



Smithsonian  
Institution

# **The Smithsonian Should Streamline and Standardize Its Architect/Engineer Contract Modification Process.**

**Office of the Inspector General**

**Audit of Management of the NMAAHC**

**Building Project, A-12-03-1**

**Audit Report**

**May 11, 2012**



## In Brief

## The Smithsonian Should Streamline and Standardize Its Architect/Engineer Contract Modification Process

Report Number A-12-03-1, May 11, 2012

### Why We Did This Audit

We conducted the first in a series of audits of the Smithsonian's management of the National Museum of African American History and Culture (NMAAHC) building project.

This is the first of two reports covering the contract modification process for the NMAAHC project. We focused on the Smithsonian's contracting process because previous OIG audits revealed weaknesses in this area and because management expressed concern about the efficiency of this process. Our overall audit objectives were to assess the efficiency and effectiveness of the Smithsonian's: 1) contract modification process for the architect/engineer (A/E) and construction management (CM) at-risk contracts; and 2) oversight process for awarding construction packages under the CM at-risk contract. This report covered the process related to the A/E contract only.

### What We Recommended

To improve the efficiency and effectiveness of the A/E contract modification process, we recommended that OCon&PPM and OFEO develop and implement relevant policies and procedures.

Management concurred with our findings and recommendations and has planned corrective actions to resolve the recommendations.

### What We Found

The Smithsonian should streamline and standardize its A/E contract modification process. First, we found that the Contracting Officer's Technical Representative (COTR), following her office policy, developed independent government estimates (IGE) for more additional services than federal regulations require. As a result, the COTR is doing more work than necessary, taking time away from completing her other project responsibilities, and thus potentially delaying the modification process and project schedule.

Second, based on available documentation, we also found that the COTR appeared to have generally completed the IGEs late. As a result, the project team did not know whether the COTR prepared the IGE independently and used it to determine whether the A/E contractor's fee was fair and reasonable — the intended purpose of the IGE.

Third, we found that the Office of Facilities Engineering and Operations (OFEO) did not submit modification packages to the Office of Contracting and Personal Property Management (OCon&PPM) timely, which delayed the Contract Specialist in OCon&PPM from issuing the modifications. Without a modification in place, the A/E contractor cannot bill, and the Smithsonian cannot pay, for work the A/E contractor started under a notice to proceed. Furthermore, there is a potential risk that the subcontractors may not be paid, jeopardizing a subcontractor's ability to continue as a going concern. Having to replace a subcontractor may negatively impact the project schedule.

The problems related to the IGEs and the modification package delays were primarily caused by a lack of written policies and procedures within OCon&PPM and OFEO addressing the A/E contract modification process.

During the course of the audit, we also observed that the project team members improved communications by having the COTR timely notify other OFEO team members of upcoming additional services. However, expanding the COTR's notification to include OCon&PPM would further strengthen communications.

In addition, we identified four instances of the A/E contractor performing unauthorized work for additional services. In all cases, the Smithsonian has since remedied these instances by authorizing the work.

**For additional information or a copy of the full report, contact the Office of the Inspector General at (202) 633-7050 or visit <http://www.si.edu/oig>.**

## INTRODUCTION

The Office of the Inspector General (OIG) conducted the first in a series of audits of the Smithsonian's management of the National Museum of African American History and Culture (NMAAHC) building project. Through these audits, we intend to examine whether the Smithsonian has adequate processes to keep the NMAAHC project on schedule and within budget.

In this audit, we focused on the Smithsonian's contracting process because previous OIG audits revealed weaknesses in this area and because management expressed concern about the efficiency of this process. Our objectives were to assess the efficiency and effectiveness of the Smithsonian's: 1) contract modification process for the architect/engineer (A/E) contract to design the building and the construction management (CM) at-risk contract;<sup>1</sup> and 2) oversight process for awarding construction packages under the CM at-risk contract.

At the time we began our fieldwork, the Smithsonian had not yet awarded any construction packages under the CM at-risk contract. Therefore, to supply timely and relevant information, this report addresses the contract modification process related to the A/E contract only. We expect to issue a second report focusing on the CM at-risk contract later this fiscal year.

We focused solely on A/E contract modifications for additional services.<sup>2</sup> Additional services are services not included within the original statement of work but are within the scope of the contract. Examples include preparing the NMAAHC site for a walk through by oversight agencies and performing required groundwater tests. We identified 6 modifications composed of 28 additional service items. We include a detailed description of our scope and methodology in Appendix A.

## RESULTS IN BRIEF

The Smithsonian should improve the efficiency and effectiveness of its A/E contract modification process. First, we found that the Contracting Officer's Technical Representative (COTR), following her office policy, developed independent government estimates (IGE) for more additional services than federal regulations require. As a result, the COTR is doing more work than necessary, taking time away from completing her other project responsibilities, and thus potentially delaying the modification process and project schedule.

Second, based on available documentation, we also found that the COTR appeared to have generally completed the IGEs late. As a result, the project team did not know whether the COTR prepared the IGE independently and used it to determine whether the A/E contractor's fee was fair and reasonable — the intended purpose of the IGE.

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<sup>1</sup> In a CM at-risk contract, the construction contractor is usually selected early in the design process and collaborates with the owner and designer during all phases of the project.

<sup>2</sup> The Smithsonian also modified the contract for other reasons such as to exercise priced options and to make administrative changes to the contract. We did not include these modifications because they did not follow all steps in the Smithsonian's A/E contract modification process.

Third, we found that the Office of Facilities Engineering and Operations (OFEO) did not submit modification packages to the Office of Contracting and Personal Property Management (OCon&PPM) timely, which delayed the Contract Specialist in OCon&PPM from issuing the modifications. Without a modification in place, the A/E contractor cannot bill, and the Smithsonian cannot pay, for work the A/E contractor started under a notice to proceed (NTP).<sup>3</sup> Furthermore, there is a potential risk that the subcontractors may not be paid, jeopardizing a subcontractor's ability to continue as a going concern. Having to replace a subcontractor may negatively impact the project schedule.

The problems related to the IGEs and the modification package delays were primarily caused by a lack of written policies and procedures within OCon&PPM and OFEO addressing the A/E contract modification process. OCon&PPM and OFEO concurred with our three recommendations and agreed to develop and implement relevant policies and procedures. In the meantime, OCon&PPM and OFEO have implemented an interim policy. Please refer to Appendix B for management's full response.

During the course of the audit, we observed that the project team members improved communications by having the COTR timely notify other OFEO team members of upcoming additional services. However, expanding the COTR's notification to include OCon&PPM would further strengthen communications.

In addition, we identified four instances of the A/E contractor performing unauthorized work for additional services. Unauthorized work creates a risk that the A/E contractor may perform services that do not meet the Smithsonian's requirements. In all cases, the Smithsonian has since remedied these instances by authorizing the work.

## BACKGROUND

### The NMAAHC Project

In 2003, Congress established NMAAHC, the Smithsonian's newest museum, dedicated to the collection, preservation, research, and exhibition of African American historical and cultural material. The \$500 million funding for this project will be split evenly between federal appropriations and private donations. The Smithsonian expects to open the museum to the public in the fall of 2015.

### Roles and Responsibilities

Two Smithsonian units are primarily involved in the A/E contract modification process: OCon&PPM and OFEO.

#### OCon&PPM

OCon&PPM is responsible for *awarding and administering contracts* for all major Smithsonian facilities contracts. The Director of OCon&PPM assigns a contract specialist to each project.

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<sup>3</sup> An NTP is a notice to the A/E authorizing them to proceed immediately with urgent additional services up to a defined amount.

The Contract Specialist handles the day-to-day contracting responsibilities, including issuing contract modifications and NTPs.

### OFEO

OFEO *manages* all of the Smithsonian's facility-related programs. The following individuals within OFEO are the key players in the A/E contract modification process:

- Project Executive — The Project Executive monitors, directs, and reports on the scope, budget, and schedule of the overall project. He is also responsible for ensuring there is adequate funding for the additional services.
- COTR — The COTR for the A/E contract is a Design Manager within the Office of Engineering Design and Construction (OEDC) and receives a delegation of authority from OCon&PPM. The COTR is responsible for providing technical direction and guidance to the A/E contractor related to the contract scope of services, as well as developing the scope of work and IGEs for additional services, among other duties. The COTR then gathers documents for the modification package for OFEO approvals.
- Associate Director for Design — The Associate Director for Design, who oversees all Design Managers within OEDC, reviews A/E contract modification packages before OFEO submits them to OCon&PPM.

The core project team consists of the Contract Specialist, COTR, and Project Executive.

### **NMAAHC A/E Contract Modification Process**

The Smithsonian's A/E contract modification process consists of the following nine steps, beginning when the Smithsonian recognizes a need for an additional service and ending when OCon&PPM signs the contract modification (see Figure 1):

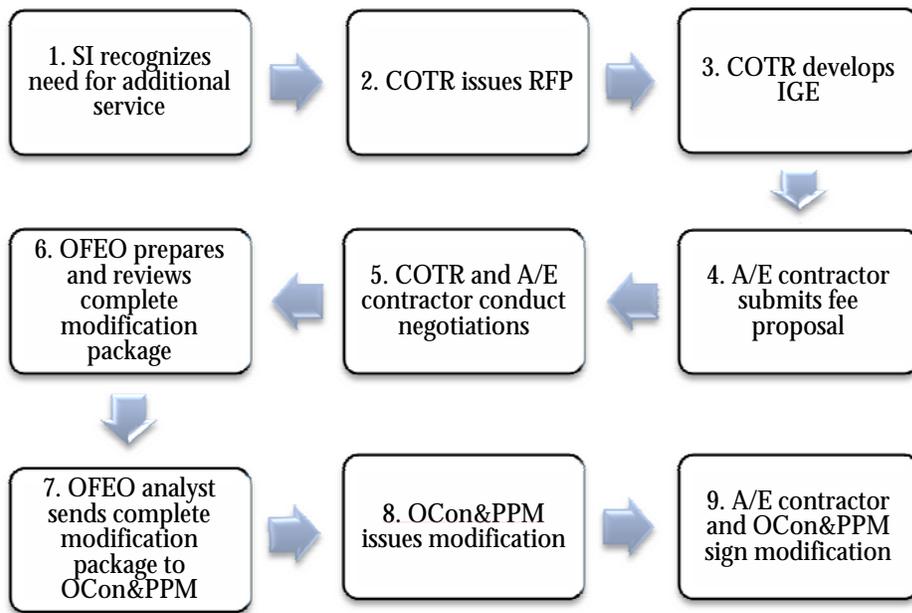
1. Smithsonian recognizes need for additional service. Various groups — NMAAHC, OFEO, and numerous oversight and regulatory agencies<sup>4</sup> — may identify the need for additional services, such as required groundwater tests.
2. COTR issues a request for proposal (RFP). The COTR defines the scope of the additional service and sends it in the form of an RFP to the A/E contractor.
3. COTR develops IGE. Once the COTR issues the initial RFP, she begins developing an IGE — a detailed estimate of the cost of the additional service. The purpose of the IGE is to help the COTR and the Contract Specialist independently determine whether the A/E contractor's fee proposal is fair and reasonable and whether the A/E contractor understands the Smithsonian's requirements.
4. A/E contractor submits fee proposal. The A/E contractor responds to the RFP with a proposed fee for performing the additional service.
5. COTR and A/E contractor conduct negotiations. The COTR conducts negotiations with the A/E contractor concerning the modification as necessary. Based on these negotiations, the COTR may adjust the scope and issue an updated RFP, and the A/E contractor may revise its fee proposal.
6. OFEO prepares and reviews complete modification package. The COTR gathers documents for the modification package: a memo to OCon&PPM requesting a

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<sup>4</sup>The National Capital Planning Commission, the Commission of Fine Arts, the National Park Service, and the Advisory Council on Historic Preservation are just a few of the agencies that oversee the design of the building.

- modification, a description of the scope of the additional service, the A/E contractor’s final fee proposal, the IGE, and a record of the COTR’s discussions with the A/E. The COTR submits these documents to both the Associate Director for Design and the Project Executive for their review. The Project Executive then issues the requisition, which establishes that funding for the additional service is available.
7. OFEO analyst sends complete modification package to OCon&PPM. Once the modification package has received the necessary OFEO approvals, an analyst attaches the requisition to the modification package and sends the completed package to OCon&PPM.
  8. OCon&PPM issues modification. The Contract Specialist in OCon&PPM reviews the package and then prepares and issues a contract modification to the A/E contractor for their review and signature.
  9. A/E contractor and OCon&PPM sign modification. The A/E contractor reviews, signs, and returns the contract modification to OCon&PPM. OCon&PPM then signs the contract modification.

**Figure 1. Smithsonian's A/E Contract Modification Process**



**NTP Process**

In December 2010, the project team members met to devise a process for issuing NTPs, which would allow the A/E contractor to begin work immediately for urgent additional services while OFEO and OCon&PPM prepared the necessary documentation for the modification. The team agreed that OCon&PPM would give an NTP to the A/E contractor only after OFEO provided OCon&PPM with three documents: scope of the additional service, A/E contractor’s fee proposal, and requisition. In the fall of 2011, OFEO changed the NTP process. Now, OCon&PPM needs only the scope of the additional service and its approximate cost to issue the NTP.

In addition, the project team agreed that OFEO would send a complete modification package to OCon&PPM within 30 days of issuing the NTP, and OCon&PPM would issue the modification within 30 days of receiving the complete package.

### **Smithsonian Policies and Procedures**

OCon&PPM and OFEO each have their own policies and procedures that address A/E contracts:

- OCon&PPM policies and procedures — The Procurement and Contracting Procedures Manual (PCPM) sets forth OCon&PPM's policies, procedures, and guidance for individuals involved in contracting activities, including A/E contracts. However, this manual does not address the IGE requirements for A/E contract modifications. Further, while the PCPM sets the Smithsonian's simplified acquisition threshold at \$100,000, the threshold does not apply to the IGE requirement.
- OFEO policies and procedures — The Facilities Project Management Handbook serves as OFEO's guide for managing facility projects, including the design process. This handbook does not include guidance surrounding the A/E contract modification process. However, the Design Management Guide, which is specifically for OFEO's Design Division does include guidance for A/E contract modifications. According to this guide, an IGE must be included in each A/E contract modification package.

### **Federal Acquisition Regulation**

The Smithsonian uses the Federal Acquisition Regulation (FAR) as a guide, but is not required to follow it. However, we believe the Smithsonian should follow the FAR as a best practice.

The relevant FAR provision, FAR 36.605(a), states:

An independent Government estimate of the cost of architect-engineer services shall be prepared and furnished to the contracting officer before commencing negotiations for each proposed contract or contract modification expected to exceed the simplified acquisition threshold.

This FAR provision is in contrast to OFEO's Design Management Guide, which requires an IGE for all contract modifications, including those below the simplified acquisition threshold.

## **RESULTS OF AUDIT**

### **OFEO Developed IGEs for More Items than Necessary**

As described above, the FAR requires an IGE only for contract modifications expected to be greater than the simplified acquisition threshold. According to the PCPM, the Smithsonian's simplified acquisition threshold is \$100,000. Yet, following the requirements set forth in OFEO's Design Management Guide, which states the COTR should establish an IGE regardless of the dollar amount of the modification, the COTR developed IGEs for most items. This guidance caused the COTR to develop an IGE for 27 of the 28 items in our sample, some of which were well below the simplified acquisition threshold.

The number of IGEs the COTR should have prepared will differ depending on whether the Smithsonian applies the FAR requirement for developing IGEs at the individual item level or the modification level. Neither OCon&PPM nor OFEO has a policy addressing this issue.

### Individual Item Level

OCon&PPM batches multiple items in each modification. For example, the first A/E contract modification included five additional service items. Therefore, if the Smithsonian applies the FAR at the individual item level, an IGE would have been required for 5 out of 28 items in our sample that are greater than \$100,000. See Table 1.

Item amounts	Number of items
\$100,000 or greater	5
\$50,000 - \$99,999	5
\$10,000 - \$49,999	8
Less than \$10,000	10

### Modification Level

If the FAR applies at the modification level, an IGE would have been required for the 19 items in our sample that were contained in the 4 modifications that each totaled more than \$100,000. See Table 2.

Modification Number	Is the modification total greater than \$100,000?	If so, how many items are in the modification?
1	Yes	5
3	No	-
4	No	-
7	Yes	3
9	Yes	9
10	Yes	2
<b>Total</b>	-	<b>19</b>

The COTR developed IGEs for more items than the FAR requires because OFEO's Design Management Guide required her to do so and the Contract Specialist in OCon&PPM did not tell her otherwise. The Contract Specialist did not inform the COTR because OCon&PPM did not have a written policy addressing IGE requirements for A/E contract modifications. Lacking such a policy, members of OCon&PPM and OFEO mistakenly believed IGEs were required for every additional service.

By completing an IGE for nearly all items in our sample, the COTR is doing more work than is necessary, taking time away from completing other project responsibilities. As a result, this may hold up the modification process, which could lead to project schedule delays.

After we completed our fieldwork, OFEO, in coordination with OCon&PPM, revised the OFEO Design policy such that an IGE is no longer required for A/E contract modifications below the

\$100,000 threshold. Consistent with the FAR, OFEO design managers still must determine whether the A/E contractor's fee is fair and reasonable through other means.

### **OFEO Appeared to Have Completed IGEs Late**

As stated in the background section, the FAR requires that the IGE be prepared before commencing negotiations with the A/E contractor. While contract specialists in OCon&PPM have differing views on when negotiations begin, they do agree that the COTR should complete the IGE at least before the COTR receives the A/E contractor's first proposal. Neither OCon&PPM nor OFEO have a policy stating this requirement.

Based on OFEO documentation we obtained, the COTR appeared to have generally completed the IGE after receiving the A/E contractor's proposal, hindering the COTR's ability to use the IGE for its intended purpose of determining whether the A/E contractor's fee is fair and reasonable. For 26 of the 27 items<sup>5</sup> (or 96 percent), the COTR appeared to have completed the IGE after receiving the A/E contractor's first proposal; for 21 items (or 78 percent), she appeared to have completed the IGE after receiving the final proposal.<sup>6</sup>

The COTR told us that she did in fact complete the IGE before receiving the A/E contractor's first proposal for most of the items, but she did not have any documentation supporting this statement. She explained that she signed the IGE on the date she assembled the modification package rather than the date she completed the IGE. As a result, the project team, as well as the OIG, did not know whether she prepared the IGE independently and used it to determine whether the A/E contractor's fee was fair and reasonable.

In addition, although OCon&PPM and OFEO agree that the IGE should be completed at least before the COTR receives the A/E contractor's proposal, neither has written policies stating this requirement.

### **Recommendations**

To improve the efficiency and effectiveness of the A/E contract modification process, we recommend that the Director of OCon&PPM:

1. Develop and implement a written policy that sets requirements for developing IGEs for A/E contract modifications, which includes (1) clarifying whether an IGE is required at the item or the modification level, (2) establishing an IGE threshold, and (3) requiring the COTR to document when she completes the IGE.

We also recommend that the Director of OFEO:

2. Align OFEO policy with OCon&PPM's policy in Recommendation 1.

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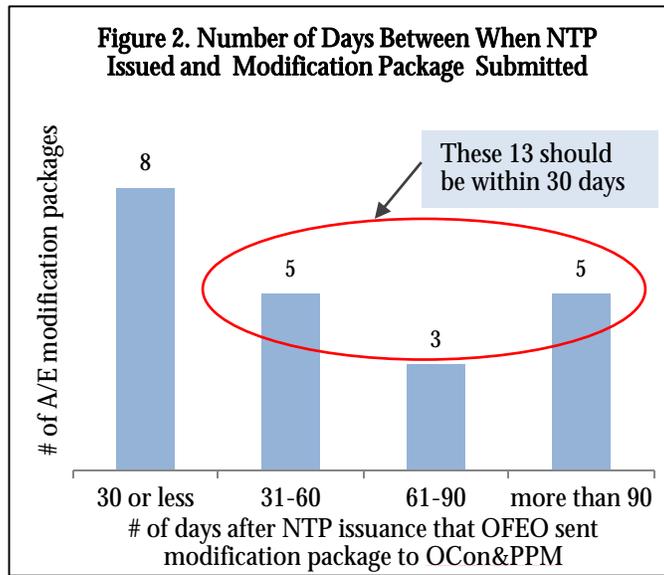
<sup>5</sup> The COTR did not develop an IGE for one item totaling approximately \$9,000.

<sup>6</sup> For some items, the A/E contractor's first proposal was also the final proposal.

**OFEO Did Not Submit Modification Packages to OCon&PPM Timely**

OFEO did not submit modification packages to OCon&PPM timely, which delayed OCon&PPM from issuing the modifications. Without a modification in place, the A/E contractor cannot bill, and the Smithsonian cannot pay, for work the A/E contractor started under an NTP. Furthermore, there is a potential risk that the subcontractors may not be paid, jeopardizing a subcontractor’s ability to continue as a going concern. Having to replace a subcontractor may negatively impact the project schedule.

In December 2010, as part of the NTP process, the project team agreed that OFEO would submit the complete modification package to OCon&PPM within 30 days of issuing an NTP. Yet, for 13 of the 21 items (or 62 percent) with an NTP and sufficient documentation,<sup>7</sup> OFEO submitted modification packages to OCon&PPM more than 30 days after the NTP date. See Figure 2.



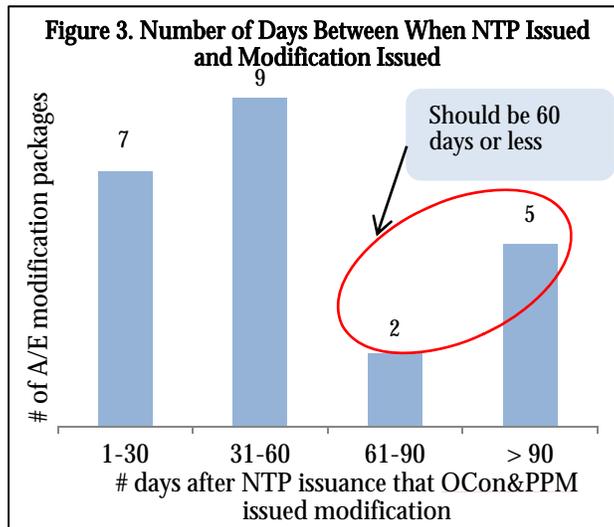
OFEO submitted modification packages to OCon&PPM late because the project team did not adequately communicate their NTP procedures to all those involved in the A/E contract modification process. Following OFEO’s standard process, the OFEO analyst normally would send a complete modification package to OCon&PPM for each additional service. Under the NTP process, however, the Project Executive or COTR sent the Contract Specialist the three documents needed to issue an NTP — scope of the additional service, A/E contractor fee proposal, and requisition — before completing the modification package. Because the project team did not understand OFEO’s process for sending modification packages to the Contract Specialist, none of the team members told the OFEO analysts that they still needed to send the Contract Specialist the remaining documents to complete the package.

Furthermore, the OFEO analyst did not think a complete package was necessary because the Contract Specialist had previously issued modifications without one. The project team and OFEO analysts have since clarified their process and now follow OFEO’s standard procedures for sending packages to the Contract Specialist.

<sup>7</sup> The project team members could not determine the date OFEO sent the complete modification package to OCon&PPM for 2 of the 23 items with an NTP.

In addition, OFEO may not have submitted the packages timely because the A/E contractor had already started work under an NTP, reducing OFEO’s urgency to send the modification package.

By not submitting modification packages to the Contract Specialist timely, OFEO delayed OCon&PPM from issuing the modifications and the A/E contractor from billing for work it started under an NTP. For 7 of the 23 items with an NTP (or 30 percent), the Contract Specialist did not issue the modification until more than 60 days<sup>8</sup> after the NTP was issued. See Figure 3.



The Contract Specialist generally followed the NTP procedures and issued modifications within 30 days of receiving a complete package. In fact, for nine items, the Contract Specialist issued modifications before receiving a complete package from OFEO. Had the Contract Specialist waited for the complete package, 10 of the 23 items (or 43 percent) would have been issued more than 60 days after the NTP.

**Recommendation**

To ensure that all those involved in preparing A/E contract modification packages understand their responsibilities in this process, we recommend that the Director of OFEO:

3. Develop and implement written procedures to ensure that OFEO submits A/E contract modification packages to OCon&PPM timely.

**ADDITIONAL OBSERVATION**

**Project Team Communication Could Be Strengthened**

While the project team members improved communications by having the COTR timely notify other OFEO team members of upcoming additional services, the team could further strengthen communications by expanding the COTR’s notification to include OCon&PPM. Prior to January

<sup>8</sup> OFEO has 30 days to submit the modification package to the Contract Specialist; the Contract Specialist then has 30 days to issue the modification.

2012, the Associate Director for Design, Project Executive, and Contract Specialist were unaware of when the COTR sent an RFP to the A/E contractor, which made it difficult to perform their project duties effectively. For example, without up to date information on the status of additional services, the Project Executive may not be able to maintain a budget reflecting all upcoming additional services.

The OFEO team members have since attempted to improve communication. Now, the COTR sends an email to the Associate Director for Design and Project Executive before sending the RFP, explaining the scope of work and rough estimate of the cost for the additional service. However, the Contract Specialist does not receive this email. According to the Contract Specialist, he does not need to receive this email, but he would find it helpful for the COTR to provide a list of current and future additional service items.

We encourage the project team members to continue to improve communication, which may help the Smithsonian gain efficiencies in the contract modification process.

### **A/E Contractor Proceeded With Unauthorized Work**

We found that the A/E contractor proceeded with \$180,000 in unauthorized work for the expansion of the history gallery. This additional service was to provide design documents for 37,000 square feet of additional history gallery space. While the COTR and the A/E contractor were negotiating the scope and fee, the A/E contractor proceeded with some work before receiving an NTP.

Section G.3.3 of the A/E contract states that the Smithsonian will not pay the A/E contractor for any additional work or services they performed that have not been approved by the Contracting Officer in writing.

In general, because of the aggressive project schedule, the A/E contractor told us they were willing to take on the risk that comes with commencing work before receiving authorization. In the case of the history gallery expansion, the Contract Specialist had not issued an NTP ahead of time because the A/E contractor started work for additional services without notifying her or OFEO. Moreover, OCon&PPM has repeatedly reminded the A/E contractor that it must first have authorization to proceed with work.

In general, the A/E contractor beginning work without having negotiated a final scope and fee creates a risk that the A/E contractor may perform services that do not meet the Smithsonian's requirements. Further, this situation creates a risk of the A/E contractor filing a claim for the services should the Smithsonian and the A/E contractor not agree on a final fee. In fact, the Smithsonian has already paid \$250,000 to the A/E contractor to settle a claim for additional services.

In addition to this example, the Smithsonian informed us of three other instances of the A/E contractor performing unauthorized work. In all four cases, the Smithsonian has since incorporated these additional services into contract modifications or NTPs. Further, OCon&PPM has repeatedly reminded the A/E contractor that they may not begin work for additional services without first receiving authorization. As such, we make no recommendations.

## APPENDIX A. SCOPE AND METHODOLOGY

Our objectives were to assess the efficiency and effectiveness of the Smithsonian's: 1) contract modification process for the A/E and CM at-risk contracts; and 2) oversight process for awarding construction packages under the CM at-risk contract.

To supply timely and relevant information, this report addresses the contract modification process related to the A/E contract only.

We obtained an understanding of the NMAAHC project by attending project executive and oversight meetings. We also reviewed Smithsonian Board of Regents meeting minutes, NMAAHC Council transcripts, and NMAAHC project A/E contractor progress meeting minutes.

To obtain an understanding of the Smithsonian's A/E contract modification process, we interviewed personnel from OCon&PPM, OFEO and NMAAHC, as well as the A/E contractor.

We identified criteria by reviewing previous OIG audit reports related to building project management; relevant sections of the FAR; Smithsonian policies and procedures; and the A/E contract, its modifications, and other contract-related documents.

To test the effectiveness and efficiency of the Smithsonian's contract modification process, we identified A/E contract modifications made through January 31, 2012, for additional service items. There were 6 A/E contract modifications composed of 28 additional service items. For each additional service item, we obtained documentation for each step in the contract modification process and calculated the time between them. We also determined whether the additional service items were incorporated into the project budget.

We did not review the Smithsonian's entire internal control structure for managing contracts. We limited our review to those internal controls related to the contract modification process for the NMAAHC A/E contract as they pertained to our audit objective.

We conducted this performance audit in Washington, D.C. from November 2011 through March 2012, in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence we obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

## APPENDIX B. MANAGEMENT'S RESPONSE

	Smithsonian Institution	Memo
Office of the Chief Financial Officer Office of Contracting and Personal Property Management		
Date:	May 2, 2012	
To:	Scott S. Dahl, Inspector General	
Attn:	Joan Mockeridge Acting Assistant Inspector General for Audits	
cc:	Albert Horvath, Under Secretary for Finance and Administration and Chief Financial Officer Richard Kurin, Under Secretary for History, Art and Culture Lonnie Bunch, Director, National Museum of African American History and Culture Judith Leonard, General Counsel Teng Chamchumrus, Executive Officer, Office of the Under Secretary for Finance and Administration/Chief Financial Officer Thomas E. Dempsey, Deputy Director, Office of Contracting and Personal Property Management Curtis B. Sanchez, Associate Director for Policies and Resources, Office of Contracting and Personal Property Management	
From:	Dorothy A. Leffler  Director, Office of Contracting and Personal Property Management  Bruce Kendall  Director, Office of Facilities Engineering and Operations	
Subject:	Management Response to the Draft Report 'The Smithsonian Should Improve the Efficiency and Effectiveness of its A/E Contract Modification Process,' Audit Report No. A-12-03-1	
Thank you for the opportunity to review and comment on the draft report, and recommendations therein, resulting from the Office of the Inspector General (OIG) Audit No. A-12-03 on the National Museum of African American History and Culture (NMAAHC) Project Management, dated April 13, 2012.		
We appreciate the time taken by the OIG staff to assess the NMAAHC project management relative to Architect/Engineering (A/E) contract modifications. The information and recommendations in the draft report are useful to the Office of Contracting and Personal Property Management (OCon&PPM) and Office of Facilities Engineering and Operations (OFEO) for improving the efficiency and effectiveness of procedures for modifying the A/E contract when necessary. The following reflects actions already implemented and planned by our offices to address each of the recommendations.		
<b>RECOMMENDATIONS</b>		
<b>Recommendation No. 1:</b> To improve the efficiency and effectiveness of the A/E contract modification process, we recommend the Director of OCon&PPM:		
1) <i>Develop and implement a written policy that sets requirements for developing IGEs for A/E contract modifications, which includes 1) clarifying whether an IGE is requested at the item or the modification level, 2) establishing an IGE threshold, and 3) requiring the COTR to document when the IGE is completed.</i>		
PO Box 37012, CC 350, MRC 1200 Washington, DC 20013-7012 202.633.7290 Telephone 202.633.7319 Fax		

## APPENDIX B. MANAGEMENT'S RESPONSE (CONTINUED)

Page 2 – Scott S. Dahl, Inspector General

**Comment:** Concur

**Action Taken:**

The OCon&PPM and the Offices of Engineering, Design and Construction and Planning and Project Management in OFEO have jointly developed and issued a written interim policy that defines when Independent Government Estimates (IGE) are required for A/E contract modifications. The interim policy and practices instituted states the following:

- A. An IGE must be prepared for any contract or contract action item requiring a modification that is projected to be above the Smithsonian Simplified Acquisition threshold of \$100,000. This simplified acquisition threshold shall apply to single contract action items. Those action items may be combined for processing in a single modification, and while the aggregate of these items may exceed the simplified acquisition threshold, the need for an IGE will be based on the projected expense of each individual action item. For contracts or contract actions below this threshold a rough order of magnitude (ROM) estimate will be done to confirm the action is below the threshold. The Contracting Officer's Technical Representative (COTR) will then request a proposal and negotiate the action using the ROM and price reasonableness as the basis.
- B. A 25% safety factor is utilized, when the ROM is at least 25% below the \$100,000 threshold then no IGE is required.
- C. Each COTR shall sign and date any IGE that is prepared for any contract or contract action item. A statement will be added to the IGE form for use by the COTR to certify that the IGE was developed independently and without knowledge of the contractor's proposal. The dating of, and certifying signature affixed to each IGE must align with the FAR requirement to not commence negotiations prior to the contracting officer receiving the IGE, regardless of when the contractor's proposal is received.

**Planned Action:**

- D. OCon&PPM and OFEO shall establish formal written policy and procedures that will address the requirements for developing IGEs for A/E contract modifications.

**Target Date:** October 31, 2012

**Recommendation No. 2:** We also recommend the Director of OFEO:

- 2) *Align OFEO policy with OCon&PPM's policy in Recommendation 1.*

**Comment:** Concur

**Action Taken:**

- E. OFEO and OCon&PPM have jointly developed and issued the interim policy and guidance described in the above response to OIG recommendation no. 1. The collaboration to-date and ongoing by OFEO and OCon&PPM on policy and procedures regarding IGE serves to ensure the practices at either office are consistent with the practices and documentation requirements of the other office.

**APPENDIX B. MANAGEMENT'S RESPONSE (CONTINUED)**

Page 3 – Scott S. Dahl, Inspector General

**Planned Action:**

- F. OCon&PPM and OFEO shall establish formal written policy and procedures that will address the requirements for developing IGEs for A/E contract modifications.

**Target Date:** October 31, 2012

**Recommendation No. 3:** To ensure that all those involved in preparing A/E contract modifications packages understand their responsibilities in this process, we recommend the Director OFEO:

- 3) *Develop and implement written procedures to ensure that OFEO submits A/E contract modification packages to OCon&PPM timely.*

**Comment:** Concur

**Planned Action:**

- G. Policy and procedures are being developed by OFEO and OCon&PPM that will define reasonable timeframes for OFEO to provide complete contract or contract modification packages to OCon&PPM. Timeframes will be based on criteria that will account for modification size, complexity, urgency, A/E cash flow, and other factors related to requirements for modifications. It is anticipated that criteria based on dollar value and execution time will be implemented for this policy.

**Target Date:** October 31, 2012

Please direct any questions you may have regarding the above information to Curtis B. Sanchez, OCon&PPM, for a coordinated response. Curtis may be reached by telephone at 202.633.7294 or via email to SanchezC@si.edu.

**APPENDIX C.**

The following individuals from the Smithsonian Office of the Inspector General contributed to this report:

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