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# **Management Assistance Report: Actions To Address Ongoing Construction Schedule Delays at New Embassy Compound Mexico City Are Needed**

MANAGEMENT ASSISTANCE REPORT

UNCLASSIFIED

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## SUMMARY OF REVIEW

As the overseas real property manager for the Department of State (Department), the Bureau of Overseas Buildings Operations (OBO) has the lead role in acquiring, designing, building, operating, and maintaining Department facilities worldwide. In September 2017, the Bureau of Administration, Office of the Procurement Executive, Office of Acquisitions Management (AQM), on behalf of OBO, awarded Caddell Construction Co, LLC (Caddell), a firm-fixed-price, design-bid-build contract (Contract SAQMMA17C0287) for the construction of the New Embassy Compound (NEC) located in the Nuevo Polanco neighborhood of Mexico City, Mexico. In accordance with contract requirements, the original substantial completion date for all work required under the Caddell contract was April 13, 2022. Four subsequent contract modifications revised the contractually required substantial completion date to October 31, 2023. However, in June 2022, OBO reported that the estimated substantial completion date could be as late as May 2024.

During an audit of contract administration processes in the construction of NEC Mexico City, which is presently underway, the Office of Inspector General (OIG) learned of ongoing and increasing schedule delays to the construction project. Specifically, OIG found that the project is falling behind schedule every month, and the ongoing and increasing schedule delays will further impact the date NEC Mexico City will be ready for occupancy. OBO and AQM did not fully comply with Department guidance addressing schedule delays. For example, OBO and AQM did not determine the type of delay (excusable,<sup>1</sup> nonexcusable,<sup>2</sup> or compensable<sup>3</sup>), document the delay, develop the government's position, discuss the government's position with the contractor, adjust the government's position based on the discussions with the contractor, and prepare a final decision. As a result, the Department cannot be certain that Caddell will meet the contractually required substantial completion date of October 31, 2023.

In addition, OIG found that the Department issued a unilateral modification for the solar photovoltaic system construction improvements (P00066) without assessing time to determine whether a schedule extension was justified. Specifically, Caddell submitted a proposal in October 2022 requesting a schedule extension of 459 days (168 compensable<sup>4</sup> days and 291 noncompensable days) in response to the Contracting Officer's (CO) request for proposal (RFP) to change the solar photovoltaic system. In response, the Department issued a unilateral contract modification without assessing time as part of their independent government cost estimate or evaluating and responding to the time impact analysis (TIA) submitted by the contractor to determine whether a time extension was justified. As a result, the Department required Caddell to adhere to the current substantial completion date of October 31, 2023, but with the potential of an excusable delay that could result in

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<sup>1</sup> An excusable delay is a delay that is beyond the control and without the fault or negligence of the contractor.

<sup>2</sup> A nonexcusable delay is a delay that the government has not authorized and for which the contractor is totally at fault.

<sup>3</sup> A compensable delay is a delay for which the contractor may recover money as well as time.

<sup>4</sup> Compensable days and time are those which the contractor is entitled to recover in both time and money.

constructive acceleration.<sup>5</sup> The unilateral modification of the Caddell contract will therefore result in additional expenses to complete the NEC Mexico City project. Cadell estimates the compensable time they charged to be \$38,000 per day.

OIG made four recommendations to address the deficiencies identified in this report relating to project schedule management. On the basis of OBO's response to a draft of this report, OIG considers all four recommendations resolved, pending further action. A synopsis of management's comments and OIG's reply follow each recommendation in the Results section of this report. Management's response is reprinted in its entirety in Appendix A.

## BACKGROUND

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### **About New Embassy Compound Mexico City**

As the overseas real property manager for the Department, OBO has the lead role in acquiring, designing, building, operating, and maintaining Department facilities worldwide. In September 2017, AQM, on behalf of OBO, awarded Caddell a firm-fixed-price,<sup>6</sup> design-bid-build<sup>7</sup> contract (Contract SAQMMA17C0287) for the construction of the NEC located in the Nuevo Polanco neighborhood of Mexico City. The contract requires Caddell to build a chancery, Marine Security Guard Residence, underground parking structure, utility building, and police barracks, as well as four campus access pavilions. In accordance with contract requirements, the original substantial completion date for all work required under the contract was April 13, 2022. Four subsequent contract modifications revised the contractually required substantial completion date, and, as of November 2022, the contractually required substantial completion date was October 31, 2023. However, in June 2022, OBO reported the estimated substantial completion date could be as late as May 2024.

### **Management Assistance Report Purpose**

This Management Assistance Report is intended to provide early communication to OBO and the Bureau of Administration leadership regarding the schedule delays—and the possible effects of those delays—that OIG identified at NEC Mexico City during its audit of select contract administration processes, which is currently underway. The objective of the audit is to determine whether OBO and AQM personnel executed processes involving contract modifications, construction quality management, and progress payment reviews and approvals for the NEC Mexico City construction project in accordance with the Federal Acquisition Regulation (FAR) and Department guidance. OIG is reporting the conditions discussed in this Management Assistance Report in accordance with generally accepted government auditing

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<sup>5</sup> Constructive acceleration is when the government requires the contractor to meet the current delivery schedule in the face of excusable delays.

<sup>6</sup> FAR 16.202-1, "Firm-fixed-price contracts description" states, "A firm-fixed price contract provides for a price that is not subject to any adjustment based on the contractor's cost experience in performing the contract."

<sup>7</sup> FAR 36.102 defines design-bid-build as the traditional delivery method in which design and construction are sequential and contracted separately, with two contracts and two contractors.

standards. In performing the work related to this report, OIG interviewed OBO and AQM officials and Caddell personnel, reviewed applicable criteria and supporting documentation, and conducted audit fieldwork at NEC Mexico City. OIG believes that the evidence obtained pertaining to the identified schedule delays provides a reasonable basis for the conclusions presented in this report.

## RESULTS

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### **Finding A: Ongoing and Increasing Schedule Delays**

OIG found that the NEC Mexico City project is falling behind schedule every month and the ongoing and increasing schedule delays will further impact the date NEC Mexico City will be ready for occupancy. OBO and AQM did not fully comply with Department guidance in addressing schedule delays. For example, OBO and AQM did not determine the type of delay (excusable, nonexcusable, or compensable), document the delay, develop the government's position, discuss the government's position with the contractor, adjust the government's position based on the discussions with the contractor, and prepare a final decision. As a result, the Department cannot be certain that Caddell will meet the current contractually required substantial completion date of October 31, 2023, as expected.

#### ***Schedule Management***

Schedule management provides a detailed plan and the processes required to manage the timely completion of a construction project. OBO's "Contract Division 01, Specification 013205 Project Scheduling," provides a detailed explanation of the Project Execution Schedule (PES) development for OBO-administered construction projects. The construction contractor is required to provide the PES and subsequent PES updates. The contractor's PES submission is reviewed and accepted or rejected by the OBO Project Director. The PES is used in monitoring the construction progress and costs, and it can serve as a valuable basis for evaluating delay claims. The contract completion date is fixed and can only be changed by contract modification. For the PES to have value in coordinating the construction work, the OBO Project Director must meet with the construction contractor on a regular basis to discuss revisions that are necessary to maintain it as a useful tool.<sup>8</sup>

#### ***Schedule Delays***

The schedule, if developed and updated properly, can be used to determine whether the contractor is behind schedule, on schedule, or ahead of schedule. Schedule analysis is crucial to determine what caused any delays encountered, what impact the delay(s) could have on performance, and the computation of any compensable time owed to the contractor due to the delay.

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<sup>8</sup> OBO Construction Management Guidebook, 3.2 Gate 5: Project Execution (3.2.1-3.2.10), 3.2.10 Construction Schedule – Project Execution Schedule (PES).

According to the Overseas Procurement Guide, “a delay occurs when there is a failure to deliver products or make progress in accordance with the schedule set forth in the contract. . . . Problems that involve delays tend to be serious. A failure to meet a delivery or completion date usually begins with a problem that occurred much earlier in the course of the contract. Take action as soon as a problem is identified.”<sup>9</sup>

**Project Scheduling – NEC Mexico City**

In November 2022, OIG learned of significant schedule delays to the NEC Mexico City project and confirmed that the monthly PES updates demonstrated the schedule delays increased monthly. For example, the monthly PES updates from May 2022 through November 2022 demonstrated that the project was falling behind approximately 1 day for every 1 workday. In addition, the May 2022 revised Baseline PES<sup>10</sup> shows negative 296 days of total float.<sup>11</sup> This means the schedule had been delayed 296 calendar days from the October 31, 2023, contractually required substantial completion date. The November 2022 PES update shows negative 480 days of float. This means the schedule had been delayed 480 calendar days from the October 31, 2023, contractually required substantial completion date. Therefore, from May 2022 to November 2022, the project was delayed an additional 184 days. Table 1 shows the project’s total float and schedule change each month from May through November 2022.

**Table 1: Summary of Total Float for Monthly PES Updates NEC Mexico City**

<b>Schedule Name</b>	<b>Schedule Data Date</b>	<b>Total Float Days<sup>a,b,c</sup></b>	<b>Change From Previous Month<sup>d</sup></b>	<b>PES Substantial Completion Date<sup>e</sup></b>
MX53	May 31, 2022	-296		August 21, 2024
MX54	June 30, 2022	-326	-30	September 20, 2024
MX55	July 31, 2022	-357	-31	October 21, 2024
MX56	August 31, 2022	-389	-32	November 22, 2024
MX57.R0	September 30, 2022	-417	-28	December 20, 2024
MX58	October 31, 2022	-457	-40	January 24, 2025
MX59	November 30, 2022	-480	-23	February 21, 2025

<sup>a</sup> The total float for the project was reviewed for the PES update.

<sup>b</sup> The total float for “OBO Issues Certificate of Substantial Completion” was reviewed for the PES update. This activity is on the longest path and was equal to the total float for the project.

<sup>c</sup> Indicates the total number of days the project is behind schedule according to the PES update.

<sup>d</sup> Indicates the number of days the project was delayed during the month.

<sup>e</sup> Projected substantial completion date according to the PES update.

**Source:** OIG-generated based on analysis of monthly PES updates provided by OBO.

<sup>9</sup> Office of the Procurement Executive, Overseas Procurement Guide, Chapter 7, “Contract Administration,” Section VII. Delays, A. General (June 2021).

<sup>10</sup> The May 2022 schedule was a revision to the Baseline PES.

<sup>11</sup> Float is the total amount of time a scheduled task can be delayed or extended before affecting a project completion date.

### **Usefulness of the NEC Mexico City PES**

In performing the work related to this audit, OIG interviewed OBO officials and Caddell personnel at the NEC Mexico City construction site. The interviewees expressed uncertainty regarding the usefulness of the PES. Comments included:

- “The schedule doesn’t mean much other than for payment.”
- “The project schedule is only for payment.”
- “The schedule has been in a large amount of disarray.”
- “The schedule is a tool only for pay applications.”

According to the Contract Specification 013205, Section 1.4, the purposes of the PES are:

- “To be the only schedule that is developed and updated throughout the project period of performance.”
- “To forecast completion of future work based on actual performance to date.”
- “To evaluate any time impact associated with unforeseen conditions, events, contract modifications, and performance delays.”
- “To be the basis for evaluation of the work completed and the preparation of the Contractor’s monthly payment application.”

Although the PES is the only tool to forecast the completion of the project, construction officials onsite stated that they did not believe the PES was a reliable tool to forecast completion of future work, including the substantial completion date. Given these comments, OIG reviewed the total float on other critical activities,<sup>12</sup> namely, fire alarm commissioning, chiller commissioning, and integrated systems tests, from May through November 2022, based on monthly PES updates. As shown in Table 2, the negative total float for these critical activities increased month to month as well.

**Table 2: Total Float on Critical Activities From the Monthly PES Updates<sup>a,b</sup>**

<b>Schedule Name</b>	<b>Schedule Data Date</b>	<b>Fire Alarm Commissioning</b>	<b>Chiller Commissioning</b>	<b>Integrated Systems Testing</b>
MX53	May 31, 2022	-94	-142	-142
MX54	June 30, 2022	-115	-160	-160
MX55	July 31, 2022	-141	-183	-183
MX56	August 31, 2022	-156	-206	-206
MX57.R0	September 30, 2022	-179	-241	-302
MX58	October 31, 2022	-209	-256	-331
MX59	November 30, 2022	-228	-269	-349

<sup>a</sup> The total float for each activity was reviewed for the PES update.

<sup>b</sup> Each activity is not on the longest path according to the PES update.

**Source:** OIG-generated based on analysis of monthly PES updates provided by OBO.

<sup>12</sup> A critical activity is defined as any activity with a total float of zero or less.

Finally, OIG reviewed the monthly applications for payment that were submitted from May through November 2022 based on the PES updates. Table 3 provides a summary of monthly payments for contract line-item number (CLIN) 0001, which relates to construction.

**Table 3: Summary of Monthly Payments for CLIN 0001**

<b>Schedule Data Date</b>	<b>Subtotal With Modifications</b>	<b>Monthly Payment</b>	<b>Balance to Finish</b>
May 31, 2022	\$527,119,678	\$6,033,008	\$171,645,089
June 30, 2022	\$526,901,735	\$7,201,686	\$164,225,461
July 31, 2022	\$527,003,431	\$6,834,705	\$157,492,452
August 31, 2022	\$527,817,456	\$7,118,773	\$151,187,704
September 30, 2022	\$527,817,456	\$5,560,053	\$145,627,651
October 30, 2022	\$527,817,456	\$6,011,524	\$139,616,126
November 30, 2022	\$527,817,456	\$4,649,987	\$134,966,140

**Source:** OIG-generated based on analysis of Monthly PES Updates provided by OBO.

OIG used the payment data for CLIN 0001 to project the substantial completion date based on actual performance. OIG determined that the average monthly payment from May 2022 through November 2022 was \$6,201,391. OIG used this average monthly payment to determine the number of months to substantial completion, which was 21.8 months or 654 calendar days to completion, as of November 30, 2022. This would result in a September 2024 substantial completion date. However, according to OBO staff interviewed during audit fieldwork at NEC Mexico City, Caddell has billed OBO approximately \$30 million for material delivered offsite.<sup>13</sup> Material delivered offsite has not been incorporated into the construction project. As a result, the CLIN 0001 Balance to Finish could include the value of the \$30 million material stored offsite. Including the \$30 million in the “CLIN 0001 Balance to Finish” increases the value to \$164,966,140. Therefore, this will increase the number of months to completion to 26.6 months or 798 calendar days, which represents a projected substantial completion date of February 2025.

### ***Projecting NEC Mexico City Occupancy***

The NEC Mexico City project is falling behind schedule every month and the ongoing and increasing schedule delays will further impact the date NEC Mexico City will be ready for occupancy. OBO and AQM did not fully comply with Department guidance in addressing schedule delays. Specifically, OBO and AQM did not determine the type of delay (excusable, nonexcusable, or compensable), document the delay, develop the government’s position, discuss the government’s position with the contractor, adjust the government’s position based on the discussions with the contractor, and prepare a final decision. As a result, the Department cannot be certain that Caddell will meet the current contractually required substantial completion date of October 31, 2023. Therefore, OIG is offering the following

<sup>13</sup> When the contractor prepares monthly progress payments, FAR 52.232-5 (b)(2) permits the Contracting Officer to consider material delivered to the contractor at locations other than the construction site.



recommendations to address the deficiencies identified and to help advance the NEC Mexico City project to the extent practicable.

**Recommendation 1:** OIG recommends that the Bureau of Overseas Buildings Operations (OBO), in coordination with the Bureau of Administration, comply with Department of State guidance to address the schedule delay for New Embassy Compound Mexico City, Mexico. Specifically, OBO, in coordination with the Bureau of Administration, must (1) determine the type of delay (excusable, nonexcusable, or compensable), (2) document the delay, (3) develop the government's position, (4) discuss the government's position with the contractor, (5) adjust the government's position based on the discussions with the contractor, and (6) prepare a final decision.

**Management Response:** OBO concurred with the recommendation and stated that it is currently working with AQM and the contractor to determine the types of schedule delays, the resolution, and a mutual decision for the schedule delays with the goal of reaching a swift final agreement, mutually agreed upon by all parties.

**OIG Reply:** On the basis of OBO's concurrence with the recommendation and planned actions, OIG considers the recommendation resolved, pending further action. This recommendation will be closed when OIG receives documentation demonstrating that OBO, in coordination with the Bureau of Administration, complied with Department guidance to address the schedule delay for NEC Mexico City.

**Recommendation 2:** OIG recommends that the Bureau of Overseas Buildings Operations, working collaboratively with Caddell Construction Co, LLC, develop and implement an action plan to ensure the Project Execution Schedule meets all the purposes outlined in Contract Specification 013205, paragraph 1.4 for Contract SAQMMA17C0287, NEC Mexico City, Mexico.

**Management Response:** OBO concurred with the recommendation and stated that it has already begun working with the contractor to update and improve their Baseline Project Execution Schedule to meet the contract PES per contract specification in Section 013205-1.04. OBO furthermore stated that the contractor's latest Baseline Project Execution Schedule (MX60R2), released on February 28, 2023, showed acceptable action plans and that OBO and the contractor are working to implement them.

**OIG Reply:** On the basis of OBO's concurrence with the recommendation and stated actions, OIG considers this recommendation resolved, pending further action. This recommendation will be closed when OIG receives documentation demonstrating that OBO and the contractor have developed and implemented an action plan that ensure that the PES meets all the purposes outlined in Contract Specification 013205, paragraph 1.4, for Contract SAQMMA17C0287, NEC Mexico City, Mexico.

## **Finding B: Unilateral Modification for the Solar Photovoltaic System Phase II – Construction Did Not Determine Whether Caddell Was Entitled to a Schedule Extension**

OIG found that the Department issued a unilateral modification<sup>14</sup> for the solar photovoltaic system construction improvements (P00066) without assessing time as part of their independent government cost estimate or evaluating and responding to the TIA submitted by the contractor to determine whether a schedule extension was justified. Specifically, Caddell submitted a proposal in October 2022 requesting a schedule extension of 459 days (168 compensable days and 291 noncompensable days) in response to the CO’s RFP to change the solar photovoltaic system<sup>15</sup> at NEC Mexico City. In response, the Department issued a unilateral contract modification without determining whether a time extension was justified. As a result, the Department required Caddell to adhere to the current substantial completion date of October 31, 2023, but with the potential of an excusable delay that could result in constructive acceleration.<sup>16</sup> The unilateral modification of the Caddell contract will result in additional financial expenses to complete the NEC Mexico City project. The compensable time charged by Caddell was estimated to be \$38,000 per day.<sup>17</sup>

### ***Contract Modifications***

A contract modification is any written change in the terms of a contract. Only COs acting within the scope of their authority may legally execute contract modifications. Ideally, a contract contains all the terms and conditions that are necessary for completing the work. In practice, however, few contracts are completed without some type of modification. Some modifications involve substantial changes to the price, schedule, or other terms.<sup>18</sup>

Modifications to a contract affect the interests, rights, and obligations of two independent parties: the government and the contractor. The responsibility of the CO is to preserve the integrity of the relationship between these two parties. The CO reviews the action to determine whether it is consistent with the existing contract. The CO must also ensure that the equities of the existing relationship are preserved and will be continued.<sup>19</sup>

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<sup>14</sup> A unilateral modification is a contract modification signed only by the CO. A unilateral modification may be either an administrative change or a substantive change order authorized by the applicable “Changes” clause.

<sup>15</sup> Solar photovoltaic systems are power systems that convert sunlight into electricity by using the photovoltaic effect. This is a process in which semiconducting materials generate voltage and current when exposed to light.

<sup>16</sup> Constructive acceleration is when the government requires the contractor to meet the current delivery schedule in the face of excusable delays.

<sup>17</sup> The \$38,000 per day estimate was provided by a Caddell official.

<sup>18</sup> Office of the Procurement Executive, *Overseas Procurement Guide*, Chapter 8, “Contract Modification/Contract Closeout,” II. Original Signed Contract and Modifications, B. Modifications, 1. General (June 2021).

<sup>19</sup> *Ibid.*

According to the Overseas Procurement Guide, the CO must negotiate an equitable adjustment in the contract price and delivery schedule.<sup>20</sup> In addition, the government must prepare an independent government cost estimate of what the change entails and assess any time extension that may be justified. An independent government cost estimate is an estimate for a specific contract action in the same format and level of detail that the contractor provides in response to an RFP or solicitation. An independent government cost estimate includes direct and indirect costs of the contract, such as material prices, labor charges, general requirements, contractor overhead, and profit.<sup>21</sup> An assessment of time is needed to ensure that all direct and indirect costs are included. The estimate must be detailed enough to permit a cost analysis of the contractor's proposal.<sup>22,23</sup> Furthermore, the contractor is required to perform and prepare a TIA as a standard deliverable. The purpose of the TIA is to identify and evaluate the impact of a particular event or situation on the completion of the project.<sup>24</sup>

OIG found that OBO and AQM did not assess time for the NEC Mexico City project as part of the independent government cost estimate process. Time assessment during the independent government cost estimate process is important because the estimate must be prepared prior to receiving the proposal from the contractor. Without a complete independent government cost estimate that includes an assessment of time, the Department is not fully prepared to determine whether the contractor's proposal is fair and reasonable and whether a time extension, as presented in the TIA prepared by the contractor, is justified. Instead, OIG found that the CO issued unilateral modification P00066 on December 6, 2022, to incorporate, fund, and direct Caddell to proceed with the revision and changes to site conditions. According to language in the unilateral modification, "the government is issuing this modification at what it considers to be a fair and reasonable price, \$173,328.00, since Caddell and the [Department] are not currently able to definitively address the monetary compensation and schedule impact." The modification does not include a schedule extension. Additional language in the modification states that the Department "has yet to determine if Caddell is entitled to any schedule extension."

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<sup>20</sup> Office of the Procurement Executive, Overseas Procurement Guide, Chapter 8, "Contract Modification/Contract Closeout," Section II. Original Signed Contract and Modifications, D. Change Orders and Changes Under the "Changes" Clause, 1. Non-Commercial Item Contracts (June 2021).

<sup>21</sup> OBO, Office of Cost Management Guide, Section 1.7.2 Independent Government Estimates and Bid Evaluation.

<sup>22</sup> Office of the Procurement Executive, Overseas Procurement Guide, Chapter 8, "Contract Modification/Contract Closeout," Section VI. Backup Supporting Contract Modifications/Delivery Orders/Task Orders, C. Pricing of Adjustments, 1. Independent Government Cost Estimate.

<sup>23</sup> In response to a draft of this report, OBO requested that OIG clarify that OBO, in coordination with the Bureau of Administration, will evaluate the TIA prepared by the contractor, not perform a TIA. OIG modified this final report to clarify that point and accepted all other technical comments provided. However, it is important to note that OIG's finding that the Department issued a unilateral modification for the solar photovoltaic system construction improvements without assessing time or evaluating and responding to the contractor-prepared TIA remains unchanged.

<sup>24</sup> Contract Specification, Section 013205 Project Scheduling, Paragraph 3.6.

### ***Solar Photovoltaic System***

OBO officials and Caddell personnel stated that the solar photovoltaic system chosen for NEC Mexico City adversely impacted the project. Specifically, on February 21, 2020, Caddell informed OBO that the solar photovoltaic system modules that were included in the submission and the basis of design in the contract documents “are being discontinued by the manufacturer and delivery of these modules cannot be guaranteed if not purchased by March 15, 2020.” In response, the CO concurred that “the current design for the solar photovoltaic system has been found to be lacking as a product of a dated design that is no longer consistent with current technology.”

Under an OBO directive, the designer was required to prepare documents sufficient to support a delegated design for solar photovoltaic system arrays and mounting systems. The CO issued Caddell a request for proposal on September 7, 2020, including the documents from the designer. However, the documents did not provide a completed design. Rather, the documents included general information regarding the changes and upgrades required to bring the solar photovoltaic system to current standards, revised architectural drawings, structural drawings, and electrical drawings. They also included updated solar photovoltaic system specifications essential to the completion of the Department’s tasking to the contractor.

The RFP had two phases:

- Phase 1 – The contractor’s submission of a formal cost proposal detailing design work and coordination to be performed.
- Phase 2 – The contractor’s submission and OBO’s acceptance of a cost proposal for construction improvements.

The RFP requested that the contractor’s proposal include project schedules as appropriate, supporting any anticipated time and cost impacts arising from the inclusion of these changes. On February 2, 2021, Caddell submitted a proposal for Phase I. On April 8, 2021, Caddell and the CO signed a bilateral modification for Phase I. On June 23, 2022, Caddell submitted an initial proposal for Phase II. Caddell’s initial proposal requested a schedule extension of 367 days (175 compensable days and 192 noncompensable days). Caddell submitted a revised proposal on October 11, 2022, requesting a schedule extension of 459 days (168 compensable days and 291 noncompensable days).

The narrative provided with the May 2022 through November 2022 monthly PES updates identifies the longest path to project completion. According to Caddell, the longest path runs through submittal of the solar photovoltaic system design, review of the design, purchase of photovoltaic equipment, manufacture of photovoltaic equipment, transport of photovoltaic equipment, and installation of the photovoltaic panels to substantial completion. However, the Department issued the unilateral modification without any additional time, meaning the Department required Caddell to meet the current substantial completion date of October 31, 2023, with the potential of an excusable delay.

Requiring a contractor to meet the current substantial completion date with the potential of an excusable delay can result in constructive acceleration, with a risk of additional financial outlays of an unknown magnitude. In addition, OIG learned that there are at least three RFPs that include requested schedule extensions in Caddell's proposals. Caddell considers these extensions vital to the construction schedule and to determining the substantial completion date. In accordance with the FAR and Department policy, the Department must prepare an independent government cost estimate of what the change entails and assess any time extension that may be justified. OIG is therefore offering the following recommendations.

**Recommendation 3:** OIG recommends that the Bureau of Overseas Buildings Operations (OBO), in coordination with the Bureau of Administration, evaluate and respond to the Time Impact Analysis (TIA) prepared by the contractor to determine whether a schedule extension was justified for the unilateral modification P00066 to the New Embassy Compound Mexico City, Mexico. In accordance with the Federal Acquisition Regulation and Department of State policy, OBO, in collaboration with the Bureau of Administration, must (1) prepare a prenegotiation memorandum and a findings of fact that include a TIA, (2) issue a decision on the prenegotiation memorandum, (3) proceed with negotiations, including discussion of the TIA, with the goal of a fair and reasonable settlement for the change, and (4) report the results of the negotiations to the Contracting Officer, including recommendations for a fair and reasonable settlement that include any schedule extensions for the change.

**Management Response:** OBO requested that OIG modify the recommendation that was included in a draft of this report to reflect that OBO, in coordination with the Bureau of Administration, will evaluate the TIA prepared by the contractor, not perform a TIA. With that modification, OBO stated that it concurred with the recommendation and indicated that the Baseline Project Execution Schedule (MX60R2) referenced in response to Recommendation 2 serves as the basis by which OBO evaluates and responds to the TIA prepared by the contractor. OBO and the Bureau of Administration will follow the steps outlined in Recommendation 3 and work with the contractor to negotiate a fair and reasonable settlement for the schedule changes.

**OIG Reply:** As requested, OIG modified Recommendation 3 to reflect that OBO will evaluate the TIA prepared by the contractor and negotiate a fair and reasonable settlement for the schedule changes. On the basis of OBO's concurrence with the modified recommendation and planned actions, OIG considers the recommendation resolved pending further action. This recommendation will be closed when OIG receives documentation demonstrating that OBO, in coordination with the Bureau of Administration, evaluated and responded to the TIA prepared by the contractor.

**Recommendation 4:** OIG recommends that the Bureau of Overseas Buildings Operations (OBO), in coordination with the Bureau of Administration, assess time as part of their independent government cost estimate process and evaluate and respond to the Time Impact Analysis (TIA) prepared by the contractor for all outstanding requests for proposals

## RECOMMENDATIONS

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**Recommendation 1:** OIG recommends that the Bureau of Overseas Buildings Operations (OBO), in coordination with the Bureau of Administration, comply with Department of State guidance to address the schedule delay for New Embassy Compound Mexico City, Mexico. Specifically, OBO, in coordination with the Bureau of Administration, must (1) determine the type of delay (excusable, nonexcusable, or compensable), (2) document the delay, (3) develop the government's position, (4) discuss the government's position with the contractor, (5) adjust the government's position based on the discussions with the contractor, and (6) prepare a final decision.

**Recommendation 2:** OIG recommends that the Bureau of Overseas Buildings Operations, working collaboratively with Caddell Construction Co, LLC, develop and implement an action plan to ensure the Project Execution Schedule meets all the purposes outlined in Contract Specification 013205, paragraph 1.4 for Contract SAQMMA17C0287, NEC Mexico City, Mexico.

**Recommendation 3:** OIG recommends that the Bureau of Overseas Buildings Operations (OBO), in coordination with the Bureau of Administration, evaluate and respond to the Time Impact Analysis (TIA) prepared by the contractor to determine whether a schedule extension was justified for the unilateral modification P00066 to the New Embassy Compound Mexico City, Mexico. In accordance with the Federal Acquisition Regulation and Department of State policy, OBO, in collaboration with the Bureau of Administration, must (1) prepare a prenegotiation memorandum and a findings of fact that include a TIA, (2) issue a decision on the prenegotiation memorandum, (3) proceed with negotiations, including discussion of the TIA, with the goal of a fair and reasonable settlement for the change, and (4) report the results of the negotiations to the Contracting Officer, including recommendations for a fair and reasonable settlement that include any schedule extensions for the change.

**Recommendation 4:** OIG recommends that the Bureau of Overseas Buildings Operations (OBO), in coordination with the Bureau of Administration, assess time as part of their independent government cost estimate process and evaluate and respond to the Time Impact Analysis (TIA) prepared by the contractor for all outstanding requests for proposals to the New Embassy Compound Mexico City, Mexico, project when preparing an independent government cost estimate. In accordance with the Federal Acquisition Regulation and Department of State policy, OBO, in collaboration with the Bureau of Administration, must (1) prepare a prenegotiation memorandum and a findings of fact that include TIAs, (2) issue a decision on the prenegotiation memorandum, (3) proceed with negotiations, including discussion of the TIAs, with the goal of a fair and reasonable settlement for the change, and (4) report the results of the negotiations to the Contracting Officer, including recommendations for a fair and reasonable settlement that include any schedule extensions for the change.

## APPENDIX A: BUREAU OF OVERSEAS BUILDINGS OPERATIONS RESPONSE

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United States Department of State

Washington, D.C. 20520

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March 21, 2023

### INFO MEMO FOR NORMAN BROWN – OIG/AUD

FROM: OBO/COMP– Elizabeth A.S. Slaughter Elizabeth A. Slaughter Digitally signed by Elizabeth A. Slaughter  
Date: 2023.03.21  
15:55:13 -0400

SUBJECT: Bureau of Overseas Buildings Operations (OBO) Response to OIG draft *Management Assistance Report: Actions to Address Ongoing Construction Schedule Delays at New Embassy Compound (NEC) Mexico City Are Needed*

OBO thanks the OIG for its careful review of contract administration processes in the construction of NEC Mexico City, specifically the schedule delays.

OBO concurs with the improvements the OIG outlines in the report. OBO would like to note that it continues to engage with peers in the government and its Industry Advisory Group for leading-edge best practices to make project schedules as practical and efficient as possible and has taken some measures already as a result. For example, in 2020, OBO began its formal partnering initiative designed as a pathway for OBO and its contractors to identify and resolve contract disputes, including schedule disputes. In addition, OBO and the Bureau of Administration (A/OPE/AQM) signed a Service Level Agreement (SLA) in 2022 to address improved Departmental collaboration for procurement in areas such as scope, performance dependencies, performance measures, governance, and issue management.

OBO agrees with the report's reference on Page 8 that the purpose of a time impact analysis (TIA) is to identify and evaluate the impact of a particular event or situation on the completion of the project. However, it is the contractor, not OBO, that performs and prepares the TIA that OBO and A/OPE/AQM use when reviewing and approving requests for proposal and/or changes to the contract. The TIA is a standard deliverable that the contractor provides, as referenced in the Mexico City project's Contract Specification, Section 013205 on Project Scheduling. OBO commits to evaluating and responding to the TIAs to ensure that it conforms to the specification requirements and that it provides a reasonable

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to the New Embassy Compound Mexico City, Mexico, project when preparing an independent government cost estimate. In accordance with the Federal Acquisition Regulation and Department of State policy, OBO, in collaboration with the Bureau of Administration, must (1) prepare a prenegotiation memorandum and a findings of fact that include TIAs, (2) issue a decision on the prenegotiation memorandum, (3) proceed with negotiations, including discussion of the TIAs, with the goal of a fair and reasonable settlement for the change, and (4) report the results of the negotiations to the Contracting Officer, including recommendations for a fair and reasonable settlement that include any schedule extensions for the change.

**Management Response:** OBO requested that OIG modify the recommendation that was included in a draft of this report to reflect that OBO, in coordination with the Bureau of Administration, will evaluate the TIA prepared by the contractor, not perform a TIA. OBO stated that with that modification, OBO concurred with the recommendation and indicated that the Baseline Project Execution Schedule (MX60R2) referenced in Recommendations 2 and 3 serves as the basis by which OBO evaluates and responds to the TIAs prepared by the contractor. OBO and the Bureau of Administration will follow the steps outlined in the OIG's Recommendation 4 and work with the contractor to reconcile contract changes for a fair and reasonable settlement.

**OIG Reply:** As requested, OIG modified the Recommendation 4 to better convey the intent of the recommendation, which is to ensure that OBO, in coordination with the Bureau of Administration, assesses time as part of the independent government cost estimate process. OIG concludes that an assessment of time is needed when preparing the independent government cost estimate to ensure that the estimate includes all direct and indirect costs. Moreover, an assessment of time is necessary to evaluate the contractor's TIA proposal to negotiate a fair and reasonable settlement for any schedule changes. On the basis of OBO's concurrence with the modified recommendation and planned actions, OIG considers the recommendation resolved pending further action. This recommendation will be closed when OIG receives documentation demonstrating that OBO, in coordination with the Bureau of Administration, assessed time as part of the independent cost estimate process and is therefore positioned to evaluate and respond to the TIA prepared by the contractor for the purpose of negotiating a fair and reasonable settlement for any schedule extensions.



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cost and duration. OBO has suggested both technical corrections to the report and the recommendations to reflect this clarification.

Please see the following responses to the four recommendations for which OBO is the action office.

**Recommendation 1:** OIG recommends that the Bureau of Overseas Buildings Operations (OBO), in coordination with the Bureau of Administration, comply with Department of State guidance to address the schedule delay for New Embassy Compound Mexico City, Mexico. Specifically, OBO, in coordination with the Bureau of Administration, must (1) determine the type of delay (excusable, non excusable, or compensable), (2) document the delay, (3) develop the government's position, (4) discuss the government's position with the contractor, (5) adjust the government's position based on the discussions with the contractor, and (6) prepare a final decision.

**OBO Response:** OBO concurs with the recommendation. OBO is currently working with Bureau of Administration (A/OPE/AQM) and the contractor to determine the types of schedule delay, the resolution, and a mutual decision for the schedule delay with the goal of reaching a swift final agreement, mutually agreed between all parties.

**Recommendation 2:** OIG recommends that the Bureau of Overseas Buildings Operations, working collaboratively with Caddell Construction Co, LLC, develop and implement an action plan to ensure the Project Execution Schedule meets all the purposes outlined in Contract Specification 013205, paragraph 1.4 for Contract SAQMMA17C0287, NEC Mexico City, Mexico.

**OBO Response:** OBO concurs with the recommendation and has already begun work with the contractor to update and improve their Baseline Project Execution Schedule (BPES) to meet the contract Project Execution Schedule (PES) per contract specification in Section 013205-1.04. The contractor's latest BPES (MX60R2), released on February 28, 2023, showed acceptable action plans and OBO and the contractor are working to implement them.

**Recommendation 3:** OIG recommends that the Bureau of Overseas Buildings Operations (OBO), in coordination with the Bureau of Administration, perform a

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time impact analysis (TIA) for the unilateral modification P00066 to the New Embassy Compound Mexico City, Mexico, project to evaluate the modification's impact on the completion of the project. In accordance with the Federal Acquisition Regulation and Department of State policy, OBO must (1) prepare a prenegotiation memorandum and a findings of fact that include a TIA, (2) issue a decision on the prenegotiation memorandum, (3) proceed with negotiations, including discussion of the TIA, with the goal of a fair and reasonable settlement for the change, and (4) report the results of the negotiations to the Contracting Officer, including recommendations for a fair and reasonable settlement that includes any schedule extensions for the change.

**OBO Response:** OBO would like to clarify and suggest that the recommendation reflect that OBO, in coordination with A/OPE/AQM, will evaluate and respond to the time impact analysis (TIA) prepared by the contractor, not perform a TIA. Also, it is A/OPE/AQM, in collaboration with OBO, that must conduct the four steps outlined in the second part of the recommendation. (Please see technical edits to the recommendation language at the end of this memo.) With that, OBO concurs with the recommendation. The Baseline Project Execution Schedule (MX60R2) referenced in the response to Recommendation 2 serves as the basis by which OBO evaluates and responds to the TIA prepared by the contractor. OBO and A/OPE/AQM will follow the steps outlined in the OIG's recommendation and work with the contractor to negotiate a fair and reasonable settlement for the schedule changes.

**Recommendation 4:** OIG recommends that the Bureau of Overseas Buildings Operations (OBO), in coordination with the Bureau of Administration, perform time impact analyses (TIA) for all outstanding request for proposals to the New Embassy Compound Mexico City, Mexico, project when preparing an independent government cost estimate. In accordance with the Federal Acquisition Regulation and Department of State policy, OBO must (1) prepare a prenegotiation memorandum and a findings of fact that include TIAs, (2) issue a decision on the prenegotiation memorandum, (3) proceed with negotiations, including discussion of the TIAs, with the goal of a fair and reasonable settlement for the change, and (4) report the results of the negotiations to the Contracting Officer, including recommendations for a fair and reasonable settlement that includes any schedule extensions for the change.

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**OBO Response: OBO would like to clarify and suggest that the recommendation reflect that OBO, in coordination with A/OPE/AQM, will evaluate and accept the time impact analyses (TIA) prepared by the contractor, not perform a TIA. Also, it is A/OPE/AQM, in collaboration with OBO, that must conduct the four steps outlined in the second part of the recommendation. (Please see technical edits to the recommendation language at the end of this memo.) With that, OBO concurs with the recommendation. The Baseline Project Execution Schedule (MX60R2) referenced in Recommendations 2 and 3 serves as the basis by which OBO evaluates and responds to the TIAs prepared by the contractor. OBO and A/OPE/AQM will follow the steps outlined in the OIG's recommendation and work with the contractor to reconcile contract changes for a fair and reasonable settlement.**

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Technical Corrections to Recommendation language:

- **Current language in draft report:**  
**Recommendation 3:** OIG recommends that the Bureau of Overseas Buildings Operations (OBO), in coordination with the Bureau of Administration, perform a time impact analysis (TIA) for the unilateral modification P00066 to the New Embassy Compound Mexico City, Mexico, project to evaluate the modification's impact on the completion of the project. In accordance with the Federal Acquisition Regulation and Department of State policy, OBO must (1) prepare a prenegotiation memorandum and a findings of fact that include a TIA, (2) issue a decision on the prenegotiation memorandum, (3) proceed with negotiations, including discussion of the TIA, with the goal of a fair and reasonable settlement for the change, and (4) report the results of the negotiations to the Contracting Officer, including recommendations for a fair and reasonable settlement that includes any schedule extensions for the change.
- **OBO and AQM request the following updates:**  
**"Recommendation 3:** OIG recommends that the Bureau of Overseas Buildings Operations (OBO), in coordination with the Bureau of Administration, **evaluate and respond to the time impact analysis (TIA) prepared by the contractor** for the unilateral modification P00066 to the New Embassy Compound Mexico City, Mexico, project to evaluate the modification's impact on the completion of the project. In accordance with the Federal Acquisition Regulation and Department of State policy, **the Bureau of Administration (A/OPE/AQM), in collaboration with OBO,** must (1)..."
- **Current language in draft report:**  
**Recommendation 4:** OIG recommends that the Bureau of Overseas Buildings Operations (OBO), in coordination with the Bureau of Administration, perform time impact analyses (TIA) for all outstanding request for proposals to the New Embassy Compound Mexico City, Mexico, project when preparing an independent government cost estimate. In accordance with the Federal Acquisition Regulation and Department of State policy, OBO must (1) prepare a prenegotiation memorandum and a

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findings of fact that include TIAs, (2) issue a decision on the prenegotiation memorandum, (3) proceed with negotiations, including discussion of the TIAs, with the goal of a fair and reasonable settlement for the change, and (4) report the results of the negotiations to the Contracting Officer, including recommendations for a fair and reasonable settlement that includes any schedule extensions for the change.

- **OBO and AQM request the following updates:**  
**“Recommendation 4:** OIG recommends that the Bureau of Overseas Buildings Operations (OBO), in coordination with the Bureau of Administration, **evaluate and respond to the time impact analyses (TIAs) prepared by the contractor** for all outstanding **requests for proposal** to the New Embassy Compound Mexico City, Mexico, project when preparing an independent government cost estimate. In accordance with the Federal Acquisition Regulation and Department of State policy, **the Bureau of Administration (A/OPE/AQM), in collaboration with OBO,** must (1)...”

Other Technical Corrections:

- Page 1:
  - For the introductory sentence, please add the bolded text: “As the overseas real property manager for the Department of State (Department), the Bureau of Overseas Buildings Operations (OBO) has the lead role in acquiring, designing, building, **operating** and maintaining Department facilities worldwide.”
  - In the first paragraph, “However, in June 2022, OBO reported that the ~~actual~~ **estimated** substantial completion date could be as late as May 2024,” please replace “actual” with “estimated.” OBO requests that this correction also be made also on page 2.
  - For the sentence, “In addition, OIG found that the Department issued unilateral modification for the solar photovoltaic system construction improvements (P00066) without conducting a time impact analysis (TIA) to determine whether a schedule extension was justified.”
    - OBO recommends this be adjusted to “...without **evaluating and responding to the time impact analysis (TIA) performed**

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**by the contractor** to determine whether a schedule extension was justified.”

- For the sentence, “In response, the Department issued a unilateral contract modification without conducting a TIA to determine whether a time extension was justified.”
  - Please adjust to “...the Department issued a unilateral contract modification without **evaluating and responding to the** TIA performed by the contractor to determine...”
- Page 7: For, “In response, the Department issued a unilateral contract modification without conducting a TIA to determine whether a time...”
  - Please adjust to “... issued a unilateral contract modification without **evaluating and responding to the** TIA **performed by the contractor** to determine whether a time...”
- Page 8: For, “OIG found that OBO and AQM did not conduct a TIA for the NEC Mexico City project as part of the independent government cost estimating process or unilateral contract modification.”
  - Please adjust to, “OIG found that OBO and AQM did not **evaluate and respond to the** TIA **performed by the contractor**...”

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## ABBREVIATIONS

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AQM	Office of Acquisitions Management
CLIN	contract line item number
CO	Contracting Officer
FAR	Federal Acquisition Regulation
NEC	New Embassy Compound
OBO	Bureau of Overseas Buildings Operations
OIG	Office of Inspector General
PES	Project Execution Schedule
RFP	request for proposal
TIA	time impact analysis

## OIG AUDIT TEAM MEMBERS

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