



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

Audit of the Calexico West Land Port of Entry Expansion and Modernization Project

Report Number A210070/P/9/R23006
March 2, 2023

Executive Summary

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Why We Performed This Audit

This audit was included in our *Fiscal Year 2021 Audit Plan*. Since Fiscal Year 2007, the GSA Public Buildings Service's Pacific Rim Region (PBS) has received \$416 million for design, construction, and construction management for the Calexico West Land Port of Entry (LPOE) expansion and modernization project.

Our objective was to determine whether PBS's planning, award, administration, and close out of construction contracts related to the expansion and modernization of the Calexico West LPOE were in accordance with the Federal Acquisition Regulation, the General Services Administration Acquisition Manual, and PBS's pricing policy and facilities standards.

What We Found

PBS did not effectively award and administer contracts for Phase 1 and Phase 2A of the Calexico West LPOE expansion and modernization project. We found multiple deficiencies in PBS's oversight of the contracts for the project that affected project security, compliance with applicable laws and regulations, and safety.

We found that:

1. Security at the Calexico West LPOE project is compromised by inconsistent requirements and inadequate enforcement.
2. PBS did not oversee the acquisition activities performed by the construction manager.
3. PBS contract modifications lack essential documents, including support for price reasonableness determinations and regional business clearance reviews.
4. Oversight of contractor compliance with labor standards requirements is inadequate to ensure PBS responsibilities are met.
5. PBS violated federal acquisition procedures and competition requirements by awarding a soil analysis contract without seeking multiple offers and reviewing qualifications.
6. PBS did not ensure that contractors completed required safety orientation training before working onsite, creating the potential for safety incidents.

What We Recommend

We recommend that the PBS Regional Commissioner for the Pacific Rim Region:

1. Review the contracts and site security procedures for the Calexico West LPOE project and modify contracts and site security procedures that contain inconsistent or contradictory security requirements.
2. Perform an internal review to identify all contractors for the Calexico West LPOE project who did not undergo HSPD-12 processing and submit all identified personnel, including the 41 identified during this audit, for HSPD-12 processing.¹ In addition, review the access rights for the eight contractors with criminal histories identified during this audit and take appropriate corrective action.
3. Verify all contract employees working on the Calexico West LPOE project pass initial HSPD-12 screening, as well as the U.S. Customs and Border Protection Quick Check screening, if applicable, before working on the project.
4. Ensure that contractors are not performing inherently governmental functions.
5. Implement controls to carefully monitor contractors performing acquisition activities that are closely associated with inherently governmental functions.
6. Develop and implement effective controls to ensure contracting officers have performed all acquisition activities necessary to determine fair and reasonable pricing, establish the contractors' technical abilities, and authorize funding when awarding contract modifications.
7. Require that PBS officials perform an adequate number of labor standards interviews for the Calexico West LPOE project. In addition, review and validate all labor standards interviews with available data, including payroll, to ensure contractors comply with labor standards requirements.
8. Ensure all contractors working at the Calexico West LPOE are paid prevailing wages and their corresponding benefits.
9. Ensure all awards below the simplified acquisition threshold comply with Federal Acquisition Regulation simplified acquisition procedures.
10. Implement controls to ensure all contract employees complete required safety orientation training before accessing the Calexico West LPOE site.

The PBS Regional Commissioner agreed with our recommendations and provided comments for clarification and additional context. These comments did not affect our findings and conclusions. GSA's written comments are included in their entirety in **Appendix B**.

¹ HSPD-12 stands for the 2004 Homeland Security Presidential Directive 12, *Policy for a Common Identification Standard for Federal Employees and Contractors*.

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Introduction

We performed an audit of the GSA Public Buildings Service Pacific Rim Region's (PBS's) award and administration of contracts related to the expansion and modernization of the Calexico West Land Port of Entry (LPOE).

Purpose

This audit was included in our *Fiscal Year 2021 Audit Plan*. Since Fiscal Year (FY) 2007, PBS has received \$416 million for design, construction, and construction management for the Calexico West LPOE expansion and modernization project.

Objective

Our objective was to determine whether PBS's planning, award, administration, and close out of construction contracts related to the expansion and modernization of the Calexico West LPOE were in accordance with the Federal Acquisition Regulation (FAR), the General Services Administration Acquisition Manual (GSAM), and PBS's pricing policy and facilities standards.

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

Background

The Calexico West LPOE is located in Calexico, California, along the border with Mexico. It processes non-commercial traffic, including over 4.6 million northbound vehicles and 4 million pedestrians annually.² Due to its critical mission and potential threats of terrorism attack and narcotics trafficking, the port is rated a Facility Security Level 4 building out of 5 security levels by the U.S. Department of Homeland Security's (DHS's) Federal Protective Service.

In July 2006, PBS determined that the Calexico West LPOE, which was built in 1974, could no longer accommodate traffic loads or meet the security requirements of DHS's U.S. Customs and Border Protection (CBP). To increase vehicle and pedestrian capacity and support DHS's ability to conduct its rapidly changing mission, PBS is expanding and modernizing the port. The expansion project includes new pedestrian and privately owned vehicle (POV) inspection facilities, new operations and administration buildings, and 300 staff parking spaces. PBS estimated total project costs will be \$416 million.

As shown in *Figure 1* on the next page, PBS split project construction across two phases, the second of which was further split into two sub-phases.

² Commercial traffic is processed through the Calexico East LPOE.

Figure 1 – Calexico West LPOE Project Phases

Phase and Status	Requirements
Phase 1 – Completed in September 2018	<ul style="list-style-type: none"> • Relocating vehicular inspection away from pedestrian processing • Adding 3 southbound and 10 primary northbound POV inspection lanes, along with inspection booths and equipment • Adding a secondary vehicle inspection area for northbound traffic • Demolishing the old commercial building • Construction of a new operations building
Phase 2A – In Process; Estimated Completion in Spring 2023	<ul style="list-style-type: none"> • Construction of a new administration building and employee parking structure • Expansion of primary and secondary POV inspection canopies • Addition of six northbound and five southbound POV inspection lanes and booths, along with a pre-primary northbound POV inspection canopy
Phase 2B – Not Started; To be funded using \$103.4 million PBS received through the Infrastructure Investment and Jobs Act	<ul style="list-style-type: none"> • Demolition of the existing pedestrian inspection building • Construction of a temporary pedestrian inspection building • Construction of a permanent pedestrian inspection facility with increased processing capacity

To accomplish our audit objective, our focus was on PBS’s planning, award, administration, and close out of its construction and construction management contracts for Phase 1. We also examined the design services and soil analysis contracts for Phase 1 and Phase 2A. In addition, we looked at PBS’s enforcement of FAR and GSAM security and safety requirements and compliance with labor laws for Phase 2A.

Contracts and Project Funding

Figure 2 on the next page presents a summary of funding and awarded contracts for the Calexico West LPOE project.

Figure 2 – Calexico West LPOE Project Funding and Awarded Contracts

Fiscal Year	Funding Amount	Type of Funding	Contracts Awarded	Award Amount
FY 2007	\$14.4 million	Site Acquisition and Design	Design services	\$10,998,147
			Soil analysis	\$68,500
FY 2010	\$9.4 million	Site Acquisition and Design	Construction management	\$536,169
FY 2015	\$98 million	Construction (Phase 1)	Construction	\$77,976,000
FY 2019	\$191 million	Construction (Phase 2A)	Construction	\$898,000
			Construction management	\$3,698,075
FY 2022	\$103.4 million	Construction (Phase 2B)	Contracts not yet awarded	

As shown above, PBS issued contracts for design services, soil analysis, construction, and construction management. The construction manager is responsible for providing necessary support services to ensure the quality of the work during design and construction stages of the project. These services include:

- Reviewing, monitoring, and ensuring contractors comply with GSA’s security clearance procedures;
- Reviewing architectural design documents;
- Evaluating and developing cost estimates for proposed contract modifications;
- Performing inspections to assist PBS in overseeing the day-to-day activities of the construction contractor;
- Reviewing, monitoring, and ensuring compliance with the safety program developed by the construction contractor; and
- Interviewing contractors to verify proper classification and rates of pay and assisting in the enforcement of labor standards.

While the construction manager has a significant role in the day-to-day management of the project, PBS remains responsible for ensuring the project is completed in accordance with applicable requirements. To that end, PBS is responsible for oversight of the construction manager by performing the following actions:

- Directing work performed by the construction manager;
- Approving the construction manager’s recommendations and evaluations; and
- Administering the construction manager contract and ensuring contract terms and conditions are followed.

Project Security Requirements

Because the Calexico West LPOE is a Level 4 security facility, contractors and subcontractors must comply with the 2004 Homeland Security Presidential Directive 12, *Policy for a Common Identification Standard for Federal Employees and Contractors* (HSPD-12), to prevent security breaches and potential terrorist attacks.

The U.S. government created the HSPD-12, which requires implementation of a mandatory standardized badging process, to enhance security and reduce identity fraud for federal employees and contractors who access secure federal buildings. In addition to HSPD-12, contractors must pass a CBP Security Clearance check, known as CBP Quick Check, prior to accessing the Calexico West LPOE facility.

Results

PBS did not effectively award and administer contracts for Phase 1 and Phase 2A of the Calexico West LPOE expansion and modernization project. We found multiple deficiencies in PBS's oversight of the contracts for the project that affected project security, compliance with applicable laws and regulations, and safety.

We found that:

1. Security at the Calexico West LPOE project is compromised by inconsistent requirements and inadequate enforcement.
2. PBS did not oversee the acquisition activities performed by the construction manager.
3. PBS contract modifications lack essential documents, including support for price reasonableness determinations and regional business clearance reviews.
4. Oversight of contractor compliance with labor standards requirements is inadequate to ensure PBS responsibilities are met.
5. PBS violated federal acquisition procedures and competition requirements by awarding a soil analysis contract without seeking multiple offers and reviewing qualifications.
6. PBS did not ensure that contractors completed required safety orientation training before working onsite, creating the potential for safety incidents.

Finding 1 – Security at the Calexico West LPOE project is compromised by inconsistent requirements and inadequate enforcement.

A basic premise of project security is to limit access to the project site to contractor personnel who have been vetted and provided with proper identification. PBS is responsible for ensuring that contract employees assigned to work on the Calexico West LPOE project receive background checks and are provided with identification to access the project site. However, we found that PBS's security requirements for the project were inconsistent and contradictory. We also found that PBS's enforcement of site security requirements was inadequate for Phase 2A of the project. As a result, 95 contract employees who did not clear background checks were allowed to work on the project, including 8 with criminal records. Taken together, these deficiencies compromised project security.

HSPD-12 and Personal Identity Verification Card Requirements

HSPD-12, the FAR, and GSA policy establish the basic security requirements for the Calexico West LPOE project. These requirements focus on providing personal identity verification (PIV) cards to individuals with access to federal facilities after a complete background investigation in accordance with HSPD-12.

HSPD-12 mandated the development and implementation of a government-wide standard for secure and reliable forms of identification for federal and contract employees. In response to

the HSPD-12 requirement, the U.S. Department of Commerce's National Institute of Standards and Technology established standards for implementing PIV cards in Federal Information Processing Standards Publication 201-3, *Personal Identity Verification (PIV) of Federal Employees and Contractors*. Among other things, Federal Information Processing Standards Publication 201-3 requires that federal agencies complete a background investigation prior to issuing a PIV card to an employee or contractor.

Additionally, the FAR extends the HSPD-12 requirement to contractor personnel with access to federal facilities. FAR 4.13, *Personal Identity Verification*, requires contracting officers to incorporate FAR 52.204-9, *Personal Identity Verification of Contractor Personnel*, in contracts that require contractor personnel to have routine physical access to a federally controlled facility. This clause requires contractors to:

Comply with agency personal identity verification procedures identified in the contract that implement [HSPD-12], Office of Management and Budget (OMB) guidance M-05-24 and Federal Information Processing Standards Publication (FIPS PUB) Number 201.

GSA Order ADM 2181.1 further requires issuance of access cards to individuals who require routine access to GSA facilities and prescribes that recipients must pass an initial fitness determination followed by a more thorough background investigation.³

Collectively, these requirements are designed to protect federal facilities and tenants from security threats. Compliance with these requirements is especially important for very high-risk, Level 4 security facilities, like the Calexico West LPOE. As described below, PBS failed to develop effective security procedures and provide adequate enforcement.

Inconsistent and Contradictory Security Requirements

PBS's security requirements outlined in its contracts and site security procedures are inconsistent and contradictory. While certain project documents differentiate between security requirements for unoccupied and occupied parts of the project, others do not.

For example, the project security provisions established in PBS's contract with the construction management firm responsible for administering the background checks for contractor employees states that:

Portions of this project will be subject to requirements of [HSPD-12] ... Areas of work where not occupied by tenants will not be subject to HSPD-12, conversely occupied areas will be subject to this requirement.

³ *Homeland Security Presidential Directive-12 Personal Identity Verification and Credentialing Policy, and Background Investigations for Contractor Employees*, March 18, 2020.

According to these requirements, only those contractors who work in the occupied sections of the project would require background checks necessary to obtain their HSPD-12 clearances. However, later in the same section of the contract, PBS included language that suggests the HSPD-12 requirements applied to all contractors, regardless of where they worked, providing that:

This project requires that all consultants, contractors and persons working on these projects have background checks performed, which includes the submittal and review of personal information such as Social Security number, work history, past addresses, arrests and convictions, etc. Photographs and fingerprints are also required.

Further, Calexico West LPOE's *Guidelines for All Contractor Employees Security Background Check*, which PBS cited as the prevailing security requirements for the Calexico West LPOE project, included similar inconsistencies. The guidelines initially state that:

All Construction Contractor Personnel ... working under [the contract] will be required to undergo two (2) forms of Security Background Checks, [CBP Quick Check] and GSA HSPD-12.⁴

Later in the guidelines, PBS again makes a distinction between security requirements for occupied and unoccupied portions of the project, providing that "Contractor and Subcontractor personnel working in occupied areas will be required to undergo the HSPD-12 Security Clearance."

Notwithstanding these inconsistent and contradictory security requirements, the contracting officer's representative (COR) told us that he was not aware of PBS instructions or guidance that explain what is an occupied area versus an unoccupied area. Citing numerous GSA and PBS requirements, he added that "these ... guidelines do not cover contractor access to occupied and unoccupied areas," but instead address "access to a GSA-Controlled facility." Without a way of tracking who is hired to work in specific locations, PBS is unable to determine who should or should not receive HSPD-12 clearance. Therefore, we conclude that PBS project staff operate under the assumption that all contractor personnel are required to have HSPD-12 clearance, regardless of whether the work area is occupied or unoccupied.

Inadequate Enforcement of Security Requirements

PBS's enforcement of security requirements is inadequate. Specifically, we found that PBS did not screen construction personnel prior to their work on the project and did not deny site access to those who did not pass screening.

⁴ CBP Quick Check is an additional review requested and performed by CBP for site access.

We reviewed 130 contractor records as of May 2022 and found the following:

- 95 of the 130 contractors did not pass the required initial HSPD-12 screening before accessing the site.
 - 41 of the 95 contractors were never submitted for HSPD-12 screening.
 - We searched the National Crime Information Center database for 19 of these contractor employees and found that 8 had a criminal record.⁵
 - Searches could not be completed for the remaining 22 contractor employees because sufficient information was not available for these employees.
- 2 of the 130 contractors did not pass CBP Quick Check screening, but were still allowed site access.

PBS's COR told us that it was the construction manager's responsibility to ensure that contractor personnel were screened and complied with security requirements. However, PBS has overall responsibility for security and must perform adequate oversight of the construction manager to ensure that security requirements are followed.

Accordingly, PBS should review its security procedures at Calexico West LPOE to ensure compliance with federal and GSA policy for proper screening of contractors and modify procedures that contain inconsistent or contradictory security requirements. Also, PBS should verify that all contract employees working on this project pass initial HSPD-12 screening and CBP Quick Check screening, if applicable, before working on the project. Furthermore, PBS should identify all project contractors who did not undergo HSPD-12 processing and submit all identified personnel for processing. Lastly, PBS should review access rights for the individuals with criminal histories identified during this audit and take appropriate corrective action.

Finding 2 – PBS did not oversee the acquisition activities performed by the construction manager.

OMB's Office of Federal Procurement Policy Letter 11-01, *Performance of Inherently Governmental and Critical Functions* (OMB Policy) requires that agencies carefully oversee contractors who perform activities closely associated with inherently governmental functions.

As defined under the OMB Policy, these activities include acquisition support, such as preparing cost estimates and performing technical analyses of contractor proposals. The OMB Policy also lists the drafting of price negotiation memorandums as an acquisition support activity. Price negotiation memorandums are required under the FAR to document the proposal, negotiation objectives, results of negotiation, and determination of fair and reasonable pricing.⁶

⁵ The National Crime Information Center database uses data compiled by the Federal Bureau of Investigation; federal, state, local, and foreign criminal justice agencies; and authorized courts.

⁶ FAR 15.406-3, *Documenting the negotiation*.

If contractors are authorized to perform these functions, OMB Policy requires agencies to:

Provide greater attention and an enhanced degree of management oversight ... to ensure that contractors' duties do not expand to include performance of inherently governmental functions.

However, PBS did not oversee acquisition activities that were performed by the construction manager for Phase 1 of the Callexico West LPOE project. As described below, we found that PBS did not review or approve the independent government cost estimates (IGEs), technical analyses, and price negotiation memorandums prepared by the construction manager.

- **IGEs** – An IGE is the government's best estimate of a contract's potential cost and is a key means of determining whether pricing is fair and reasonable. For the Callexico West LPOE project, PBS contracting officers awarded 53 construction contract modifications totaling \$14.2 million. PBS contracting officers awarded 50 construction contract modifications based on IGEs that were developed by construction managers. However, the IGEs were not reviewed or approved by PBS personnel; as a result, PBS cannot ensure the modifications were reasonably priced.
- **Technical Analyses** – PBS contracting officers awarded four construction contract modifications totaling \$1.7 million based on technical analyses performed by the construction manager without PBS's review and approval. As a result, PBS cannot ensure that the proposed modifications met PBS's requirements.
- **Price Negotiation Memorandums** – PBS contracting officers awarded two construction contract modifications totaling \$963,000 using price negotiation memorandums prepared by the construction manager. Although the OMB Policy provides that contractors can prepare price negotiation memorandums, the document must be reviewed and approved by the contracting officer. The contracting officer neither reviewed nor approved the price negotiation memorandums prepared by the construction manager for these modifications. As a result, PBS cannot ensure that it achieved its negotiation objectives and awarded fair and reasonable prices.

Our office previously reported similar deficiencies in PBS's oversight of construction managers in our *Audit of the GSA Public Building Service's Use of Construction Management Services*.⁷ In that report, we found that PBS: (1) allowed construction managers to perform inherently governmental functions, (2) gave construction managers access to sensitive information, and (3) contracted for construction managers to perform prohibited services. Also, in an August

⁷ Report Number A150028/P/4/R20009, September 4, 2020.

2022 memorandum, our office noted that PBS faces challenges in providing effective oversight of construction managers when using funds from the Infrastructure Investment and Jobs Act.⁸

Due to losses in project management staff, PBS has been forced to rely on construction managers to support its construction projects. As it relies more on these contractors, PBS should assess whether it has effective controls to oversee construction managers and ensure they are not performing inherently governmental functions.

Finding 3 – PBS contract modifications lack essential documents, including support for price reasonableness determinations and regional business clearance reviews.

Some contract modifications that were awarded during Phase 1 of the Calexico West LPOE project are missing essential documents, including statements of work (SOWs), IGEs, and technical analyses. These documents are needed to describe the work being procured, support price reasonableness determinations, evaluate the proposal, and provide evidence of the regional business clearance review.

During Phase 1, PBS awarded 221 design and construction modifications totaling \$23.7 million. We sampled 74 of these contract modifications, totaling \$17.6 million, as follows:

- **Design Services** – We tested 21 design contract modifications totaling \$3.4 million. Our sample represented 81 percent of the dollar value of modifications awarded for design services.
- **Construction Services** – We tested 53 construction contract modifications totaling \$14.2 million. Our sample represented 73 percent of the dollar value of the modifications awarded for construction services.

Based on our testing of this sample, we found that some contract modifications lack completed SOWs, IGEs, technical analyses, and internal reviews necessary to support price reasonableness determinations and decision-making. The missing documentation is described below:

- **SOWs** – Contracting officers must develop SOWs to establish the government’s specific needs and requirements under FAR 11.002, *Policy*. Without developing a well-defined SOW, the government is not specifying its requirements to the contractor. We found that PBS did not include SOWs on two construction contract modifications totaling \$299,000.
- **IGEs** – IGEs are required under FAR 36.203, *Government estimate of construction costs*, to evaluate proposed costs and determine cost reasonableness for each contract

⁸ GSA’s Public Buildings Service Faces Challenges in Using Funds Received under the Infrastructure Investment and Jobs Act (Memorandum Number A220036-2, August 11, 2022).

modification that exceeds the simplified acquisition threshold.⁹ Contracting officers use IGEs to estimate associated project costs. Without an IGE, the government may award modifications at prices that are not fair and reasonable. We found that PBS did not prepare IGEs for four design contract modifications totaling \$188,000.

- **Technical Analyses** – FAR 15.404-1(e), *Technical analysis*, requires a technical analysis, performed by a person with relevant knowledge and experience, of the proposed materials, labor, prices, and other factors to determine the need of the proposed labor and supplies. However, we found that PBS did not include technical analyses on 13 contract modifications for design and construction services totaling \$3 million.
- **Business Clearance Reviews** – PBS policy requires senior management to validate the purpose, cost, and schedule of proposed contract modifications exceeding \$150,000. Contract modifications awarded without a business clearance review by senior management may be unnecessary, overpriced, or cause significant project delays. We found that PBS did not perform business clearance reviews for five construction contract modifications totaling \$1.9 million.

PBS officials told us they could not find the missing documents for the sampled design and construction modifications, noting only that the construction contract was “fairly old” and not maintained in an electronic format. However, FAR 4.805, *Storage, handling, and contract files*, requires agencies to retain contract files for 6 years from date of final payment. PBS awarded all sampled modifications for the Calexico West LPOE construction contract that did not have SOWs, IGEs, and technical analyses within the last 6 years.

PBS did not administer its design and construction contracts adequately when it awarded modifications totaling \$6 million without all required actions. To address these deficiencies, PBS should develop procedures to ensure contracting officers perform all tasks and document all information needed to determine fair and reasonable pricing, establish the contractors’ technical abilities, and validate the purpose when awarding contract modifications.

Finding 4 – Oversight of contractor compliance with labor standards requirements is inadequate to ensure PBS responsibilities are met.

The construction contract for the Calexico West LPOE project requires the construction contractor to comply with the Davis-Bacon Act.¹⁰ Under the provisions of this act, contractors and subcontractors must pay workers employed under a covered contract no less than the local

⁹ FAR 2.1, *Definitions*, defines the simplified acquisition threshold during Phase 1 of the project as \$150,000.

¹⁰ Public Law 107-217, August 21, 2002 [as amended].

prevailing wages and fringe benefits for corresponding work on similar projects in the area.¹¹ To ensure compliance, FAR 22.406-7, *Compliance checking*, requires contracting officers to perform labor standards compliance checks, which include labor standards interviews and payroll reviews.¹²

For Phase 2A of the Calexico West LPOE project, the contracting officer delegated this responsibility to the COR assigned to the project. The COR Appointment Letter specifically states that PBS's COR has a responsibility to monitor contract labor compliance by performing onsite interviews of contractors, verifying wage rates are posted, ensuring payrolls comply with the Davis-Bacon Act, and ensuring that labor standards interviews are performed and properly documented.

Subsequently, the PBS COR relied on the construction manager to perform the labor standards interviews and verification. As a result, PBS chose to fulfill its responsibility for ensuring that the construction contractor complied with the Davis-Bacon Act by relying on the construction manager.

We reviewed all 22 labor standards interview forms conducted by the construction management firm from 398 contractors who worked on Phase 2A of the project as of December 2021 and noted the following:

- 3 interview forms were blank on the section for contractors to report their hourly wage;
- 1 contractor was not compensated for working 1.5 hours of overtime;
- 16 interview forms were blank on the section pertaining to whether or not wage rate posters were displayed, and 1 interview form noted that no posters were displayed;
- 22 interview forms were not verified with payroll data; and
- 0 interview forms were signed off as reviewed.

In reviewing payroll data in conjunction with the labor standards interview documentation, we found one laborer who was interviewed but not included on the payroll records. The contractor confirmed this, but could not explain how a laborer working on the project was not on any of the payrolls.

The deficiencies found during our examination of labor standards interview documentation and payroll data indicate that PBS did not review any of the 22 labor standards interviews performed by the construction manager. Furthermore, PBS acknowledged that it relies heavily

¹¹ The Davis-Bacon Act, as amended, applies to contractors and subcontractors performing on federally funded or assisted contracts in excess of \$2,000 for the construction, alteration, or repair of public buildings or public works.

¹² Labor standards interviews are prescribed by GSA in accordance with FAR 53.222(g), *Application of labor laws to Government acquisitions*, and are documented on Standard Form 1445, *Labor Standards Interview*.

on the construction manager to see that labor payrolls comply with U.S. Department of Labor requirements, and that the construction manager may not be performing enough interviews to assess compliance with these requirements. However, FAR 22.406-7 provides that PBS is ultimately responsible for ensuring that the construction contractor complies with these requirements.

In accordance with its responsibilities under the FAR, PBS needs to ensure that contractors comply with Davis-Bacon Act requirements. Accordingly, PBS should ensure enough labor standards interviews are performed to obtain sufficient assurance that contractors comply with labor standards requirements. Furthermore, PBS should review and validate all labor standards interviews with available data, including payroll. Lastly, PBS should ensure that all Calexico West LPOE project contractors, including the 22 contractors interviewed by the construction manager, are paid prevailing wages and corresponding benefits.

Finding 5 – PBS violated federal acquisition procedures and competition requirements by awarding a soil analysis contract without seeking multiple offers and reviewing qualifications.

PBS violated FAR procedures and competition requirements by making a direct award for a soil analysis contract for Phase 1 of the Calexico West LPOE project without soliciting multiple offers and reviewing the consultant’s qualifications.

In its response to PBS’s solicitation for design services on the Calexico West LPOE project, the design services contractor included another firm as its soil analysis consultant. However, PBS later decided to award the soil analysis contract separately from the design services contract. PBS then awarded the soil analysis contract directly to the soil analysis consultant for \$68,500.

Based on the award amount, the procurement fell under the simplified acquisition procedures for FAR 36.6, *Architect-Engineer Services*. When awarding a contract under the simplified acquisition threshold, FAR 36.602-3, *Evaluation board functions*, requires an evaluation board to review at least three qualified applicants interested in performing architectural or engineering work on a project to assess their qualifications.¹³ FAR 36.602-5, *Short selection process for contracts not to exceed the simplified acquisition threshold*, allows the evaluation board or its chair to review applicants and make a selection.

However, in our review of PBS’s contract files for the soil analysis contract, we found no documentation that showed PBS followed the FAR simplified acquisition procedures by seeking other offers. Awarding the contract to the soil analysis consultant without seeking competition was inappropriate and not in compliance with the FAR.

Further, we found no documentation to show that PBS independently evaluated the soil analysis consultant’s qualifications. PBS justified this award based on its determination that the

¹³ FAR 2.1, *Definitions*, defines architect-engineer services to include other professional services of an architectural or engineering nature, such as studies, tests, evaluations, and soils engineering.

design services contractor was the most highly qualified design team and therefore, PBS trusted the contractor's decision to use the soil analysis consultant.

PBS violated FAR acquisition procedures and competition requirements by making a direct award for a soil analysis contract without soliciting multiple offers and reviewing the consultant's qualifications. PBS should ensure all awards below the simplified acquisition threshold comply with FAR simplified acquisition procedures.

Finding 6 – PBS did not ensure that contractors completed required safety orientation training before working onsite, creating the potential for safety incidents.

PBS did not ensure that contractors working on Phase 2A of the Calexico West LPOE project completed required safety orientation training before working onsite, risking safety hazards at the construction site.

As part of the safety program developed in accordance with its contract, the construction contractor conducts safety orientation training. This training, which is required for all contractors and subcontractors working onsite, covers safety hazards associated with the project, the location of the medical emergency centers, how to work in the heat, important phone numbers, and any site-specific items related to each laborer's trade. The training is approximately 2 hours long and held multiple times throughout the week. The construction manager is responsible for monitoring contractor compliance with safety requirements and reporting deficiencies to the PBS contracting officer.

We reviewed the 22 labor standards interview forms for labor standards interviews conducted by the construction manager and found that two of the interviewed contractors did not complete the required safety orientation training before working onsite. Of these two contractors, one worked 41 days and another worked 85 days before completing the required safety orientation training.

The PBS COR acknowledged that some contractors did not complete the required safety training. The PBS COR stated that they are working to prevent this from occurring by requesting that the construction contractor and construction managers perform "spot checks" during safety orientation training to reinforce safety compliance. However, they did not specify what these spot checks would entail or how they would be effective to identify contractors who do not attend the training.

Maintaining safety during the expansion and modernization of the Calexico West LPOE is critical, as construction is ongoing while the port is processing pedestrian and vehicle traffic across the border. PBS must improve its oversight of the project's construction contractor and construction managers. It must also implement controls to ensure all contractors complete required safety orientation training before accessing LPOE sites.

Conclusion

PBS did not effectively award and administer its contracts for Phase 1 and Phase 2A of the Calexico West LPOE expansion and modernization project. We found multiple deficiencies in PBS's oversight of the contracts for the project that affected project security, compliance with applicable laws and regulations, and safety.

We found that:

1. Security at the Calexico West LPOE project is compromised by inconsistent requirements and inadequate enforcement.
2. PBS did not oversee the acquisition activities performed by the construction manager.
3. PBS contract modifications lack essential documents, including support for price reasonableness determinations and regional business clearance reviews.
4. Oversight of contractor compliance with labor standards requirements is inadequate to ensure PBS responsibilities are met.
5. PBS violated federal acquisition procedures and competition requirements by awarding a soil analysis contract without seeking multiple offers and reviewing qualifications.
6. PBS did not ensure that contractors completed required safety orientation training before working onsite, creating the potential for safety incidents.

PBS should correct these deficiencies as it completes ongoing LPOE expansion and modernization projects, including those funded by the Infrastructure Investment and Jobs Act. To that end, PBS should ensure that security procedures and site security enforcement for contractors are effective. PBS should also ensure that contracting officers properly award and administer contracts and provide adequate oversight of contractors who perform activities closely associated with inherently governmental functions. Additionally, PBS should ensure compliance with federal labor standards, simplified acquisition procedures, and project safety requirements.

Recommendations

We recommend that the PBS Regional Commissioner for the Pacific Rim Region:

1. Review the contracts and site security procedures for the Calexico West LPOE project and modify contracts and site security procedures that contain inconsistent or contradictory security requirements.
2. Perform an internal review to identify all contractors for the Calexico West LPOE project who did not undergo HSPD-12 processing and submit all identified personnel, including the 41 identified during this audit, for HSPD-12 processing. In addition, review the access rights for the eight contractors with criminal histories identified during this audit and take appropriate corrective action.

3. Verify all contract employees working on the Calexico West LPOE project pass initial HSPD-12 screening, as well as the U.S. Customs and Border Protection Quick Check screening, if applicable, before working on the project.
4. Ensure that contractors are not performing inherently governmental functions.
5. Implement controls to carefully monitor contractors performing acquisition activities that are closely associated with inherently governmental functions.
6. Develop and implement effective controls to ensure contracting officers have performed all acquisition activities necessary to determine fair and reasonable pricing, establish the contractors' technical abilities, and authorize funding when awarding contract modifications.
7. Require that PBS officials perform an adequate number of labor standards interviews for the Calexico West LPOE project. In addition, review and validate all labor standards interviews with available data, including payroll, to ensure contractors comply with labor standards requirements.
8. Ensure all contractors working at the Calexico West LPOE are paid prevailing wages and their corresponding benefits.
9. Ensure all awards below the simplified acquisition threshold comply with Federal Acquisition Regulation simplified acquisition procedures.
10. Implement controls to ensure all contract employees complete required safety orientation training before accessing the Calexico West LPOE site.

GSA Comments

The PBS Regional Commissioner agreed with our recommendations and provided comments for clarification and additional context. These comments did not affect our findings and conclusions. The PBS Regional Commissioner's comments are summarized below:

1. Addressing the scope of our audit, the PBS Regional Commissioner asserted that the Calexico West LPOE project included six contracts and hundreds of modifications and asserted that "the majority of the contracts and modifications ... were awarded and administered properly."
2. *Finding 1* – The PBS Regional Commissioner disagreed with our finding that security at the Calexico West LPOE was compromised by inconsistent requirements and inadequate enforcement. According to the PBS Regional Commissioner, "The project team followed the established fitness determination protocols for various categories of contractor personnel accessing the site." In particular, the PBS Regional Commissioner notes that the *GSA Contractor Fitness Determination Requesting Official (RO) Training Manual* is used for the project and "clearly identifies who shall obtain a PIV card."

The PBS Regional Commissioner asserted that this manual "does not require HSPD-12 fitness determinations in contractor controlled areas." Because "most areas under construction are solely controlled by the construction contractor," the PBS Regional

Commissioner concluded that our finding “is based on the erroneous assumption that all contractors on site must have a PIV card.”

3. *Finding 3* – The PBS Regional Commissioner agreed with our finding that the reviewed contract modifications lack essential documents but asserted that the report overstates the scope of the problem.
4. *Finding 6* – The PBS Regional Commissioner wrote that “As required by its contract with GSA, the construction contractor implemented a comprehensive safety program.” Under this program, “subcontractors were required to view the safety video.” The PBS Regional Commissioner asserted that “the vast majority” of subcontractors complied with this requirement.

GSA’s written comments are included in their entirety in **Appendix B**.

OIG Response

We address the PBS Regional Commissioner’s comments below:

1. Although the PBS Regional Commissioner asserted that “the majority” of contracts and modifications for the Calexico West LPOE project were awarded and administered properly, we found that PBS did not effectively award and administer its contracts for Phase 1 and Phase 2A of the project.
2. PBS neither discussed nor provided the *GSA Contractor Fitness Determination Requesting Official (RO) Training Manual* during our audit testing and subsequent exit conference. After reviewing PBS’s response to our draft report, we requested a copy of the manual and obtained a version that, according to PBS, was in effect when our audit ended on June 17, 2022. We subsequently asked the project team if they were familiar with the manual. They were not. Specifically, the contracting officer told us that they were not aware of the manual until we brought it to their attention on February 3, 2023. The COR told us that they did not obtain a copy of the manual until June 29, 2022—12 days after our audit ended. Accordingly, we conclude that the project team was unaware of the manual; and therefore, contrary to the PBS Regional Commissioner’s assertion, the project team was not complying with it.

Whether the project team complied with the manual or not has no bearing on *Finding 1* because the manual provides another example of inconsistent and contradictory project security requirements. The manual states that an HSPD-12 investigation is not required for “contractors working on new construction projects prior to occupancy and not yet considered to be substantially complete.”¹⁴ However, as described on pages 6-7 of our

¹⁴ We could not find language in the manual that supported the PBS Regional Commissioner’s assertion that the manual “does not require HSPD-12 fitness determinations in contractor controlled areas.”

report, we found that both the contract and PBS’s guidelines for background checks at the Calexico West LPOE project require that all contractors undergo HSPD-12 background checks.

Therefore, we reiterate that these inconsistent and contradictory requirements create confusion that undermines enforcement and compromises project security. Accordingly, we reaffirm our finding and conclusions.

3. We disagree with the PBS Regional Commissioner’s assertion that our report “overstates” the lack of essential documents described in *Finding 3*. While it is unclear what the PBS Regional Commissioner found to be overstated, we reaffirm the language in our report.

First, we clearly describe our sample in relation to the entire population of design and construction modifications for Phase 1 of the Calexico West LPOE project on page 10 of the report. We are also careful to describe that only “some” of the selected contract modifications lacked the essential documents. Second, we identify the missing documents as “essential” because they are so. The missing documents include SOWs, IGEs, and technical analyses, all of which are necessary to determine fair and reasonable pricing and establish the contractors’ technical abilities to perform the work.

4. While the PBS Regional Commissioner asserted that “the vast majority” of subcontractors met the requirement to view the project safety training video, all contractors and subcontractors working onsite were required to view this video. This training was designed to ensure that workers are aware of safety hazards associated with the project and any site-specific items related to each laborer’s trade. Accordingly, we are encouraged that the PBS Regional Commissioner will ensure that “appropriate steps” are taken to address our finding.

Audit Team

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

Hilda M. Garcia	Regional Inspector General for Auditing
Eric Madariaga	Audit Manager
Lily Mirsepassi	Auditor-In-Charge
Bozena Proskurowska	Auditor

Appendix A – Objective, Scope, and Methodology

Objective

Our objective was to determine whether PBS’s planning, award, administration, and close out of construction contracts related to the expansion and modernization of the Calexico West LPOE were in accordance with the FAR, the GSAM, and PBS’s pricing policy and facilities standards.

Scope and Methodology

To accomplish our objective, we reviewed construction management and construction contracts and associated modifications that were awarded for Phase 1 of the Calexico West LPOE expansion and modernization project. We also reviewed the design services and soil analysis contracts and associated modifications of the project. Our audit also included a review of labor, safety, and security standards that were required during Phase 2A. We conducted a site visit to the Calexico West LPOE from January 12–14, 2022.

To accomplish our objective, we:

- Reviewed design, construction management, construction, and soil analysis contract files and supporting documentation, including solicitations, technical evaluations, acquisition plans, prospectuses, and contract modifications;
- Reviewed three prior GSA Office of Inspector General audit reports that are relevant to the audit objective;
- Reviewed contractor and subcontractor payrolls for November and December 2021;
- Reviewed labor standards interviews for Calendar Years 2020 and 2021;
- Reviewed contractors’ and subcontractors’ completed safety orientation training records for June 2020 through December 2021;
- Reviewed the FAR, the GSAM, the OMB Policy, the PBS business clearance review process, the *GSA Personnel Security and Suitability Program Handbook*, DHS procedures for vetting contractors and HSPD-12 compliance, and the *Calexico West LPOE Project Security Clearance Procedures*;
- Communicated with officials from PBS’s Design and Construction Division, Acquisition Management Division, and Portfolio Management Division;
- Interviewed GSA’s Office of Mission Assurance team members; and
- Interviewed CBP and construction management officials involved with construction.

Sampling

In September 2015, PBS awarded Contract Number GS-09-P-15-KT-C-7008 for Phase 1 construction services on the Calxico West LPOE project for \$77,976,000. In addition, PBS awarded \$19,553,973 in contract modifications, resulting in a Phase 1 total obligated amount of \$97,529,973 for construction. We judgmentally selected all 55 modifications under this construction contract that were awarded for \$100,000 or more. Two of these modifications were unavailable, so we examined the remaining 53 modifications. These sampled modifications totaled \$14.2 million and represented 73 percent of the value of all Phase 1 construction modifications.

In September 2007, PBS awarded Contract Number GS-09P-06-KTC-3043 for architect-engineer design services on the Calxico West LPOE project for \$10,998,147. In addition, PBS awarded \$4,233,219 in contract modifications, resulting in a total obligated amount of \$15,231,366 for design services. We judgmentally selected all 21 modifications under this design contract that were awarded for \$40,000 or more. These sampled modifications totaled \$3.45 million and represented 81 percent of the value of all design modifications.

Our judgmental samples do not allow for projection to the population; however, they allowed us to sufficiently address our audit objective.

Internal Controls

We assessed internal controls significant within the context of our audit objective against GAO-14-704G, *Standards for Internal Control in the Federal Government*. The methodology above describes the scope of our assessment and the report findings include any internal control deficiencies we identified. Our assessment is not intended to provide assurance on GSA's internal control structure as a whole. GSA management is responsible for establishing and maintaining internal controls.

Compliance Statement

We conducted the audit between August 2021 and June 2022 in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objective.

Appendix B – GSA Comments

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GSA Public Buildings Service

January 10, 2023

MEMORANDUM FOR HILDA GARCIA
*REGIONAL INSPECTOR GENERAL FOR AUDITING
PACIFIC RIM REGION AUDIT OFFICE (JA-9)*

THROUGH: NINA ALBERT
COMMISSIONER
PUBLIC BUILDINGS SERVICE (P)

FROM: DAN R BROWN, REGIONAL COMMISSIONER,
PUBLIC BUILDINGS SERVICE (9P)

DocuSigned by:

A handwritten signature in blue ink, appearing to read "Dan R. Brown".

036100143896477

SUBJECT: Response to the Office of Inspector General Draft Audit Report, *Audit of the Calexico West Land Port of Entry Expansion and Modernization Project (Audit Number: A210070)*

The U.S. General Services Administration (GSA) Public Buildings Service (PBS) thanks you for the opportunity to comment on the subject draft audit report. We understand the purpose of the audit is to provide feedback on portions of the completed project and to promote continuous improvement on remaining portions of this project and future projects. In this spirit, PBS notes that the Calexico West Land Port of Entry (LPOE) Expansion and Modernization Project spans 15 plus years, over \$300 million, 6 contracts, and hundreds of contract modifications. The majority of the contracts and modifications for this complex, multi phase project were awarded and administered properly. The project remained on track despite the challenges associated with the COVID 19 pandemic. Notwithstanding the findings of this report, the project has been and continues to be a success for GSA, the U.S. Customs and Border Protection (CBP), and the surrounding community.

PBS agrees with the recommendations and is committed to continuous improvement. Phase 2A of the project, the subject of much of the report, will likely reach substantial completion before implementation of a Corrective Action Plan. For this reason, PBS will focus on Phase 2B, the final phase of the project, when addressing the recommendations.

The PBS Pacific Rim Region thoroughly reviewed the report's findings and offers the following clarifications and additional context.

Finding 1 - Finding 1 – Security at the Calexico West LPOE project is compromised by inconsistent requirements and inadequate enforcement.

The security at the Calexico West LPOE was not compromised by inconsistent requirements and inadequate enforcement. The project team followed the established fitness determination protocols for various categories of contractor personnel accessing the site, particularly the GSA Contractor Fitness Determination Requesting Official (RO) Training Manual that is used for the project that clearly identifies who shall obtain a PIV card. Of particular note, most areas under construction are solely controlled by the construction contractor. The RO manual does not require HSPD -12 fitness determinations in contractor controlled areas. The areas where contractor staff intersect with federally controlled areas of the site require HSPD-12 fitness determinations. The OIG Finding is based on the erroneous assumption that all contractors on site must have a PIV card. The project is in compliance with the applicable fitness determination requirements.

Finding 3 – PBS contract modifications lack essential documents, including support for price reasonableness determinations and regional business clearance reviews.

While this finding is accurate for the modifications reviewed, the draft audit report overstates the scope of the problem. Rather, a limited number of contract modification files omitted certain documents. PBS will assure that the oversight is corrected.

Finding 6 – PBS did not ensure that contractors completed required safety orientation training before working onsite, creating the potential for safety incidents.

PBS is always concerned about the safety of everyone working on its construction sites. As required by its contract with GSA, the construction contractor implemented a comprehensive safety program that resulted in only one minor accident in seven years. As part of that program, subcontractors were required to view the safety video. The vast majority did. The PBS team, along with the Construction Manager (CM), reviews all safety logs of who attends the briefings and compares this log with certified payroll records to ensure compliance with safety training. PBS will take appropriate steps to remind the general contractor of its responsibilities under the safety program.

If you have any questions, please contact Dan R. Brown, Regional Commissioner, Pacific Rim Region, at (253) 709-5086.

Appendix C – Report Distribution

GSA Administrator (A)

GSA Deputy Administrator (AD)

Commissioner (P)

Deputy Commissioner (PD)

Regional Commissioner (9P)

Deputy Regional Commissioner (9PD)

Chief of Staff (PB)

Deputy Chief of Staff (PB)

Assistant Commissioner for Strategy & Engagement (PS)

Chief Financial Officer (B)

Deputy Chief Financial Officer (B)

Office of Audit Management and Accountability (BA)

Assistant Inspector General for Auditing (JA)

Deputy Assistant Inspector General for Acquisition Program Audits (JA)

Deputy Assistant Inspector General for Real Property Audits (JA)

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