



U.S. GENERAL SERVICES ADMINISTRATION  
Office of Inspector General

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April 6, 2012

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 Contracts for Construction and  
Construction Management Services in Support of the  
American Recovery and Reinvestment Act of 2009<sup>1</sup> at the  
Galveston Post Office and Courthouse, Galveston, Texas  
Memorandum Number A090184-45

As part of our oversight of the General Services Administration's American Recovery and Reinvestment Act (Recovery Act) projects, we identified three issues related to the subject project that warrant your attention. First, the Public Buildings Service (PBS) has not been ensuring compliance with the Davis-Bacon Act. Specifically, a major subcontractor did not pay prevailing wages, certified payrolls were not always obtained, and fringe benefits payments were made to an unverified fund. Second, foreign-manufactured construction materials were incorporated into the project in violation of Recovery Act Buy American requirements. Finally, PBS did not ensure that the contractor provided a written staffing plan, a key requirement of the ancillary construction management contract.

PBS responded to the draft memorandum on April 2, 2012. The response is incorporated into this memorandum.

On January 28, 2010, GSA awarded task order number GS-P-07-10-UM-5004 to Jim Cooley Construction, Inc. (Cooley). This task order, valued at \$5,268,344 called for general construction services at the Galveston Post Office and Courthouse in

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<sup>1</sup> 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, 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.

Galveston, Texas. The scope of service was repairs for damage from Hurricane Ike including replacement of mechanical, electrical, and plumbing systems destroyed by flooding of the building's basement during the storm surge. The task order was issued against Cooley's indefinite delivery indefinite quantity contract number GS-07P-99-HHD-0085.

The work was in progress as of April 2011, when we performed an administrative review of the task order. As part of our review we conducted a site visit to Galveston, Texas. During our visit, we also reviewed the associated construction management contract awarded to PDG, Inc. (PDG).

**PBS has not ensured compliance with the Davis-Bacon Act.**

PBS has not ensured compliance with the requirements of the Davis-Bacon Act. Cooley had not supplied PBS with certified payroll registers for several subcontractors. Lakewood Mechanical, Inc. (Lakewood), a major mechanical subcontractor on this task, did not pay the prevailing wages established for the trades employed on the job. Finally, although a subcontractor claimed that it was paying fringe benefits to an approved fund, we were unable to verify the legitimacy of the fund.

The Davis-Bacon Act applies to contractors and subcontractors performing construction, alterations, or repairs of public buildings or public works on federally funded contracts in excess of \$2,000. The Act requires contractors and subcontractors to pay laborers, mechanics and other trades working on these contracts at least the local prevailing wages and fringe benefits, as determined by the Department of Labor.<sup>2</sup> Federal Acquisition Regulation (FAR) 52.222-6 outlines the labor standards for the types of construction contracts cited above and was incorporated into Cooley's base contract. By extension, these requirements apply to Cooley's subcontractors. FAR 52.222-8(a) and (b) requires the contractor to submit a copy of all payrolls to the contracting officer for each week in which work is performed in order to substantiate that the required wages are being paid. These payrolls must include hourly rates of pay and contributions for fringe benefits.

***PBS did not ensure all certified payrolls were received.***

FAR 52.222-8<sup>3</sup> also requires Cooley to submit weekly certified payroll records for all work performed, including work done by subcontractors. We reviewed the Standard Form 1413<sup>4</sup> and sign-in/sign-out logs (logs) maintained by Cooley and determined that it

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<sup>2</sup> Department of Labor, Wage and Hour Division, General Decision TX20080010, dated January 22, 2010, was incorporated into the task order.

<sup>3</sup> Per FAR 52.222-8(b)(1), the contractor shall submit weekly for each week in which any contract work is performed a copy of all payrolls to the contracting officer. Additionally, the prime contractor is responsible for the submission of copies of payrolls by all subcontractors.

<sup>4</sup> The SF 1413 was used on the Galveston project to acknowledge the assignment of a subcontract by the prime contractor.

had not furnished PBS certified payroll registers for at least seven subcontractors – four of which appeared multiple times on the logs.<sup>5</sup>

For example, according to the logs, FGH Insulation worked on the Galveston project during January and February of 2011. However, as of April 26, 2011, PBS had no payroll records for this subcontractor on file. During our on-site review, we interviewed an FGH Insulation worker who stated that he was receiving the prevailing wage for his trade, but no fringe benefits. This worker may have been under-paid by as much as \$8.30 per hour. Without certified payrolls, PBS had no basis to substantiate or disprove the worker's claim and therefore ran an increased risk that there were additional violations of the Davis-Bacon Act.<sup>6</sup>

If PBS does not ensure that required payroll records are submitted, it is difficult for the Government to know who was working on the project and to assess whether workers are paid in accordance with the appropriate Davis-Bacon Act wage determination.

***A subcontractor was not paying required prevailing wages.***

We reviewed all 15 payroll registers submitted by Lakewood, a major mechanical subcontractor to Cooley, for work performed from July 21 through November 10, 2010, to evaluate Lakewood's compliance with the Davis-Bacon Act.

Lakewood, in its submitted payrolls, did not certify that fringe benefits were being paid. Fringe benefits (or their equivalent in cash wages) were required to be paid to most trades per the terms of the wage determination incorporated into Cooley's task order. We included the fringe benefits, with hourly values ranging from \$3.71 (pipefitters) to \$10.17 (sheet metal workers) in our computation of the prevailing wage due each trade.

We determined Lakewood was not paying the prevailing wage (hourly wage plus the hourly value of fringe benefits) to the laborers or mechanics it employed. We found that Lakewood under-paid up to 13 employees in a given pay period. The amount of underpayment was generally in the range of \$.99 to \$1.18 per hour; however, we calculated hourly under-payments as high as \$11.91 per hour.<sup>7</sup> We estimated the value of the under-payments to be \$3,000.

***A subcontractor used an unverified fund for fringe benefit payment.***

A Cooley subcontractor, Mechanical Plumbing, Inc. (MPI), certified that over \$1,950 (representing 243 hours worked by tradespersons on MPI's payrolls) in fringe benefits

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<sup>5</sup> The four subcontractors whose workers signed in were LMI Painting, FGH Insulation, Millennium Glass, and McCorvey Sheet Metal.

<sup>6</sup> On May 5, 2011, the contracting officer forwarded correspondence from Cooley stating that the FGH payrolls would be delayed due to legal complications associated with the surety.

<sup>7</sup> We were advised by the contracting officer to use wage rates contained in the task order's wage determination that did not represent collectively-bargained wage and fringe benefit rates. We could not do this for sheet metal workers employed by Lakewood because the wage determination contained only collectively-bargained rates.

were paid into the “**Carroll E. Academy**” fund, supposedly an “approved plans, funds or programs,” between September and December 2010. However, the local plumber’s union has no knowledge of this fund.

We asked the contracting officer to have Cooley obtain additional information about this from MPI. To date, MPI has been unable or unwilling to provide documentation validating the payment to the fund. Consequently, we were unable to verify that such a fund even exists.

PBS’s responded that the CO did not require logs to be submitted with all payrolls and therefore was unaware of the missing payrolls. PBS also states that the prevailing wage issue has been referred to the Department of Labor and restitution has been made to the affected subcontractor employees. The unverified fund issue was also referred to the Department of Labor, but PBS is unaware of what action will be taken.

**PBS did not ensure compliance with Section 1605 (Buy American).**

Cooley installed construction material that did not comply with Section 1605 (Buy American) of the Recovery Act.

Cooley installed two boilers at the Galveston project. These boilers, valued at \$35,210, were supplied by a company called RBI, and were manufactured in Mississauga, Ontario, Canada.<sup>8</sup>



**Boiler - Manufactured in Canada**

RBI provided Cooley with a letter of compliance for the boilers which stated that, while manufacturing was performed in a Canadian facility, the manifold castings, burners, heat exchanger, and controls - representing over 60 percent of the total cost of the boilers - were of U.S. origin.

The boilers were manufactured in Canada and did not meet the Buy American requirements of the Recovery Act.

FAR 52.225-21, incorporated into the task order, implements Section 1605 (Buy American) of the Recovery Act. FAR 52.225-21 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 and requires, unless an exception applies, that all iron, steel, and other manufactured goods used as

<sup>8</sup> The specifics on the boilers as shown on the units’ data plates: RBI Heating Boiler Futera III; model MB2000; 2M BTU/HR; serial numbers 081056733 and 081056732.

construction material in the project are produced in the United States. The contractor shall use only domestic construction material in performing the contract.<sup>9</sup> In this case, the contracting officer listed no exceptions. Therefore, the origin of the components is immaterial. Since the boiler was manufactured in Canada, it does not meet the Buy American requirements of the Recovery Act.

RBI's letter of compliance also states that "Canada is covered under the World Trade Organization Government Procurement Agreement (WTO GPA)". However, FAR 25.603(c)(1) specified, at the time of task order award, that trade agreements requirements (FAR 25.4) applied only to contracts with an estimated value of \$7,443,000<sup>10</sup> or more. As stated above, this task order was awarded for \$5,268,344; therefore the trade agreements regulations are not applicable.

PBS should have reviewed the contractor's equipment submittals for compliance since the use of foreign-manufactured material on the project violates the Recovery Act requirements.

PBS responded that the non-conformance of the products was not identified until the auditor's site visit. As part of the response, PBS included a letter from the mechanical engineer stating that "to our knowledge, no other boiler manufacturer provides a product that would fit in the space provided and meet the design requirements of this project."

### **PBS did not have the required written documentation of the staffing plan.**

We reviewed the task order awarded to PDG for construction management and commissioning services at the Galveston project.<sup>11</sup> We concluded that the operation and administration of the task order was satisfactory except in one key area: PDG had not provided a detailed staffing plan as required by section 2.7 of the task order's statement of work.

Per the task order, PDG is required to provide "a staffing plan identifying the individual, proposed position, role, qualification, part time/full time, location (onsite/offsite)." Further, in the event that any of the personnel or consultants listed becomes unavailable, PDG "shall promptly submit a complete written detailed explanation of the circumstances." A PDG official told us that the staffing plan that was used was a verbal agreement between himself and the PBS contracting officer's representative.

PBS should have required PDG to submit a written staffing plan. A verbal agreement presupposes continuity in the operation and management. A written plan ensures that if

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<sup>9</sup> Domestic construction material is defined in the clause as construction material manufactured in the United States.

<sup>10</sup> See FAR 25.603(c)(1) as contained in Federal Acquisition Circular 05-38, dated January 11, 2010. The threshold is currently \$7,777,000.

<sup>11</sup> The task order, awarded against PDG's contract for architect-engineering services, was valued at around \$365,000.

government principals leave, replacement managers would have guidance as to the intended staffing.

PBS stated that these individuals were approved on the basis of past history with the agency.

If you have questions regarding this memorandum, please call me or audit manager Hilda Garcia at (312) 353-0500 and (312) 353-6695, respectively.

## **Memorandum Distribution**

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