



U.S. GENERAL SERVICES ADMINISTRATION
Office of Inspector General

September 1, 2011

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 Contract for Construction Services in
Support of the American Recovery and Reinvestment Act of
2009¹ at the old Austin Courthouse, Austin, Texas
Memorandum Number A090184-43

This is to inform you that several key aspects of two tasks orders issued under the subject Recovery Act contract were not properly administered. Specifically, PBS personnel did not always obtain certified payrolls as required. In addition, the contractor incorporated foreign-manufactured construction materials into the work, in violation of the Buy American provision of the Recovery Act.

The result was that compliance with wage rules was not monitored and the intent of the Recovery Act to stimulate the American economy was marginalized. Finally, the solar hot water system installed as part of this project does not have a reasonable return on investment.

GSA awarded two task orders against Indefinite Delivery Indefinite Quantity (IDIQ) contract number GS-07P-99-HHD-0025 awarded to Ed A. Wilson's (Ed Wilson) for general construction services at the old Austin Courthouse in Austin, Texas. The first task order, dated November 30, 2009, and valued at around \$44,000, was for a solar hot water system. The second task order, dated January 11, 2010, and valued at around \$384,000, was for the removal and replacement of four air handling units with two modern units and the installation of two variable frequency drives. According to

¹ 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, 2010, and that the remaining funds be obligated by September 30, 2011. The GSA Office of Inspector General (OIG) 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.

payroll documentation, the work was completed in August 2010. In January 2011, we performed an administrative review of these task orders.

Certified payrolls not reviewed timely.

PBS did not ensure that certified payrolls were submitted from the subcontractors working on these tasks. As a result, PBS did not know if prevailing wages were being paid or if the subcontractors' employees were classified correctly.

Our review of subcontractor payrolls determined that a subcontractor may have violated the Davis-Bacon Act by not paying employees the prevailing wage. In addition, we noted that some workers were incorrectly classified as "Solar Thermal," a nonexistent occupational category.

As part of the work performed on the solar hot water system task order, Ed Wilson used two subcontractors - Standard Renewable Energy (SRE) and 5-F Mechanical Group. These two subcontractors employed 18 workers on the project. Neither subcontractor submitted certified payrolls for this project. We obtained the missing payrolls and determined that SRE had classified all 13 of its workers under the labor category "Solar Thermal." "Solar Thermal" is not an occupational category found in the Bureau of Labor Statistics' 2010 Standard Occupational Classification or the task order's wage determination. The employees were lumped into this classification even though their wage rates ranged from \$11.50 to \$36.05 per hour.

We reviewed SRE's statement of work and the company's cost submittal to Ed Wilson. Although SRE classified all of the company's workers as "Solar Thermal," the trades SRE could have reasonably used for the project were roofers, plumbers, iron workers, and electricians. However, most were not paid the prevailing hourly wage rates for these trades. Of 13 SRE workers, 8 (who performed 59 percent of the work) received wages of \$16 per hour or less; rates much lower than they should have received had they been properly classified.

Labor standards clauses for construction contracts were incorporated into Ed Wilson's base IDIQ contract. Federal Acquisition Regulation (FAR) 52.222-8(b)(1) states that every week the contractor shall submit a copy of all payrolls to the contracting officer for each week in which any contract work is performed. FAR 52.222-6 (Davis-Bacon Act)(b)(1) stipulates that the contracting officer shall require that any class of laborers or mechanics which is not listed in the wage determination and which is to be employed under the contract shall be classified in conformance with the wage determination. The contracting officer shall approve additional classifications and wage rates only when all of the following criteria have been met:

- a) the work performed is not performed by a classification in the wage determination;
- b) the classification is utilized in the area by the construction industry; and

- c) the proposed wage rate, including fringes, bears a reasonable relationship to the existing wage rates in the wage determination.

Since the subcontractor did not demonstrate that installing a solar hot water system could not be performed by an existing labor classification or that the “Solar Thermal” classification is used in the area by the construction industry, the use of the “Solar Thermal” classification did not meet the FAR qualifications for approval.² Further, since the contractor submitted 12 different wage rates (from \$11.50 to \$36.05 per hour) for one labor classification; criterion (c) was not met. Therefore, the contractor violated Davis-Bacon reporting requirements.

Finally, PBS did not obtain the payrolls until 9 months past project completion. Without the certified payrolls, PBS could not have determined if SRE was compliant with the Davis-Bacon Act. According to FAR criteria, the company did not comply with the labor classifications. By not requiring timely submission of certified payrolls from subcontractors, PBS did not provide adequate contract administration and did not properly monitor compliance with wage regulations.

Section 1605 (Buy American) not always enforced.

We identified two instances in which Ed Wilson did not comply with the Buy American provision of the Recovery Act. Purchasing foreign made construction material marginalizes the basic intent of the Recovery Act: stimulating the American economy.

Ed Wilson used SRE to install the solar hot water system and electric hot water heater back-up supply (around \$44,000). SRE claimed that the solar hot water system was compliant with the Buy American provision of the Recovery Act. However, the two primary parts of the solar hot water system - the 3 roof-top solar collectors and the 120 gallon solar storage tank³ - were assembled in Canada and made in Mexico, respectively. The PBS project manager and Ed Wilson made three attempts to obtain an explanation as to how the system complied with the Recovery Act’s Buy American provision. SRE provided no response.

FAR clause 52.225-21, incorporated into the base IDIQ contract, 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 of 2009 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

² The contracting officer had not asked the contractor to demonstrate the propriety of the “solar thermal” classification. This is because the certified payrolls for the solar hot water system had not been obtained at the time of our audit field work.

³ The two parts (and a monitor) accounted for 40 percent of the subcontractor’s price quote. The percentage would be higher with the inclusion of steel and labor necessary for installation.

construction material⁴ in performing the contract. The contracting officer listed no exceptions.

The solar hot water system was a collection of discrete parts assembled on the job site, with two primary parts assembled or made in foreign countries. Therefore, the construction material was not manufactured in the United States.



Roof-top Solar Collector “Assembled in Canada”

In addition, the two Square D (Schneider Electric) variable frequency drives (installed as a modification to the air handler remove and replace project and priced at \$3,900 each) were of mixed origin: one unit was assembled in the United States while a second was assembled in Mexico. Therefore, the unit that was assembled in Mexico was construction material that did not meet the requirements of FAR 52.225-21.

Section 1605(d) of the Recovery Act provides that the Buy American requirement shall be applied in a manner consistent with U.S. obligations under international (trade) agreements. Trade agreements do not apply to these Recovery Act projects due to their small dollar values. CFR Part 176 Subpart B §176.90 states that the obligation to honor international trade agreements shall only apply to projects with an estimated value of \$7,804,000 or more as of January 1, 2010.

⁴ Domestic construction material was defined in the clause as construction material manufactured in the United States.

Solar hot water system has a limited return on investment.

PBS's investment in the solar hot water technology will not pay for itself over the 20-year useful life of the system. The total installed cost was around \$44,000, and, based on data submitted by SRE, the estimated savings over the useful life will be around \$13,500 in electricity costs.⁵ At this rate, the payback period could be 65 years.

The Recovery Act emphasizes investment in energy-efficient technologies, a reduced carbon footprint, and decreased energy consumption. It also states that investment in the Government's real estate infrastructure will provide a significant return on investment for the taxpayer. However, a payback period of 65 years, significantly beyond the useful life of the system, is arguably well beyond what can be construed as a positive return on investment for the taxpayer.

If you have questions regarding this memorandum, please call John Langeland, Audit Manager, at (312) 353-6691 or me at (312) 353-0500.

⁵ System savings were estimated at 137,099 kilowatt hours and the Texas retail price of electricity was put at 9.86 cents per kilowatt hour as of March 2010 (U.S. Energy Information Administration; State Electricity Profiles 2008, March 2010). It should be noted that the back-up water heater was electric. We did not factor out the cost of a new traditional water heater in our analysis.

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