



# INSPECTOR GENERAL

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AUGUST 25, 2020

## **AUDIT OF THE CANNON HOUSE OFFICE BUILDING RENEWAL PROJECT'S CONTRACT INVOICES**

*Report No. OIG-AUD-2020-05*

## 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

## *Audit of the Cannon House Office Building Renewal Project's Contract Invoices*

August 25, 2020

### Objective

Cotton & Company LLP (Cotton) was contracted by the Architect of the Capitol (AOC) Office of Inspector General (OIG) to examine invoices (also known as pay applications) submitted to the AOC by its Construction Manager as Constructor (CMc) on the Cannon House Office Building Renewal (CHOB) Project (Contract No. AOC13C2002). We assessed the review and approval process for the CHOB Project invoices for Option Periods 1 and 2 to ensure that costs and payments complied with contract requirements, AOC policies and procedures, and industry standards. Additionally, the audit's objective was to determine whether the costs invoiced were allowable and supported, and appeared to be reasonable within the scope of contract requirements.

The AOC OIG required the AOC to provide a management representation letter associated with the issuance of a performance audit citing Generally Accepted Government Auditing Standards (GAGAS). The letter is intended to confirm representations, both oral and written, made during the audit. A management representation letter was requested from the AOC on July 10, 2020, a copy of which is included in this report as Appendix C. AOC management refused to sign the management representation letter provided and instead provided a letter, included as Appendix D, stating that the information provided for the audit was complete and accurate. AOC management did not explain why they refused to sign the management representation letter provided nor why they were unable to make the requested representations that included routine representations such as their knowledge of any fraud or suspected fraud, instances of noncompliance with laws or regulations and any pending or threatened litigation.

### Findings

We determined that the AOC's review and approval process for the CHOB 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. The audit included reviewing the AOC's documented policies and procedures for the review and approval of the pay applications and determining the adequacy of those procedures. We tested a sample of two pay applications to determine if the policies and procedures were followed. Although we concluded that the AOC's review and approval process for the CHOB Project pay applications was adequate, we discovered that the payment applications were not being reviewed and approved in accordance with the contract terms and conditions. The CMc contract terms and conditions for the construction phases reflected a fully cost-reimbursable Guaranteed Maximum Price (GMP) contract with an option to convert to a firm-fixed-price contract; however, the CHOB Project team administered the CMc contract as a hybrid cost-reimbursable/firm-fixed-price GMP contract.

### Recommendations

As a result of the finding, the AOC OIG makes three recommendations to address the identified areas of improvement.

Specifically the AOC OIG recommends:

1. The AOC review the terms and conditions of the CMc's contract to ensure that the contract contains the appropriate terms and conditions for the CHOB Project.
2. The AOC perform and document an analysis of the advantages and risks to the AOC, including lessons learned from the CHOB Project, on the use of



# Results in Brief

## *Audit of the Cannon House Office Building Renewal Project's Contract Invoices*

### *Recommendations (cont.)*

various contract vehicles when procuring future major construction projects, to ensure that the AOC selects the best option to meet its objectives.

3. The AOC ensure that its policies and procedures regarding the development and review of future construction contracts are sufficient to ensure that its contracts contain the appropriate terms and conditions prior to implementation.

## **Management Comments**

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

The AOC provided comments on August 11, 2020, see Appendix E. Overall, AOC management agreed with the conclusion that while the CHOBr Project's review and approval process was adequate and the costs reviewed were allowable and supported and appeared to be reasonable, the review and approval process did not adhere to the CMC contract requirements. AOC management concurred with the AOC OIG's three recommendations.

Please see the Recommendations Table following this page.

## *Recommendations Table*

<b>Management</b>	<b>Recommendations Unresolved</b>	<b>Recommendations Resolved</b>	<b>Recommendations Closed</b>
Architect of the Capitol Cannon House Office Building Renewal Project Team	NONE	1, 2 and 3	NONE



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UNITED STATES GOVERNMENT

## MEMORANDUM

DATE: August 25, 2020

TO: J. Brett Blanton  
Architect of the Capitol

FROM: Christopher P. Failla, CIG  
Inspector General

SUBJECT: Audit of the Cannon House Office Building Renewal (CHOBBr)  
Project's Contract Invoices (Report No. OIG-AUD-2020-05)

The Office of the Inspector General (OIG) is transmitting Cotton & Company, LLP's (Cotton) final audit report on the Cannon House Office Building Renewal (CHOBBr) Project's Contract Invoices (OIG-AUD-2020-05). Under contract AOC19A3002-T002 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 August 25, 2020, 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.

Architect of the Capitol (AOC) management has agreed with the report conclusion that overall, the CHOBBr Project's review and approval process was adequate and the costs reviewed were allowable and supported and appeared to be reasonable. AOC management concurred with the three recommendations in this report.

In our review of AOC 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 that outlines the actions taken to implement the agreed upon recommendations. This notice is due one year from the date of report finalization, August 25, 2021.

We appreciate the courtesies extended to the staff during the audit. Please direct questions to Erica Wardley, Assistant Inspector General for Audits at 202.593.0081 or [erica.wardley@aoc.gov](mailto:erica.wardley@aoc.gov).



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UNITED STATES GOVERNMENT

## MEMORANDUM

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## Introduction

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### Objective

This report presents the results of our audit of invoices (also known as payment applications) submitted to the AOC by its Construction CMc on the CHOBr Project (Contract No. AOC13C2002). The objective of this audit was to assess the AOC's review and approval process for the CHOBr Project invoices for Option Periods 1 and 2 to ensure that costs and payments complied with contract requirements, AOC policies and procedures, and industry standards. Additionally, the audit's objective was to determine whether the costs invoiced were allowable and supported and appeared to be reasonable within the scope of contract requirements.

We conducted this performance audit in Washington, D.C. from September 2019 through June 2020, in accordance with GAGAS. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

The AOC IG required the AOC to provide a management representation letter associated with the issuance of a performance audit report citing GAGAS. 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 July 10, 2020, 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 the Architect of the Capitol provided for this audit is complete and accurate to the best of our knowledge." AOC management did not explain why they refused to sign the management representation letter provided nor why they were unable to make the requested representations that included routine representations such as their knowledge of any fraud or suspected fraud, instances of noncompliance with laws or regulations, and any pending or threatened litigation.

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

## Background

The Cannon House Office Building was designed in the Beaux Arts architectural style by Carrere and Hastings and built in 1906 for the AOC. It is part of the Capitol campus in Washington, D.C. and is fully occupied by more than 2,000 people. It is one of a series of buildings occupied by the U.S. House of Representatives, with member suites, committee support offices and utility support space. The building has five stories and a full basement. There is a multi-level parking garage in the courtyard area housing approximately 300 vehicles, with car access from the south. The total square footage of the building, including the parking garage, is approximately 800,000 square feet.

The AOC undertook the CHOBr Project to ensure the building continues to provide space for members to perform their legislative business. The building has not received a comprehensive systems upgrade since the 1930s, and many of the building's systems are original. The CHOBr Project is scheduled to take approximately 10 years to complete, with five phases (0 through 4) aligned to fall between congressional move cycles.

The AOC entered into base contracts with three entities for the CHOBr Project: Architect-Engineer (AE), Construction Manager as Agent (CMA), and CMc. The primary and most substantial contract for Phases 1 and 2 was with the CMc. The AOC contracted with a joint venture between two construction companies to perform CMc services. The AOC's base contract with the CMc was awarded on October 25, 2012, and incorporates a GMP. The GMP is a cap on how much the owner (i.e., the United States Government via the AOC) will pay the contractor. The scope of the CMc contract is design assistance and pre-construction services, as well as additional contract options for a pre-installation phase (Option 0); four option periods of staged construction, each roughly addressing one of the four wings of the building; and a closeout option. Under the contract, the CMc is responsible for replacing or upgrading all major building systems to include complete modernization to meet all applicable codes.

As part of our audit, we reviewed appropriate criteria and members of the CHOBr Project team that participated in the pay application review and approval process were interviewed.

On a monthly basis, the CMc Business Manager provides a draft pay application to the AOC Contracting Officer's Technical Representative (COTR) and CMA Project Controls Manager for review. The CMA Project Controls Manager assigns pay

application review tasks to the Quality Assurance (QA) Manager and Financial Manager. Specifically, the CMA Project Controls Manager conducts QA-level checks of the certified payroll and ensures the CMc is not requesting payment for unapproved change orders. The QA Manager conducts QA-level labor interviews, while the Financial Manager ensures the pay application meets the financial requirements of the AOC/CMA contract and is mathematically sound. To validate the amounts in the payment application for work performed by subcontractors, the QA Manager and QA Inspectors ensure that the percentage complete is correct for the work requested for payment. They accomplish this by inspecting all percentages that changed from the last pay application and reviewing relevant documentation. Additionally, because the CMc invoices for general conditions (GC), general requirements (GR), bonding, and insurance are based on actual costs incurred, the CMA team reviews the supporting documentation for the actual costs included in the pay application. The supporting documentation includes the CMc's Detail Construction Costs Report (DCCR) and invoices for the CMc's self-performed work, as well as for GC/GR work performed by subcontractors. The QA Manager summarizes any comments regarding the percentage of completion; the Financial Manager forwards comments on GC/GR, bonding and insurance costs to the CMA Project Controls Manager.

The CMA Project Controls Manager communicates the payment application review comments to the CMc. If the CMc needs to better understand the comments, the CMA holds a pay application review meeting with the CMc. If revisions to the pay application are necessary, the CMc Business Manager revises the pay application and resubmits it to the CMA. The CMA reviews the pay application and provides a recommendation to the AOC COTR on whether the pay application should be approved. The AOC COTR determines whether to approve or reject the pay application. If the AOC COTR rejects the pay application, the CMc Business Manager must again revise the pay application and resubmit it to the CMA. Once the AOC COTR approves the pay application, the CMc enters it into the Department of the Treasury's Invoice Processing Platform (IPP). The AOC COTR must then determine whether to approve or reject the pay application in IPP. If rejected, the CMc must reenter the pay application in IPP. Once approved, the CMc is paid.

As of October 28, 2019, the CHOBBr Project team had approved 50 pay applications from Phases 1 and 2 (40 from Phase 1 and 10 from Phase 2).

## Internal Controls

We reviewed internal controls to obtain an understanding of the AOC's process for reviewing and approving pay applications. We obtained our understanding by reviewing AOC policies and contract specifications and interviewing CHOBr Project team members from the AOC and the CMA to determine if controls were properly implemented and working as designed, individually or in combination with other controls. We determined that the controls over the CHOBr Project's pay application review and approval process were adequate; however, the CHOBr Project team review and approval process did not adhere to the CMc contract requirements.

## Criteria

We used the below criteria to assess the AOC's review and approval process for the pay applications to ensure the costs and payments complied with the relevant guidance and to determine whether the costs included in the pay applications were allowable and supported and appeared to be reasonable within the scope of contract requirements.

The following excerpts from the Base Contract relate to the Finding:

- Base Contract (AOC13C2002) Section C.6 – Definitions, Items M and N define “Cost of the Work” and “Costs”:
  - **Cost of the Work.** *The cost of all subcontractors and CMc's self-performed Work to include overhead, direct costs, and home office overhead, less discounts.*
  - **Costs.** *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.*
- Base Contract (AOC13C2002) Section C.3.B.9 – Conversion to a Firm-Fixed-Price Contract Prior to Final Settlement:
  - *At any time prior to final settlement, the Contracting Officer may request that the CMc provide a firm-fixed-price proposal for any portion of the Construction Work.*

- Base Contract (AOC13C2002) Section C.3.B.10 – Determination of Final Settlement:
  - *a. **Proposal for the Cost of the Work:** The CMc shall submit a Final Settlement Proposal within 120 days of substantial completion of each GMP Option Period to determine the Cost of the Work for that Option Period. The proposal shall consist of:*
    - (1) A detailed statement of all costs incurred by the CMc in performing the Construction work;*
    - (2) A firm-fixed-price proposal for the performance of the remaining work, if any, that may be necessary to complete performance of all work required under the Contract;*
    - (3) A list of inventory retained by the CMc and its residual value;*
    - (4) An executed Release of Claims, which must describe any and all exceptions, including a description of any outstanding claims. To the extent that outstanding claims would impact the value of the Final Settlement, the AOC may withhold from the Final Settlement a sum equal to the projected impact of these claims;*
    - (5) Any other relevant data that the Contracting Officer (CO) may reasonably require.*
  - b. **Determination of the Cost of the Work.** The CO shall evaluate the above data submitted by the CMc and may require an audit of the CMc's records and/or the Contractor's Final Settlement Proposal. The CO shall negotiate the Cost of the Work with the CMc. The Cost of the Work shall include a firm-fixed-price for the remaining work, and exclude the residual value of CMc retained inventory. In the event that the parties are unable to reach agreement, the CO shall unilaterally determine the Cost of the Work.*
  - c. **Final Settlement.** The Final Settlement amount shall consist of the Cost of Performance, if less than the GMP. This Final Settlement amount shall be the CMc's total compensation due under the Contract and will be evidenced by a contract modification.*

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## Audit Results

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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.

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.

We discovered terms and conditions in the contract that stated all costs should be paid based on actual amounts incurred. The AOC later acknowledged that these requirements were mistakenly left in the contract. Per the AOC, the contract terms and conditions should have stated that only GC/GR costs performed by the CMc would be paid based on actual costs incurred. The CMc's invoices were based on the percentage of the work completed by the subcontractors during each payment period, rather than on the actual costs.

Although the current pay application process does not adhere to the terms and conditions of the contract, we assessed the CHOBr Project team's internal controls over the review and approval process for pay applications was based on the percentage of completion for the work performed by subcontractors and actual costs for the work performed by the CMc. We determined that the design of the pay application review and approval process for the CHOBr Project was adequate.

Although we concluded that the AOC's review and approval process for the pay applications for the CHOBr Project was adequate, it is essential for the CMc contract to include appropriate terms and conditions to ensure proper contract compliance by all parties.

We made three recommendations to improve how the AOC originates, reviews and approves the terms and conditions of construction contracts.

## Finding

### **The CHOBr Project Team's Invoice Review and Approval Process Did Not Adhere to the Terms and Conditions of the CMc Contract**

We determined that the AOC's review and approval process did not adhere to the CMc contract requirements. We found that 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; however, the CHOBr Project team administered the CMc contract as a hybrid cost-reimbursable/firm-fixed-price GMP contract. The AOC treated the CMc's self-performed work as cost-reimbursable but treated the work performed by subcontractors, which makes up the majority<sup>1</sup> of the contract costs, as firm-fixed-price.

The AOC awarded the base contract with its CMc for the CHOBr Project on October 25, 2012. The contract incorporated a pre-construction phase (Base Contract Part One and Part Two [Option]), five phases of construction (Options 0 through 4), and a one-year closeout and commissioning phase (Option 5). The AOC awarded the two parts of the pre-construction phase as firm-fixed-price contracts, and it awarded or will award the construction phases as GMP contracts. The AOC will award the closeout and commissioning phase as a firm-fixed-price contract.

According to the AOC, prior to the award of the initial GMP contract, the AOC planned to award the contract as a fully cost-reimbursable contract for both the work performed by the CMc and the work performed by the subcontractors. However, after considering all the challenges, risks, and uncertainties associated with the Project, the AOC decided that a hybrid cost-reimbursable/firm-fixed-price GMP would be the best fit for the circumstances. The AOC largely shaped the contract to be consistent with the U.S. General Services Administration (GSA) guidance for CMc/GMP construction contracts, issued in October 2011. The AOC acknowledged that

it mistakenly left in contract terms and conditions that stated all costs should be paid based on actual amounts incurred. The contract terms and conditions should have stated that only GC/GR costs performed by the CMC would be paid based on actual costs incurred. The CMC's invoices were based on the percentage of the work completed by the subcontractors during each payment period. Upon completion of each phase, the CMC would have been paid the total fixed price amount for that phase.

On April 29, 2020, the CO stated that neither the AOC nor the CMC has been interpreting the contract as a fully cost-reimbursable contract, as set forth in the contract's terms and conditions. Although a traditional commercial GMP is described as a cost-reimbursable contract that contemplates actual costs plus a fixed fee, neither the AOC nor CMC intended to utilize this structure at contract execution. The AOC also stated that the original CO, who no longer works for the AOC, agreed that this was the intent of the contract. The AOC stated that the original intent was to provide a fixed price based on construction drawings, with allowances and contingencies for work that could not be sufficiently priced at the time of the GMP award or the subsequent phased pricing efforts at time of award. Any identified allowance and contingency work would be incorporated into the contract against the applicable allowance or contingency through a negotiated firm-fixed-price proposal. The AOC noted that using a cost-reimbursable GMP construction contract vehicle would require more AOC and contractor resources to properly administer, as compared to a firm-fixed-price contract.

During our review of the CMC contract, we found that the AOC did not comply with several contract terms and conditions due to the unintended contract language. As specified in the Criteria section above, the CMC contract:

- States that 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

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<sup>1</sup> The self-performed GC work was valued at approximately 11 percent of the Phase 1 work (\$17.0 million of \$148.8 million) on January 1, 2019, and 9 percent of the Phase 2 work (\$11.5 million of \$125.7 million) on September 21, 2019.



invoiced at actual prices, including any available trade and quantity discounts.”

- Defines costs of the work as “the cost of all subcontractor and CMc’s self-performed Work to include overhead, direct costs, and home office overhead, less discounts.”
- Requires the CMc to submit a final settlement proposal at the end of each GMP option period within 120 days of substantial completion to determine the cost of the work for that period. As part of this proposal, the CMc must provide a detailed statement of all the costs that it incurred in performing the construction work.
- States that, in order to convert to a firm-fixed-price contract prior to final settlement, the CO would request that the CMc provide a firm-fixed-price proposal for any portion of the construction work. Within 60 days of receipt of this proposal, the CO shall have the right, but not the obligation, to convert the contract to a firm-fixed-price contract at the offered price or as otherwise negotiated, so long as such price is less than or equal to the GMP. If the contract is not converted to a firm-fixed-price contract, then the final determination of settlement will be based on the settlement proposal’s price or as otherwise negotiated.

Although we acknowledge that the AOC’s initial and ongoing intent was to administer the portion of the project completed by subcontractors as a firm-fixed-price contract, the AOC never formally modified the contract to reflect this intent. The contract still contains terms and conditions that require the CMc to invoice the AOC based on its actual costs incurred and provide a detailed statement of all costs incurred in performing the construction work at the completion of each phase of the project. As previously stated, the contract does contain language detailing how to convert the contract into a firm-fixed-price contract prior to final settlement; however, there is no documentation indicating that the AOC elected to execute this contract provision.

It is important that the CMc contract contains clear and appropriate terms and conditions for the project. Contract terms and conditions for firm-fixed-price

GMP and cost-reimbursable GMP can vary significantly. Highlighted below are a few aspects of each contract type to illustrate how administration of these provisions could differ between the two.

#### *Firm-Fixed-Price GMP*

Under a firm-fixed-price contract, the CMc is awarded a contract amount for the agreed-upon work. The contract amount can be increased or decreased for changes in the scope but does not change based on the actual costs incurred by the CMc. Typically, the CMc's invoices are based on the estimated percentage of the work completed during each payment period. Upon completing the contract, the CMc will have been paid the fixed-price amount in the contract, regardless of its actual costs to complete the work. The CMc would therefore be responsible for any actual costs that exceeded the fixed-price amount. Conversely, if the CMc's actual costs were less than the fixed-price amount, it would retain 100 percent of this amount as profit. This encourages the CMc to reduce costs to increase its profit; however, the decreased costs do not result in any savings to the owner (i.e., the AOC).

#### *Cost-Reimbursable GMP*

GMP contracts are a contract vehicle commonly used in the construction industry. Typically, GMP contracts provide for the owner to pay the CMc for its actual costs plus an agreed upon-fee (i.e., cost-reimbursable). The CMc is not allowed to invoice for any costs in excess of the maximum price negotiated in the contract, thus shifting the risk of cost overruns to the CMc, similar to a fixed-price contract. Cost-reimbursable GMP contracts typically contain a cost-sharing provision that allows the owner and the CMc to share any savings that are realized if the actual costs are less than the GMP amount. The owner will therefore pay the lesser of either the actual project costs, plus the CMc's share of any savings, or the GMP stated in the contract. This incentivizes the CMc to reduce project costs to increase its profit, and cost savings result in a lower overall project cost for the owner. GMP contracts can be converted to firm-fixed-price contracts, typically after the construction documents have been completed. The CO would issue a modification to convert the GMP contract to a firm-

fixed-price contract. The owner should perform and document an analysis to support converting a GMP to a firm-fixed-price contract.

As we reviewed and compared the AOC's CMc contract to industry and government-wide practices, we found that cost-reimbursable GMP contracts are used in federal government construction projects. Specifically, we noted that GSA, the federal agency responsible for constructing, managing and preserving government buildings, has been awarding cost-reimbursable GMP contracts for more than 10 years. In 2019, GSA formally amended its acquisition regulation (General Services Administration Acquisition Regulation (GSAR) Part 536, Construction and Architect-Engineer Contracts, and corresponding clauses in GSAR Part 552, Solicitation Provisions and Contract Clause) to adopt the CMc method of construction with cost-reimbursable GMP ceilings. The regulation states that the incentive in these types of contracts is the shared portion of the difference between the final GMP and the final cost of performance. Cost reductions may be realized by the construction contractor as a result of innovations and efficiencies during the construction phase, such as increased labor productivity or strong material subcontract negotiations. Guidance in the regulation states that the share ratio for the construction contractor shall range from 30 percent to 50 percent of the savings (GSAR 536.7105-5 Shared Savings Incentive). The regulation further states that all payments shall be reconciled with the open-book accounting records and the schedule of values adjusted as appropriate. Reconciliation shall occur each month and should be coordinated with monthly progress payments and the reconciliation shall be documented in the contract file (GSAR 536.7105-3 Accounting and Auditing Requirements).

The AOC noted that its hybrid cost-reimbursable/firm-fixed-price GMP approach incorporates features designed to incentivize savings. For example, the contract includes a shared savings incentive that applies to the construction contingency allowance. Additionally, the AOC can realize cost savings when the CMc negotiates subcontracts for amounts lower than those initially budgeted. These fixed-price contracts limit the risk of price escalation over the duration of the project. The contract also includes a bonus plan that promotes cost control, as well as other project objectives, such as quality and safety. The AOC also stated that the use of fully cost-reimbursable contracts

can restrict competition because potential subcontractors may choose not to bid due to increased contract administration.

## **Conclusion**

We recognize that the decision to modify the current CMc contract to reflect a firm-fixed-price GMP or to consider aspects of cost-reimbursable GMP is at the agency's discretion. However, the importance of a well-written contract on a large, complex construction project such as the CHOBr Project cannot be overstated. The parties to the contract should comply with all contract terms and conditions, as non-compliance may increase risk to the AOC. For example, the failure to comply with contract terms could result in complications should a disagreement on payments arise between the AOC and the CMc.

## **Recommendations**

### ***Recommendation 1***

We recommend that the AOC review the terms and conditions of the Construction Manager as Constructor's contract to ensure that the contract contains the appropriate terms and conditions for the CHOBr Project.

### ***AOC Comment***

Concur. By September 30, 2020, the AOC will modify the contract's payment terms to reflect the process being used by the AOC and the CMc.

### ***OIG Comment***

We recognize the AOC's concurrence with the recommendation. The AOC's proposed action to modify the contract's payment terms by September 30, 2020 is responsive to the recommendation. Therefore, the recommendation is considered resolved and will be closed upon completion and verification of the proposed action.

### ***Recommendation 2***

We recommend that the AOC perform and document an analysis of the advantages and risks to the AOC, including lessons learned from the CHOBr Project, on the use of various contract vehicles when procuring future major construction projects, to ensure that the AOC selects the best option to meet its objectives.

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***AOC Comment***

Concur. The AOC will review viable contract vehicles and select the one that is most likely to meet our objectives, including cost, risk and lessons learned from the CHOBr Project.

***OIG Comment***

We recognize the AOC's concurrence with the recommendation. The AOC's proposed action to review viable contract vehicles and select the one that is most likely to meet our objectives is responsive to the recommendation. Therefore, the recommendation is considered resolved and will be closed upon completion and verification of the proposed action.

***Recommendation 3***

We recommend that the AOC ensure that its policies and procedures regarding the development and review of future construction contracts are sufficient to ensure that its contracts contain the appropriate terms and conditions prior to implementation.

***AOC Comment***

Concur. By September 30, 2020, the AOC will issue guidance to the contracting officers and their supervisors highlighting the need to ensure that payment provisions in construction contracts are appropriate before award.

***OIG Comment***

We recognize the AOC's concurrence with the recommendation. The AOC's proposed action to issue guidance to the contracting officers and their supervisors highlighting the need to ensure that payment provisions in construction contracts are appropriate before award is responsive to the recommendation. Therefore, the recommendation is considered resolved and will be closed upon completion and verification of the proposed action.

COTTON & COMPANY LLP



Michael W. Gillespie, CPA, CFE  
Partner  
August 25, 2020

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## Appendix A

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### Scope and Methodology

The scope of this performance audit was the pay applications that the CMC submitted to the AOC during Phases 1 and 2 of the CHOBr Project for Contract AOC13C2002 (awarded October 25, 2012). The scope of the audit was altered to review whether the payment application and review process was adequate for a hybrid cost-reimbursable/ firm-fixed-price GMP, rather than the terms and conditions outlined in the contract. We conducted this performance audit of the Cannon House Office Building, located in Washington, D.C. from September 2019 through June 2020, in accordance with GAGAS. 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 for the review and approval of the pay applications and determined the adequacy of those procedures. We discussed and documented the roles and responsibilities of those responsible for reviewing and approving payment applications and tested a sample of two pay applications to determine or confirm the policies and procedures actually followed. The sampled pay applications were selected on a judgmental basis and included Pay Application 62 (Phase 1) and Pay Application 77 (Phase 2). Phase 1's period of performance was January 2017 to November 2018, while Phase 2's period of performance is January 2019 to November 2020.

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

### Review of Internal Controls

Government Auditing Standards require auditors to obtain an understanding of internal controls that are significant within the context of the audit objectives. For internal controls that are significant within the context of the audit objectives, auditors should assess whether the internal control has been properly designed and implemented and should perform procedures designed to obtain sufficient and appropriate evidence to support their assessment about 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.

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We reviewed internal controls to obtain an understanding of the AOC’s process for reviewing and approving pay applications. We obtained our understanding by reviewing AOC policies and contract specifications and interviewing CHOBr Project team members from the AOC and the CMA to determine if controls were properly implemented and working as designed, individually or in combination with other controls.

The AOC’s base contract with the CMC and the supplemental payment procedures from the CHOBr Project Manual – Volume 1 document policies and practices for processing pay applications that are specific to the CHOBr Project. As discussed in the Finding, the CHOBr Project team is not conducting the invoice review and approval process and making payments to the CMC in accordance with the terms and conditions of this contract. The CHOBr Project team has been administering the contract as a hybrid cost-reimbursable/firm-fixed-price GMP contract even though the terms and conditions of the contract itself indicate that it is a GMP cost-reimbursable-type contract. The original intent of this engagement was to audit the CHOBr Project team’s process for reviewing and approving pay applications based on actual costs incurred. However, under a firm-fixed-price contract, pay applications are based on percentage of completion, as opposed to actual costs incurred. Despite this, we assessed the CHOBr Project team’s internal controls over the review and approval process for pay applications based on the percentage of completion and determined that the controls over the CHOBr Project’s pay application review and approval process were adequate.

## Use of Computer-Processed Data

A material amount of computer-processed data was not used to perform this audit.

## Prior Coverage

During the last five years, the Government Accountability Office (GAO) issued an update to its previous report on the AOC’s efforts to revise the CHOBr Project’s cost and schedule estimates. In addition, the AOC OIG issued a report on its performance audit of three CHOBr Project plans.

### **GAO**

Report No. GAO-19-712T, “Efforts Are Ongoing to Update Cannon House Office Building’s Renovation Cost and Schedule Estimates,” dated September 10, 2019:

In March 2014, the GAO issued a report recommending that the AOC incorporate additional leading practices from the GAO’s *Cost Estimating and Assessment Guide* into the AOC’s cost-estimating guidance and submit the confidence levels of project estimates (including the CHOBr Project) to Congress. As part of its monitoring of the CHOBr Project, the GAO issued Report No. GAO-19-712T, noting that the AOC had

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implemented the recommendations from the March 2014 report. The GAO also noted that the AOC was updating its CHOBr Project cost estimate by undertaking an Integrated Cost Schedule Risk Analysis (ICSRA).

Note: The ICSRA was completed in December 2019. The 90 percent confidence level for the revised budget estimates total costs for the CHOBr Project to be \$890.1 million, which is approximately \$137.4 million over the original \$752.7 million budget.

## ***AOC OIG***

Report No. A-2016-01, “Cannon House Office Building Renewal Project,” dated June 24, 2016:

The AOC Chief Operating Officer requested that the AOC OIG review the CHOBr Project’s Partnering Fee Plan (PFP), Project Management Plan (PMP), and Tower Crane Procurement Plan. In its review of the PFP, PMP, and Tower Crane Procurement Plan, the AOC OIG found no significant issues in the execution of the plans. Regarding the Change Management Plan section of the PMP, the AOC OIG recommended that the CHOBr Project team further define approval responsibilities for “Priority 2 Urgent Changes” and “Priority 3 Mandatory Tier 3.”

Note: This terminology is no longer used in the current version of the Change Management Plan.



## 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](http://www.aoc.gov)

United States Government

#### MEMORANDUM

**DATE:** September 09, 2019

**TO:** Thomas J. Carroll III  
 Acting Architect of the Capitol

**FROM:** Christopher P. Failla, CIG   
 Inspector General

**SUBJECT:** Announcement Memo for the Audit of Cannon Renewal Project's  
 Contract Invoices (2019-AUD-006-A)

This memorandum serves as notification that the Office of Inspector General (OIG) is working with the independent audit and accounting firm, Cotton & Company LLP to initiate a construction audit of the Cannon Renewal Project's Contract Invoices. The objective is to assess the Architect of the Capitol's (AOC) review and approval of the Cannon Renewal Project Invoices for Option Periods 1 and 2, to ensure the costs and payments were made in accordance with contract requirements, AOC policies and procedures, and industry standards. Additionally, the audit will determine whether the costs invoiced are allowable, supported, and appear reasonable within the scope of contract requirements.

An OIG auditor will be in contact with your office to set up an audit entrance conference. If you have any questions, please contact Erica Wardley, Assistant Inspector General for Audit, at 202.593.0081.

**Distribution List:**

Michelle Kayon, Acting Superintendent House Office Buildings  
 Peter W. Mueller, Director Planning & Project Management  
 William O'Donnell, Chief Administrative Officer  
 Anthony Hutcherson, Chief Acquisition & Material Management Officer  
 Jason Baltimore, General Counsel  
 Mary Jean Pajak, Senior Advisor to the Chief Operating Officer

## Appendix C

# Cotton & Company's Management Representation Letter

*Insert AOC letterhead*

[Date of Report and Completion of the Performance Audit]

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

Attention: [XXX]

We are providing this representation letter in connection with your performance audit of the Cannon House Office Building Renewal (CHOBr) Project invoicing review and approval process, which was conducted by Cotton & Company.

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 Responsibilities**

- We acknowledge our responsibility for:
  - Managing the CHOBr project invoicing review and approval process and achieving its objectives.
  - Preventing and detecting fraud, improper payments, waste and abuse relating to CHOBr project invoicing review and approval process, including responsibility for designing, implementing, and maintaining internal control to prevent and detect fraud, improper payments, waste and abuse.
  - Designing, implementing, and maintaining internal control over the review and approval of CHOBr project invoicing review and approval process.
  - Complying with laws, regulations, and the terms and conditions of the contract, related to CHOBr project invoicing review and approval process.

#### **Information Provided**

- To the best of our knowledge, we have made available to you:
  - All records, documentation, and information relevant to CHOBr project invoicing review and approval process.
  - Unrestricted access to and full cooperation of personnel within the entity from whom you determined it necessary to obtain evidence.

PAGE 1 OF 2

- We have identified to you all previous audits, attestation engagements, and other studies that relate to the objectives of this performance audit, including whether related recommendations have been implemented.
- We have no knowledge of any known matters contradicting your conclusions.
- We have no knowledge of any information regarding fraud, suspected fraud, allegations of fraud, waste, or abuse that affects CHOB project invoicing review and approval process.
- We have no knowledge of any officer of the AOC, or any other person acting under the direction thereof, having taken any action to fraudulently influence, coerce, manipulate, or mislead you during your performance audit.
- We have disclosed to you all deficiencies in the design or operation of internal control that could adversely affect CHOB project invoicing review and approval process. A deficiency in internal control exists when the design, implementation, or operation of a control does not allow management or personnel to achieve control objectives and address related risks. A deficiency in design exists when a necessary control is missing or is not properly designed so that even if the control operates as designed, the control objective would not be met. A deficiency in implementation exists when a control is properly designed but not implemented correctly in the internal control system. A deficiency in operating effectiveness exists when a properly designed control does not operate as designed or the person performing the control does not have the necessary competence or authority to perform the control effectively.
- We have disclosed to you all known instances of noncompliance or suspected noncompliance with laws, regulations, or the terms and conditions of the contract, whose effects should be considered in the performance audit.
- We have disclosed to you all known actual or possible pending or threatened litigation, claims, and assessments that relate to CHOB project invoicing review and approval process.
- We intended for the contract between the AOC and the CMC (Contract No. AOC13C2002), which became effective on October 25, 2012, to be a firm-fixed price / cost-reimbursable Guaranteed Maximum Price (GMP) hybrid contract vehicle. The contract terms and conditions which state that the CMC is to be reimbursed on a fully cost-reimbursable basis, were mistakenly left in the contract, and do not reflect the intent of either the AOC or the CMC.

\_\_\_\_\_  
[Responsible Party and Title]  
Architect of the Capitol

\_\_\_\_\_  
[Responsible Party and Title]  
Architect of the Capitol

\_\_\_\_\_  
[Responsible Party and Title]  
Architect of the Capitol

cc: Michael Gillespie, 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](http://www.aoc.gov)

August 11, 2020

Michael Gillespie  
Partner  
Cotton & Company LLP  
635 Slaters Lane, Fourth Floor  
Alexandria, Virginia 22314

Dear Mr. Gillespie:

We are providing this management representation letter in connection with your performance audit of the Cannon House Office Building Renewal Project's contract invoices (Project No. 2019-AUD-006-A).

The information the Architect of the Capitol provided for this audit is complete and accurate to the best of our knowledge.



Sincerely,

Peter W. Mueller, PE, PMP  
Director, Planning and Project Management

Doc. No. 200805-18-03

## Appendix E

### Management Comments

	<p><b>Architect of the Capitol</b>          U.S. Capitol, Room SH-16          Washington, DC 20515          202.228.1793  <a href="http://www.aoc.gov">www.aoc.gov</a></p>
DATE:	August 11, 2020
TO:	Mr. Chris Failla Inspector General
FROM:	Thomas J. Carroll, III  Assistant to the Architect of the Capitol
SUBJECT:	Audit of the Cannon House Office Building Renewal (CHOB) Project's Contract Invoices Project No. 2019-AUD-006-A

Thank you for the opportunity to review and provide a response on the Office of Inspector General (OIG) draft report in accordance with sections 5.2.6 and 8 of Architect of the Capitol Order (AOC) 40-1.

The AOC is pleased that you found the team's review and approval process for the CHOB Project invoices for option periods 1 and 2 was adequate and the costs reviewed were allowable, supported and appeared reasonable. This is a reflection of the outstanding work done by the CHOB Project team and the Construction Manager as Constructor (CMc) to ensure an effective and efficient invoice preparation, review and approval process is in effect.

The AOC concurs with your finding that the process was not aligned with contract requirements and that this misalignment was inadvertent. We recognize that even though, before award, the AOC and CMc agreed to follow the established process and have consistently done so, it is important to ensure that contract language and the process are aligned.

The AOC concurs with the OIG's recommendations, as discussed below.

**Recommendation 1**

We recommend that the AOC review the terms and conditions of the CMc's contract to ensure that the contract contains the appropriate terms and conditions for the CHOB Project.

**AOC Response**

By September 30, 2020, we will modify the contract's payment terms to reflect the process being used by the AOC and the CMc.

**Recommendation 2**

We recommend that the AOC perform and document an analysis of the advantages and risks to the AOC, including lessons learned from the CHOB Project, on the use of various contract

vehicles when procuring future major construction projects, to ensure that the AOC selects the best option to meet its objectives.

**AOC Response**

The AOC has an existing acquisition planning process for selecting appropriate contract vehicles. The process calls for a case-by-case evaluation of the most appropriate and beneficial contract type, including associated risks for the specific situation at hand. The acquisition assessment is documented. In future situations involving large construction projects like the CHOBr Project, we will review viable contract vehicles and select the one that is most likely to meet our objectives, including cost, risk and lessons learned from the CHOBr Project.

**Recommendation 3**

We recommend that the AOC ensure that its policies and procedures regarding the development and review of future construction contracts are sufficient to ensure that its contracts contain the appropriate terms and conditions before implementation.

**AOC Response**

By September 30, 2020, we will issue guidance to our contracting officers and their supervisors highlighting the need to ensure that payment provisions in construction contracts are appropriate before award.

Doc. No. 200805-18-03

## Acronyms and Abbreviations

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AE	Architect-Engineer
AOC	Architect of the Capitol
CHOB	Cannon House Office Building Renewal
CMA	Construction Manager as Agent
CMC	Construction Manager as Constructor
CO	Contracting Officer
COTR	Contracting Officer's Technical Representative
Cotton	Cotton & Company LLP
DCCR	Detail Construction Costs Report
GAGAS	Generally Accepted Government Auditing Standards
GSAR	General Services Administration Acquisition Regulation
GAO	Government Accountability Office
GC	General Conditions
GMP	Guaranteed Maximum Price
GR	General Requirements
GSA	General Services Administration
ICSRA	Integrated Cost Schedule Risk Analysis
IPP	Invoice Processing Platform
OIG	Office of Inspector General
PFP	Partnering Fee Plan
PMP	Project Management Plan
QA	Quality Assurance



## INSPECTOR GENERAL

499 S. CAPITOL ST, SW  
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