun-19	AOC19C2000	FFP	\$11,283,536.00
3-Jul-19	AOC16C3004-T001	FFP	\$6,377,724.00
24-Sep-19	AOCACB19F0001	FFP	\$7,704,879.54
7-Jan-20	AOCACB20C0001	FFP	\$17,345,089.41
28-Sep-20	AOCACB20C0011	FFP	\$8,224,816.00
29-Sep-20	AOC16C3005-T025	FFP	\$9,219,490.00
5-Apr-21	AOC16C3004-T005	FFP	\$18,057,310.35
10-Jun-21	AOCACB21C0008	FFP	\$5,636,915.00
29-Oct-21	AOCACB21D0003-F001	FFP	\$13,288,638.97

Appendix H

Construction-Specific Contract Clauses

Clause No.	Clause Title
FAR 52.202-1	Definitions
FAR 52.203-3	Gratuities
FAR 52.203-5	Covenant Against Contingent Fees
FAR 52.203-6	Restrictions on Subcontractor Sales to the Government
FAR 52.203-7	Anti-Kickback Procedures
FAR 52.209-6	Protecting the Government's Interest when Subcontracting with Contractors Debarred, Suspended, or Proposed for Debarment
FAR 52.211-18	Variation in Estimated Quantity
FAR 52.214-29	Order of Precedence – Sealed Bidding
FAR 52.216-18	Ordering
FAR 52.216-19	Order Limitations
FAR 52.216-20	Definite Quantity
FAR 52.216-21	Requirements
FAR 52.217-6	Option for Increased Quantity
FAR 52.217-7	Option for Increased Quantity - Separately Priced Line Item
FAR 52.222-4	Contract Work Hours and Safety Standards Act - Overtime Compensation
FAR 52.222-6	Construction Wage Rate Requirements
FAR 52.222-7	Withholding of Funds
FAR 52.222-8	Payrolls and Basic Records
FAR 52.222-9	Apprentices and Trainees
FAR 52.222-10	Compliance with Copeland Act Requirements
FAR 52.222-11	Subcontracts (Labor Standards)
FAR 52.222-12	Contract Termination - Debarment
FAR 52.222-13	Compliance with Construction Wage Rate Requirements and Related Regulations
FAR 52.222-14	Disputes Concerning Labor Standards
FAR 52.222-15	Certification of Eligibility
FAR 52.222-21	Prohibition of Segregated Facilities
FAR 52.222-26	Equal Opportunity
FAR 52.222-27	Affirmative Action Compliance Requirements for Construction
FAR 52.222-30	Construction Wage Rate Requirements - Price Adjustment (None or Separately Specified Method)
FAR 52.222-31	Construction Wage Rate Requirements - Price Adjustment (Percentage Method)

Clause No.	Clause Title
FAR 52.222-32	Construction Wage Rate Requirements - Price Adjustment (Actual Method)
FAR 52.222-35	Equal Opportunity for Veterans
FAR 52.222-36	Affirmative Action for Workers with Disabilities
FAR 52.222-37	Employment Reports on Veterans
FAR 52.222-50	Combating Trafficking in Persons
FAR 52.223-2	Affirmative Procurement of Biobased Products Under Service and Construction Contracts
FAR 52.223-3 Alternate I	Hazardous Material Identification and Material Safety Data
FAR 52.223-6	Drug-Free Workplace
FAR 52.223-15	Energy Efficiency in Energy-Consuming Products
FAR 52.223-17	Affirmative Procurement of EPA-designated Items in Service and Construction Contracts
FAR 52.225-13	Restrictions on Certain Foreign Purchases
FAR 52.227-1	Authorization and Consent
FAR 52.227-4	Patent Indemnity-Construction Contracts
FAR 52.227-14	Rights in Data - General
FAR 52.228-2	Additional Bond Security
FAR 52.228-12	Prospective Subcontractor Requests for Bonds
FAR 52.228-13	Alternative Payment Protection
FAR 52.228-14	Irrevocable Letter of Credit
FAR 52.229-3	Federal, State and Local Taxes
FAR 52.232-18	Availability of Funds
FAR 52.232-19	Availability of Funds for the Next Fiscal Year
FAR 52.232-23	Assignment of Claims
FAR 52.233-3	Protest after Award
FAR 52.233-4	Applicable Law for Breach of Contract Claim
FAR 52.236-1	Performance of Work by the Contractor
FAR 52.236-2	Differing Site Conditions
FAR 52.236-3	Site Investigation and Conditions Affecting the Work
FAR 52.236-4	Physical Data
FAR 52.236-5	Materials and Workmanship
FAR 52.236-6	Superintendence by the Contractor
FAR 52.236-7	Permits and Responsibilities
FAR 52.236-8	Other Contracts
FAR 52.236-9	Protection of Existing Vegetation, Structures, Equipment, Utilities, and Improvements
FAR 52.236-10	Operations and Storage Areas
FAR 52.236-11	Use and Possession Prior to Completion

Clause No.	Clause Title
FAR 52.236-12	Cleaning Up
FAR 52.236-13	Accident Prevention
FAR 52.236-15	Schedules for Construction Contracts
FAR 52.236-26	Pre-Construction Conference
FAR 52.242-13	Bankruptcy
FAR 52.243-4	Changes
FAR 52.243-6	Change Order Accounting
FAR 52.243-7	Notification of Changes
FAR 52.245-1 Alternate I	Government Property
FAR 52.246-13	Inspection—Dismantling, Demolition, or Removal of Improvements
FAR 52.246-21	Warranty of Construction
FAR 52.248-3	Value Engineering – Construction
FAR 52.249-2 Alternate I	Termination for Convenience of the Government (Fixed-Price)
FAR 52.249-10	Default (Fixed-Price) Construction
FAR 52.252-2	Clauses Incorporated by Reference
FAR 52.253-1	Computer Generated Forms
AOC 52.203-1	Advertising/Promotional Materials
AOC 52.203-2	Disclosure of Information to the General Public
AOC 52.203-4	Dissemination of Contract Information
AOC 52.203-5	Confidentiality Requirement
AOC 52.204-1	Printed or Copied Double-Sided on Recycled Paper
AOC 52.204-4	Personal Identity Verification of Contractor Personnel (E-Verify)
AOC 52.204-5	System for Award Management (SAM)
AOC 52.204-7	Executive Orders not Applicable to the AOC
AOC 52.208-1	Supp. Clauses for Orders against other Government Agency Contracts
AOC 52.209-2	Restrictions and Disclosures of Organizational and Personal Conflicts of Interest
AOC 52.211-3	Deficiencies in Contract Documents
AOC 52.215-10	Examination of Records
AOC 52.215-11	Examination of Costs
AOC 52.216-6	Undefinitized Contract Actions
AOC 52.216-22	Indefinite Quantity
AOC 52.219-1	Utilization of Small Business Concerns
AOC 52.219-3	Small Business Subcontracting Plan
AOC 52.219-6	Notice of Total Small Business Set-Aside

Clause No.	Clause Title
AOC 52.222-2	Supplemental Wage Determination Request
AOC 52.222-3	Convict Labor
AOC 52.223-1	Hazardous Material Identification and Material Safety Data – Supplement
AOC 52.223-2	Hazardous Material Identification and Material Safety Data
AOC 52.223-3	Security Markings – CUI
AOC 52.223-11	Contract Performance and Reporting Requirements during a Pandemic
AOC 52.223-10	Use of Radiography or other Nuclear Regulatory Commission Licensed Devices and Notice of Radioactive Materials
AOC 52.228-2	Insurance - Work on a Government Installation
AOC 52.228-3	Professional Liability Insurance
AOC 52.228-8	Pollution Liability Insurance
AOC 52.232-5	Invoicing and Payments for Small Purchases
AOC 52.232-6	Payment by Electronic Funds Transfer
AOC 52.232-12	Assignment – Supplement
AOC 52.232-13	Availability of Funds - Continuing Resolution
AOC 52.233-1	Disputes
AOC 52.233-2	Waiver and Release of Claims
AOC 52.236-6	Archeological or Historical Sites
AOC 52.239-1	Protection of AOC Information Technology Systems
AOC 52.242-3	Suspension of Work
AOC 52.243-2	Contract Status with Modifications
AOC 52.243-3	Contractor's Statement of Release
AOC 52.243-4	Task/Delivery Order Status with Modifications
AOC 52.245-2	Government-Furnished Property
AOC 52.246.2	Inspection and Acceptance - Small Purchases
AOC 52.249-14	Excusable Delays

Acronyms and Abbreviations

AIA	American Institute of Architects
AOC	Architect of the Capitol
AUD	Audit
CGL	Comprehensive General Liability
CHOB	Cannon House Office Building Renewal
CM	Contracting Manual
CMc	Construction Manager as Constructor
CO	Contracting Officer
Cotton	Cotton & Company Assurance and Advisory, LLC
COVID-19	Coronavirus Disease 2019
CVC	Capitol Visitor Center
DCAD	Design and Construction Acquisition Division
ERR	Exterior Envelope Repair and Restoration
FAR	Federal Acquisition Regulations
FFP	Firm-Fixed-Price
GAO	Government Accountability Office
GC	General Conditions
GMP	Guaranteed Maximum Price
GR	General Requirements
HOB	House Office Buildings
IDIQ	Indefinite Delivery/Indefinite Quantity
MACC	Multi-Award Construction Contract
OCE	Office of the Chief Engineer
OGC	Office of General Counsel
OIG	Office of Inspector General
PCO	Potential Change Order
PMD	Project Management Division
SOB	Senate Office Buildings
SOW	Statement of Work
SUG	Senate Underground Garage



OFFICE OF THE INSPECTOR GENERAL

Fairchild Building, Suite 518
499 South Capitol Street, SW
Washington, DC 20515
(202) 593-1948
hotline@aoc-oig.org