



# INSPECTOR GENERAL

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## **EVALUATION OF ASBESTOS ABATEMENT CONTRACT TERMS RELATED TO CAPITOL DOME RESTORATION PROJECT**

*OIG Report A-2017-03*

## MISSION

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

## VISION

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



# Results in Brief

## Asbestos Abatement Contract Terms Related to Capitol Dome Restoration Project

September 29, 2017

### Objective

Our initial objective was to determine whether construction costs were billed appropriately, properly supported, accurate and in accordance with Architect of the Capitol (AOC) orders, statutes, regulations and contract specifications. During our evaluation we noted a number of modifications related to the identification and abatement of asbestos, and modified our objective to: evaluate if proper procedures were followed in identifying and abating asbestos and if terms related to the contract modifications were followed.

### Finding

Overall, we concluded that AOC should improve its internal controls related to contractors. We had one finding related to the need for AOC to improve internal controls over the contractor working beyond Not to Exceed (NTE) authorization.

### Recommendation

We recommended action to improve processes, documentation, oversight, and controls over contract work limits.

Specifically, we recommended that AOC Planning and Project Management and Acquisition and Material Management Division improve internal controls for monitoring work to ensure proper notification of levels of effort when the contractor is under an NTE order. AOC provided us with their newly implemented Standard Operating Procedure (SOP 16-2) effective August 16, 2017 related to NTEs. SOP 16-2 requires Contracting Officers to include specific additional language in contracts that have lines with NTE amounts. We encourage AOC to actively monitor the results of the new controls to prevent future incidents of contractors exceeding NTE levels.

### Management Comments

AOC concurred with our finding and recommendation and provided comments.

AOC commented that while the contractors should not exceed an NTE authorized amount, the risk primary falls on the contractor when the NTE is exceeded. He further emphasized the tight time constraints of the asbestos abatement and that the volume of work outpaced the increase of the NTE levels.

We agree with AOC that the contractor is the entity primarily at risk in exceeding an NTE. However, it is imperative the government provide the resources for the contractor to complete its requirements, especially when the federal government has tight time constraints under which a contractor must operate. This duty includes modifying the contract in a timely manner to increase NTE levels.

AOC provided three technical comments. *Our responses are in italics.*

- 1) The recommendation should be directed at both Planning and Project Management (PPM) and Acquisition and Material Management Division (AMMD). *We adjusted our recommendation to include AMMD.*
- 2) Because the Dome project was extremely complex and challenging, contract management was accomplished by PPM staff with major support from other AOC staff and a contractor. *This review focused on the area in which the contractor CMS had administrative responsibilities related to the contract, as opposed to overall contract oversight.*
- 3) The name of the project was changed from Dome Rehabilitation to Dome Restoration prior to the start of construction. *We adjusted our report to reflect the project name change to Dome Restoration.*

## ***Recommendation Table***

<b>Management</b>	<b>Recommendation Requiring Comment</b>
1) Planning and Project Management 2) Acquisition and Material Management Division	Recommendation is closed



INSPECTOR GENERAL

DATE: September 29, 2017

TO: The Honorable Stephen T. Ayers, FAIA, LEED AP,  
Architect of the Capitol

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

SUBJECT: Evaluation of Asbestos Abatement Contract Terms Related  
to Capitol Dome Restoration Project, Office of  
Inspector General (OIG) Report -A-2017-03

This memorandum transmits the final OIG Evaluation Report A-2017-03, which includes a recommendation on improving internal controls related to Not-to-Exceed (NTE) amounts. The Architect of the Capitol (AOC) concurred with the recommendation.

We consider your implementation of Standard Operating Procedure 16-2 related to NTEs to be your completion of the required Notification of Final Action. Accordingly, you have completed all phases of the finding resolution process; we do not require any additional response. If you have questions or wish to discuss the report, please contact Ashton Coleman, Jr., Assistant Inspector General for Audits, at 202.593.0261 or [ashton.coleman@aoc.gov](mailto:ashton.coleman@aoc.gov).

Distribution List:

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# Introduction

## Objective

Our initial objective was to determine whether construction costs were billed appropriately, properly supported, accurate and in accordance with AOC orders, statutes, regulations and contract specifications. During our evaluation we noted a number of modifications totaling \$6.75 million related to the identification and abatement of asbestos, and modified our objective to: evaluate if proper procedures were followed in identifying and abating asbestos and if terms related to the contract modifications were followed.

## Background

The AOC awarded a firm fixed price multiyear contract to restore the Capitol Dome and Rotunda (Capital Dome Restoration Project). This was the first major restoration of the dome in more than 50 years. The project included repairing more than 1,000 cracks to the dome, restoration and replacement of cast iron and ornamentation, and paint removal and replacement. Requests for payment, according to the November 30, 2016 application for payment, totaled approximately \$78 million. The payment requests were for the contract base amount of approximately \$41 million, options totaling approximately \$24 million, and additional change orders of approximately \$13 million. The time period under review covered payment requests from 2013 through November 30, 2016.

The AOC's Planning and Project Management (PPM) contracted out the Construction Management Services (CMS) for the Dome Restoration Project. The CMS contract's extent of services includes but does not limit specific duties in the construction phase, commissioning, testing, claim, post construction and additional special services. The CMS responsibilities for the construction phase services specifically include "... monitoring project financial data and budgetary cost accounting (maintain spread sheets indicating project fund allowances, obligations, payments, balances, planned expenditures, etc.)...

The CMS has specific responsibilities in regards to the contractor's applications payment. CMS must, among other things, verify the percentage of satisfactory completion of work and the correct materials delivered to the site and/or stored off-site. The CMS contractor must conduct weekly (or as instructed by the Contracting Officer Technical Representative (COTR)) progress meetings and CMS must submit a recommendation concerning approval to the COTR within three calendar days of the date payment requests are received.

PPM shares with Acquisition and Material Management Division (AMMD) the responsibilities for contractor oversight. AMMD provides the contracting officers; PPM staff work closely with those contracting officers to manage contractors.

The contract included several modifications that totaled \$6.75 million for asbestos abatement. We focused our efforts to determine whether the original testing was sufficient and why 11 different modifications were needed for additional asbestos abatement. We reviewed the original asbestos testing and discussed the testing with the program manager. He stated the original testing was done on accessible portions of the dome and that, once work commenced and portions of the dome were opened, additional asbestos presence was noted. As more asbestos was exposed, the program manager worked with the contractors to establish additional modifications for abatement. He stated that the AOC originally attempted to get a firm fixed price contract for the newly identified asbestos abatement required, but the estimate came in close to \$11.3 million. The AOC decided to, in this instance, use time and materials modifications to effect the abatement, with the additional abatement total being \$6.75 million.

### *Management Comments on Background*

AOC stated our statement that PPM contracted out construction management services is misleading; that the Dome Restoration project construction management was led and supported by PPM personnel. PPM staff were supported by many other AOC organizational components and another contractor who provided construction administration services. AOC further stated that the decision to perform asbestos abatement work under a time and materials contract rather than a fixed price approach saved the government approximately \$4.5 million.

### *Our Response*

This report focused on areas where the CMS contractor had administrative responsibilities. Accordingly, we described the CMS duties and did not cover most other project management contributors. AOC's statement that conducting the asbestos abatement under a time and materials approach rather than a fixed price approach saved the government approximately \$4.5 million would only be accurate if they had originally budgeted for the fixed price contract. As they had not budgeted for the additional costs, AOC's records show unplanned expenditures \$6.75 million for asbestos abatement.

## Criteria

The main criteria we used to conduct this evaluation included:

- U.S. Capitol Dome Restoration Project Contract (AOC 13C2004), including modifications;
- AOC Contracting Manual (Order 34-1) contains “uniform policies for the acquisition of ... construction... and provides guidance to personnel in applying policies and procedures.”; and
- AOC Project Management Manual 28-9, dated December 2013, which includes the responsibilities of the COTR to process and approve all payment applications in accordance with the provisions in the Contract General Condition.

## Finding

### *Noncompliance with Contract Terms – “Not to Exceed Amount”*

During the period August through December 2014, we found instances where the contractor did not abide by the not to exceed (NTE) requirement. The contract included a \$2 million NTE for work relating to the asbestos abatement. The contractor, however, performed work that exceeded this amount. While within the total dollar amount allowed for the contract, the contractor did not adhere to the terms of the contract. The project team acknowledged this occurrence. AMMD and PPM have responsibilities to require and monitor the contractor’s adherence to NTE requirements.

## Recommendation

We recommend that PPM and AMMD improve internal controls for monitoring work to ensure proper notification of levels of effort when the contractor is under an NTE order. The AOC provided us with their newly implemented Standard Operating Procedure (SOP 16-2) effective August 16, 2017 related to NTEs. SOP 16-2 requires Contracting Officers to include specific additional language in contracts that have lines with NTE amounts. We encourage PPM to actively monitor the results of the new controls to prevent future incidents of contractors exceeding NTE levels.

## *Management Comments on Finding and Recommendation*

AOC concurred with our finding and recommendation, but stated the recommendation responsibility should be shared by both PPM and AMMD. AOC additionally commented that the contractor is the entity primarily at risk of not getting paid for work done when exceeding the NTE limits. The program was under tight time constraints and the volume of work outpaced the award of contract modifications to increase NTE levels.

## *Our Response*

We added AMMD to the recommendation to reflect the shared responsibilities between PPM and AMMD. We agree with AOC that the contractor is the entity primarily at risk in exceeding an NTE. However, it is imperative the government provide the resources for the contractor to complete its requirements, especially when the federal government has tight time constraints under which a contractor must operate. This duty includes modifying the contract in a timely manner to increase NTE levels.

# Appendix

## Scope and Methodology

We conducted this evaluation from August 2015 through September 2017 in accordance with Council of Inspectors General for Integrity and Efficiency Quality Standards for Inspection and Evaluation issued in January 2012. Those standards require that we conduct our operations in the most efficient and effective manner possible to enhance the credibility of the OIG. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our evaluation objectives.

Our initial focus was to determine whether the project team adequately reviewed contractor progress and payment requests for the period November 2013 through November 2016 totaling approximately \$78 million. During our evaluation we noted \$6.75 million in additional modifications for asbestos abatement and focused our evaluation on the contract line item that was associated with those modifications.

We examined contract specifications, AOC procedure manuals, and regulations, conducted interviews, and obtained documentary evidence when determining if AOC followed the requirements for asbestos identification and handling, and enforced applicable requirements listed in the contract modifications.

# Management Comments



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September 22, 2017

Mr. Christopher P. Failla  
AOC Inspector General  
Washington, DC 20515

Dear Mr. Failla:

I appreciate the opportunity to comment on your draft report on the Capitol Dome Rehabilitation Project (OIG-A-2017-03). The Architect of the Capitol (AOC) concurs with your finding and recommendation regarding the issuance of not-to-exceed (NTE) authorizations to contractors. As your report notes, the AOC issued a new policy addressing this issue on August 16, 2017. Contracting officer technical representatives (COTR) are made aware of their implementation responsibilities under this policy, and they are subject to annual audits of their performance.

While the AOC agrees that contractors should not exceed an NTE authorized amount, it is important to note that the risk is primarily on the contractor, not the government, when an NTE level is exceeded. That is, the contractor is at risk of not getting paid for work performed beyond the NTE limit. In the case of the Dome Restoration project, the asbestos abatement work had to be done under tight time constraints, and unfortunately, the sheer volume of work outpaced the award of contract modifications to increase the NTE levels for which sufficient funding was available. Moreover, from the beginning of the abatement effort, working together, the contracting officer and the COTR explicitly notified the contractor of its contractual obligation to limit the work done to the NTE level, monitored the value of the work performed to the extent possible under the circumstances, notified the contractor of concerns over its control of the work and precluded payment to the contractor for work done beyond the NTE level. Although the NTE level was continuously adjusted, the adjustments were not always sufficient to match the work pace. Equally important, the decision to perform the asbestos abatement work under a time and materials rather than a fixed price approach saved the government approximately \$4.5 million, even though it created a much greater administrative challenge for the AOC.

In addition to responding to your finding and recommendation, the AOC submits the following technical comments on the draft report.

1. Your recommendation to improve internal controls over NTEs is directed at Planning and Project Management (PPM), which does have a major role in overseeing contractor performance and payments, including contractor work being done under an NTE. However, PPM shares this responsibility with the Acquisition and Material Management Division (AMMD), which provides the contracting officers with whom PPM staff work closely to manage contractors. With respect to the Dome Restoration project, PPM's COTR did work closely with AMMD's contracting officer in monitoring NTEs, and such

collaboration will be necessary on other projects to effectively manage NTIs and achieve the intent of your recommendation.

2. Your draft report says that PPM contracted out the construction management services (CMS) for the project. This statement is misleading and does not properly reflect how construction was actually managed for the project. The Dome Restoration project was extremely complex and challenging, and could not have been completed safely and successfully without the combined efforts of many organizations. In this regard, full-time PPM staff led and supported the project's construction management. A contractor did support PPM staff in carrying out a number of important construction management functions, but this work did not supplant the critical role played by PPM staff assigned to the project. In addition, PPM staff were supported in managing the project by AOC staff from the Capitol Building jurisdiction and the Safety, Fire and Environmental Programs Division as well as two AMMD contracting officers, the U.S. Capitol Police and another contractor who provided construction administration services.
3. Although the project was referred to as the Dome Rehabilitation project during the design phase, it was retitled as the Dome Restoration project prior to the start of construction. This has been the correct project title through construction and during the period covered by your review.

I would be pleased to answer any questions you may have about the agency's comments.

Sincerely,



Stephen E. Ayers, FAIA, LEED AP  
Architect of the Capitol

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