




U.S. GENERAL SERVICES ADMINISTRATION
Office of Inspector General

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MEMORANDUM FOR SEAN M. MILDREW
ASSISTANT COMMISSIONER,
OFFICE OF BUDGET AND FINANCE (PF)

FROM: PAUL MALATINO 
DIRECTOR, OFFICE OF SPECIAL PROJECTS (JA-P)

SUBJECT: Follow-up to a Prior Memo Concerning Environmental Remediation
Liability of the Department of Health and Human Services
Memorandum Number A090168-07

This is a follow-up to our June 18, 2010, memo (copy included with transmittal) dealing with Department of Health and Human Services (HHS) environmental remediation liability arising under the transfer of the Saint Elizabeths West Campus from HHS to GSA. At the time, we had identified a \$28.9 million charge for soil remediation related to excavation for the United States Coast Guard Headquarters (Coast Guard) facility under construction. We observed that GSA appears to have a legitimate basis to recover such remediation costs from HHS. This memo provides an update on the matter and discusses the related financial accounting and reporting requirements.

Background

In 2004, the HHS-controlled West Campus of Saint Elizabeths in Anacostia, Washington, D.C., was transferred to GSA. A memorandum of understanding (MOU), dated December 9, 2004, defined roles and responsibilities arising under that transfer. In it, HHS warranted “...that it shall take any additional response action found to be necessary after the date of this transfer regarding hazardous substances located on the Property on the date of this transfer, and not yet discovered by GSA or GSA’s contractor. HHS agrees to be responsible for required remediation, subject to HHS having sufficient appropriations to cover the costs of such remediation.”

Along with the property, HHS transferred the available balance of funds previously appropriated to HHS for historic structure stabilization and site remediation. A June 28, 2006, letter from GSA to HHS – requesting an additional \$1 million from HHS to fund a remediation study - summarized the total HHS funding, up to that point, at approximately \$8.7 million. Stabilization costs and a land use study had already consumed most of those funds. GSA had

received prospectus authorization and partial funding for the initial phase of campus development; design work for the new Coast Guard headquarters was underway. Unable to obtain the additional funding from HHS, GSA used project funds to pay for the necessary remediation studies and related work. Those costs, incurred throughout fiscal years 2007 and 2008, were reimbursed by HHS in August 2009. The total was approximately \$1.3 million.

At the time of our June 2010 memo, the magnitude of actual remediation costs was becoming apparent. We referenced a \$28.9 million modification to the Phase 1 construction contract, a change that was also funded out of the project budget (specifically, budget activity PG01 - American Recovery and Reinvestment Act of 2009). The modification established a unit price of \$195/ton, and specified that all hazardous and contaminated soils¹ were to be relocated to an approved remediation facility. It covered the building and parking garage sites, central utility plant, child care facility, access road, and site entrances. The price was based upon an estimated quantity which would be adjusted to an actual amount once it was known/determined.

Remediation Cost Update

Soil remediation has been necessary for each of the major construction activities that have involved excavation. This includes construction of the Coast Guard headquarters and parking garages (Clark Construction), campus-wide utilities (Balfour Beatty Construction), and construction of an underground electrical vault (Washington Gas). The GSA project team has calculated approximately \$52.8 million in remediation costs obligated as of October 2011:

Contractor	Item	Award Amount (per Project Team)	Applied Reimbursement
Clark Construction	<i>soil remediation</i>	\$ 46,000,001	\$ -
Tishman	<i>oversight</i>	\$ 2,615,633	\$ -
Balfour Beatty	<i>soil remediation</i>	\$ 1,817,100	\$ -
Greenhorne and O'Mara	<i>investigations and assessments</i>	\$ 1,294,436	\$ 1,138,534
Washington Gas	<i>soil remediation</i>	\$ 942,216	\$ 655,433
Nastos Construction	<i>oil storage tank removal</i>	\$ 136,000	\$ -
Bishop and Associates	<i>chemical drum removal</i>	\$ 8,650	\$ -
Total		\$ 52,814,036	\$ 1,793,967

¹ The primary contaminated material is ash from a coal-fired power plant and solid waste incinerator formerly operated on the campus. The ash has been found to contain dioxins and furans, polycyclic aromatic hydrocarbons such as benzo(a)pyrene, lead, and petroleum hydrocarbons at concentrations that exceed EPA risk-based screening levels. Unrestricted disposal of the ash is not permitted by local and federal regulations.

The applied reimbursements that appear in the above table originate from four HHS Reimbursable Work Authorizations (RWAs):

RWA	Date	Authorized Amount	Balance Dec 2011
N0892441	8/3/2009	\$ 547,824	\$ 2,358
N0892438	8/3/2009	\$ 756,158	\$ 1,977
N1084737	3/29/2010	\$ 561,635	\$ 37,042
B1235243	9/29/2010	\$ 214,062	\$ 168,782
Total		\$ 2,079,679	\$ 210,159

There remains over \$50 million in unreimbursed soil remediation and related costs. For the most part, these costs represent delivered orders with the contractors paid directly from project funds. The project team has not provided an estimate of remediation costs for future phases, but additional contamination is considered likely. By its actions to date, HHS has acknowledged liability and has demonstrated that it will reimburse GSA as its budget permits. In the interim, the project budget has had to absorb the impact.

Financial Accounting and Reporting Requirements

Historically, GSA has failed to properly record and report soil remediation costs related to this project.² In general, environmental remediation costs are subject to special accounting treatment and financial reporting requirements. Unlike other land development costs, environmental remediation is not capitalized as an improvement, but instead is to be expensed in the year incurred. In addition, the reporting entity must recognize probable future costs as a liability. Ignored, the result would be to understate expenses, overstate the value of land, and understate liabilities. GSA was, incorrectly, recording the incurred costs as an addition to its land value. The asset was further inflated by the estimated future remediation cost, the offset GSA used to record its environmental liability. Year-end adjusting entries for FY 2011 correct this mistake.

Even as corrected, the current accounting treatment may misrepresent GSA environmental liability. If the HHS agreement to retain responsibility for site remediation can be considered legally binding, then the estimated cost should be carried as an HHS liability, not a GSA liability. This assumes that an estimate of future remediation costs is possible and can satisfy the

² In the course of their FY 2010 review, GSA’s financial statement auditors found that GSA capitalized remediation costs that Federal accounting standards require to be expensed (Audit Finding FBF-2010-015). In addition, it found that GSA was overstating its land account balance for certain environmental cleanup cost estimates that should have been expensed (Audit Finding FBF-2010-014).

relevant federal accounting criteria.³ The unreimbursed costs already incurred by GSA should also be carried as a liability on HHS' balance sheet.

An additional matter concerns proper coding of accounting transactions. To manage environmental remediation costs and to ensure a fully compliant disclosure, those costs must be entered into the accounting system as discrete line items. GSA employs "function codes" for this purpose. Prior to FY2011, we found that neither the procurement team that prepares the contract award documents, nor the financial management group that actually records the financial transaction, used the appropriate function code. Typically, a more generic code was substituted, which meant the separate identity of those transactions was lost. Transactions since that time reflect use of the more exact coding, possibly a function of the increased attention paid. However, a control deficiency may still exist.

Conclusion

It appears that the project team has taken this matter as far as it can within its operating boundaries. HHS has reimbursed GSA for a portion of costs incurred, but has not recognized a reportable environmental liability on its books. A legal decision is needed to evaluate whether the terms of the MOU equate to a legally binding liability of HHS. If so, GSA should take whatever action is necessary to enforce its collection rights. Future site development remediation costs should appear on the balance sheet as an environmental liability: an HHS liability if the MOU is binding, a GSA liability if it is not. Whatever the outcome, a source of funding must be identified to cover the cost of future site remediation.

These observations are made in the course of our oversight and monitoring of the DHS headquarters consolidation project. They do not derive from nor have we conducted the tests and procedures that would be required under an audit. Accordingly, we are making no formal recommendations. However, this memo will be made available to the independent public accountant, and may trigger additional testing as part of its annual audit of GSA's financial statements. We hope these observations will assist you in evaluating your procurement options. If we can be of further assistance, please contact me at 202-208-0021.

³ Federal Financial Accounting and Auditing Technical Release 2: *Determining Probable and Reasonably Estimable for Environmental Liabilities in the Federal Government*

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