



Architect of the Capitol
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UNITED STATES GOVERNMENT

MEMORANDUM

DATE: September 21, 2023

TO: Chere Rexroat, RA
Acting Architect of the Capitol

FROM: Christopher P. Failla, CIG 
Inspector General

SUBJECT: Semiannual Review of the Architect of the Capitol's (AOC's)
Multimillion-Dollar Construction Project Change Orders (Report No.
OIG-AUD-2023-07)

The AOC 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 in compliance with contract requirements. We tested a sample of change orders and determined that the sampled change orders generally met the audit objective; however, we noted instances of (1) inconsistent guidance, (2) proposals containing duplicative costs, (3) incorrectly applied markups, (4) proposals lacking contractually required detail and (5) supporting documentation that did not properly adhere to AOC policies and procedures. We identified \$105,224 in questioned costs and funds put to better use [waste] as a result of the findings. We performed this review in accordance with the Statement on Standards for Consulting Services, promulgated by the American Institute of Certified Public Accountants.

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

Background

Cotton selected a judgmental sample of 20 potential change orders (PCOs) from five active construction contracts that had values exceeding \$2 million. Table 1 lists the contracts that we included in our review and the number of PCOs that we sampled for each contract.

Table 1. Sample Summary

Contract	Awarded Contract Amount*	PCOs Sampled	Absolute Value of PCOs Sampled
Russell Stone Exterior Envelope Repair and Restoration (Contract No. AOC16C2007)	\$66,302,875	8	\$249,437
Exterior Stone & Metal Preservation, Phase III (Contract No. AOC16C3004-T005)	19,161,420	7	348,459
Senate Underground Garage Renovation and Landscape Restoration, Phase I (Contract No. AOC16C3008-T002)	61,648,611	3	238,323
Thurgood Marshall Federal Judiciary Building Administrative Office Space Realignment (Contract No. AOCACB21D0001-F003)	3,486,794	1	106,373
Thomas Jefferson Building North Exit Stair B, Phase II (Contract No. AOCACB21D0003-F001)	13,503,639	1	215,000
Sample Total	<u>\$164,103,339</u>	<u>20</u>	<u>\$1,157,592</u>

* Amounts noted represent the total amount awarded for the contract as of April 27, 2023.

Review Results

Cotton reviewed the AOC's supporting documentation for the sampled PCOs to ensure the amounts the AOC approved were accurate and were supported by the contractor's and subcontractor's proposals. Cotton also reviewed the supporting documentation to ensure the costs proposed by the contractor and subcontractor were reasonable, allowable, and in compliance with the contractual requirements. Finally, Cotton reviewed the AOC's review and approval process to ensure AOC personnel followed AOC policies and procedures. Our review resulted in seven findings and five recommendations, which we have detailed in the following sections.

Internal Controls

Our review of the AOC's policies and procedures related to PCOs resulted in one finding, summarized in Table 2:

Table 2. Internal Control Finding

Identified Issue	Questioned Amount	Finding No.
Inconsistent criteria for PCO notification form	\$0	1
Total	<u>\$0</u>	

Finding 1: The AOC Issued Inconsistent Criteria for PCO Notification Form

The AOC’s Planning and Project Management Memorandum (PPM Memo) provides guidance to Contracting Officers’ Representatives (CORs) regarding the construction contract modification process. According to PPM Memo 20-4, dated August 31, 2020, the AOC should prepare a PCO notification form when one of the following criteria applies to a PCO:

- *PCO exceeds 2 percent of original contract value*
- *PCO exceeds \$25,000*
- *PCO exceeds available contingency*
- *PCO may cause potential schedule impacts*

We noted that the flowchart in PPM Memo 20-4 also listed four criteria, however, it replaced “PCO exceeds 2 percent of original contract value” with “exceeds 10 percent original contingency.” Further, we noted that five of the 11 PCO notification forms that the AOC provided only listed the following three criteria:¹

- *PCO exceeds 10 percent of original contract value*
- *PCO exceeds \$25,000*
- *PCO exceeds available contingency*

These inconsistencies increase the likelihood that CORs will complete the PCO notification forms in a manner that is inconsistent with the guidance in the PPM Memo.

¹ Russell Stone Exterior Envelope Repair and Restoration PCO No. 204, 206 and 209; Senate Underground Garage Renovation and Landscape Restoration, Phase I PCO No. 253; and Thurgood Marshall Federal Judiciary Building Administrative Office Space Realignment PCO No. 001.

Russell Stone Exterior Envelope Repair and Restoration

Our review of the sampled PCOs related to the Russell Stone Exterior Envelope Repair and Restoration project resulted in three findings, summarized in Table 3.

Table 3. Russell Stone Exterior Envelope Repair and Restoration Project Findings

Identified Issue	Questioned Amount	Number of Instances Identified	Finding No.
Contractor markups not in compliance with contract	\$2,105	6	2
Duplicative overhead costs awarded as direct costs	288	1	3
Costs approved without obtaining sufficient detail	66,449	2	4
Total	<u>\$68,842</u>	<u>9</u>	

Finding 2: Contractor Markups Are Not in Compliance with Contract Requirements

The AOC approved PCOs in which the contractor did not adhere to the contractual markups for subcontractor costs. AOC-243-1(c)(3) allows the contractor to collect a combined 10 percent markup for overhead and profit on a subcontractor's direct costs for labor, materials, and equipment.² However, during our review of the sampled PCOs related to the Russell Stone Exterior Envelope Repair and Restoration project, we identified six instances in which the contractor applied its markups for overhead and profit to the subcontractor's total costs, rather than to the subcontractor's direct costs (i.e., the contractor did not remove overhead and profit before applying the markup). As a result, the AOC overpaid the contractor by \$2,105.

Finding 3: Duplicative Overhead Costs Awarded as Direct Costs

The AOC approved direct costs that were duplicative of the contractual overhead markup applied to a PCO. AOC52.243-1(c) describes the overhead and profit markups a contractor or subcontractor is entitled to recover on direct costs. AOC 243-1(d) describes the various items that are covered by the overhead markup. These items include, but are not limited to:

- Contractor's and subcontractor's superintendence
- Utilities

² See Appendix A for all relevant contract clauses.

- Field administrative office/support staff
- Job site safety aids
- Cleaning
- Storage facilities

During our review of the sampled PCOs related to the Russell Stone Exterior Envelope Repair and Restoration project, we identified one instance in which the AOC approved a PCO that contained supervision costs that were already included in the overhead markup. As a result, the AOC paid \$288 (before markups) in costs for which it had already reimbursed the subcontractors and contractors.

Finding 4: PCO Costs Approved Without Obtaining Sufficient Detail

The AOC approved PCOs' costs without obtaining sufficient detail to determine whether the proposed costs were allowable. AOC52.243-1(b)(1) requires contractor PCO proposals to include a brief description of the change, a breakdown of the costs, and a time impact analysis (if applicable). Moreover, AOC52.243-1(b)(2) states the following regarding the breakdown of costs:

(2) For changed requirements involving added elements within the general scope of work, omitted elements of work, or any combination thereof, the contractor shall submit an itemized breakdown of costs which shall include, but not be limited to:

- (i) Direct labor costs by trade, hours and hourly rate*
- (ii) Social Security and Unemployment Insurance Taxes*
- (iii) Direct material quantities and unit costs*
- (iv) Direct equipment costs by equipment, hours performing, and hourly rate*
- (v) Field and home office overhead*
- (vi) Profit*
- (vii) Bonds*

During our review of the sampled PCOs for the Russell Stone Exterior Envelope Repair and Restoration project, we identified two instances totaling \$66,449, in which the subcontractor's PCO proposal documentation did not contain a detailed breakdown of costs in accordance with AOC52.243-1(b)(2). If subcontractors do not provide an adequate cost breakdown in their proposals, the risk of including costs that would otherwise be considered unallowable and/or duplicative of overhead costs increases.

Thurgood Marshall Federal Judiciary Building Administrative Office Space Realignments (Contract No. AOCACB21D0001-F003)

Our review of the sampled PCO related to the Thurgood Marshall Federal Judiciary Building (TMFJB) Administrative Office (AO) Space Realignments project resulted in two findings, summarized in Table 4:

Table 4. TMFJB AO Space Realignments Project Findings

Identified Issue	Questioned Amount	Number of Instances Identified	Finding No.
Inappropriate markups applied to second-tier subcontractors	\$215	1	5
Costs approved without obtaining sufficient detail	18,968	5	6
Total	<u>\$19,183</u>	<u>6</u>	

Finding 5: Inappropriate Markups Applied to Second-tier Subcontractors³

The AOC allowed first-tier subcontractors to recover markups on second-tier subcontractor work that were similar to the markups allowed on work performed by the first-tier subcontractor's own workforce. AOC-243-1(c)(2)(ii) allows subcontractors to collect a 10 percent markup for overhead and a 10 percent markup for profit on work performed solely by the subcontractor with its forces. However, the contract does not discuss the markup rates to which a subcontractor is entitled when the work is performed by a second-tier subcontractor.

During our review of the sampled PCO related to the TMFJB AO Space Realignments project, we identified one instance in which a first-tier subcontractor applied a 10 percent markup for overhead, a five percent markup for profit, and a three percent markup for bonds to work performed by a second-tier subcontractor. This instance resulted in the

³ Subcontractors work at a variety of levels. The primary, or general, contractor works directly with the customer. The primary contractor hires first-tier contractors to perform work on the customer's project. The second-tier contractor is hired by the first-tier contractor to perform specific tasks. A third-tier contractor works with the second-tier contractor. The second-tier contractor hires the third-tier contractor to perform services that it is unable to complete because of a lack of ability or a tight deadline. The second-tier contractor receives payment from the first-tier contractor while the second-tier contractor pays the third-tier contractor. (<https://smallbusiness.chron.com/legal-contracts-contractors-65751.html>)

AOC overpaying the subcontractor by \$215 (before markups). We realize that the contract does not provide exact guidance regarding the amount of markup a first-tier subcontractor is allowed to collect on a second-tier subcontractor; however, it is logical that the markup rate should not exceed the markup rate a contractor is allowed to collect on work performed by a first-tier subcontractor (i.e., a combined 10 percent rate for overhead and profit).

Finding 6: Additional PCO Costs Approved Without Obtaining Sufficient Detail

The AOC approved costs without obtaining sufficient detail to determine whether the proposed costs were allowable. AOC52.243-1(b) requires contractor PCO proposals to include a brief description of the change, a breakdown of the costs, and a time impact analysis (if applicable). Moreover, the clause states the following regarding the breakdown of costs:

(2) For changed requirements involving added elements within the general scope of work, omitted elements or work, or any combination thereof, the Contractor shall submit, unless specified otherwise by the Contracting Officer, an itemized breakdown of costs which shall include, but not be limited to:

- (i) Direct labor costs by Davis Bacon worker classification, hours, and hourly rate. Labor hourly rates shall be individually itemized by direct labor wage costs, individual payroll tax & expense, and individual bona fide fringe benefit costs*
- (ii) Direct material quantities and unit costs. If the extended total cost of an individual material exceeds \$100.00, the Contractor's proposal shall include the associated material supplier's quotation itemizing those costs*
- (iii) Direct equipment costs by equipment, hours performing, and hourly rate. If the extended total cost of an individual equipment exceeds \$100.00, the Contractor's proposal shall include the associated equipment supplier's quotation itemizing those costs*
- (iv) Overhead (percentage only)*
- (v) Profit (percentage only)*
- (vi) Bonds (percentage only)*

During our review of the sampled PCO for the TMFJB AO Space Realignments project, we identified five instances totaling \$18,968 in which the subcontractor’s proposal documentation did not contain a detailed breakdown of costs in accordance with AOC52.243-1(b)(2). If subcontractors do not provide an adequate cost breakdown in their proposals, they have the opportunity to include costs that would otherwise be considered unallowable and/or duplicative of overhead costs.

Thomas Jefferson Building North Exit Stair B, Phase II (Contract No. AOCACB21D0003-F001)

Our review of the sampled PCO related to the Thomas Jefferson Building (TJB) North Exit Stair B, Phase II project resulted in one finding, summarized in Table 5:

Table 5. TJB North Exit Stair B, Phase II Project Findings

Identified Issue	Questioned Amount	Number of Instances Identified	Finding No.
The AOC approved costs containing non-contractual markups	\$17,199	1	7
Total	<u>\$17,199</u>	<u>1</u>	

Finding 7: AOC Approved Costs Containing Non-Contractual Markups

The AOC approved costs containing non-contractual markups. AOC-243-1(c)(2)(ii) allows the subcontractor to collect a 10 percent markup for overhead and a 10 percent markup for profit on work performed solely by the subcontractor with its forces. During our review of the sampled PCO for the TJB North Exit Stair B, Phase II project, we noted that the final negotiated amount of the PCO was based on the AOC’s Independent Government Estimate (IGE). In performing the IGE calculation, the AOC applied a 10 percent markup to the subcontractor’s direct costs to determine overhead, then applied another 10 percent markup to the direct costs to determine the subcontractor’s profit. Finally, the AOC applied a third, 10 percent markup to the subcontractor’s direct costs to determine bond costs. By using three separate 10 percent markups, the AOC’s calculation exceeded the two 10 percent markups allowed per AOC-243-1(c)(2)(ii). Specifically, the AOC included a third 10 percent markup for bond costs; however, AOC 243-1(d) states that insurance costs, which we interpret to include bonds, should be included in the overhead markup. As a result, the AOC overpaid the subcontractor by \$15,220.

Moreover, we noted that in the proposal submitted by the contractor, the first-tier subcontractor did not include any mark-up for bond costs on the work it proposed to perform. Conversely, the IGE included a 10 percent mark-up for bond costs for the first-tier subcontractor. When the AOC uses an IGE to negotiate or evaluate a PCO, which includes costs elements not included in the contractor's proposal, regardless of the costs' allowability, it could result in the AOC incurring additional costs. The AOC uses IGEs to determine the reasonableness of bids submitted by subcontractors and contractors. If the IGE calculations use unnecessary markups, the AOC's estimate for the work will always be higher than it should be, which could hinder AOC's ability to negotiate downward adjustments to the proposals submitted by subcontractors and the contractor.

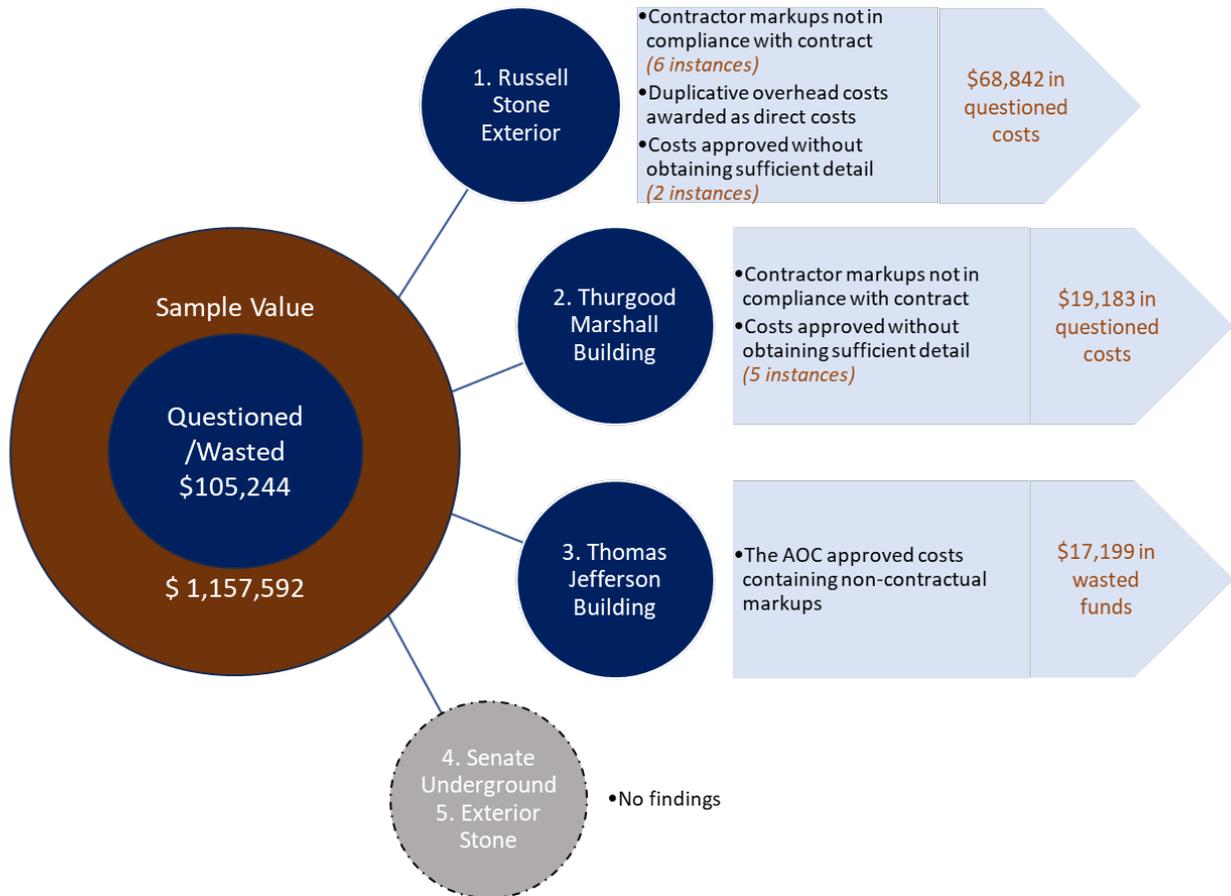
Alternatively, in the case of the sampled PCO, the AOC's IGE ended up as the final PCO amount. The government could have avoided additional costs if it only used contractual markups and did not use unnecessary markups not included in subcontractor proposals.

Last, the IGE that the AOC used to determine the amount of the PCO also included a 10 percent markup for overhead and profit for the prime contractor and an additional 1 percent markup on the subcontractor's direct costs for the prime contractor's bond costs. AOC-243-1(c)(2)(iii) allows the prime contractor to collect a 10 percent markup for overhead and profit on work performed by the subcontractor, which includes bond costs. As a result, the AOC overpaid the prime contractor by \$1,979.

CONCLUSION

We determined that the PCOs reviewed were generally (1) reasonable, necessary and within the scope of the contract, and (2) effectively awarded and administered. While we determined that the project teams had properly issued the PCOs, we identified inconsistent criteria for the PCO notification form and proposals that contained incorrectly applied markups, duplicative costs, proposals that did not include contractually required details, and documentation that did not adhere to AOC policy and procedures. We have quantified these findings as questioned costs (\$88,025) and funds put to better use [waste] (\$17,199) and noted the number of instances found for each finding (16 total instances) in Table 6. Although the monetary effects of these findings may not appear significant in the context of the overall project budgets, it is important to remember that these findings are the result of testing only a small sample of change orders — total absolute value of PCOs sampled was \$1,157,592 with \$105,224 questioned or noted as waste (Figure 1). We also find the number of instances for noncompliant markups (7 instances) and costs approved without obtaining sufficient details (7 instances) for nine sampled PCOs across two of the five sampled contracts indicates a need for process improvements.

Figure 1. Summary of Change Order Findings by Sampled Contract Amount



Last, we note that on March 30, 2023, we issued a memorandum which reviewed construction change orders issued by the AOC. Recommendation No. 6 in that memorandum stated that “We recommend the Architect of the Capitol work with the contractor to ensure proposals submitted for change orders are factually sound, contain the required cost detail and exclude unallowable costs.” The AOC concurred with this recommendation, and it is currently open. Therefore, we are not making the recommendation again, but note that it is relevant to Findings 4 and 6 in this memorandum.

Table 6. Summary of Change Order Findings

Identified Issue	Questioned Amount	Funds Put to Better Use (Waste)	Number of Instances Identified	Finding No.
Inconsistent criteria for PCO notification form	\$0	0	N/A	1
Contractor markups not in compliance with contract	2,320	0	7	2, 5
Duplicative overhead costs awarded as direct costs	288	0	1	3
Costs approved without obtaining sufficient details	85,417	0	7	4, 6
The AOC approved costs containing non-contractual markups	0	17,199	1	7
Total	<u>\$88,025</u>	<u>\$17,199</u>	<u>16</u>	

RECOMMENDATIONS

We made the following five recommendations to address the findings identified during our review:

Recommendation 1

We recommend the Architect of the Capitol review its potential change order (PCO) notification criteria and implement the following:

- Ensure that any diagrams or flowcharts referencing the criteria for PCO notification forms are consistent with the criteria outlined in the Planning and Project Management Memorandum (PPM Memo).
- Ensure the criteria in any PCO notification form templates are consistent with the criteria outlined in the PPM Memo.

Recommendation 1 – AOC Comment

We concur. The AOC will reconcile criteria with all respective charts, diagrams, forms, templates, etc. to ensure consistency with our PPM [Memo].

Recommendation 1 – OIG Comment

We recognize the AOC's concurrence with recommendation 1. 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 2

We recommend the Architect of the Capitol (AOC) evaluate the \$2,320 in questioned costs related to improper application of markups for the following projects:

- Russell Stone Exterior Envelope Repair and Restoration \$2,105 - contractor's improper application of overhead and profit markups to first-tier subcontractor work.
- Thurgood Marshall Federal Judiciary Building Administrative Office Space Realignments \$215 - 1st tier subcontractor's improper application of markups on a 2nd tier subcontractor.

The AOC should recover any erroneously awarded costs to the extent legally and administratively possible.

Recommendation 2 – AOC Comment

We concur. The AOC will evaluate this questioned cost and, if deemed unallowable, the AOC will recover it to the extent legally and administratively possible.

Recommendation 2 – OIG Comment

We recognize the AOC's concurrence with recommendation 2. 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) evaluate the \$288 in questioned costs for duplicative overhead costs awarded as direct costs for the Russell Stone Exterior Envelope Repair and Restoration. The AOC should recover any erroneously awarded costs to the extent legally and administratively possible.

Recommendation 3 – AOC Comment

We concur. The AOC contracting officer (CO) determined in their contemporaneous memorandum for record that the cost was not duplicative. The AOC will reevaluate this

questioned cost and if deemed duplicative, the AOC will recover it to the extent legally and administratively possible.

Recommendation 3 – OIG Comment

We recognize the AOC's concurrence with recommendation 3. 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 4

We recommend the Architect of the Capitol review the insufficiently supported questioned costs identified within the Russell Stone Exterior Envelope Repair and Restoration (\$66,449) and the Thurgood Marshall Federal Judiciary Building Administrative Office Space Realignments (\$18,968) 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. The AOC will reevaluate whether the CO properly exercised their broad discretion in determining the level of proposal detail needed to determine a fair and reasonable price. The AOC will reevaluate the CO's determination that the settlement was in the overall best interest of the government. If questioned costs are deemed unallowable, the AOC will recover them to the extent legally and administratively possible.

Recommendation 4 – OIG Comment

We recognize the AOC's concurrence with recommendation 4. 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 5

We recommend the Architect of the Capitol ensure that it uses the contractual markups when preparing Independent Government Estimates to ensure that the resulting price is

consistent with the costs allowed under the contract and avoids overpayment (Funds Put to Better Use \$17,199).

Recommendation 5 – AOC Comment

We concur. While the price element in question was part of a negotiated global settlement resulting [in] more than \$180,000 in government savings, the AOC will reevaluate whether the overall benefits of the settlement warranted the concession.

Recommendation 5 – OIG Comment

We recognize the AOC’s concurrence with recommendation 5. 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.

COTTON & COMPANY ASSURANCE AND ADVISORY LLC



Jason Boberg, CPA, CFE
Partner
September 18, 2023

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Appendix A: Contract Clauses

Planning and Project Management (PPM) 20-4

Potential Change Order Notification: The purpose of the notification form is to timely inform leadership and other stakeholders of a potential change to a construction contract, for awareness and mitigation of schedule, scope and cost impacts. The Potential Change Order (PCO) form should be used when one or more of the following applies:

- PCO exceeds 2 percent of original contract value
- PCO exceeds \$25,000.00
- PCO exceeds available contingency
- PCO may cause potential schedule impacts

Russell Stone Exterior Envelope Repair and Restoration

AOC52.243-1 Changes – Supplement (June 2014)

(b) Submission of Contractor proposals, cost breakdowns, and time impacts.

- (1) Proposals for changed requirements to the contract shall include a brief description of the change; a breakdown of costs as outlined herein; and a time impact analysis (critical path method (CPM) fragnet).
- (2) For changed requirements involving added elements within the general scope of work, omitted elements of work, or any combination thereof, the contractor shall submit an itemized breakdown of costs which shall include, but not be limited to:
 - (i) Direct labor costs by trade, hours and hourly rate
 - (ii) Social Security and Unemployment Insurance Taxes
 - (iii) Direct material quantities and unit costs
 - (iv) Direct equipment costs by equipment, hours performing, and hourly rate
 - (v) Field and home office overhead
 - (vi) Profit
 - (vii) Bonds
- (3) If the contractor believes that changed requirements affect the contract period of performance, appropriate substantiation must be submitted. Requests for an adjustment of contract time shall include a narrative description of the time impact created by the changed requirements supported by a fragnet of the project CPM schedule. Even if a schedule other than a CPM schedule is used on the project, all requests for an adjustment of time caused by changed requirements

shall be subject to establishing a time impact to the project schedule caused by the changed requirements.

(i) float or slack time available in the schedule at any time shall not be for the exclusive use or benefit of either the Contractor or the Government but is jointly owned. Delay for which the Government is responsible in any portion of the work shall not automatically mean that the extension of the contract completion date is warranted or due the Contractor. Contractor agrees that a delay in any given activity at any given time may not necessarily affect critical activities and may not necessarily cause non-critical activities to become critical. The effect of any given delay may be only to absorb float and may not necessarily delay critical activities. Extensions of time for delays for which the Government is responsible will be granted only to the extent that affected activities exceed the total float along their paths on the current and approved CPM schedule.

(ii) the Contractor must take all reasonable action to avoid or to mitigate the effects of delays, including but not limited to rescheduling or resequencing the work; accepting other work; and reassigning personnel.

(4) Complete and reasonable proposals shall be submitted by the contractor within seven calendar days after request, or as specified in the request for proposals. If complete and reasonable proposals are not timely received, the Contracting Officer may determine the cost and time impact of the changed requirements and issue a unilateral change order. This determination will be final and conclusive, subject to the contractor's rights of appeal as provided in the disputes clause of the contract.

AOC52.243-1 Changes – Supplement (June 2014)

(c) Allowable Markups (3):

For work performed by a subcontractor solely with its own forces, the Contractor is entitled to a reasonable mark-up for combined overhead and profit, not to exceed 10 percent of the cost of the Subcontractor's materials, equipment and labor.

AOC52.243-1 Changes – Supplement (June 2014)

(d) examples of allowed overhead costs:

Allowed overhead is deemed to include, but shall not be limited to, the following:

(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 -when required by the changed requirements
 - (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, correspondence, and all written and electronic documents, relating to the contract
 - (ix) Job site safety aids
 - (x) Maintenance and cleaning of debris from jobsite
 - (xi) Field office automobiles and trucks used for transportation and routine 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
- (ii) Storage Facilities
 - (iii) Porta-johns and sanitary facilities
 - (iv) Contractor's and subcontractor's superintendence -when required by the changed requirements

Thurgood Marshall Federal Judiciary Building, Administrative Office Space Realignment

AOC52.243-1 Changes – Supplement (July 2020)

(b) Submission of Contractor Proposals, cost breakdowns and time impacts

- (1) Proposals for changed requirements to the contract shall include a brief description of the change; a breakdown of costs as outlined herein; and a time impact analysis (critical path method (CPM) fragnet) if requesting an adjustment of the period of performance.

- (2) For changed requirements involving added elements within the general scope of work, omitted elements of work, or any combination thereof, the Contractor shall submit, unless specified otherwise by the Contracting Officer, an itemized breakdown of costs which shall include, but not be limited to:
- (i) Direct labor costs by Davis Bacon worker classification, hours, and hourly rate. Labor hourly rates shall be individually itemized by direct labor wage costs, individual payroll tax & expense costs, and individual bona fide fringe benefit costs
 - (ii) Direct material quantities and unit costs. If the extended total cost of an individual material exceeds \$100.00, the Contractor's proposal shall include the associated material supplier's quotation itemizing those costs
 - (iii) Direct equipment costs by equipment, hours performing, and hourly rate. If the extended total cost of an individual equipment exceeds \$100.00, the Contractor's proposal shall include the associated equipment supplier's quotation itemizing those costs
 - (iv) Overhead (percentage only)
 - (v) Profit (percentage only)
 - (vi) Bonds (percentage only)

AOC52.243-1 Changes – Supplement (July 2020) (c) Allowable Markups

(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 percent 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 percent 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 percent 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 percent 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 percent 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.

Thomas Jefferson Building North Exit Stair B Phase II

AOC52.243-1 Changes – Supplement (July 2020) (c) Allowable Markups

(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 percent 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 percent 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 percent 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 percent 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 percent 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.

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: September 13, 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 Construction Change Orders (Project No. 2023-AUD-002-O)

Thank you for the opportunity to review and comment on the Office of Inspector General (OIG) subject report. The following comments concerning the OIG's recommendations are provided.

Recommendation 1

We recommend the Architect of the Capitol review its potential change order (PCO) notification criteria and implement the following:

- Ensure that any diagrams or flowcharts referencing the criteria for PCO notification forms are consistent with the criteria outlined in the Planning and Project Management Memorandum (PPM Memo).
- Ensure the criteria in any PCO notification form templates are consistent with the criteria outlined in the PPM Memo.

AOC Response

We concur. The Architect of the Capitol (AOC) will reconcile criteria with all respective charts, diagrams, forms, templates, etc. to ensure consistency with our PPM.

Recommendation 2

We recommend the AOC evaluate the \$2,320 in questioned costs related to improper application of markups for the following projects:

Russell Stone Exterior Envelope Repair and Restoration \$2,105 - contractor's improper application of overhead and profit markups to first tier subcontractor work

Thurgood Marshall Federal Judiciary Building Administrative Office Space Realignments \$215 - 1st tier subcontractor's improper application of markups on a 2nd tier subcontractor.

The AOC should recover any erroneously awarded costs to the extent legally and administratively possible.

AOC Response

We concur. The AOC will evaluate this questioned cost and, if deemed unallowable, the AOC will recover it to the extent legally and administratively possible.

Recommendation 3

We recommend the AOC evaluate the \$228 in questioned costs for duplicative overhead costs awarded as direct costs for the Russell Stone Exterior Envelope Repair and Restoration. The AOC should recover any erroneously awarded costs to the extent legally and administratively possible.

AOC Response

We concur. The AOC contracting officer (CO) determined in their contemporaneous memorandum for record that the cost was not duplicative. The AOC will reevaluate this questioned cost and if deemed duplicative, the AOC will recover it to the extent legally and administratively possible.

Recommendation 4

We recommend the AOC review the insufficient supported questioned costs identified within the Russell Stone Exterior Envelope Repair and Restoration (\$66,449) and the Thurgood Marshall Federal Judiciary Building Administrative Office Space Realignments (\$18,968) 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.

AOC Response

We concur. The AOC will reevaluate whether the CO properly exercised their broad discretion in determining the level of proposal detail needed to determine a fair and reasonable price. The AOC will reevaluate the CO's determination that the settlement was in the overall best interest of the government. If questioned costs are deemed unallowable, the AOC will recover them to the extent legally and administratively possible.

Recommendation 5

We recommend the AOC ensure that it uses the contractual markups when preparing Independent Government Estimates (IGE's) to ensure that the resulting price is consistent with the costs allowed under the contract and avoids overpayment (Funds Put to Better Use \$17,199).

AOC Response

We concur. While the price element in question was part of a negotiated global settlement resulting more than \$180,000 in government savings, the AOC will reevaluate whether the overall benefits of the settlement warranted the concession.

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