
STATEMENT OF HON. BRIAN D. MILLER

INSPECTOR GENERAL

GENERAL SERVICES ADMINISTRATION

BEFORE

COMMITTEE ON HOMELAND SECURITY AND GOVERNMENTAL AFFAIRS

AD HOC SUBCOMMITTEE ON CONTRACTING OVERSIGHT

UNITED STATES SENATE



MARCH 1, 2011

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Madame Chair, Ranking Member Portman, and Members of the Subcommittee, thank you for your invitation to testify on the use of public relations contracts at the General Services Administration (GSA) in the Heartland Region. I would also like to thank you for your continued support of Inspectors General and for the Subcommittee's strong commitment to oversight.

The Subcommittee has asked me to present the GSA Office of Inspector General's (OIG) findings from its review of a \$234,000 contract that was awarded to Jane Mobley Associates, Inc. (JMA) to assist GSA with communications related to environmental concerns at the Bannister Federal Complex (Bannister) in Kansas City, Missouri. I will also address GSA OIG reports regarding environmental concerns at Bannister and GSA's response. GSA OIG issued reports on its reviews of Bannister on June 24, 2010, and November 8, 2010, which are both available on our website.

GSA OIG's review of the JMA contract is ongoing, as an audit and an investigation. On February 18, 2011, the OIG issued an interim audit memorandum to GSA to notify GSA management of the problems with the JMA contract and to ensure that these types of problems are not repeated in future procurements. Problems include:

- There was inadequate justification to award a sole-source contract to JMA;
- The scope of work was not adequately defined or priced;
- The initial task order had no specific deliverables; and
- The contract extension was not justified.

Environmental Concerns at Bannister

The Bannister Federal Complex consists of 310 acres located in the southern part of Kansas City, Missouri. It started as a manufacturing plant that used toxic substances. Soil and groundwater contamination resulted. Bannister is currently divided into GSA-controlled space and Department of Energy space. The Department of Energy controls over three million square feet of building space, and its National Nuclear Security Administration produces non-nuclear components of national defense systems at the site.

Concerns about the health of current and former occupants of the Bannister Complex were brought to light in November 2009 by local media reports. Originating from a letter drafted by Bannister employees, local media circulated a list of 95 names of individuals alleged to have developed cancer or other illnesses related to environmental conditions at Bannister. These reports stated that historical contaminants at Bannister such as trichloroethylene (TCE), lead, petroleum hydrocarbons, beryllium, uranium, and polychlorinated biphenyls (PCBs) caused occupants to contract cancer or other illnesses symptomatic of exposure to such compounds. News reports further stated that such exposure may have resulted in the deaths of some occupants of the Bannister facilities.

On February 3, 2010, then-Senator Christopher “Kit” Bond of Missouri sent a letter to me requesting a review of the environmental conditions at Bannister. My office then performed an audit to determine whether GSA’s Public Buildings Service¹ (PBS) took appropriate steps to protect the health and safety of the occupants in the PBS space at Bannister. During that audit, we issued an interim report on June 24, 2010, to advise GSA that they had not been fully responsive to a Freedom of Information Act request when they did not disclose the existence of a January 7, 2005, letter from the Missouri Department of Natural Resources (MDNR).

The final audit report on environmental issues, which was issued on November 8, 2010, concluded that while environmental testing conducted in 2010 did not identify any significant health hazards at Bannister at that time, the lack of effective environmental oversight in the previous 10 year period precludes GSA from ensuring that historically the complex had been a safe and healthy workplace. Additional findings included the following:

- GSA personnel provided incorrect and misleading information to both the OIG during our review and to the public concerning environmental issues at Bannister. For example, agency management stated that comprehensive annual and five year safety and health evaluations were conducted at Bannister. This characterization was misleading in that the surveys they

¹ GSA’s Public Buildings Service operates federally owned buildings throughout the country.

referenced consisted of visual safety walkthroughs, but did not include testing for such substances as beryllium and TCEs.

- PBS did not always take appropriate steps to protect the health and safety of the occupants at Bannister when presented with evidence of potential hazards. PBS's lax oversight is demonstrated by its delayed response to a January 7, 2005, letter from the Missouri Department of Natural Resources (MDNR). MDNR criticized the Agency's limited investigation of TCE contamination. Despite the seriousness of the issues raised in MDNR's letter, PBS took no substantive investigative action for eighteen months, when it finally initiated a site inspection. That site inspection was not completed until three and a half years after MDNR's letter. PBS did not respond to MDNR regarding its concerns and terminated MDNR's environmental oversight contract on October 24, 2005. One of MDNR's concerns related to the child care facility was not addressed until a vapor intrusion system was installed five years after the date of the MDNR letter.

It is important to note that GSA's recent efforts regarding the environmental concerns have been encouraging. In 2010, PBS enlisted the assistance of the Environmental Protection Agency (EPA) and the Center for Disease Control's National Institute for Occupational Safety and Health (NIOSH) to conduct water, air, and soil analyses and to provide health screening services, respectively. However, GSA's neglect regarding the environmental issues before media reports and government investigation requests surfaced, along with the dissemination of incorrect information, damaged GSA's credibility with the site's occupants and with the general public.

In summary, regional personnel should have known about applicable environmental requirements; approached testing systematically given the known contaminants; followed up on concerns; and documented decisions.²

Jane Mobley Associates, Inc. (JMA) Contract

On February 4, 2010, one day after Senator Bond asked the OIG to investigate the problems at Bannister, the PBS Regional Commissioner instructed PBS contracting officials to award a task order to JMA under its existing GSA multiple award schedule (MAS) contract, number GS-23F-0354P.

One day later, on February 5, 2010, the contracting officer awarded a \$99,940.25 firm fixed-price task order to JMA for a performance period of February 5 to March 8, 2010. The statement of work (SOW) called for "Public Relations Services" and required that:

² The lack of proactive national environmental management by PBS is a vulnerability identified by GSA OIG in the November Audit Report (at 7) and in earlier reviews (e.g., OIG 2006 Review of the PBS Environment Program Management (A050040/P/4/R06003)).

The contractor shall provide expertise and technical support, equipment, materials, and supplies necessary to support the government in responding to complaints against government officials about handling of notice by current and former government employees indicating health concerns caused by toxic substances at the site of the Bannister Federal Complex.

The SOW listed tasks and deliverables related to arranging meetings; message development to the media, government officials, and Bannister employees; development of materials for media; information management across multiple agencies; and stakeholder identification and communication.

On March 8, 2010, the contract was extended to May 10, 2010, at an estimated cost of \$134,400, for a total price of over \$234,000.³

Award Problems

GSA OIG found several problems related to the contract award and extension.

First, the award inappropriately cited an “unusual and compelling need” as a justification for limiting competition. While an “urgent and compelling need” can be a justification, the circumstances must show that following ordering procedures would result in unacceptable delays. PBS contracting personnel, however, did not demonstrate that soliciting other sources would have resulted in unacceptable delays. A failure of advance planning is not an adequate justification to restrict competition. As I stated earlier, media attention on Bannister began in November 2009, several months before the decision to immediately enter into the JMA contract. Furthermore, the decision to contract with a public relations firm was made by the region after consulting with the PBS Commissioner and Central Office staff. According to the PBS Commissioner, a public relations contract did not have to be awarded in one day, and discussions regarding obtaining a contract had been on-going for months.

Second, there was very little information in the task order file justifying why JMA was selected. There was no indication that JMA had unique qualifications. Rather, PBS officials stated that JMA was selected for a sole source contract based on a recommendation by an EPA official to the PBS Regional Commissioner. Later, in response to GSA OIG’s memorandum, GSA officials stated that JMA was the only local public relations firm on the MAS schedule,⁴ and JMA had knowledge of the local

³ GSA also entered into a Blanket Purchase Agreement with JMA for one year effective June 1, 2010, with four one-year options. However, we do not believe GSA has used that BPA to obtain any services from JMA.

⁴ The MAS schedule lists another small, woman-owned business that offers public relations services, Creative Communications Network, located in Liberty, MO, about 25.9 miles from Bannister.

community and Bannister. Further, they stated that “JMA was knowledgeable of crisis management, experienced at digesting, evaluating, and translating technical data, and had previously worked with a broad spectrum of government agencies.” These are not unique qualifications, and the only way to determine if there were other qualified firms, with better prices, would have been a competition for this contract.

Third, the scope of work was not adequately defined or priced as required by the Federal Acquisition Regulation. The task order file did not include a detailed description of the need for the services, specifics of the work to be performed, or performance measures. Because the tasks and deliverables listed in the SOW were very general, there was no documentation of how performance would be assessed or what each task should cost. There were also indications that JMA drafted the SOW itself.

Fourth, the contracting officer did not adequately determine whether the price was reasonable for the initial task order. She did not compare the price to independent government cost estimates, or even obtain such estimates. Rather, the contracting officer compared the proposed JMA rates to other MAS contract labor rates. However, since this was to be a fixed price contract, labor rates should not have been controlling, as the number of hours spent on each deliverable could also vary significantly. The price should have been based on the reasonableness of the cost of the deliverable. However, the scope of work was nebulous, and, without a defined scope, the contracting officer could not define deliverables or the labor hours necessary to produce them. JMA initially proposed labor rates ranging from \$61.41 an hour to \$270.41 an hour, but these labor categories were not linked to specific tasks or deliverables. The task order shows a lump sum award of \$99,940 with no breakdown of work items. Furthermore, the contract file did not make clear why an EPA employee provided input on the proposed price. This individual was also involved in authorizing contract payment. GSA should have relied on its own personnel, not someone from an outside agency, to make judgments concerning the reasonableness of pricing for required work products for GSA’s own contracts, and to fully document those judgments in the contract file.

Fifth, GSA extended the contract for two months, increasing the cost by another \$134,400. Although GSA insists that it continued to be a firm fixed-price contract, the payments were based on hours billed. Regardless, GSA did not document why the extension was needed or had to be sole-sourced.

Last, the work product from JMA that the region provided us did not demonstrate any special expertise in terms of knowledge of Bannister or digesting and translating technical data. The JMA work product did contain information readily available on the internet, and, in some cases, inaccurate data.

Conclusion

Ensuring the health and safety of its occupants should be GSA's first priority as a federal landlord. However, GSA was not initially responsive to workers' concerns about environmental issues. Once GSA began to address the environmental issues, it chose to contract with a public relations firm, JMA, to try to put its actions in the most favorable light.

Unfortunately, the resulting JMA contract was poorly conceived and administered. GSA awarded JMA a task order without substantiating the asserted "unusual and compelling need" to justify restricting competition. Furthermore, the award lacked measurable deliverables and a well defined scope of work. This created a situation in which the Government has no assurance that it paid a fair price for the services it received.