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United States Government

# MEMORANDUM

DATE: March 30, 2023

TO: Chere Rexroat, RA  
Acting Architect of the Capitol

FROM: Christopher P. Failla, CIG   
Inspector General

SUBJECT: Review of the Architect of the Capitol's (AOC's) Multimillion-Dollar Construction Project Change Orders (Report No. OIG-AUD-2023-04)

The Office of the Inspector General (OIG) contracted with the independent audit and accounting firm Cotton & Company Assurance and Advisory, LLC, (Cotton) to review the AOC's construction change orders. The objective of the review was to determine whether the change orders for multimillion-dollar construction projects were reasonable, authorized, supported and complied with contract requirements. We determined that the change orders sampled generally met our objective; however, we noted instances of (1) proposals containing duplicative costs, (2) potentially improper use of government funds, (3) incorrectly applied markups, (4) proposals lacking contractually required detail and (5) documentation that did not support proper adherence to AOC policies and procedures. We identified \$741,758 in questioned costs, of which the AOC confirmed \$19,675 as unallowable.

This memorandum reports on our review of the AOC's construction change orders and recommendations for process improvements.

## Background

For this review Cotton selected a judgmental sample of 20 change orders from three active construction contracts in excess of \$5 million.<sup>1</sup> Table 1 lists the contracts and the number of change orders selected for this review.

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<sup>1</sup> We sampled four potential change orders from the R-Tunnel Repairs at 2<sup>nd</sup> & Constitution Avenue project, however, at the time of our sample selection only one out of the four potential change orders selected was fully executed.

TABLE 1: SAMPLE SUMMARY

| Contract Name & Number   | Awarded Contract Amount | Change Orders Sampled | Absolute Value     |
|--|-------------------------|-----------------------|--------------------|
| Cannon House Office Building Renewal (CHOBr) Project (Contract No. AOC13C2002) | \$530,850,980           | 11                    | \$4,922,602        |
| Exterior Stone & Metal Preservation, Phase III (Contract No. AOC16C3004-T005)  | \$18,057,310            | 5                     | \$644,351          |
| R-Tunnel Repairs at 2nd & Constitution Avenue (Contract No. AOCACB21C0008)     | \$5,636,915             | 4                     | \$259,790          |
| <b>Total</b>   | <b>\$554,545,205</b>    | <b>20</b>             | <b>\$5,826,743</b> |

\* Amounts noted represent the total amount awarded for the contract as of October 3, 2022.

## Review Results

Cotton reviewed the supporting documentation maintained by the AOC for the sampled change orders to ensure the AOC approved amounts were accurate and supported by the contractor's and subcontractor's proposals. Cotton also reviewed the supporting documentation to ensure that the costs proposed by the contractor and subcontractor were reasonable, allowable and in compliance with the contractual requirements. Finally, Cotton also reviewed the AOC's review and approval process to ensure it followed AOC policies and procedures. Cotton's review resulted in 10 findings and eight recommendations.

## Cannon House Office Building Renewal (CHOBr) Project

Our review of change orders sampled for the CHOBr Project identified six findings, which are summarized in Table 2.

TABLE 1: CHOBR PROJECT FINDINGS

| Identified Issue  | Questioned Amount | Confirmed Unallowable | Finding No. |
|---|-------------------|-----------------------|-------------|
| Duplicative overhead costs awarded as direct costs            | \$53,663          | -                     | 1           |
| Government funds used to remediate contractor damages         | \$167,628         | -                     | 2           |
| Markups applied by second tier subcontractors                 | \$6,958           | -                     | 3           |
| Costs approved without obtaining sufficient details           | \$367,315         | -                     | 4           |
| Potential Change Order amount unsupported by documentation    | \$226             | \$226                 | 5           |
| Documentation dates don't adhere to AOC policy and procedures | N/A               | N/A                   | 6           |

|              |                  |              |
|--------------|------------------|--------------|
| <b>Total</b> | <b>\$595,790</b> | <b>\$226</b> |
|--------------|------------------|--------------|

- = No data, N/A = not applicable.

*Finding 1: AOC approved direct costs that are duplicative of the contractual overhead markup applied to change orders.*

AOC 243-1(d)(1) covers the overhead and profit markups the contractors and subcontractors are allowed to recover as a percentage of their direct costs, while AOC 243-1(d)(2) describes the various items that are covered under overhead markup.<sup>2</sup> These items include, but are not limited to:

- Contractor's and subcontractor's superintendence
- Utilities
- Contractor's and subcontractor's field office, administrative support staff
- Job site safety aids
- Cleaning
- Storage

During our review of the change orders sampled for the CHOBr Project, we identified seven instances<sup>3</sup> in which the AOC approved a change order containing costs covered by the overhead markup. The AOC's acceptance of such items as direct costs resulted in the AOC paying \$53,663 (before markups) for items covered by the overhead markups included in the contractor's and subcontractors' proposal.

The CHOBr Project team<sup>4</sup> disagreed with all the items identified during our review and noted that they considered the costs to be allowable. The CHOBr Project team's responses noted one, or a combination of, three reasons for each instance being allowable: (1) the item was specific to the requested change (i.e., not included in the contractor's/subcontractor planned markup); (2) the contractual markups were insufficient to cover the contractor's/subcontractor proposed costs for the item, or (3) the Contracting Officer (CO) reviewed the subcontractor/Contractor's proposal and determined the costs to be allowable at the time of the award.

<sup>2</sup> See Appendix for relevant contract clauses.

<sup>3</sup> An instance refers to noting the presence of an issue type with the Contractor's or subcontractor's costs within a change order. For example, a subcontractor may have multiple items questioned as duplicative overhead costs within a single change order; however, for the purposes of this report we are treating those multiple items as a single instance.

<sup>4</sup> CHOBr Project team consists of AOC and construction manager as agent (CMA) personnel responsible for overseeing the work performed by the contractor and subcontractors.

The contract for the CHOBr Project defines the type of costs covered by the overhead rate applied to contractor change orders. Defining costs covered by overhead rates in the contract is a typical practice in the construction industry. In our experience, this contract language is usually adhered to during negotiations, and it is unusual for an owner (in this case, the AOC) to award as direct costs any costs contractually covered in an overhead rate. While the CHOBr Project team disagreed with the instances identified during our review for the reasons previously stated, the documentation provided in support of the questioned costs did not explain how the costs were determined to be allowable.

In one example, the draft Price Negotiation Memorandum (PNM) and a Price Review Letter (PRL) sent to the contractor noted that the costs we questioned were unallowable, and that the contractor would need to provide additional justification if it felt that the costs were allowable.

**Draft PNM:** The Government considers Cleanup, [Quality Control (QC)] Time, Safety Time, Coordinator Time, Subcontractor Supervision and Commissioning as Overhead Costs and are not considered allowable.

**PRL:** The Government has determined that it is in concurrence with the base labor hours and material costs proposed by [Clark/Christman, A Joint Venture's (CCJV's)] subcontractor ..., but not the markups... The Government considers Cleanup, QC Time, Safety Time, Coordinator Time, Subcontractor Supervision and Commissioning as Overhead Costs and are not considered allowable... If CCJV or [subcontractor] disagree, please provide additional information refuting the above points.

This language was removed from the signed PNM, and there was no indication of how the costs were determined to be allowable, or what justification was provided by the contractor in support of the allowability of the costs.

Additionally, there was no breakout for what percentage of the 10 percent overhead markup applied to items included in the rate (e.g., superintendence). We were unable to determine if a contractor's costs for a specific covered item exceeds the amount to be recovered through the rate. Moreover, the contract does not state that a contractor is entitled to recover these additional costs, and the government would not be entitled to recovery when the contractor's actual costs are less than the amount recovered through the overhead markup rate (i.e., the contractor's actual costs for covered items are less than 10 percent of the proposed direct costs). A purpose of negotiating an overhead rate is to streamline the change order process. Both the owner and the contractor recognize that there will be over and under recoveries using the negotiated rate. However, these

amounts are typically minimal and offset during the project, which is the tradeoff for streamlining the process. If the CO determines that a contractor's covered costs should be allowable, it is important to document how and why that determination was made.

*Finding 2: AOC potentially used Government funds to remediate pre-existing damage as well as additional damages caused by the Contractor.*

The AOC awarded a change order to CCJV for \$375,000 to repair existing damage to plaster cornices. CCJV was also allowed to use \$167,628 from the contractor's contingency to cover the costs to repair damage that CCJV caused to the cornices. The Change Management Board (CMB) memorandum noted that "CCJV did not take the proper precautions to protect the cornice" which resulted in the additional damage. The AOC's action appeared to contradict contract clause FAR 52.237-2, which states:

- The Contractor shall use reasonable care to avoid damaging existing buildings, equipment, and vegetation on the Government installation. If the Contractor's failure to use reasonable care causes damage to any of this property, **the Contractor shall replace or repair the damage at no expense to the Government as the Contracting Officer directs. If the Contractor fails or refuses to make such repair or replacement, the Contractor shall be liable for the cost, which may be deducted from the contract price** (Emphasis added).

As noted in the contract clause, the contractor is liable to repair damages due to its actions at no cost to the government and if the contractor fails to replace or repair the damage the government can deduct the cost from the contract price.

The CHOBr Project team provided additional information in response to questions we posed as part of our review. During Phase 1, the project team became aware of some existing visible damage to the plaster cornice and during Phase 2, CCJV found asbestos containing material (ACM) within the ceiling and cornice. As a result, CCJV removed most of the cornice during Phase 2. While it found issues during prior phases, the AOC determined that an extensive cornice survey was not required at the time it awarded Phase 3. The CHOBr Project team initially requested CCJV to address visible cracks and delamination uncovered during Phase 1 of the project. The project team found cost reductions in the value engineering process during ACM negotiation.

During a walkthrough prior to CCJV submittal of the initial change order to repair the plaster cornices, the project team noted that CCJV's improper protection, unacceptable demolition practice and overall poor conditioning had contributed additional damage to the plaster cornice. Since CCJV had not performed an extensive cornice survey at the

time of the award, it solicited the help of a third-party consultant to provide an independent review and assessment of the cornice damage.

The third-party consultant concluded that the location of the trash room and hoist resulted in vibrations that damaged the plaster cornice. Additionally, it determined that the heavy demolition conducted on the 5<sup>th</sup> floor likely resulted in the delamination between the finish and brown coats on the 4<sup>th</sup> floor. Following the independent review and assessment, CCJV submitted a proposal amounting to \$519,033 (prior to CCJV markups) to address the repairs on floors 1 to 4. CCJV later revised its proposal to \$620,918 and then to \$820,000 due to more extensive damage uncovered on the 3<sup>rd</sup> and 4<sup>th</sup> floors.

The AOC did not perform an Independent Government Estimate (IGE) to address the repairs. The plaster cornice and related work commenced prior to an extensive survey being performed; therefore, the project team was unable to segregate the initial damages from the additional damage caused by CCJV. The AOC and CCJV began negotiations to lower the estimated proposal and potentially split the repair costs. CCJV ultimately submitted a proposal for \$542,628, with the Government directly paying \$375,000 for existing damages and CCJV paying \$167,628 through the project contingency.

Per the base contract, the AOC was entitled to keep all unspent project contingency. However, contract modification number 36, introduced a cost-sharing plan that allowed CCJV to retain 50 percent of the unspent project contingency. Then in January 2022, the AOC and CCJV developed an incentive fee arrangement, which would allow CCJV to retain 100 percent of unspent project contingency funds, if CCJV met certain project deadlines. The AOC asserts that the \$167,628 used from project contingency represents CCJV directly paying for the repairs because had CCJV not been allowed to use the funding to fix the cornice damage, it still would have received the unspent contingency as an incentive fee. However, this understanding assumes that CCJV would meet the requirements of the incentive agreement and earn 100 percent of the unspent contingency funds. If CCJV met the terms of the incentive fee then it would have received 100 percent of the \$167,628 as an incentive fee, even if it had not been allowed to use the contingency funds for the cornice repair. Yet, that was not a guaranteed outcome at the time that the contingency was authorized. If the contractor only earns 80 percent of the incentive fee, then the government would have overpaid the contractor by \$33,526 ( $\$167,628 \times 20$  percent). As such, the AOC allowed the contractor to use funds that had not yet been earned by the contractor to pay for damage caused by the contractor.

*Finding 3: The markups allowed under the CHOBr project are not consistent with the contract or the markups negotiated in actual change orders.*

The CMC's contract includes AOC52.243-1(d)(1), which defines the markups a contractor or subcontractor is entitled to for the CHOBr Project on change orders. According to AOC52.243-1(d)(1)(i), the prime contractor is allowed to recover a 10 percent markup for overhead and a 10 percent markup for profit on work performed by its own workforce. Similarly, AOC52.243-1(d)(1)(iii) allows a first-tier subcontractor to recover the same percentages for work performed by or for it. AOC interprets this to mean that the first-tier subcontractor can apply the two markups to work it directly performs, as well as work performed by a lower tier subcontractor included in its proposal. According to AOC52.243-1(d)(1)(iv) subcontractors of any tier other than first are not allowed to collect any percentages for fees, overhead and profit.

On March 28, 2023, the CHOBr project team provided us a memorandum dated June 26, 2017, titled "*Allowable Subcontractor Markups on CCJV Proposals — Contract No. AOC13C2002, Cannon House Office Building Renewal, Phase 1-4 GMP*". The purpose of this memorandum was to provide clarification surrounding the markups or more specifically AOC52.243-1(d). i. ii. and iii by noting:

- (i) The contractor (first-tiered subcontractors to CCJV, i.e., Kirlin, Mona, etc.) shall receive an amount not to exceed 10 percent overhead on direct/self-perform work and 10 percent profit on direct/self-perform work. The profit markup must be taken on direct costs and not on sum of direct work and overhead.
- (ii) If subcontractors (second-tiered subcontractors to CCJV, i.e., Kirlin's tiered subcontractors, Mona's tiered subcontractors, etc.) are involved in a change, a fee in an amount not to exceed 10 percent can be charged by the contractor (first-tiered subcontractors to CCJV) on the total price of the subcontractors (second tiered subcontractors to CCJV) for the change.
- (iii) Subcontractors (second-tiered subcontractors to CCJV) shall receive a total amount not to exceed 10 percent overhead and not to exceed 10 percent profit, of all work performed by or for it.

The AOC asserts that the markups in the memorandum should be followed when awarding change orders, however the contract was not modified to include this updated language. Moreover, during our review of change orders sampled for the CHOBr Project, we identified six instances in which the first-tier subcontractor applied a 10 percent markup for overhead and 10 percent markup for profit on work performed by a second-tier subcontractor, rather than only applying a single 10 percent markup to the work performed by its lower tier subcontractors, as directed in the memorandum. The AOC's

acceptance of the first-tier subcontractor application of two separate 10 percent markups, resulted in the AOC overpaying \$6,958.

*Finding 4: AOC approved costs without obtaining sufficient detail required to determine whether the proposed costs were reasonable.*

AOC52.243-1(c) requires contractor proposals to include a brief description of the change, a breakdown of costs, and a time impact analysis (if applicable). Moreover, the clause states the following regarding the cost breakdown:

With each proposal, the contractor shall submit separately an itemized breakdown as per "Exhibit A" hereof, which shall include, but not be limited to, the following:

- (i) Direct labor costs
- (ii) Social Security and Unemployment Insurance Taxes
- (iii) Workmen's compensation and general liability insurance
- (iv) Direct material quantities and unit prices (separated into trades)
- (v) Construction equipment
- (vi) Overhead
- (vii) Profit

During our review of change orders sampled for the CHOBr Project, we identified six instances<sup>5</sup> amounting to \$367,315 where the subcontractors' proposal documentation did not contain a detailed breakdown of costs in accordance with AOC52.243-1(c). Without an adequate cost breakdown, subcontractors could include costs that would otherwise be considered unallowable and/or duplicative of overhead costs.

The CHOBr Project team disagreed with this finding and noted that it does not require individual subcontractor proposal analysis to determine the price reasonableness. Instead, it uses the IGE performed for the proposed change as a whole to determine the reasonableness of proposed changes. According to the project team, an individual subcontractor proposal analysis would require significant resources; therefore, as long as the proposed change is within 10 percent of the IGE, proposed costs are determined reasonable.

The OIG identified the same finding in Report No. OIG-AUD-2020-04 "Audit of the Cannon House Office Building Renewal Project's Contract Modifications," dated May 29, 2020. The OIG recommended "The CHOBr Project team work with the [Construction Manager as Constructor] to ensure that proposals submitted for Potential Change Orders (PCOs) are factually sound, contain the required cost detail and exclude unallowable

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<sup>5</sup> The six instances identified included proposals from five different subcontractors.

costs” [Emphasis added]. The AOC concurred with the recommendation. Additionally, CCJV provided a letter to the AOC dated May 13, 2020, addressing a draft of the OIG report (OIG-AUD-2020-04). In this letter, CCJV outlined its process for reviewing and submitting change order proposals, which included a step to ensure the required cost detail is included in each subcontractor’s proposal.

It is certainly possible to determine reasonableness of a contractor’s proposed change order amount, absent a detailed breakdown of the costs, by comparing it to an IGE. However, it would not be possible to determine the allowability of costs proposed without some level of detail. The CHOBr Project team should ensure contractors’ proposals include sufficient detail, which is contractually required, to determine if the amounts proposed are for contractually allowable costs. If the CO waives this requirement, the CO should document why they made that decision.

*Finding 5: AOC approved costs in excess of costs supported by proposal documentation.*

We identified one instance in which the amount approved for the change order was greater than the amount supported by the subcontractor’s proposal. This resulted in AOC overpaying \$226.

*Finding 6: Dates on supporting documentation did not align with the sequence of preparation and review required under AOC policies and procedures.*

The AOC’s policies and procedures (i.e., Planning and Project Management Memorandum 19-4, *Project Management Division Construction Change Order Process*), require the AOC to perform an IGE before accepting a proposal from a contractor and/or subcontractor, and approving a change order. During our review of the change orders sampled for the CHOBr Project, we identified six instances in which the support documentation we reviewed did not follow the sequence outlined in the AOC’s policies and procedures.

We noted that in four of these instances, the IGE we reviewed was dated after the AOC received the contractor’s proposal. Per the CHOBr Project team, its practice had been to update the IGE date as changes were made to match the final directive date, thus overwriting the date that the CHOBr Project team performed the initial IGE. The project team asserted that is what happened in each of these instances, and that an IGE had been prepared prior to receiving the contractor’s proposal. Going forward, the CHOBr Project team stated that it plans to retain the initial IGE to better document its compliance with the AOC’s policies and procedures.

In two instances, the CMB approved the change order prior to performance of an IGE. The CHOBr Project team stated that it plans to propose language for the CMB memorandum template that will allow the team to document and justify instances in which it is requesting approval of a change order prior to the completion of an IGE.

The CHOBr Project team uses IGE's as a basis to determine the reasonableness of contractor proposals in the change order process. Preparing IGE's after viewing a contractor proposal could impact the IGE and compromise the evaluation process. Moreover, approving a change order without an IGE is a deviation from the AOC prescribed approval process. It is important that the documentation accurately reflects when IGE's are prepared, and how the reasonableness of proposals is determined in the absence of an IGE.

## Exterior Stone & Metal Preservation, Phase III

Our review of the change orders sampled for the Exterior Stone & Metal Preservation, Phase III project identified one finding, summarized in Table 3:

TABLE 2: EXTERIOR STONE & METAL PRESERVATION FINDING

| Identified Issue                | Questioned Amount | Confirmed Unallowable | Finding No. |
|---------------------------------|-------------------|-----------------------|-------------|
| Noncompliant contractor markups | \$3,551           | \$3,551               | 7           |
| <b>Total</b>                    | <b>\$3,551</b>    | <b>\$3,551</b>        |             |

*Finding 7: AOC approved change orders in which the Contractor did not follow the contractual markups for subcontractor costs.*

AOC-243-1(c)(2)(iii) allows the contractor to collect a combined 10 percent markup for overhead and profit on a subcontractor's direct costs for labor, materials, equipment and overhead (i.e., excluding profit). However, during our review of change orders sampled for Exterior Stone & Metal Preservation, Phase III, we identified six instances in which the contractor applied the 10 percent markup to the total amount proposed by a subcontractor (i.e., without removing profit). The six instances identified during our review resulted in the AOC overpaying \$3,551.

The AOC agreed to the finding and noted that it will recover the questioned amounts through a contract modification.

## R-Tunnel Repairs at 2nd & Constitution Avenue

We decided to test change orders for the R-Tunnel Repairs at 2nd & Constitution Avenue (“R-Tunnel”) Project, but at the time we selected our sample, only one of the four potential change orders was fully executed. The three change orders that had not been finalized remained part of our sample because we found the contractor had started performing work under notices to proceed. Our review of the change orders sampled for the R-Tunnel Project identified three findings summarized in Table 4:

TABLE 3: R-TUNNEL REPAIR FINDINGS

| Identified Issue                                    | Questioned Amount | Confirmed Unallowable | Finding No. |
|---|-------------------|-----------------------|-------------|
| Duplicative overhead costs proposed as direct costs | \$21,741          | \$6,464               | 8           |
| Proposals contain insufficient details              | \$113,958         | \$2,716               | 9           |
| PCO amount unsupported by documentation             | \$6,718           | \$6,718               | 10          |
| <b>Total</b>  | <b>\$142,417</b>  | <b>\$15,898</b>       |             |

*Finding 8: Contractor proposed direct costs duplicative of overhead costs and should be covered by the contractual markups for overhead costs.*

Similar to Finding 1 for the CHOBr Project, during our review of sampled change orders for the R-Tunnel project, we identified five instances in which the change orders included overhead-type costs as direct costs.

The R-Tunnel Project team agreed with two instances identified during our review that amounted to \$6,464 (note that at the time of our review, these were not finalized change orders) and disagreed with three instances that amounted to \$15,277. According to the R-Tunnel Project team, the AOC52.243-1(c) clause from the contract provides the CO with the sole discretion to accept or reject any overhead costs applied as direct costs.

However, the R-Tunnel Project team did not provide any documentation that demonstrated the CO determined these instances allowable under the contract. As discussed in Finding 1, if the CO determines that a contractor’s covered costs should be allowable, it is important to document how and why that determination was made.

*Finding 9: Contractor proposals did not contain sufficient detail required to determine whether the proposed costs were reasonable.*

Similar to Finding 4 for the CHOBr Project, during our review of the potential change orders sampled for the R-Tunnel project, we identified four instances in which the change

orders did not include sufficient detail required to determine the reasonableness of proposed costs.

The R-Tunnel Project team agreed with one instance that amounted to \$2,716 (note at the time of our review, this was not a finalized change order). The R-Tunnel Project team disagreed with the other three instances that amounted to \$111,242 and noted the CO waived a detailed cost breakdown required under AOC52.243-1(b).

*Finding 10: Contractor proposed costs were in excess of costs supported by proposal documentation.*

We identified three instances in which the R-Tunnel Project team agreed the proposal documentation contained calculation errors:

- \$2,985 – Tax miscalculation
  - Per the project team, the final change and subsequent modification will reflect the corrected tax miscalculation.
  - This amount does not reflect the tax effects of two other amounts we questioned related to this change order: \$8,500 for duplicative overhead and lack of detail; and \$5,000 for lack of detail.
- \$2,550 – Labor miscalculation
  - Note that this was not a finalized change order at the time our testing was performed.
- \$1,183 – Overhead miscalculation
  - Note that this was not a finalized change order at the time our testing was performed.

## Conclusion

We determined the change orders reviewed were generally reasonable, necessary, and within the scope of the contract and effectively awarded and administered. While we determined that the project teams had properly issued change orders, we noted instances of (1) proposals containing duplicative costs, (2) potentially improper use of government funds, (3) incorrectly applied markups, (4) proposals lacking contractually required detail and (5) documentation that did not support proper adherence to AOC policies and procedures. These findings are quantified in Table 5. While the monetary effects of these findings may not appear significant in the terms of a \$1 billion project, it is important to remember that the results are based on a sample. For example, consistently ensuring that the AOC does not award costs contractually covered by overhead rates as duplicative

direct costs in change orders, can potentially add up to large costs savings over the life of a project with millions of dollars in change orders awarded.

TABLE 4: SUMMARY OF RECOMMENDATIONS & COSTS

| Identified Issue   | Questioned Amount | Confirmed Unallowable | Finding No. |
|--|-------------------|-----------------------|-------------|
| Duplicative overhead costs awarded or proposed as direct costs   | \$75,404          | \$6,464               | 1, 8        |
| Government funds used to remediate contractor damages            | \$167,628         | -                     | 2           |
| Markups applied by second tier subcontractors                    | \$6,958           | -                     | 3           |
| Costs approved or proposed without obtaining sufficient details  | \$481,273         | \$2,716               | 4, 9        |
| PCO amount unsupported by documentation                          | \$6,944           | \$6,944               | 5, 10       |
| Documentation dates do not adhere to AOC policies and procedures | N/A               | N/A                   | 6           |
| Noncompliant contractor markups                                  | \$3,551           | \$3,551               | 7           |
| <b>Total</b>   | <b>\$741,758</b>  | <b>\$19,675</b>       |             |

- = No data, and N/A = not applicable.

The AOC was unable to officially respond to the findings and recommendations discussed prior to issuance. Once received, we will incorporate the AOC's official response within this memorandum.

## Recommendations

We made eight recommendations to address the findings identified during our review.

### ***Recommendation 1***

We recommend the Architect of the Capitol (AOC) perform the following:

- a. Recover the questioned costs of \$6,464 identified within the R-Tunnel Project to the extent legally and administratively possible.
- b. Review the questioned costs of \$68,940 (\$75,404 - \$6,464) identified within the Cannon House Office Building Renewal (\$53,663) and R-Tunnel (\$15,277) projects to determine if the costs are allowable in accordance with contract requirements; and as applicable, recover any additional amounts resulting from the application of items like overhead and profits to the unallowable costs.
- c. Ensure future change orders adhere to the contractual language regarding overhead costs not being allowed as direct costs; and when the AOC determines that overhead costs are allowable as direct costs, document how and why that determination was made.

### ***Recommendation 1 – AOC Comment***

We concur with 1a. The AOC will work to recover the questioned costs if it is legally and administratively possible.

We partially concur with 1b. The AOC does not concur with 1b as it relates to the Cannon House Office Building Renewal (CHOBr) Project but concur with 1b for the R-Tunnel Project. As stated during the OIG's review of change order documentation and cited on Page 3 of their report, we disagree with the OIG's finding on the CHOBr Project.

We concur with 1c. We will review existing processes for the AOC's review of contractor-submitted potential changes and their respective supporting documentation to ensure compliance with existing AOC policies and procedures and executed contracts.

### ***Recommendation 1 – OIG Comment***

We recognize the AOC's concurrence with recommendations 1a and 1c. The AOC will work to recover the questioned costs if legally and administratively possible and review existing processes for the AOC's review of contractor-submitted potential changes and the respective supporting documentation to ensure compliance with existing AOC

policies and procedures and executed contracts. The AOC's actions appear to be responsive to the recommendation. Therefore, the recommendation is considered resolved but open. The recommendation will be closed upon completion and verification of the proposed actions.

We recognize the AOC's concurrence with recommendation 1b as it relates to the R-Tunnel project. The AOC's concurrence implies that the questioned cost will be reviewed to determine if the costs are allowable in accordance with contract requirements; and as applicable, recover any additional amounts resulting from the application of items like overhead and profits to the unallowable costs. Therefore, the recommendation is considered resolved and open. The recommendation will be closed upon receipt and verification of the AOC's action.

We recognize the AOC's non-concurrence with 1b as it relates to the CHOBr Project. The CHOBr Project team disagreed with all the items identified during our review and noted that they considered the costs to be allowable; however, the documentation provided in support of the questioned costs did not explain how the costs were determined to be allowable. Moreover, the CHOBr Project team was unable to explain how they would perform the analysis needed to support its decision that these costs are allowable. Therefore, the recommendation is considered unresolved.

## ***Recommendation 2***

We recommend the Architect of the Capitol (AOC) perform the following:

- a. Review the questioned costs of \$167,628 once the AOC determines whether Clark/Christman, A Joint Venture (CCJV) met the incentive fee requirements; if CCJV does not meet the incentive fee requirements and the 100 percent unspent project contingency funds are not awarded, the AOC should recover to the extent legally and administratively possible the AOC's proportional share of the of the questioned costs.
- b. Ensure project funds are not used to pay for damages caused by the contractor, even if those funds may be earned by the contractor at a later date.

## ***Recommendation 2 – AOC Comment***

We do not concur with 2a. The AOC provided the OIG detailed support and documentation of the history of discussions related to the cornice scope on March 27, 2023. The CHOBr project team and historic preservationist determined that the damage was not caused by CCJV. The repairs were funded through construction contingency.

CCJV contract Section C.6. Definitions defines construction contingency as "The component of the GMP [guaranteed maximum price] intended to provide contingency for unanticipated construction costs. The construction contingency shall be realistic to successfully build the project within the GMP." Furthermore, Section C construction contingency costs are costs excluded from the Estimated Cost of the Work (ECW) and attributed to the following: 1. Resolution of Errors and Omissions 2. Resolution of Unforeseeable Constructability Issues 3. Subcontract adjustments necessary to resolve unforeseeable coordination issues 4. Variances between the ECW and the Cost of the Work established through the award of subcontracts 5. Other items as may be agreed to by the Contracting Officer and the Contractor.

As these costs align with the purpose and definition of construction contingency costs, i.e., "Resolution of Unforeseeable Constructability Issues" and "Other items as may be agreed to by the Contracting Officer and Contractor," the AOC will not seek to recover any costs from the contractor after the award of the CHOBr Project Phase 3 incentive fee.

We concur with 2b. We will review existing processes for the AOC's review of contractor-submitted potential changes and their respective supporting documentation to ensure compliance with existing AOC policies and procedures and contractual requirements as they relate to the use of contingency.

### ***Recommendation 2 – OIG Comment***

We recognize the AOC's non-concurrence with recommendation 2a. The AOC has stated that the CHOBr project team and historic preservationist determined that the damage was not caused by CCJV and will not seek to recover any costs from the contractor after the award of the CHOBr Project Phase 3 incentive fee. As noted in our memo, the documentation provided by the CHOBr project team does not support this assertion. It is unclear how the AOC has come to this resolution when the project team noted and a third-party consultant concluded that the contractor's improper protection, unacceptable demolition practice, and overall poor conditioning as well as the location of the trash room and hoist resulted in vibrations that contributed to the damage of the plaster cornice. The AOC also asserts that CCJV still would have received the unspent contingency as an incentive fee.

In addition, the project team did not perform an Independent Government Estimate to address the repairs or commence an extensive survey to properly segregate damages caused by the contractor. The AOC and contractor subsequently developed an incentive fee arrangement, which would allow the contractor to retain 100 percent of unspent project contingency funds, if the contractor met certain project deadlines. However, this was not a guaranteed outcome at the time that the contingency was authorized. Our

recommendation to review the questioned costs and recover to the extent legally and administratively possible the AOC's share of the questioned costs remain. Therefore, the recommendation is considered unresolved.

We recognized the AOC's concurrence with recommendation 2b. The AOC will review existing processes for the AOC's review of contractor-submitted potential changes and their respective supporting documentation to ensure compliance with existing AOC policies and procedures and contractual requirements as related to the use of contingency. The AOC's actions appear to be responsive to the recommendation. Therefore, the recommendation is considered resolved but open. The recommendation will be closed upon completion and verification of the proposed actions.

### ***Recommendation 3***

We recommend the Architect of the Capitol (AOC) perform the following:

- a. Review the questioned costs of \$6,958 identified within the Cannon House Office Building Renewal Project for potential improper overhead and profit markups by the first-tier subcontractor for a second-tier subcontractor's work.
- b. Review and modify the contract language to specify the allowable markups on change orders aligns with the memorandum dated June 26, 2017.

### ***Recommendation 3 – AOC Comment***

We do not concur with 3a. Contract Section AOC52.243-1 (d)(l)(iii) states:

*Subcontractor(s) to the prime contractor (first tier subcontractor(s)) shall receive, as a percentage of the cost of all work performed by or for it, a total amount not to exceed 10% overhead and not to exceed 10% profit.*

Therefore, a subcontractor may collect 10 percent overhead and 10 percent profit on work done by or for itself. Thus, the first-tier subcontractor is correct in applying 10 percent overhead and 10 percent profit on work performed by second-tier subcontractors.

We do not concur with 3b. No correction is required to the contract. The clause cited above and the Contracting Officer's memorandum to CCJV dated June 26, 2017 (provided to OIG on March 27, 2023) align in stating that subcontractors (second-tier subcontractors to CCJV) shall receive a total amount not to exceed 10 percent overhead and 10 percent profit on all work performed by or for themselves.

### ***Recommendation 3 – OIG Comment***

We recognize the AOC’s non-concurrence with recommendations 3a and 3b. The AOC stated that the first-tier subcontractor is correct in applying 10 percent overhead and 10 percent profit on work performed by second-tier subcontractors and no correction is required to the contract. However, the contract was not modified to include the updated language stipulated in the memorandum dated June 26, 2017, titled “Allowable Subcontractor Markups on CCJV Proposals — Contract No. AOC13C2002, Cannon House Office Building Renewal, Phase 1-4 GMP,” used to provide clarification surrounding the markups or more specifically AOC52.243-1(d). Therefore, the recommendation is considered unresolved.

### ***Recommendation 4***

We recommend the Architect of the Capitol (AOC) perform the following:

- a. Recover the questioned costs of \$2,716 identified within the R-Tunnel Project to the extent legally and administratively possible.
- b. Review the insufficient supported questioned costs of \$478,557 (\$481,273 - \$2,716) identified within the Cannon House Office Building Renewal (CHOBr) (\$367,315) and R-Tunnel (\$111,242) projects to determine if the costs are supported and allowable; for any of the costs deemed unsupported and/or unallowable, recover the costs to the extent legally and administratively possible; as applicable, recover any additional amounts resulting from the application of items such as overhead and profits to the unallowable costs.

### ***Recommendation 4 – AOC Comment***

We concur with 4a and 4b related to the R-Tunnel project.

We do not concur with 4b related to the CHOBr project. These are not insufficient supported costs. The total cost of the proposals in question fell within 10 percent of the independent government estimate (IGE). As a best practice the IGE supports the total cost of a change and subcontractor proposal analysis is not required to determine price reasonableness. To complete a full cost analysis and full negotiation for every subcontractor would take considerably more resources (people, time, and money) than are currently in place. If the full scope IGE is within 10 percent of a proposal amount further analysis is not needed.

### ***Recommendation 4 – OIG Comment***

We recognize the AOC’s concurrence with recommendations 4a and 4b related to the R-Tunnel project. The AOC’s concurrence implies that the questioned costs for 4a will be recovered to the extent legally and administratively possible. For 4b questioned costs, the AOC will review the insufficient supported questioned costs to determine if the costs are supported and allowable. For any of the costs deemed unsupported and/or unallowable, recover the costs to the extent legally and administratively possible; as applicable, recover any additional amounts resulting from the application of items such as overhead and profits to the unallowable costs. Therefore, the recommendations are considered resolved and open. The recommendations will be closed upon receipt and verification of the AOC’s action.

We recognize the AOC’s non-concurrence with recommendation 4b related to the CHOBr Project. The AOC stated these are not insufficient supported costs. The total cost of the proposals in question fell within 10 percent of the IGE. We maintain our position that it is certainly possible to determine reasonableness of a contractor’s proposed change order amount, absent a detailed, contractually required, breakdown of the costs. However, it would not be possible to determine the allowability of costs proposed without some level of detail. The CHOBr Project team should ensure contractors’ proposals include sufficient detail, which is contractually required, to determine if the amounts proposed are for contractually allowable costs. Therefore, the recommendation is considered unresolved.

### ***Recommendation 5***

We recommend the Architect of the Capitol (AOC) recover the unsupported questioned costs of \$6,944 identified within the Cannon House Office Building Renewal (\$226) and R-Tunnel (\$6,718) projects to the extent legally and administratively possible.

### ***Recommendation 5 – AOC Comment***

We concur. The AOC will work to recover the questioned costs if it is legally and administratively possible.

### ***Recommendation 5 – OIG Comment***

We recognize the AOC’s concurrence with recommendation 5. The AOC will work to recover the questioned costs if legally and administratively possible. The AOC’s actions appear to be responsive to the recommendation. Therefore, the recommendation is

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

### ***Recommendation 6***

We recommend the Architect of the Capitol (AOC) work with the contractor to ensure proposals submitted for change orders are factually sound, contain the required cost detail and exclude unallowable costs.

### ***Recommendation 6 – AOC Comment***

We concur. We will review existing processes for the AOC's review of contractor-submitted potential changes and their respective supporting documentation to ensure compliance with the contract.

### ***Recommendation 6 – OIG Comment***

We recognize the AOC's concurrence with recommendation 6. The AOC will review existing processes for the AOC's review of contractor-submitted potential changes and their respective supporting documentation to ensure compliance with the contract. The AOC's actions appear to be responsive to the recommendation. Therefore, the recommendation is considered resolved but open. The recommendation will be closed upon completion and verification of the proposed actions.

### ***Recommendation 7***

We recommend the Architect of the Capitol (AOC) comply with the sequence of review and approval for its change orders as prescribed by its policies and procedures and ensure sufficient documentation is maintained. If the AOC deviates from its policies and procedures, the AOC should fully document the reason for the deviation.

### ***Recommendation 7 – AOC Comment***

We concur. We will review existing processes for the AOC's review of contractor-submitted potential changes and their respective supporting documentation to ensure compliance with existing AOC policies and procedures.

### ***Recommendation 7 – OIG Comment***

We recognize the AOC's concurrence with recommendation 7. The AOC will review existing processes for the AOC's review of contractor-submitted potential changes and their respective supporting documentation to ensure compliance with existing AOC

policies and procedures. The AOC's actions appear to be responsive to the recommendation. Therefore, the recommendation is considered resolved but open. The recommendation will be closed upon completion and verification of the proposed actions.

### ***Recommendation 8***

We recommend the Architect of the Capitol (AOC) recover or not award the questioned costs of \$3,551 identified within the Exterior Stone & Metal Preservation, Phase III project to the extent legally and administratively possible and ensure the contractor excludes subcontractor profit prior to applying contractual markups.

### ***Recommendation 8 – AOC Comment***

We concur. To the extent legally and administratively possible, the AOC will recover the questioned costs.

### ***Recommendation 8 – OIG Comment***

We recognize the AOC's concurrence with recommendation 8. The AOC will work to recover the questioned costs if legally and administratively possible. The AOC's actions appear to be responsive to the recommendation. Therefore, the recommendation is considered resolved but open. The recommendation will be closed upon completion and verification of the proposed actions.

#### Distribution List:

Peter Bahm, Chief of Staff

Mary Jean Pajak, Deputy Chief of Staff

Thomas Costello, (Acting) Deputy Chief Engineer

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

Joseph DiPietro, Chief of Operations

David Wilder, Superintendent House Office Buildings

Christopher Potter, Director, Utilities and Power Plant Operations

Stephen Titus, Project Executive

## Appendix A: Contract Clauses

### CHOB Project:

**AOC52.243-1(c):** Submission of proposals and cost breakdowns by the contractor.

- (1) Proposals for changes to the contract requirements shall include a brief description of the change; a breakdown of costs as outlined hereinafter; and a time impact analysis (fragnet).
- (2) In considering proposals for changes involving added requirements, omitted requirements, or any combination thereof, the Contracting Officer or his duly authorized representative will make check-estimates in such detail as he deems necessary with the view of arriving at equitable adjustments. With each proposal, the contractor shall submit separately an itemized breakdown as per "Exhibit A" hereof, which shall include, but not be limited to, the following:
  - (viii) Direct labor costs
  - (ix) Social Security and Unemployment Insurance Taxes
  - (x) Workmen's compensation and general liability insurance
  - (xi) Direct material quantities and unit prices (separated into trades)
  - (xii) Construction equipment
  - (xiii) Overhead
  - (xiv) Profit
- (3) If the contractor believes that the change in the contract requirements affects the contract period of performance, as required by AOC52.211-5, Commencement, Prosecution, and Completion of Work, of the Supplementary Conditions, appropriate substantiation must be submitted for evaluation/review.
- (4) complete proposal, including breakdown of cost and time impact, shall be submitted by the contractor within the time frame stipulated in calendar days by the Government for each proposed change. Generally, complete proposals shall be submitted by the contractor within 7 calendar days after the contractor receives the request for proposal, although this time frame may be adjusted for more complex or more urgent requirements. Except as provided by an individual contract modification, no payment for a change order will be made until a supplemental agreement has been signed by the contractor and the Contracting Officer. If complete proposals are not received timely, the Contracting Officer, after consultation with his authorized representative, may determine the cost of the change and the time impact and issue a change order based upon this determination with the stipulation that if a supplemental agreement is not negotiated within a reasonable amount of time, this determination will be final

and conclusive, subject only to the contractor's rights of appeal as provided in AOC52.233-1, Disputes, of the General Conditions.

**AOC52.243-1(d)(1):** The following percentages will be allowed for overhead and profit:

- (i) The contractor shall receive, as a percentage of the cost of all work performed by his own organization, an amount not to exceed 10% overhead and not to exceed 10% profit; and
- (ii) If subcontractor(s) are involved in the change, a fee in an amount not to exceed 10% as a percentage of the total price of the subcontractor portion of the change.
- (iii) Subcontractor(s) to the prime contractor (first tier subcontractor(s)) shall receive, as a percentage of the cost of all work performed by or for it, a total amount not to exceed 10% overhead and not to exceed 10% profit.
- (iv) The percentages for fees, overhead, and profit permitted by the above shall be allowed only for the contractor and its first-tier subcontractors. Percentages for fees, overhead, and profit in any amount will not be allowed for subcontractors of any other tier.

**AOC52.243-1(d)(2):** Percentages for overhead allowed are deemed to include, but shall not be limited to, the following:

- (i) Field Overhead Items.
  - (A) Trailer.
  - (B) Storage Facilities.
  - (C) Contractor's and subcontractor's superintendence.
  - (D) Construction equipment/tools, except those that are specially required for a specific change.
  - (E) Utilities.
  - (F) Contractor's and subcontractor's field office, administrative/support staff.
  - (G) Cost of preparing record drawing changes, correspondence, etc., relating to the contract.
  - (H) Job site safety aids.
  - (I) Cleaning and maintenance of nuisance debris from jobsite.
- (ii) Office Overhead Items for Contractor and Subcontractors.
  - (A) Maintenance/operation of principal or branch offices.
  - (B) Personnel costs.
  - (C) Cost for preparing correspondence, fragnets, etc., relating to the contract.
  - (D) Cost of insurance and bonds, except for insurance costs relating to direct labor, as outlined in "Exhibit A".

- (iii) For changes which include custom items unique to the project and which are fabricated off-site, the fabricator, whether the contractor or a subcontractor at any tier, shall furnish a breakdown of costs associated with the work in the fabricating plant. This breakdown shall include labor, material, equipment, and overhead/plant costs in sufficient detail to allow for review by the Contracting Officer or his duly authorized representative. Costs charged to overhead/plant shall be allowable costs for the fabricator, whether he is the contractor or a subcontractor at any tier, provided that the costs claimed are consistent with the provisions of Subpart 31.203 of the Federal Acquisition Regulation (Chapter 1, Title 48, Code of Federal Regulations). An amount not to exceed 10% of the cost of the fabricated item will be allowed for the fabricator's profit. If the fabricator is a subcontractor, the overhead and profit percentages for the contractor and any subcontractor at a higher tier having a contractual relationship with the fabricator shall be allowed in accordance with this clause.

### **Exterior Stone & Metal Preservation, Phase III:**

#### **AOC52.243-1(c): Allowable Mark-ups.**

- (1) Work Self-Performed by Contractor.
  - (i) The overhead mark-up allowed to the Contractor for work performed solely by the Contractor with its forces shall not exceed 10% applied to the Contractor's direct costs of labor, materials, and equipment.
  - (ii) The profit mark-up allowed to the Contractor for work performed solely by the Contractor with its forces shall not exceed 10% applied to the Contractor's direct costs of labor, materials, equipment, and overhead.
- (2) Work Performed by Subcontractor.
  - (i) The overhead mark-up allowed to the Subcontractor for work performed solely by the Subcontractor with its forces shall not exceed 10% applied to the Subcontractor's direct costs of labor, materials, and equipment.
  - (ii) The profit mark-up allowed to the Subcontractor for work performed solely by the Subcontractor with its forces shall not exceed 10% applied to the Subcontractor's direct costs of labor, materials, equipment, and overhead.
  - (iii) The combined overhead and profit mark-up allowed to the Contractor for work performed by a Subcontractor with its forces shall not exceed 10% or the sum of the profit and overhead rates identified in the Contract Price Section (Section B), whichever is lower, as applied to the Subcontractor's direct costs of labor, materials, equipment, and overhead. Passthrough

Subcontractors are not entitled to additional fees, overhead, or profit on a lower-tiered Self-performing Subcontractor, however the Contractor may distribute any amount of the Contractor's combined overhead and profit mark-up at their discretion to any Passthrough Subcontractors.

### **R-Tunnel Repairs at 2nd & Constitution Ave:**

#### **AOC52.229-1 Exclusion of DC Sales and Use Tax on Construction Projects**

- (a) In accordance with Section 9-417 (Certificates of Exemptions) and Section 9-438 (Construction, Repair, or Alteration of Real Property) of Title 9 of the D.C. Municipal Regulations (Taxation and Assessments), the Federal Government is exempt from District of Columbia sales and use tax on goods and equipment, purchased by general contractors, to be permanently incorporated into real property owned by the Federal Government.
- (b) The general contractor is directed to complete DC Form FR-500, "Combined Business Tax Registration Application", and submit it to the DC Office of Tax and Revenue for approval.
- (c) The general contractor must also complete DC Form OTR-553, Contractor's Exempt Purchase Certificate which shall be provided to each Washington DC vendor supplying such goods and services.
- (d) Due to this sales and use tax exemption, the general contractor shall not to include DC sales and use tax on goods and equipment to be permanently affixed to Federal property in its quotations, bids or proposals to the AOC.

**AOC52.243-1(c)** *Examples of Overhead costs.* Overhead costs include, but shall not be limited to, the items listed below. All overhead costs shall be included in the mark-up rate and not be applied as direct costs unless the changed requirements necessitate an adjustment to the period of performance, performance of the change work outside of the Contract's normal working hours (e.g., additional shifts, overtime hours, premium time, etc.), or other special circumstances. In these instances, Contractors shall provide sufficient documentation with their proposal justifying why the overhead item should be applied as a direct allowable cost for the Contracting Officer's consideration. The Contracting Officer has the sole discretion to accept or reject any overhead costs applied as direct costs.

#### (1) Field Overhead Items

- (i) Field trailer (including maintenance and operation).
- (ii) Storage facilities.
- (iii) Porta-johns and sanitary facilities.
- (iv) Contractor's and Subcontractor's superintendence.
- (v) Small construction equipment such as drills and nail guns, small tools (under one hundred dollars (\$100) each); and consumable materials such as rags, rope and cleaning compounds.

- (vi) Utilities, including the cost of cellular communications (i.e., cell phones, tablets and similar mobile devices) along with any related service fees.
  - (vii) Field administrative/support staff.
  - (viii) Cost of preparing record drawing changes, proposals, Time Impact Analysis (Fragnet), correspondence, and all written and electronic documents, relating to the contract.
  - (ix) Additional OSHA compliance, including but not limited to personal protective equipment, occupational health and environmental controls, fire protection, and other job site safety aids for routine performance of duties.
  - (x) Maintenance and cleaning of debris from jobsite.
  - (xi) Automobiles and trucks used for transportation and routine performance of duties.
- (2) Home Office Overhead Items
- (i) Office maintenance/operation costs;
  - (ii) Personnel costs;
  - (iii) All insurances required by the contract or at law; and
  - (iv) Any other general and administrative costs relating to the changed requirements.

## Appendix B: AOC Management Comments



**Architect of the Capitol**  
U.S. Capitol, Room SB-16  
Washington, DC 20515  
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United States Government

### MEMORANDUM

DATE: May 30, 2023

TO: Christopher P. Failla  
Inspector General

FROM: Chere Rexroat, RA   
Acting Architect of the Capitol

SUBJECT: The Office of Inspector General's Review of the Architect of the Capitol's Multimillion Dollar Construction Project Change Orders (Report No. OIG AUD-2023-04)

Thank you for the opportunity to review and comment on the Office of Inspector General (OIG) memo. The Architect of the Capitol (AOC) is pleased the OIG found that overall, the AOC issued change orders properly. The following comments concerning the OIG's recommendations are provided.

#### Recommendation 1

We recommend the AOC perform the following:

- a. Recover the questioned costs of \$6,464 identified within the R-Tunnel Project to the extent legally and administratively possible.
- b. Review the questioned costs of \$68,940 (\$75,404 - \$6,464) identified within the within the Cannon House Office Building Renewal (CHOBr) (\$53,663) and R-Tunnel (\$15,277) projects to determine if the costs are allowable in accordance with contract requirements; and as applicable, recover any additional amounts resulting from the application of items like overhead and profits to the unallowable costs.
- c. Ensure future change orders adhere to the contractual language regarding overhead costs not being allowed as direct costs; and when the AOC determines that overhead costs are allowable as direct costs, document how and why that determination was made.

#### AOC Response

We concur with 1a. The AOC will work to recover the questioned costs if it is legally and administratively possible.

We do not concur with 1b as it relates to the Cannon House Office Building Renewal (CHOBr) Project, but we do concur with 1b for the R-Tunnel Project. As stated during the OIG's review of change order documentation and cited on Page 3 of their report, we disagree with the OIG's finding on the CHOBr Project.

We concur with 1c. We will review existing processes for the AOC's review of contractor-submitted potential changes and their respective supporting documentation to ensure compliance with existing AOC policies and procedures and executed contracts.

#### Recommendation 2

We recommend the AOC perform the following:

- a. Review the questioned costs of \$167,628 once the AOC determines whether Clark/Christian, A Joint Venture (CCJV) met the incentive fee requirements; if CCJV does not meet the incentive fee requirements and the 100 percent unspent project contingency funds are not awarded, the AOC should recover to the extent legally and administratively possible the AOC's proportional share of the of the questioned costs.
- b. Ensure project funds are not used to pay for damage caused by the contractor, even if those funds may be earned by the contractor at a later date.

#### AOC Response

We do not concur with 2a. The AOC provided the OIG detailed support and documentation of the history of discussions related to the cornice scope on March 27, 2023. The CHOBr project team and historic preservationist determined that the damage was not caused by CCJV. The repairs were funded through construction contingency.

CCJV contract Section C.6. Definitions defines construction contingency as "The component of the GMP [guaranteed maximum price] intended to provide contingency for unanticipated construction costs. The construction contingency shall be realistic to successfully build the project within the GMP". Furthermore, Section C construction contingency costs are costs excluded from the Estimated Cost of the Work (ECW) and attributed to the following: 1. Resolution of Errors and Omissions 2. Resolution of Unforeseeable Constructability Issues 3. Subcontract adjustments necessary to resolve unforeseeable coordination issues 4. Variances between the ECW and the Cost of the Work established through the award of subcontracts 5. Other items as may be agreed to by the Contracting Officer and the Contractor.

As these costs align with the purpose and definition of construction contingency costs, i.e., "Resolution of Unforeseeable Constructability Issues" and "Other items as may be agreed to by the Contracting Officer and Contractor," the AOC will not seek to recover any costs from the contractor after the award of the CHOBr Project Phase 3 incentive fee.

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We concur with 2b. We will review existing processes for the AOC's review of contractor-submitted potential changes and their respective supporting documentation to ensure compliance with existing AOC policies and procedures and contractual requirements as they relate to the use of contingency.

#### Recommendation 3

We recommend the AOC perform the following:

- a. Review the questioned costs of \$6,958 identified within the CHOBr Project for potential improper overhead and profit markups by the first-tier subcontractor for a second-tier subcontractor's work.
- b. Review and modify the contract language to specify the allowable markups on change orders aligns with the memorandum dated June 26, 2017.

#### AOC Response

We do not concur with 3a.

Contract Section AOC52.243-1(d)(1)(iii) states:

*Subcontractor(s) to the prime contractor (first tier subcontractor(s)) shall receive, as a percentage of the cost of all work per- formed by or for it, a total amount not to exceed 10% overhead and not to exceed 10% profit.*

Therefore a subcontractor may collect 10 percent overhead and 10 percent profit on work done by or for itself. Thus, the first-tier subcontractor is correct in applying 10 percent overhead and 10 percent profit on work performed by second-tier subcontractors.

We do not concur with 3b.

No correction is required to the contract. The clause cited above and the Contracting Officer's memorandum to CCJV dated June 26, 2017 (provided to OIG on March 27, 2023) align in stating that subcontractors (second-tier subcontractors to CCJV) shall receive a total amount not to exceed 10 percent overhead and 10 percent profit on all work performed by or for themselves.

#### Recommendation 4

We recommend the AOC perform the following:

- a. Recover the questioned costs of \$2,716 identified within the R-Tunnel Project to the extent legally and administratively possible.
- b. Review the insufficient supported questioned costs of \$478,557 (\$481,273 - \$2,716) identified within the CHOBr Project (\$367,315) and R-Tunnel (\$111,242) projects to determine if the costs are supported and allowable; for any of the costs deemed

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unsupported and/or unallowable, recover the costs to the extent legally and administratively possible; as applicable, recover any additional amounts resulting from the application of items such as overhead and profits to the unallowable costs.

AOC Response

We concur with 4a and 4b related to the R-Tunnel Project.

We do not concur with 4b related to the CHOBr Project. These are not insufficient supported costs.

The total cost of the proposals in question fell within 10 percent of the Independent Government Estimate (IGE). As a best practice the IGE supports the total cost of a change and subcontractor proposal analysis is not required to determine price reasonableness. To complete a full cost analysis and full negotiation for every subcontractor would take considerably more resources (people, time, and money) than are currently in place. If the full scope IGE is within 10 percent of a proposal amount further analysis is not needed.

Recommendation 5

We recommend the AOC recover the unsupported questioned costs of \$6,944 identified within the CHOBr Project (\$226) and R-Tunnel (\$6,718) projects to the extent legally and administratively possible.

AOC Response

We concur. The AOC will work to recover the questioned costs if it is legally and administratively possible.

Recommendation 6

We recommend the AOC work with the contractor to ensure proposals submitted for change orders are factually sound, contain the required cost detail and exclude unallowable costs.

AOC Response

We concur. We will review existing processes for the AOC's review of contractor-submitted potential changes and their respective supporting documentation to ensure compliance with the contract.

Recommendation 7

We recommend the AOC comply with the sequence of review and approval for its change orders as prescribed by its policies and procedures and ensure sufficient documentation is maintained. If the AOC deviates from its policies and procedures, the AOC should fully document the reason for the deviation.

AOC Response

We concur. We will review existing processes for the AOC's review of contractor-submitted potential changes and their respective supporting documentation to ensure compliance with existing AOC policies and procedures.

Recommendation 8

We recommend the AOC recovers or not award the questioned costs of \$3,551 identified within the Exterior Stone & Metal Preservation, Phase 3 project to the extent legally and administratively possible and ensure the contractor excludes subcontractor profit prior to applying contractual markups.

AOC Response

We concur. To the extent legally and administratively possible, the AOC will recover the questioned costs.

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