



U.S. GENERAL SERVICES ADMINISTRATION
Office of Inspector General

May 24, 2012

MEMORANDUM FOR DALE ANDERSON
ACTING COMMISSIONER, PBS
NORTHWEST/ARCTIC REGION (10P)

FROM ADAM R. GOOCH *Adam Gooch*
REGIONAL INSPECTOR GENERAL FOR AUDITING
GREAT LAKES REGION (JA-5)

SUBJECT Administration of Task Order GS-P-10-10-LT-5091 for
Construction Services in Support of the American Recovery
and Reinvestment Act of 2009¹ at the Federal Building and
U.S. Post Office in Wenatchee, Washington
Memorandum Number A090184-58

As part of our oversight of the General Services Administration's (GSA's) American Recovery and Reinvestment Act (Recovery Act) projects, we identified issues related to construction services at the Wenatchee Federal Building and U.S. Post Office that warrant your attention. The contractor installed foreign-manufactured construction material in violation of Recovery Act provisions. However, the Public Buildings Service (PBS) did not incorporate the Recovery Act clauses mandating adherence to Section 1605 (Buy American) into the base contract until one year after the task order's award. During that period, GSA was in a position in which none of the remedies afforded by the Federal Acquisition Regulation (FAR) could be applied.

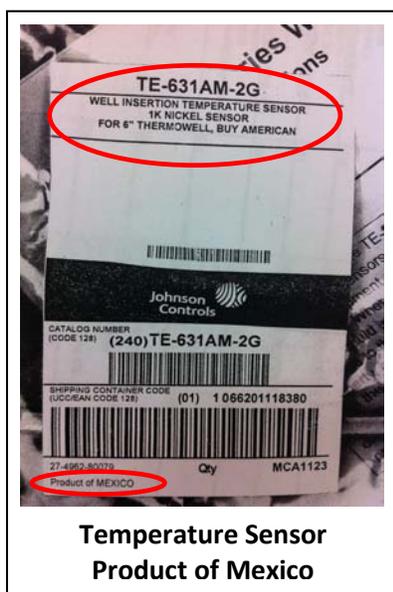
On June 28, 2010, PBS awarded task order GS-P-10-10-LT-5091 to Randolph Construction Services, Inc. (Randolph) to install new boilers and associated equipment in the Federal Building and U.S. Post Office in Wenatchee, Washington. The task, valued at approximately \$370,000, was awarded against Randolph's indefinite delivery indefinite quantity (IDIQ) contract number GS-10P-08-LT-D-0100. Work at the building was to be completed in September 2011. The work was completed when we conducted our review during October 2011.

¹The American Recovery and Reinvestment Act of 2009 (Recovery Act) provides the General Services Administration (GSA) with \$5.5 billion for the Federal Buildings Fund. In accordance with the Recovery Act, the GSA Public Buildings Service (PBS) is using the funds to convert federal buildings into High-Performance Green Buildings as well as to construct federal buildings, courthouses, and land ports of entry. The Recovery Act mandates that \$5 billion of the funds must be obligated by September 30, 2010 and that the remaining funds must be obligated by September 30, 2011. The GSA Office of Inspector General is conducting oversight of the projects funded by the Recovery Act. One objective of this oversight is to determine if PBS is awarding and administering contracts for limited scope and small construction and modernization projects in accordance with prescribed criteria and Recovery Act mandates.

The PBS Acting Regional Commissioner, Northwest/Arctic Region, submitted a formal response to our audit memorandum, which we have incorporated below.

During our review, we noted that Randolph installed the following foreign-manufactured construction material on this project:

Manufacturer	Description	Model Number	Markings
TACO	3-way valve	MPV-040-4	"Assembled in Brazil of U.S. and Brazilian Components"
Johnson Controls	3-way valves and actuators (two units)	VG1841CL; VG1841AL; actuator number 906GGA	"Assembled in Mexico"
Johnson Controls	Valve	M900-520	"Assembled in Mexico"
Johnson Controls	Well insertion temperature sensor (3 units plus attic stock)	TE-631AM-2G ²	"Product of Mexico"
Hoffman	Lateral Steel panel box (electrical enclosure)	Not determined	"Made in Mexico"
V and F Transformer	Transformer (2 units)	VF2N02A096KL	"Made in China"
Not determined	Steel flanges ³ to fit valves to piping	4-150-SA-1-5	"India"



We found that the equipment listed above has a value of around \$1,600.

The use of foreign-manufactured construction material violated Section 1605 of the Recovery Act. Section 1605 specifically requires that, unless an exception applies, all manufactured construction material be produced in the United States and, if the construction material consists wholly or predominately of iron or steel, the iron or steel was produced in the United States.

PBS officials agreed that the items above were not in compliance with Section 1605. GSA has obtained a bilateral credit from Randolph for the cost of materials and associated labor. This will leave the non-compliant materials in place without disruption to building operations or tenant comfort.

Further, FAR clause 52.225-21 is to be included in contracts to help implement Section 1605 where applicable. However, PBS did not incorporate this clause into Randolph's contract until July 1, 2011, a full year after the task order's award date of June 28, 2010.

²Note accompanying image, which clearly shows that, although the model number is stated to be "Buy American," it is a "Product of Mexico."

³The flanges were 100 percent steel. We estimated that there were at least 20 to 40 of these flanges, including attic stock.

Therefore, during that time, GSA was precluded from demanding remedies ordinarily available under its contracts.

According to PBS, "...FAR 52.225-21 was not required due to the fact that the aggregate total of the contract would be over \$7,804,000." PBS inserted FAR 52.225-23 into Randolph's contract on November 13, 2009. Currently, FAR 52.225-23 should be used if the value of the project is \$7,777,000 or more.⁴ After the task order award, the PBS Design and Construction Division determined that FAR 52.225-21 did apply and should have been incorporated into Randolph's contract along with FAR 52.225-23.

The FAR provides several possible remedies for a contractor's use of foreign-manufactured construction material including a requirement that the contractor remove and replace the unauthorized foreign-manufactured construction material. If the noncompliance is sufficiently serious, the FAR provides other appropriate contractual remedies, such as terminating the contract for default.

Because the contract did not contain the correct clause at the time the work was done, these remedies could not be applied to this project.

PBS agreed that "the speed of award resulted in a failure to include the appropriate ARRA Buy American Act clauses timely and put GSA PBS at risk of not being able to invoke the clause and seek a remedy for the violation." The response added that the ARRA Buy American clauses at all dollar levels have been included to ensure full coverage of the requirements at the task order level.

If you have any questions about this memorandum, please contact me at (312) 353-0500 or Hilda Garcia, Audit Manager at (312) 353-6695.

⁴FAR 25.402(b) states that the value of the acquisition is a determining factor in the applicability of trade agreements. Most of these dollar thresholds are subject to revision by the U.S. trade representative approximately every two years. At the date of the task order award, the trade agreements threshold was \$7,443,000.

Report Distribution

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