



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

DATE: August 7, 2013

TO: SARA MANZANO-DIAZ
ACTING REGIONAL ADMINISTRATOR
SOUTHEAST SUNBELT REGION (4A)

FROM: 
JAMES M. CORCORAN
REGIONAL INSPECTOR GENERAL FOR AUDITING
MID-ATLANTIC FIELD OFFICE (JA-3)

SUBJECT: Concerns Regarding Contract Administration on the Recovery Act
Project for the Roof Replacement at the Peachtree Summit Federal
Building
Audit Memorandum Number A090184-76

As part of our oversight of projects funded via the American Recovery and Reinvestment Act of 2009 (Recovery Act),¹ we identified areas of concern related to the administration of the roof replacement project that we would like to bring to your attention. Specifically, the contractor installed foreign-manufactured construction material in violation of Section 1605 (Buy American) of the Recovery Act. In addition, contractor employees worked onsite without evidence of appropriate security clearances.

On October 16, 2009, the Public Buildings Service (PBS), Southeast Sunbelt Region (Region 4) awarded Task Order GS-P-04-10-EX-0003 to National Building Contractors, Inc. (NBC, Inc.), to design and replace the penthouse and stairwell roofs with vegetated roofs at the Peachtree Summit Federal Building in Atlanta, Georgia. The task order, valued at \$261,575, was awarded against NBC, Inc.'s indefinite-delivery, indefinite-quantity, Contract Number GS-04P-09-EX-D-0115.

¹ The Recovery Act appropriated \$5.55 billion to the Federal Buildings Fund, the majority of which was related to converting facilities to High-Performance Green Buildings. The Recovery Act required the Office of Inspector General to oversee and audit programs, grants, and projects funded under the Act.

PBS did not ensure compliance with Section 1605 (Buy American) of the Recovery Act.

NBC, Inc. installed construction material that did not comply with Section 1605 of the Recovery Act. Since the use of foreign-made material was prohibited in this case, the materials do not meet the Buy American requirements of the Recovery Act.

NBC, Inc. replaced the penthouse and stairwell roof enclosures with vegetated roofs that included foreign-manufactured material. According to the Product Origin Roster provided by NBC, Inc., 32 percent of the material was manufactured in Canada.² Section 1605 prohibits the use of foreign-manufactured material for Recovery Act funded projects. Federal Acquisition Regulation (FAR) 52.225-21(b)(1)(i) implements Section 1605 of the Recovery Act, "...by requiring, unless an exception applies, that all manufactured construction material in the project is manufactured in the United States..." The contracting officer stated that there was no letter "...providing an exception regarding the applicable foreign made material."

In addition, a Region 4 project manager stated that "Canada is a Recovery Act designated country..." He referenced FAR 52.225-23,³ which lists Canada as a designated country. Although Canada is a designated country per FAR 52.225-23, it does not apply in this case. FAR 25.603 *Exceptions*, states:

(a)(1) When one of the following exceptions applies, the contracting officer may allow the contractor to incorporate foreign manufactured construction materials without regard to the restrictions of section 1605 of the Recovery Act or foreign unmanufactured construction material without regard to the restrictions of the Buy American Act....

(c) *Acquisitions under trade agreements.*

(1) For construction contracts with an estimated acquisition value of \$7,777,000 or more....

Therefore, the trade agreement regulation is not applicable as the task order is valued at \$261,575.

In her response, dated July 22, 2013, the Acting Regional Administrator agreed that the project did not fully comply with Section 1605 of the Recovery Act and identified several causes. She stated that PBS will: (1) notify NBC, Inc. that they did not comply with Section 1605 of the Recovery Act; (2) prepare a Construction Contractor Appraisal Support System (CCASS) report no later than August 1, 2013, for NBC, Inc.'s Indefinite

² The 32 percent foreign made material included: TREMLAR 120 EP PRIMER (4%), TREM-LAR LRM (14%), and TRA ELASTOMERIC SHEETING (14%). The cost and quantities of the materials could not be determined based on the information on file.

³ FAR 52.225-23 *Required Use of American Iron, Steel, and Manufactured Goods-Buy American Act-Construction Materials Under Trade Agreements*. Canada is listed as a World Trade Organization Government Procurement Agreement country and Free Trade Agreement country.

Delivery, Indefinite Quantity contract to address the noncompliance with Section 1605 for this task order; and (3) issue a policy no later than August 1, 2013, requiring the Contracting Officer's Representative (COR) and CO to verify that the Contractor did not use foreign materials in accordance with FAR 52.225-21(b)(1)(i) for all current and ARRA projects completed within the last three years.

Two contractor employees worked onsite without security clearances.

We determined that two employees worked on the project without evidence of security clearances. A lack of adequate security clearances for contractor employees could put the occupants of the building, as well as the public, at risk.

GSA Homeland Security Presidential Directive 12 (HSPD-12), Personal Identity Verification and Credentialing Handbook guidelines require 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.⁴ Payroll records show NBC, Inc. had seven employees onsite, more than ten days during the construction phase. Region 4 security officials provided security clearance documentation for five of the seven individuals.

For one of the two remaining individuals, a preliminary and/or final adjudication could not be found. We were unable to determine if this employee was escorted. The adjudication of the other individual was canceled for failing to provide information to the Office of Personnel Management (OPM). The employee initially received a favorable "entry on duty" letter,⁵ dated December 9, 2009, to work on the project. However, on March 24, 2010, his case was terminated. According to payroll documents, the individual worked on the project from the construction phase through April 23, 2010, the approximate project completion date. According to Region 4's Lead Physical Security Specialist, if an individual does not provide additional/requested information to OPM, "...the investigation is cancelled and the applicant must discontinue working on the project." Therefore, this individual should not have been permitted to work on the project after March 24, 2010.

The COR was the GSA point of contact for this project. According to the "Appointment of Contracting Officer's Representative" memo, one of the COR's responsibilities is to, "Enforce the identification, clearance, qualifications and attendance program of the contractor's employees." The COR's electronic files did not contain any relevant security clearance information. As a result, there is no evidence that the COR⁶

⁴ HSPD-12 establishes "a common identification standard for Federal employees and contractors. HSPD-12 requires all Federal Executive departments and agencies to conduct personnel investigations, adjudicate the results, and issue identity credentials to all Federal employees and contractors who require routine access to their building facilities and information technology (IT) systems."

⁵ According to the letter, a favorable entry on duty did not constitute a security clearance.

⁶ The COR was a term employee for the ARRA program which expired on September 28, 2012, prior to officially commencing our review. Therefore, we were unable to interview him.

enforced the identification and clearance of contractor employees. The COR's supervisor acknowledged the "critical issue" regarding the COR's responsibility and said he will remind his staff "...of the importance of tracking security clearances and providing escorts as needed for our projects." In addition, he stated:

...there have been several improvements in the handling of security clearances and improving jobsite clearance issues since the time of the Summit Roof Project.... Recently, many of the PMs in our Division have received a training presentation on the handling of security clearances and the escort procedure.

In her response, dated July 22, 2013, the Acting Regional Administrator agreed that the contractor did not fully comply with the contract clauses concerning security clearances and that PBS did not appropriately monitor compliance. She said that, since the Summit Roof Replacement Project, many improvements have been made, including those mentioned above, along with implementing new policies and procedures (effective August 1, 2013) to address the security clearance process and escort procedures.

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.

Memorandum Distribution

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