

**Recovery Act Report
Installation of Foreign Bollards at
Scobey Land Port of Entry
Review of PBS's Reimbursable Work Authorization
Projects Funded by the American Recovery and
Reinvestment Act of 2009
Audit Number A090169/P/R/R11015**

September 30, 2011





Date: September 30, 2011

Reply to: R. Nicholas Goco
Attn of: Deputy Assistant Inspector General
For Real Property Audits (JA-R)

Subject: Recovery Act Report
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To: Robert A. Peck
Commissioner
Public Buildings Service (P)

As part of our oversight of Reimbursable Work Authorizations (RWA) issued under American Recovery and Reinvestment Act (Recovery Act) projects, we reviewed nine General Services Administration (GSA) managed projects for the Land Port of Entry (LPOE) Modernization Program. During our review, we identified an issue involving a violation of the Buy American provision of the Recovery Act that warrants your attention.

Installation of Foreign Bollards violates Section 1605 of the Recovery Act.

Construction material manufactured in the Republic of Korea was installed as bollards¹ at the Scobey, Montana LPOE in violation of Section 1605 of the Recovery Act. Purchasing foreign made construction material marginalizes the basic intent of the Recovery Act: stimulating the American economy.

GSA awarded a Design/Build construction contract for \$6,595,988.13 on August 14, 2009, to modernize the Scobey LPOE. The contract was funded by the Recovery Act. On September 16, 2010, a subcontractor ordered Korean-manufactured material for bollards that were installed on October 1, 2010.

Section 1605(d) provides that the Buy American clause shall be applied to Recovery Act projects in a manner consistent with U.S. obligations under international (trade) agreements. The Section states:

¹ Reinforced posts that protect the Radiation Portal Monitors against accidental damage.

None of the funds appropriated or otherwise made available by this Act may be used for a project for the construction, alteration, maintenance, or repair of a public building or public work unless all of the iron, steel, and manufactured goods used in the project are produced in the United States.

The contracting officer researched this situation after we brought it to his attention. He determined that a violation had not occurred because:

Once the value of the order exceeded the threshold for application of the WTO,² the provisions contained in FAR 52.225-23 were activated for WTO countries. At the time the bollards manufactured in Korea were installed, the threshold for application of the WTO had been reached. Since Korea is listed as a WTO country, installation of the Korean bollards was in compliance with the ARRA Buy American Act requirements.

We disagree with this determination. While the Federal Acquisition Regulation (FAR) 52.225-23,³ allows the use of construction materials by a WTO when the acquisition exceeds a threshold established by the Trade Agreements Act (i.e. Buy American is waived), this is predicated on the contracting officer making the threshold determination based on an “estimated acquisition value”—not the actual, completed costs. The FAR assumes that the contracting officer will make the threshold determination at the time of award, not after the fact.

The contracting officer based his threshold determination on the cost of the project at the time the bollards were installed, not the acquisition value at the time of the contract award.⁴ The contract award amount of \$6,595,988.13 was well under the TAA threshold of \$7,443,000 in effect at that time.

Even if the contracting officer had conducted a new threshold determination on September 16, 2010, the day the bollards were procured, it would not have justified waiving the Buy American provisions. The contract’s estimated value at that time was \$6,816,399.56, well below the new TAA threshold of \$7,804,000 established on January 1, 2010.

Conclusion

The Scobey LPOE project meets the definition contained in Section 1605 of the Recovery Act, which requires that all manufactured goods used as “construction material” in a construction project funded by the Recovery Act be produced or manufactured in the United States. Construction materials used in bollards at the Scobey LPOE were produced in the Republic of Korea, not the United States.⁵ Accordingly, their use violates the Recovery Act.

² World Trade Organization Government Procurement Agreement (WTO). The WTO falls under the Trade Agreements Act (TAA).

³ Required Use of American Iron, Steel, and Other Manufactured Goods-Buy American Act-Construction Material Under Trade Agreements.

⁴ At the time of installation, a September 29, 2010 modification increased the contract value to \$7,997,642.77 which was above the January 1, 2010 TAA threshold of \$7,804,000.

⁵ According to the subcontractor’s quote, the cost of the domestic material was \$12,358.08 versus \$7,770 for the foreign material, a difference of \$4,588.08.

Recommendations

We recommend that the Commissioner of the Public Buildings Service:

1. Ensure Construction Contractors, Construction Managers, and PBS Project Personnel are knowledgeable of the requirement of Section 1605 of the Recovery Act (i.e. the use of foreign construction material), and that violations are reported to the GSA contracting officer.
2. Obtain a credit, if applicable, from the Design/Build contractor for the difference in value between the foreign made bollards and comparable U.S. manufactured bollards.

Management Comments

In its response to the draft report, PBS concurred with our findings and accepted the report recommendations. PBS's response is included in its entirety as Attachment A to this report.

We appreciate the support that has been provided throughout this review. If you have any questions about this report, please contact me at (202) 219-0088.

Sincerely,

for Susan P. Hall
R. Nicholas Goco
Deputy Inspector General
For Real Property Audits (JA-R)

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Management Comments



SEP 27 2011

GSA Public Buildings Service

MEMORANDUM FOR R. NICHOLAS GOCO
DEPUTY ASSISTANT INSPECTOR GENERAL
FOR REAL PROPERTY (JA-R)

FROM: ROBERT A. PECK
COMMISSIONER
PUBLIC BUILDINGS SERVICE (P)

A handwritten signature in blue ink, appearing to read "R. Peck", is written over the printed name of Robert A. Peck.

SUBJECT: Recovery Act Report: Installation of Foreign Bollards at Scobey Land
Port of Entry Review of PBS's Reimbursable Work Authorization Projects
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The Public Buildings Service (PBS) appreciates the opportunity to comment on the draft report. PBS concurs with the findings.

The report contains the following recommendations:

1. Ensure Construction Contractors, Construction Managers, and PBS Project Personnel are knowledgeable of the requirement of Section 1605 of the Recovery Act (i.e. the use of foreign construction material), and that violations are reported to the GSA contracting officer.
2. Obtain a credit, if applicable, from the Design/Build contractor for the difference in value between the foreign made bollards and comparable U.S. manufactured bollards.

In response to recommendation 1, PBS will issue guidance regarding Section 1605 of the Recovery Act and will instruct construction contractors and construction managers to report violations to their contracting officer.

In response to recommendation 2, the contracting officer will review the purchase of the foreign made bollards and take necessary action, including negotiation of a credit, if applicable, for the difference in the value of the foreign made bollards and comparable U.S. manufactured bollards.

Upon receipt of the final report, PBS will prepare a detailed corrective action plan to address the recommendations. Please note that a more comprehensive response may follow upon issuance of the final audit report or as further information comes to our attention.

If you or your staff has any further questions, please contact Matt Radford at (202) 219-0906.

U.S. General Services Administration
1900 F Street, NW
Washington, DC 20408-1002
www.gsa.gov

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Background, Objective, Scope, and Methodology

Background

The GSA Office of Inspector General (OIG) is conducting oversight of the projects funded by the Recovery Act. Included in this oversight are projects for which Recovery Act funds were transferred to GSA's Public Buildings Service (PBS) through Reimbursable Work Authorizations for the purpose of constructing, renovating, and altering federal buildings.

Under the LPOE Modernization Program, the Department of Homeland Security received \$420 million in Recovery Act funds for the planning, management, design, alteration, and construction of U.S. Customs and Border Protection (CBP) owned LPOEs. These funds are to be used to (1) expand the ports to address increasing demands, thereby reducing wait times at many locations; (2) incorporate mission enhancements required to bring these facilities up to current operational requirements; and (3) address deteriorating physical conditions. CBP provided PBS approximately \$101 million in Reimbursable Work Authorizations to perform LPOE modernization work at nine LPOEs.

Objective

The objective of the Office of Inspector General's Recovery Act oversight is to determine if PBS is planning, awarding, and administering contracts for Reimbursable Work Authorization projects in accordance with prescribed criteria and Recovery Act mandates.

Scope

We performed the work for this report between March 2011 and July 2011.

Methodology

To accomplish the objective we reviewed pertinent project documents, held discussions with project staff, obtained legal guidance from the GSA-OIG Office of General Counsel, and reviewed applicable guidance and regulations.

Except as noted below, we conducted this performance audit in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

The planning for this review is based on the audit plan for oversight of the Recovery Act projects as well as review guidance being applied to all Reimbursable Work Authorization Recovery Act projects. A separate guide was not prepared for this project.

As this work was performed under the continuing oversight of all GSA Recovery Act projects, management controls are currently under assessment. Only those management controls discussed in the report have been assessed.

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