



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

DATE: February 1, 2012
TO: WILLIAM J. GUERIN
ASSISTANT COMMISSIONER FOR CONSTRUCTION PROGRAMS
OFFICE OF THE COMMISSIONER (PCB)

A handwritten signature in blue ink that reads "R. Nicholas Goco".

FROM: R. NICHOLAS GOCO
DEPUTY ASSISTANT INSPECTOR GENERAL FOR
REAL PROPERTY AUDITS (JA-R)

SUBJECT: Recovery Act Memorandum- Use of Recovery Act Funds After
September 30, 2010
Review of PBS's Reimbursable Work Authorization Projects Funded
By the American Recovery and Reinvestment Act of 2009
Audit Memorandum Number A090169-6

As part of our oversight of the Reimbursable Work Authorizations (RWA) for the American Recovery and Reinvestment Act (Recovery Act) projects, we reviewed nine¹ General Services Administration managed projects for the Department of Homeland Security's (DHS) Land Port of Entry Modernization Program. The objective of our oversight is to determine if the Public Buildings Service (PBS) is planning, awarding, and administering contracts for RWA projects in accordance with prescribed criteria and Recovery Act mandates.

During our review, we identified an issue that warrants your attention. Specifically, PBS violated the Economy Act and appropriations law by charging its employee and support costs against expired Recovery Act funds on an RWA.

¹ This includes the modernization of nine DHS owned land ports of entry along the northern border of the United States, located in Washington, Montana, North Dakota, and New York. We are reviewing PBS's actions in providing procurement services, contract administration services, and planning, design and construction (design/build) management services.

PBS used expired Recovery Act funds on an RWA in violation of the Economy Act and appropriations law.

By charging its employee and support costs against expired Recovery Act funds for services it directly performed on an RWA for the Land Port of Entry Modernization Program, PBS violated the Economy Act and appropriations law. The Recovery Act provided the DHS U.S. Customs and Border Protection with “\$420,000,000 solely for planning, management, design, alteration, and construction of U.S. Customs and Border Protection owned land border ports of entry.” These funds were available until September 30, 2010, according to the Recovery Act legislation. The DHS gave the General Services Administration approximately \$101 million of these funds to provide procurement, project management, and contract administration services for the Land Port of Entry Modernization Program.

DHS arranged for these services through Interagency Agreements² pursuant to the authority of the Economy Act of 1932 (31 U.S.C §§ 1535, 1536). DHS also provided PBS multiple Recovery Act funded RWAs for the individual line items noted in the Interagency Agreements. The Economy Act was cited as the authority for these as well.

Under the Economy Act, PBS had to either finish performing direct services for the DHS or award a contract to a commercial vendor while the funds were available for obligation. After September 30, 2010, DHS’s remaining unobligated Recovery Act monies became unexpended balances in an expired appropriation.

On November 23, 2010, PBS recorded the majority of the unused Recovery Act funds remaining on the RWA as deobligated. However, PBS retained \$2,105,924 (via RWA N4000022) for program management services that were to be directly performed by PBS.³ Subsequently, in April 2011, PBS expensed \$115,852 for fiscal year 2011 PBS labor costs and fees against the RWA.

² There have been nine modifications to the original \$87.7 million Interagency Agreement as of June 2011.

³ The Interagency Agreement authorizes the General Services Administration to apply a portion of the funds for its execution and administration of the contract actions issued under the agreement.

PBS's opinion was that the Interagency Agreement itself established the necessary obligation for program support from PBS. However, this was incorrect. Under the Economy Act:

The amount obligated is deobligated to the extent that the agency or unit filling the order has not incurred obligations, before the end of the period of availability of the appropriation, in—

- (1) providing goods or services; or
- (2) making an authorized contract with another person to provide the requested goods or services.

As such, even though DHS awarded an Interagency Agreement to PBS before September 30, 2010, DHS was required to deobligate all of the funding on that Interagency Agreement on October 1, 2010, except for obligations incurred by PBS for contracts to commercial vendors or direct services provided as of September 30, 2010. PBS does not have the authority to maintain funds that the Economy Act required DHS to deobligate. PBS's decision to do so violated the Economy Act.

Also, by spending expired funds rather than recording all funds as unavailable and returning the funds to DHS for deobligating, PBS violated 31 U.S.C. § 1502(a). This statute notes an appropriation limited to a definite period is available only for payment of expenses properly incurred during the period or to complete contracts made within that period.

We brought this matter to General Services Administration Counsel's and a PBS official's attention on June 30, 2011. In September 2011, PBS removed \$1,674,657.73 from RWA N400022 and returned the funds to DHS for deobligation. Included in this amount was the \$115,852 in fiscal year 2011 PBS labor costs and fees that PBS had originally expensed against N400022 in April 2011.⁴

The remainder of the original \$2,105,924 was used to fund PBS labor costs and overhead fees which were incurred prior to September 30, 2010, but had not been charged against the Recovery Act funds until fiscal year 2011.

⁴ In September 2011, PBS charged the fiscal year 2011 labor costs and fee expenses against funds currently available under a fiscal year 2007 RWA. This RWA was established for construction related work at DHS owned land ports of entry along the northern border. DHS had previously approved the use of the 2007 RWA funds for project management costs on the Recovery Act projects. Citing the continuing business relationship and programmatic support PBS provides under the 2007 RWA and other arrangements, DHS stated "we see no conflict in using the RWA for GSA's PMO support."

Conclusion

We conclude that PBS did not properly manage the Recovery Act funds provided to them by the DHS. PBS should have recorded all Recovery Act funds not properly obligated as of September 30, 2010, as unavailable and should not have used expired Recovery Act funds to cover PBS's fiscal year 2011 labor costs and fees. These actions violated the Economy Act and appropriations law. Since PBS has taken action on the findings in the report, we are not making a formal recommendation.

Management Comments

On January 28, 2012, PBS responded to a draft of this memorandum. PBS agreed with our findings noting it has already taken certain corrective actions and will take others by January 31, 2012. These include making changes to the RWA acceptance process to assure the proper authority is cited. PBS also stated "Specifically we are now aware of the requirements mandated by the Economy Act Authority and will comply with them."

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

Susan P. Hall	Audit Manager	Susan.Hall@gsaig.gov	202-219-0088
Maria Aburto	Auditor-In-Charge	Maria.Aburto@gsaig.gov	202-219-0088
Kyle Plum	Auditor	Kyle.Plum@gsaig.gov	202-219-0088
Jeff Funk	Auditor	Jeffrey.Funk@gsaig.gov	202-219-0088

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

**Recovery Act Memorandum-Use of Recovery Act Funds After
September 30, 2010
Review of PBS's Reimbursable Work Authorization Projects Funded
By the American Recovery and Reinvestment Act of 2009
Audit Memorandum Number A090169-6**

Distribution List

Assistant Commissioner for Construction Programs (PCB)

Deputy Commissioner for Public Buildings Service (P)

Chief of Staff for Public Buildings Service (P)

Chief of Staff, Public Buildings Service, Office of Construction Programs (PCB)

Assistant Inspector General for Auditing (JA)

Deputy Assistant Inspector General for Investigations (JID)

Division Director, GAO/IG Response (H1C)