

Management Assistance Report: Actions To Address Ongoing Construction Schedule Delays at New Embassy Compound Mexico City Are Needed (AUD-CGI-23-16, April 2023)

SUMMARY OF REVIEW

As the overseas real property manager for the Department of State (Department), the Bureau of Overseas Buildings Operations (OBO) has the lead role in acquiring, designing, building, operating, and maintaining Department facilities worldwide. In September 2017, the Bureau of Administration, Office of the Procurement Executive, Office of Acquisitions Management (AQM), on behalf of OBO, awarded Caddell Construction Co, LLC (Caddell), a firm-fixed-price, design-bid-build contract (Contract SAQMMA17C0287) for the construction of the New Embassy Compound (NEC) located in the Nuevo Polanco neighborhood of Mexico City, Mexico. In accordance with contract requirements, the original substantial completion date for all work required under the Caddell contract was April 13, 2022. Four subsequent contract modifications revised the contractually required substantial completion date to October 31, 2023. However, in June 2022, OBO reported that the estimated substantial completion date could be as late as May 2024.

During an audit of contract administration processes in the construction of NEC Mexico City, which is presently underway, the Office of Inspector General (OIG) learned of ongoing and increasing schedule delays to the construction project. Specifically, OIG found that the project is falling behind schedule every month, and the ongoing and increasing schedule delays will further impact the date NEC Mexico City will be ready for occupancy. OBO and AQM did not fully comply with Department guidance addressing schedule delays. For example, OBO and AQM did not determine the type of delay (excusable,¹ nonexcusable,² or compensable³), document the delay, develop the government's position, discuss the government's position with the contractor, adjust the government's position based on the discussions with the contractor, and prepare a final decision. As a result, the Department cannot be certain that Caddell will meet the contractually required substantial completion date of October 31, 2023.

In addition, OIG found that the Department issued a unilateral modification for the solar photovoltaic system construction improvements (P00066) without assessing time to determine whether a schedule extension was justified. Specifically, Caddell submitted a proposal in October 2022 requesting a schedule extension of 459 days (168 compensable⁴ days and 291 noncompensable days) in response to the Contracting Officer's (CO) request for proposal (RFP) to change the solar photovoltaic system. In response, the Department issued a unilateral contract modification without assessing time as part of their independent government cost estimate or evaluating and responding to the time impact analysis (TIA) submitted by the contractor to determine whether a time extension was justified. As a result,

¹ An excusable delay is a delay that is beyond the control and without the fault or negligence of the contractor.

² A nonexcusable delay is a delay that the government has not authorized and for which the contractor is totally at fault.

³ A compensable delay is a delay for which the contractor may recover money as well as time.

⁴ Compensable days and time are those which the contractor is entitled to recover in both time and money.

the Department required Caddell to adhere to the current substantial completion date of October 31, 2023, but with the potential of an excusable delay that could result in constructive acceleration.⁵ The unilateral modification of the Caddell contract will therefore result in additional expenses to complete the NEC Mexico City project. Cadell estimates the compensable time they charged to be \$38,000 per day.

OIG made four recommendations to address the deficiencies identified in this report relating to project schedule management. On the basis of OBO's response to a draft of this report, OIG considers all four recommendations resolved, pending further action. A synopsis of management's comments and OIG's reply follow each recommendation in the Results section of this report. Management's response is reprinted in its entirety in Appendix A.

⁵ Constructive acceleration is when the government requires the contractor to meet the current delivery schedule in the face of excusable delays.