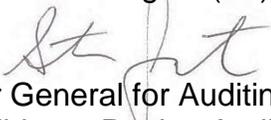




**Office of Audits  
Office of Inspector General  
U.S. General Services Administration**

**DATE:** August 13, 2014

**TO:** Denise L. Pease  
Regional Administrator  
Northeast and Caribbean Region (2A)

**FROM:** Steven Jurysta   
Regional Inspector General for Auditing  
Northeast and Caribbean Region Audit Office (JA-2)

**SUBJECT:** Award and Administration of Task Order GS-P-02-10-PE-5078 for  
Construction Services in Support of the American Recovery and  
Reinvestment Act of 2009 at the Joseph P. Addabbo Federal Office  
Building in Jamaica, New York  
Audit Memorandum Number A090184-75

As part of our oversight of GSA American Reinvestment and Recovery Act of 2009 (Recovery Act<sup>1</sup>) projects, we identified areas of concern that we would like to bring to your attention. Specifically:

- (1) The project's bonding requirements were inadequately administered;
- (2) The Schedule of Values was inappropriately modified;
- (3) An unpriced modification was improperly used;
- (4) The photovoltaic inverter was not compliant with the Buy America Act;
- (5) GSA erroneously declared that the contractor met its substantial completion date;
- (6) Certified payrolls were inaccurate; and
- (7) Several subcontractor employees did not have appropriate security clearances.

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<sup>1</sup>The Recovery Act provided GSA with \$5.5 billion for the Federal Buildings Fund. In accordance with the Recovery Act, the GSA PBS issued funds to convert federal buildings to High-Performance Green Buildings, as well as construct federal 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 in the Recovery Act.

On March 30, 2010, PBS awarded Task Order GS-P-02-10-PE-5078 to Rome Management Associates, L.L.C. (Rome) for the “Design Build and Installation of a Utility-Interactive Photovoltaic System with a New Cool Roofing System” at the Joseph P. Addabbo Federal Office Building in Jamaica, New York. The task order, for a firm-fixed price of \$3,047,305, was awarded against Rome’s Term Design Build Multiple Award Indefinite Quantity Contract Number GS-02P-08-PED-0067.

**Inadequate administration of project bonding requirements**

GSA did not adequately administer the bonding requirements associated with this project. The contracting officer did not prepare a required bid guarantee waiver, the 15-day requirement to furnish performance and payment bonds was not enforced, and the contractor overbilled the Government for its bond premiums. As a result, the Government’s interests were not adequately protected and the project was delayed.

***A bid guarantee waiver was not prepared as required by Federal Acquisition Regulation (FAR) 28.101.*** A bid guarantee is a form of security assuring that the bidder will not withdraw a bid and will execute a written contract and furnish the required bonds. Although the Solicitation, Offer, and Award (Standard Form 1442) for the photovoltaic project, dated February 19, 2010, indicated that a bid guarantee was not required, a waiver of this requirement was not prepared as required by FAR 28.101-1, which states:

(c) The chief of the contracting office may waive the requirement to obtain a bid guarantee when a performance bond or a performance and payment bond is required if it is determined that a bid guarantee is not in the best interest of the Government...Class waivers may be authorized by the agency head or designee.

According to the contracting officer, there was no bid bond required because this was an accelerated procurement.<sup>2</sup> As such, the contracting officer determined that it was not feasible to make an award by March 31, 2010, and also require Rome to procure the Performance and Payment bonds, in addition to a bid bond, in time. However, due to an “oversight,” no waiver was prepared. Consequently, the justification and approval for the waiver of the bid bond requirement was not documented.

***The requirement to furnish performance and payment bonds within 15 days of award was not enforced.*** Rome did not secure the required Performance and Payment Bonds until August 23, 2010, more than 4 months after Rome was notified of the contract award. The terms of its contract mandate that the bonds be executed within 15 days of award.

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<sup>2</sup> The prevailing mindset of the contracting staff at the time was that management wanted Recovery Act projects awarded quickly. This was borne out in a statement made by the Acting Commissioner of GSA’s PBS to the House Committee on Transportation and Infrastructure on July 31, 2009, regarding GSA’s implementation of the Recovery Act. Under the category of “Accelerated Procurement,” the Acting Commissioner asserted that GSA is “taking specific actions to accelerate the award and execution of contracts....”

GSA's award notice to Rome, dated April 16, 2010, instructed Rome that "in accordance with the terms and conditions of your contract, you must complete the enclosed Performance and Payment Bond forms and return them to this office within 15 calendar days."

On May 13, 2010, the contracting officer again requested the bonds through an e-mail. Rome responded the same day, stating that the bonds should be received by the end of the next week. After a series of additional e-mails in May, June, July, and August, Rome finally provided the required bonding. The bonds were executed on August 23, 2010, and accepted by GSA on August 31, 2010.

In this case, GSA did not properly enforce the bonding requirement. This issue was compounded because the bid bond was waived. Once the 15-day timeframe passed, there was no bid bond to guarantee the furnishing of the performance and payment bonds, so the Government was left unprotected. Without the protection of the bid bond, it was incumbent on the contracting staff to enforce the 15-day requirement. Ironically, the bid bond was waived because this was considered an accelerated procurement; however, GSA's actions were certainly at odds with the need for an accelerated procurement.

**Rome overbilled GSA \$15,797 for its bond premiums.** Rome's task order includes a scheduled value of \$74,000 for bonding costs. This amount agrees with the amount included in the Cost Breakdown of Rome's bid. In its first Application and Certificate for Payment, for the period ending September 30, 2010, Rome certified that its bonding costs were complete and billed GSA for the full \$74,000 (the actual amount invoiced and paid was \$66,600, which was net of 10 percent retainage:  $\$74,000 - \$7,400 = \$66,600$ ).

However, the Special Conditions section of Rome's contract includes the following:

#### 5.4 BONDS

- 1) The solicitation shall require the submission of performance and payment bonds as follows:
  - (a) Performance and payment bonds shall be required for each individual delivery order as awarded...
  - (b) Offerors shall include bond premiums in their price **and must provide** receipts. (emphasis added)

In light of this requirement, we reviewed the actual bond premiums paid by Rome and its subcontractor, Barrett, Inc. As indicated in *Figure 1*, the actual bond premiums paid totaled only \$58,203.

**Figure 1 - Bond Premium Invoices**

<b>Invoice Date</b>	<b>Customer</b>	<b>Contract Amount</b>	<b>Bond Premium</b>
<b>8/23/10</b>	Rome Management	\$3,047,305	\$47,068
<b>8/24/10</b>	Barrett, Inc.	1,305,000	11,135
<b>Total Bond Premiums</b>			<b>\$58,203</b>

Therefore, Rome has overbilled GSA \$15,797 for its bonding costs (\$74,000 - \$58,203). The contracting officer's representative approved the payment to Rome based on the scheduled value of \$74,000, rather than requiring Rome to submit the underlying premium invoices in accordance with the contract.

In her response, dated June 23, 2014, the Regional Administrator acknowledged the issues related to the project's bonding requirements and that they do "not represent GSA's normal business practice." She acknowledged that the reason for waiving the bid guarantee "was erroneously omitted" from the project file, "there is no justification for not enforcing the 15 calendar day requirement for furnishing of the bonds," and "the bond premium should have been lowered, but GSA failed to require a copy of the bond receipt...."

**Inappropriate modification to Schedule of Values**

GSA approved a modification to Rome's Schedule of Values (SOV) that effectively resulted in an advance payment. The initial SOV was included in Rome's first invoice to GSA, dated September 20, 2010. Rome submitted a revised SOV on March 22, 2011, which included substantial line item revisions, although the bottom line remained unchanged.

Essentially, Rome shifted \$132,000 of direct work from four line items to a new line item called "General Requirements." Rome explained that this was necessary in order to recognize "elevated upfront costs," including paperwork, security requirements, and subcontractor coordination. Rome claimed that these costs had been included as an allocation to the other line items.

Rome submitted another revision, dated March 23, 2011, which transferred \$146,210 of direct work to the new General Requirements line item. This time the shift affected most of the direct construction line items, which were reduced by approximately 5 percent in order to fund the General Requirements line item. The file does not document any discussions between GSA and Rome regarding this second revision.

At first, GSA rejected Rome's invoice (including the revised SOV) "due to the inaccurate and incomplete project schedule/workplan." Rome then submitted a schedule that included a General Requirements line item. This item showed a start date of October 22, 2010, and a finish date of October 10, 2011. GSA ultimately approved Rome's invoice on April 19, 2011. The amount approved included 50 percent of the General Requirements amount, or \$73,105. The record does not explain the basis used

to accept 50 percent completion of this line item.<sup>3</sup> In fact, the Inspection Report was not in the file for this payment.

We have three concerns with this transaction. First, the manner in which the SOV was modified did not follow the SOV approval process. A modification to this schedule should at least be properly documented, explained, and justified. As indicated earlier, the contract file was lacking in this regard.

Second, since the General Requirements line item was derived from the construction line items, it may have been inappropriate to approve this payment prior to the Construction Notice to Proceed. Although the Design Notice to Proceed on this contract was effective October 22, 2010, the Construction Notice to Proceed was not effective until May 3, 2011. This payment was approved and paid on April 19, 2011, prior to the Construction Notice to Proceed when only design work was billable.

Finally, this appears to be a case of either front-loading or advance payments, both of which are improper. Amounts originally approved for construction work were transformed to be indirect costs. This requirement was not identified in the contractor's proposal, was not incorporated in the initial SOV, was not evaluated by inspection, and the amount appears to have been derived arbitrarily, based on Rome's assertion of "elevated upfront costs."

In her response, the Regional Administrator disagreed that the modification to the SOV was inappropriate, although she acknowledged that "the file should have had an explanation of the SOV revision." According to the response:

Initially, the contractor did not have a general conditions line item in the SOV and subsequently realized it was needed to cover typical costs such as securing clearances, its site office, and the superintendent and Project Manager's salaries which it was incurring, but could not charge to other line items in the SOV. The contractor provided a written request to modify the SOV, stating the need and addressing the approach used.

Due to the fact the contractor did not adequately include mobilization costs in its bid the revision of the SOV was necessary. The contractor's bid had general conditions worked into the construction line items. After the revision of the SOV, the general conditions were in line with the independent government estimate and projects of similar size, scope, and complexity. GSA worked with the contractor, a small business, to ensure it could fairly and accurately invoice for the work it had been performing. GSA/PBS is unaware of any specific process when revising a SOV document....

Despite this explanation, we reaffirm our concerns about the revised SOV. GSA provides the following guidance regarding the evaluation and approval of an SOV:<sup>4</sup>

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<sup>3</sup> It appears that the 50 percent completion of the General Requirements may have been derived based on elapsed time. The planned performance time for this item was about a year. Counting from the October 22, 2010, start date to the invoice date of April, 19, 2011, is about 6 months (6 ÷ 12, or 50 percent).

<sup>4</sup> PBS InSite website, Design & Construction, PM Guide, Capital Projects, VII. Construction, L. GC Payment Requisitions, 2. GC Submission of Cost Breakdown/Schedule of Values.

Soon after GSA issues a Notice to Proceed (NTP) on a project, the General Contractor (GC) should prepare and submit a detailed cost breakdown of the contract value. The breakdown should comprise a schedule of values based on the GC's cost-loaded Critical Path Method (CPM) schedule. The GC's schedule of values should be in sufficient detail to evaluate applications for payment.

The breakdown should accurately reflect costs for each work element. The Project Team can refer to independent estimates or request substantiation when considering the values in a GC's breakdown. The breakdown should not over-value early project activities (i.e. no "front-loading"). Large-value work items, such as mechanical or electrical work, should be broken into detailed increments. Values should include material, labor, overhead and profit, although a separate value for bond costs is appropriate. The breakdown should be approved by GSA before the GC submits the first application for payment.

The General Requirements line item that was created on the revised SOV lacks any detail that could be used to show the cost is related to any work being performed on the project. Further, the initial payment for the General Requirements was made prior to the Notice to Proceed and with no documentation supporting the payment. In view of the above, we remain concerned that this may have been an advanced payment or front loading. This may be an area of emphasis for contracting staff going forward.

#### **Improper use of an unpriced modification**

The FAR requires that all contract modifications, including change orders, be priced before they are executed unless doing so would adversely affect the interests of the Government.<sup>5</sup> Similarly, the GSA Acquisition Manual states that the Government can order a contractor to proceed with work on a price to be determined later (PDL) basis if the contracting officer determines that it is in the best interests of the Government that the contractor proceed before negotiation of an equitable adjustment is completed. In this case, PBS issued a PDL modification that did not establish pricing, but that does not warrant a FAR exception or pricing on a PDL basis.

PBS issued Modification PC03 on March 8, 2011, in the Not to Exceed amount of \$453,393 for the removal of additional roof insulation. It was determined that a PDL was justified because "testing indicated that there is more roof insulation to be removed than indicated on the as-built drawings provided during bidding. An accurate accounting of the quantity of additional material to be removed is not possible until the demolition work is completed."

However, the PDL was issued before the Construction Notice to Proceed and as a result, there was no need for a PDL because there was no exigent need for the work to be started prior to price negotiations.

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<sup>5</sup> FAR 43.102(b).

Subsequently, PBS issued Modification PS06, effective September 15, 2011, in the amount of \$453,393 to ostensibly definitize PC03. However, PS06 added additional roof repair work. Only \$399,925 related to the original scope of PC03. The remaining \$53,468 was used for other roof repair work and included a contingency amount of \$6,343.66 for "roof repairs as project progresses."

This was not an appropriate use of the PDL process. GSA's guidance clearly states that the only difference between a PDL and a standard contract modification is that the contractor is "authorized to proceed with changed work in the absence of a firm price." Further, awarding a line item in a change order of any type, as a contingency for work that has not yet been identified, is inappropriate as the requirement to fulfill a bona-fide need has not been met.<sup>6 7</sup>

The original PDL resulted in an invalid obligation of \$453,393. Although this was subsequently corrected, the contingency amount of \$6,343.66 continued to be an invalid obligation.

In her response, the Regional Administrator acknowledged that "the PDL was awarded improperly;" although she also pointed out that "there was a bona-fide need for the issuance of this PDL." According to the response:

The file contains a justification for a PDL signed by the Contracting Officer and Supervisory Contracting Officer. GSA/PBS's intent was to deal prudently with the prospect of a government-wide funding rescission that would have jeopardized this project in mid-course, and to do so in accordance with the Recovery Act statutory authority to obligate, deobligate, and reobligate funds. However, to the extent the report identifies potential problems with the accuracy or completeness of the contract modification documents created to execute our business decisions; we welcome the findings and recommendations. As you know, these Recovery Act projects have unique management and funding requirements that depart from PBS's longstanding model.

Although the Regional Administrator asserted that there was a bona-fide need for the issuance of this PDL, we reaffirm our position that, since the Construction Notice to Proceed had not yet been issued, there was no exigent need for the work to be started and no need for a PDL at the time. Additionally, the Regional Administrator's response does not directly address the award of the contingency line item, for which there certainly was no bona-fide need.

### **Photovoltaic inverter not compliant with the Buy America Act**

The Photovoltaic Inverter (Model PVS-75KW) installed by the contractor was not compliant with the Buy American provision of the Recovery Act. Purchasing foreign made equipment marginalizes the basic intent of the Recovery Act: stimulating the economy.

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<sup>6</sup> As it turns out, the \$6,343.66 contingency was never used; it was subtracted from Rome's final billing.

<sup>7</sup> GAO-04-261SP Appropriations Law—Vol. I.

Rome's subcontractor, Russell Solar L.L.C., purchased the Photovoltaic Inverter for \$31,333. The inverter was manufactured by the Satcon Technology Corporation (Satcon). The inverter did not have any markings indicating its country of origin, nor did the purchase documents. However, we contacted Satcon and were informed that the inverter was a non-Recovery Act unit manufactured in China.<sup>8</sup>

FAR 52.225-21, incorporated into the solicitation, 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 Recovery Act which requires that, unless an exception applies, all iron, steel, and other manufactured goods used as construction material be produced in the United States and that the contractor use only domestic construction material in performing the contract.<sup>9</sup> Neither the contracting officer nor the contracting officer's representative listed any exceptions.

Figure 2 - Satcon Inverter Manufactured in China



In her response, the Regional Administrator explained that the project team relied on the contractor's self-certification that all materials were compliant. However, for future certifications of the Buy American Act, the New Jersey Service Center has been advised that "this is not a contractor's self-certifiable inspection...The CO and COR's visual inspection and product research are the normal operating procedures in GSA...."

### **GSA erroneously declared that Rome met its substantial completion date**

The contracting officer's representative declared that Rome met the contract's substantial completion date of December 19, 2011. However, documentary evidence shows that the contractor actually missed the date by as much as a month.

Based on GSA's guidance, substantial completion requires that essential components and systems are available and fully operational. The original task order, dated March 30, 2010, called for a delivery date of July 1, 2011. However, the Design Notice to Proceed was not effective until October 22, 2010. Based on this notice, the contract

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<sup>8</sup> Satcon no longer exists as a going concern; therefore, besides the non-Recovery Act issue, GSA needs to investigate whether the inverter still has any type of warranty coverage. Satcon filed for Chapter 11 bankruptcy protection in October 2012. In March 2013, Chapter 7 liquidation proceedings began. As a result of the liquidation proceedings, on September 3, 2013, China Great Wall Energy purchased all of Satcon's assets, including its intellectual property and patents. After the purchase, China Great Wall Energy selected Skwentex International Corp. and its subsidiaries as the exclusive agent for inverter sales and service. One of Skwentex International Corp.'s subsidiaries, SIC USA, Inc. then appointed Tylon Solarshield as the exclusive provider for repairs and maintenance of Satcon's inverters.

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

completion date was determined to be November 21, 2011. Modification PS07, effective November 18, 2011, changed the completion date to December 19, 2011.

The record shows that the contracting officer's representative determined that Rome met its substantial completion date based on his inspection report dated January 24, 2012, which supported Rome's payment application number 12. His report declared "All site construction work completed. Substantial Completion Date of 12/19/11 was met. Close-out documents, training and coordination with building control system remain."

However, the construction manager's daily inspection reports reveal that substantial completion did not occur on December 19, 2011. As a matter of fact, the December 19, 2011, report specifically concludes that aspects of the project were incomplete and that additional days were needed. On January 17, 2012, the construction manager reported that functional testing of the photovoltaic system would occur later that week. Finally, on January 19, 2012, the construction manager reported that the contractor started the commissioning test for the photovoltaic system and that, although most commissioning items were addressed, some items remain for verification.

Although the contracting officer's representative represented that the system was commissioned and functioning as of December 19, 2011, functional testing did not take place until January 19, 2012. Therefore, Rome did not meet its substantial completion date. Rome's contract provides for the assessment of liquidated damages of \$325 per day for failure to complete the work on time. By declaring that substantial completion was met, the opportunity to use this contractual remedy was lost.

In her response, the Regional Administrator disagreed with this finding, essentially saying that GSA did have beneficial use of the roof and the photovoltaic system by the substantial completion date. According to the response:

GSA's Contracting Officer Representative certified that the substantial completion date of December 19, 2011 was met, and that GSA had beneficial use of the roof, the PV system was operational and the building was consuming PV power. There were punch list items being performed after December 19th, but this did not take away from the fact that GSA benefited from the roofing and PV system per its intended use.

Connecting the PV system to the Building Management System (BMS) was dependent upon the BMS project, which was a separate contract and out of the control of the Reroof/PV project. Once the BMS was in place, which was after the PV was substantially complete, further testing of the PV system was required to safely tie the systems together. Although the PV and BMS projects impacted one another they were mutually exclusive and GSA had achieved beneficial use of the PV roof by the substantial complete date.

The CMs report erroneously based substantial completion date on the tie in of the BMS and PV projects. In fact, the use of the PV, as a standalone project was achieved by December 19, 2011.

We reaffirm our finding because, even if functional testing is dismissed as irrelevant to a determination of substantial completion, there is sufficient documentary evidence in the file that contradicts the contracting officer's representative's assessment that the project

was substantially complete. First, the contracting officer's representative's own inspection report dated January 3, 2012, which supported Rome's payment application number 11, did not address substantial completion, although the December 19, 2011, date had already passed. He wrote "100% Phase 2/3/4 roof work, 98% Phase 5 (roofs B,D,G,R), 98% Phase 6 (roofs A,C,T,S,F,U, Q) 95% PV work and 90% of change order work." The contracting officer's representative did not document substantial completion until his next inspection report, dated January 24, 2012, effectively contradicting his previous inspection.

Second, we disagree with the conclusion that "the CMs report erroneously based substantial completion date on the tie in of the BMS and PV projects." Actually, the construction manager (CM) reported on December 19, 2011, that:

Barrett roofing is continuing with detail work at 11<sup>th</sup> floor roofs "A" & "B".

Note: Today is the contract deadline but additional details are incomplete, additional days will be required.

The CM reported that the roofing contractor was not finished. According to the CM, the roofing contractor continued to perform detail work until at least December 22, 2011. This reported detail work appears to be more substantial than punch list items as referred to in the Regional Administrator's response.

Finally, we asked the contracting officer's representative to explain how he determined that substantial completion was met. According to his e-mail response:

The substantial completion date was met on 12/19/11 because the roof and PV system were installed to a point where they were warrantable [sic]. The pv system was commissioned and functioning and producing power. I'd say it is similar to beneficial occupancy - the space is usable with some final touches needed.

However, the referenced commissioning did not actually take place until January 24, 2012, the same day as the contracting officer's representative's "substantial completion" inspection. As such, we reaffirm this finding.

### **Inaccurate certified payrolls**

Upon review of certified payrolls submitted by Rome and its subcontractor, Russell Solar L.L.C. (Russell), we identified several instances where the same employees were reported on the certified payrolls of both companies on the same day. *Figure 3* presents our findings.

According to the information displayed in the table:

- Although the same individuals appeared on each company's payroll, their individual job classifications and wage rates differed.
- In every case, the combined hours worked on the same day exceeded 8 hours. For example, employee "DC" was reported by both companies as having worked a total

of 16 hours on 2 consecutive days during the week ending November 19, 2011, and 16½ hours in a single day during the week ending October 8, 2011.

- In two instances, total weekly hours exceeded 40, thereby mandating the payment of overtime.<sup>10</sup> However, in every case, the reported wage rate conformed to the minimum straight time wage as stipulated in the Davis Bacon Act wage determination. There was no evidence of overtime wages paid.

**Figure 3 - Schedule of Employees Appearing on the Payrolls of Two Contractors on the Same Day**

Contractor	Employee	Position	Wage Rate	MON	TUE	WED	THU	FRI	Total Hours
<u>Week Ending 10/08/2011</u>									
Rome	AT	Carpenter	\$75.00	8	8	8	8	8	40.00
Russell	AT	Roofing	\$65.37	0	2	0	0	0	2.00
Combined Hrs				8	10	8	8	8	42.00
Rome	DC	Laborer	\$47.00	8	8	8	0	0	24.00
Russell	DC	Roofing	\$65.37	0	8.5	0	0	0	8.50
Combined Hrs				8	16.5	8	0	0	32.50
Rome	SD	Project Mgr.	\$30.00	4	4	4	4	4	20.00
Russell	SD	Roofing	\$65.37	0	6.5	0	0	0	6.50
Combined Hrs				4	10.5	4	4	4	26.50
<u>Week Ending 10/29/2011</u>									
Rome	DC	Laborer	\$46.77	8	8	8	4	0	28.00
Russell	DC	Roofing	\$65.37	0	3.5	0	0	0	3.50
Combined Hrs				8	11.5	8	4	0	31.50
<u>Week Ending 11/19/2011</u>									
Rome	DC	Laborer	\$46.77	8	8	8	8	8	40
Russell	DC	Roofing	\$65.37	8	8	0	0	0	16
Combined Hrs				16	16	8	8	8	56
<u>Week Ending 12/10/2011</u>									
Rome	DC	Laborer	\$46.77	8	0	0	0	0	8
Russell	DC	Roofing	\$65.37	6	0	0	0	0	6
				14	0	0	0	0	14

When asked for an explanation, Rome's written response offered no explanation for why the same employees appeared on both Rome's and Russell's payrolls. In lieu of an explanation, Rome attempted to "make things right" by issuing payroll checks for overtime pay and creating revised certified payrolls that purportedly eliminate some of the overlap that was found. However, some of this "overtime pay" may have been unnecessary, since current labor laws only require overtime pay if total weekly hours

<sup>10</sup> The basic overtime pay provision of the Contract Work Hours and Safety Standards Act requires contractors and subcontractors with covered contracts to pay laborers and mechanics employed in performance of the contracts, one and one half times their basic rate of pay for all hours worked over 40 hours in a workweek. The Contract Work Hours and Safety Standards Act applies to both contractors and subcontractors with federal service contracts and federally funded and assisted construction contracts over \$100,000.

exceed 40. Further, the revised certified payrolls were not convincing as they were undated and not supported with underlying payroll records.

We spoke to Rome's President and Russell's Controller about this matter. In separate conversations, they each explained that Russell needed to borrow Rome's employees on occasion because Russell had problems getting enough workers cleared to perform on the project. Rome's President also stated that Rome does not have a formal system of accounting for its employees' time on a job site and depends on the field supervisor or assumes his employees are on site for 8 hours. As such, the duplicate employees on the payroll appear to be the result of poor timekeeping by Rome, which mistakenly recorded the employees on its own payroll on days when they actually worked for Russell. However, this is contrary to Rome's previous written explanation and calls into question earlier actions by Rome to "make things right."

In her response, the Regional Administrator stated that, although there was no evidence of any payroll regulation or labor law violations, she acknowledges "that both the contractor and subcontractor's inability to explain the unsupported payroll actions demonstrated a lack of an appropriate accounting system and administrative support to explain their processes."

#### **Several subcontractor employees did not have appropriate security clearances**

The *GSA HSPD-12 Personal Identity Verification and Credentialing Handbook* requires temporary contractors, working up to 6 months at a job site, to obtain a clearance for their employees through a law enforcement background check or be escorted as a provision of granting them access to non-public areas of GSA-controlled facilities. However, on this project, at least three subcontractor employees were working on-site without appropriate security clearances.

This project required contract employees to pass two background checks. First, employees needed to be cleared by the Federal Protective Service Contract Suitability Adjudication Program. The Federal Protective Service granted a preliminary and then final clearance for each employee. After final approval was granted, the Social Security Administration (Social Security), the tenant agency, insisted on conducting its own background investigations prior to allowing employees to work on-site.

The clearance processes were redundant and time consuming.<sup>11</sup> In an effort to expedite the clearance process, Social Security issued access cards to employees with only preliminary Federal Protective Service clearances, with the expectation that the final clearance would be submitted upon completion.

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<sup>11</sup> GSA contracting officials told us that Social Security's requirement of performing their own clearances after completion of HSPD-12 was redundant and delayed the project. Our contract file review revealed that this additional step did take additional time. In an e-mail sent to the contracting officer's representative, a Social Security official expounded on this very problem: "The biggest problem with the whole HSPD-12 procedure is SSA. We won't give the contractor or GSA anything written that explains our requirements. Therefore, no one knows exactly what to do, including our people."

Payroll records show that two roofing employees from subcontractor, Barrett Inc., and two roofing employees from subcontractor, Russell, were on-site for multiple pay periods without final clearances. In addition, we were not able to determine if the preliminary clearance for one of the Russell employees was ever completed. These employees were allowed to be on-site for up to 6 months if escorted. However, based on the available records, we were unable to determine if the employees were escorted.

Lack of adequate security clearances for subcontractor employees could put the occupants of the building, as well as the public, at risk.

In her response, the Regional Administrator asserted that “all security clearances on the project were obtained in accordance with GSA’s HSPD-12 guidance and handbook” and “there was an adequate number of cleared employees during the course of this project to escort the employees that did not have final favorable clearance status; this is GSA’s normal business practice.”

However, as discussed in the finding, there is no documentation supporting that these employees were actually escorted in accordance with the *GSA HSPD-12 Personal Identity Verification and Credentialing Handbook*.

Finally, the Regional Administrator’s response also stated that “based on the issues raised in the subject report, GSA/PBS will ensure that training on the proper application of the various contract fundamentals outlined above will be made mandatory to all Contracting Officers and Contracting Officer Representatives and will be given within the next few months.”

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

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

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