



**Office of Audits
Office of Inspector General
U.S. General Services Administration**

DATE: June 27, 2013

TO: SUSAN DAMOUR
REGIONAL ADMINISTRATOR
ROCKY MOUNTAIN REGION (8A)

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

SUBJECT: Incorporation of Foreign-Made Construction Materials at the Federal
Complex in Lakewood, Colorado Violated Recovery Act
Requirements
Audit Memorandum Number A090184-73

As part of our oversight of General Services Administration American Recovery and Reinvestment Act (Recovery Act¹) projects, we determined that foreign-manufactured construction material was installed at the Federal Complex in Lakewood, Colorado, in violation of Recovery Act provisions.

The Public Buildings Service (PBS) awarded three separate contractual actions for work at buildings 20, 25, 45, 54, 95, and 810 in the Federal Complex. PBS awarded task order GS-P-08-10-JA-5028 on December 29, 2009 to Gerald H. Phipps, Inc. and contracts GS-08-P-10-JA-C-0012 and GS-08P-10-JA-C-0037 on March 24, 2010, to NM Industrial Services, LLC. The contractual actions were for recommissioning, as well as heating, ventilation, and air conditioning work in the six buildings. The total award amount of all three contractual actions was \$7,643,489.

¹The Recovery Act provided GSA with \$5.55 billion for the Federal Buildings Fund. In accordance with the Recovery Act, the GSA PBS is using the funds to convert federal buildings into High-Performance Green Buildings, as well as to construct buildings, courthouses, and land ports of entry. The Recovery Act mandated that \$5 billion of the funds be obligated by September 30, 2010, and the remaining funds 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.

Construction material from Canada was installed on the project, violating the Recovery Act’s Buy American requirement.

During our review, we noted that the following Canadian construction material was installed on this project:

Table 1 – Foreign Construction Material Installed at Lakewood Federal Complex

| Building | Manufacturer | Description | Units Installed | Total Material Cost ² |
|--------------|----------------------|----------------------------------|-----------------|----------------------------------|
| 45 | Cleaver-Brooks | Condensing boiler | 3 | \$80,907 |
| 20 | Gasmaster Industries | Hot water boiler | 2 | \$56,914 |
| 95 | EnerWorks | Solar hot water system collector | 18 | \$100,000 |
| 810 | Cleaver-Brooks | Condensing boiler | 6 | \$198,105 |
| Total | | | | \$435,926 |

As the table above shows, the total cost of the installed materials was \$435,926. The use of foreign-manufactured construction material violated Section 1605 of the Recovery Act, which states that, unless an exception applies:

None of the funds appropriated or otherwise made available by the Recovery Act may be used for a project for the construction, alteration, maintenance, or repair of a public building or public work unless ... all of the iron, steel, and manufactured goods used as construction material in the project are produced or manufactured in the United States.

In its comments, PBS stated:

The construction materials installed were considered “commercially available off-the-shelf” (COTS) items, pursuant to the definition found in FAR 52.225-11, “Buy American Act Construction Materials under Trade Agreements,” paragraph (a)(1)(iii). The boilers were “offered to the Government, under a contract or subcontract at any tier, without modification, in the same form in which it is sold in the commercial marketplace.” Paragraph (b)(1) indicates that COTS items from designated countries are treated as domestic construction materials and Buy American Act restrictions are waived. Based on this clause, the region believed we were in compliance with the Recovery Act provisions.

As a result of the conversations with the IG team during this audit, the Region, in an effort to bolster its working knowledge of the Buy American Act, conducted formal training on March 20, 2013 for our entire acquisition workforce, including contract specialists, contracting officers, and project managers. The training covered the Buy American Act, various trade agreements acts, and other requirements related to the purchase of foreign products/materials.

² Data provided by PBS personnel in Region 8.

Audit Response:

FAR clause 52.225-11, which management cites in its response, was not applicable to these projects. Instead, FAR clause 25.1102(e) dictates the requirements for Recovery Act Projects and requires the use of FAR clauses 52.225-21 through 52.225-24 instead of 52.225-9 through 52.225-12. Further, only FAR clauses 52.225-21 and 52.225-22, which implement Section 1605 of the Recovery Act, applied due to the Trade Agreements Act threshold of \$7,443,000 at the time of the three individual procurements.

If you have any questions regarding this memorandum, please contact me or any member of the audit team at the following:

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|-----------------|-------------------|--|--------------|
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I would like to thank you and your staff for your assistance during this review.

Distribution

Regional Administrator (8A)

Regional Commissioner, Public Buildings Service (8P)

Regional Recovery Executive (8P)

Commissioner, Public Buildings Service (P)

Deputy Commissioner, Public Buildings Service (PD)

Chief of Staff, Public Buildings Service (PB)

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