



U.S. GENERAL SERVICES ADMINISTRATION
Office of Inspector General

June 2, 2011

MEMORANDUM FOR JAMES S. WELLER
REGIONAL COMMISSIONER, PBS
GREATER SOUTHWEST REGION (7P)

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

SUBJECT Administration of Contract for Construction Services in
Support of the American Recovery and Reinvestment Act of
2009¹ at the Earle Cabell Federal Building and U.S.
Courthouse, Dallas, TX
Memorandum Number A090184-26

This is to inform you that several key aspects of the subject Recovery Act task order² were not properly administered. Specifically, PBS did not analyze the paperwork submitted by the contractor and did not oversee accomplishment of the task's requirements. As a result, an important goal of the Recovery Act, creating new jobs and saving existing ones, was not promoted and compliance with wage rules was not monitored. In addition, foreign-manufactured materials were installed in violation of the Buy American provision of the Recovery Act, and the prime contractor was not required to demonstrate that the work was performed by its own employees as mandated by the contract. Finally, security requirements were not maintained and a questionable equipment substitution occurred.

We noted these issues during a review of the task order which we performed at the Earle Cabell Federal Building and U.S. Courthouse in Dallas, Texas during January 2011.

¹ The 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 be obligated by September 30, 2011. The GSA Office of Inspector General (OIG) 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.

² GSA awarded task order number GS-P-07-09-UM-5002 to Dodson Construction, LLC (Dodson) on September 2, 2009 in the amount of \$614,356 for various construction services. The majority of the work was completed by July 2010.

Wage Rights

The certified payroll records for this task order show that the electrical subcontractor violated the Department of Labor's wage determination for this job by paying employees who worked as electricians well below the prevailing wage for that trade. Although PBS had this information, it did not enforce the wage determination.

Approximately half (\$300,000 to \$375,000) of the task order's value was for electrical work which was subcontracted to 3 Star Electric (3 Star). Based on the certified payrolls, 3 Star provided 13 employees to the project, with 5 to 9 employees on the project during several weeks.

The certified payrolls show that, despite the project's scope, only one 3 Star employee was classified and paid as an electrician (\$33.08 per hour). All other employees were classified as unskilled labor and paid \$10 to \$20 per hour. Nevertheless, during the labor standards interviews conducted by PBS, 3 Star employees described themselves as apprentice electricians, performing work that could reasonably be that of an electrician, and using tools normally associated with the work of electricians. In addition, based on data provided by the Texas Department of Licensing and Regulation (TDLR), we determined that:

- Four of the employees had an apprentice, journeyman, or master electrician's license during the entire term of 3 Star's involvement with the Recovery Act project;
- The employee listed as an electrician and being paid the prevailing wage for electricians was not a licensed electrician in Texas during the term of the project (this employee received an apprentice license on February 18, 2011, about eight months after project completion); and
- Eleven employees had an electrician's license (apprentice or journeyman) with the TDLR at some point; but not always during the full term of the project.

3 Star provided electricians, licensed and un-licensed, but claimed they were unskilled labor and paid them \$10.99 to \$20.99 below the prevailing hourly wage. This was in violation of the contract's wage rules. The basic provision of the Davis – Bacon Act stipulates that contractors and subcontractors must pay at least the prevailing wages listed in the contract's wage determination for the work performed.³

Based on this review, we concluded that PBS officials should have questioned the veracity of the certified payrolls.

³ Davis – Bacon wage decision number TX080058, dated July 24, 2009, was incorporated into the task order.

Section 1605 (Buy American)

The prime contractor, Dodson Construction, LLC (Dodson) did not comply with the Buy American provision of the Recovery Act legislation. Dodson provided and installed foreign made construction material in electrical panels as part of replacing the pneumatic controls (work item number 1334) and the integrated automation facility controls (work item number 1135). These materials are listed below.

Manufacturer	Model or Part Number	Country of Manufacture
TAC	Xenta 401 Controller	Sweden
TAC	Xenta 422A Output Module	Sweden
Allen-Bradley	700-CF040 Contactor	Switzerland
LoyTec GMBH	EIA709/IP Router	Austria/ EU
Hoffman	Electrical Panel Box	Mexico

The request for proposal valued the materials (installed) at around \$290,000. Although we were unable to inspect all the building’s electrical panels, we found the foreign materials through physical observations. For example, as shown in the following photograph, we noted that the “Xenta 422A” output module was stamped “Made in Sweden”⁴.



Swedish-made Electrical Output Model

⁴ According to contract documentation, 75 Xenta 422A were installed at a cost to the government of \$561 each.

Federal Acquisition Regulation (FAR) clause 52.225-21, incorporated into the contract defines construction material as an article, material, or supply brought to the construction site by the contractor or subcontractor for incorporation into the building or work. The clause implements section 1605 of the ARRA of 2009 by requiring, unless an exception applies, that all iron, steel, and other manufactured goods used as construction material be produced in the United States and requires the contractor to use only domestic construction material⁵ in performing the contract. The contracting officer listed no exceptions for this project.

Further, the Code of Federal Regulations (CFR) Part 176 Subpart B (Buy American Requirements under Section 1605 of ARRA) § 176.70 states that there is no requirement with regard to the components or subcomponents of manufactured goods, as long as the manufacturing occurs in the United States. Section 176.90 states that the obligation to honor international trade agreements shall only apply to projects with an estimated value of \$7,804,000, or more, as of January 1, 2010.

The materials in question do not qualify for any of these exceptions. Therefore, the Buy American provisions apply and the foreign-made materials should not have been used.

Work Percentage (15 percent rule)

PBS in Region 7 did not determine if Dodson complied with the contract's work performance requirements. The contract states that the contractor shall perform at least 15 percent (around \$107,000)⁶ of the total amount of work to be performed with its own work force. The provision precludes using front office overhead or general and administrative expense exclusively to satisfy the requirement. None of the contract documentation we reviewed indicates that this requirement was met.

In response to our inquiries, a Dodson official stated that the company acted as a general contractor on the project and did not supply its own trade labor. We know that Dodson had a general foreman on the project, but Dodson did not provide information regarding the amount of time this employee spent at the site.

We believe the goal of the Small Business Administration 8(a) program, to provide work experience to small and/or disadvantaged businesses, was not fulfilled on the subject Recovery Act task order.

⁵ Domestic construction material was defined in the clause as construction material manufactured in the United States.

⁶ Since the governing IDIQ contract was a total 8(a) set-aside, the task order specific language in FAR 19.508(e) also applies. The clause directs the insertion, for small business set-asides valued at greater than \$150,000, the FAR clause 52.219-14 (Limitations on Subcontracting). The clause requires the construction contractor to perform 15 percent of the cost of the contract, excluding materials, with its own employees.

Security Concerns

Two 3 Star employees with unfavorable background investigation adjudications⁷ had routine access (including weekends) to the courthouse during various periods of the project.

PBS employees charged with the administration of the task had no record of the unfavorable adjudications because a master record of cleared employees was not maintained, as required. In addition, on-site contractor security was supposed to be maintained via an escort system. However, our review of 3 Star's payrolls indicates that there were extended periods of time when escorts were unavailable. Accordingly, GSA's security protocols were not being followed.

Also, PBS had no security records regarding another subcontractor, Primary Integration Energy, LLC (Primary). Dodson informed us that Primary worked on the direct digital control portion of the integrated automation facility controls (work item number 1135). As such, Primary had access to building automation systems. Therefore, per GSA directive CIO P 2181.1, Primary's employees should have received security clearances. The directive, dealing with personal identity verification, requires that long-term contractors requiring routine access to GSA information technology (IT) systems must have a personnel investigation appropriate for their job responsibilities in order to be issued a personal identity verification (PIV) card. The directive also states that temporary contractors needing issuance of a GSA PIV card and/or access to IT systems must abide by the same personnel investigation requirements applicable to long term contractors.⁸

Equipment Substitution

The contracting officer's representative (COR) authorized an equipment substitution without receiving approval from the contracting officer.

Work item number 1132 called for replacing 17 existing 15-horsepower air handler unit motors with 17 new 15-horsepower motors. However, in total, two 10-horsepower motors, fourteen 15-horsepower motors, and one 20-horsepower motor were provided.

The contacting officer was unaware of the equipment substitution and there was nothing in the project file indicating why the substitution had occurred⁹. In authorizing the motor substitution, the COR exceeded his authority. The COR's appointment letter prohibits issuing changes or deviating from the terms and conditions of the contract. The

⁷ We obtained this information by submitting a master list of all employees known to have worked on the Cabell project (compiled from certified payrolls, which contained Social Security Numbers) to the Greater Southwest Region's Emergency Management and Security Branch.

⁸ Long term contractors are those employed for more than six months. The GSA directive noted is CIO P 2181.1 Homeland Security Presidential Directive-12 Personal Identity Verification and Credentialing.

⁹ The approved equipment submittal contained a note written by the COR stating that there was no cost difference between what was specified in the delivery order and what was submitted. This was not entirely accurate. PBS officials (in response to our question) estimated a cost difference of around \$570.

equipment substitution should have been justified by the contracting officer via a formal modification to the task order. The lack of justification illustrates that PBS did not know the impact of the substitution and was not providing diligent administration of this contract.

We appreciate the support that has been provided during this review. If you have questions regarding this memorandum, please call me at (312) 353-0500, or audit manager John Langeland at (312) 353-6691.