



Department of Homeland Security Office of Inspector General

U.S. Coast Guard's Anti-Deficiency Act Violations for the Response Boat-Medium Major Acquisition Project for Fiscal Years 2004 Through 2009





Homeland
Security

MAY 10 2011

Preface

The Department of Homeland Security (DHS) Office of Inspector General (OIG) was established by the *Homeland Security Act of 2002* (Public Law 107-296) by amendment to the *Inspector General Act of 1978*. This is one of a series of audit, inspection, and special reports prepared as part of our oversight responsibilities to promote economy, efficiency, and effectiveness within the department.

This report addresses whether *Anti-Deficiency Act* violations occurred through improper use of appropriations during the administration of the Response Boat-Medium Major Acquisition project between fiscal years 2004 and 2009. It is based on interviews with employees and officials of relevant agencies and institutions, direct observations, and a review of applicable documents.

The recommendations herein have been developed to the best knowledge available to our office, and have been discussed in draft with those responsible for implementation. We trust this report will result in more effective, efficient, and economical operations. We express our appreciation to all of those who contributed to the preparation of this report.


for 
Anne L. Richards
Assistant Inspector General for Audits

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Abbreviations

ADA	<i>Anti-Deficiency Act</i>
Coast Guard	United States Coast Guard
FY	fiscal year
OIG	Office of Inspector General
OMB	Office of Management and Budget
RB-M	Response Boat-Medium

OIG

*Department of Homeland Security
Office of Inspector General*

Executive Summary

The Coast Guard initiated the acquisition of the Response Boat-Medium in 2002 to replace its aging utility boat fleet. The Coast Guard identified potential *Anti-Deficiency Act* violations in this project in 2009 and initiated an internal investigation. As a result of its review, the Coast Guard issued a stop-work order in 2010 to limit additional *Anti-Deficiency Act* violations. The Coast Guard requested an Office of Inspector General audit to determine if it had incurred *Anti-Deficiency Act* violations in connection with this project.

The objective of our audit was to determine whether *Anti-Deficiency Act* violations occurred through improper use of appropriations during the administration of the Response Boat-Medium Major Acquisition project between fiscal years 2004 and 2009. We examined the Coast Guard's reported potential violations, expenditures, and acquisition contract actions, as well as the effectiveness of the Coast Guard's new policies and procedures to ensure compliance with future appropriations.

The Coast Guard exceeded its appropriated funding for the Response Boat-Medium project during fiscal years 2004 through 2009. The violations were caused by a lack of Coast Guard acquisition policies, procedures, and training, which resulted in unallowable use of appropriations for design changes. Accordingly, we recommend that the Coast Guard notify the Secretary that it incurred 20 *Anti-Deficiency Act* violations totaling approximately \$7 million and identify the names of the responsible parties, including the funding officials (headquarters funds managers) and obligating officials (contracting officers). We also recommend that the Coast Guard revise its standard operating procedures. The Coast Guard agreed with both recommendations and has initiated action to implement them.

Background

In 2002, the Coast Guard initiated an acquisition project called Response Boat-Medium (RB-M) to replace its aging fleet of 41-foot utility boats. While the 41-foot utility boat was designed primarily to engage in search and rescue missions, the Response Boat-Medium has greater speed and range than its predecessor to better fulfill expanding operations in ports, waterways, and coastal security missions. The Response Boat-Medium Major Acquisition project will provide the Coast Guard improvements in performance, crew efficiency, and operational availability.



Response Boat-Medium



41-Foot Utility Boat

The RB-M project is a two-phase procurement to quickly acquire and field an operationally effective and suitable craft to meet Coast Guard needs. The first phase allowed the Coast Guard to select the most operationally effective test boat to meet its needs. After the test boat selection, the Coast Guard initiated the second phase to procure 180 RB-Ms. In 2006, the Coast Guard awarded a firm fixed-price contract to Marinette Marine Corporation for boat design and production. The contract consists of a base period of 5 years with an option period of an additional 3 years. Production began with the delivery of the first boat in March 2008. As of November 2010, the RB-M project had delivered 41 boats, with 19 additional boats currently in production. The project expects to reach full operating capability by the end of fiscal year (FY) 2015, producing approximately 30 boats per year.

In 2009, the Coast Guard identified a potential violation of the *Anti-Deficiency Act* (ADA) in the RB-M project. The Coast Guard received appropriations for this project beginning in 2004. The Coast Guard recognized that the RB-M project may have inappropriately exceeded its appropriations and began an internal

inquiry, which found potential ADA violations totaling approximately \$7.8 million.

Results of Review

The Coast Guard exceeded its appropriated funding for the RB-M project during FYs 2004 through 2009. As a result, the Coast Guard incurred ADA violations totaling approximately \$7 million, which cannot be corrected. We found that the Coast Guard lacked standard operating procedures on how to account for future¹ liabilities and that personnel had inadequate training. Although the Coast Guard has taken some corrective actions, additional measures are needed to prevent future ADA violations. We recommend that the Coast Guard notify the Secretary of 20 ADA violations totaling approximately \$7 million. The Coast Guard must also revise its standard operating procedures to require responsible staff to make an initial future liability determination, review and revise future liability amounts at regular intervals, and determine if funding for future liabilities should be held at the Coast Guard headquarters or with the Project Residence Office.

ADA Violations for FYs 2004 Through 2009

The Coast Guard entered into a firm fixed-price contract in 2006 to design and build the Response Boat-Medium. Subsequently, the Coast Guard initiated design changes. Federal appropriations law² states that contract claims arising from changes to an existing contract are chargeable to appropriations current at the time the base contract was executed. This type of change, commonly referred to as a within-scope change, is considered a future liability. A contract claim is based on a future liability if the modification is within the general scope of the original contract. The Coast Guard made contract modifications that were not recognized as future liabilities and were not charged to appropriations related to the original contract. The Coast Guard's design changes were incorrectly charged to current year funding rather than to appropriations used for the original boat delivery order.

The Coast Guard initiated a review of the RB-M project in 2009 and identified potential ADA violations during FYs 2004 through 2009, totaling approximately \$7.8 million. We reviewed each of the ADA transactions identified by the Coast Guard to determine if they were appropriately identified and correctable. We concur with the Coast Guard's results, but we identified corrections made to the RB-M project after the Coast Guard's review was completed. These corrections reduced

¹ Future liability refers to government liabilities that arise and are enforceable under a provision in the original contract.

² 65 Comp. Gen. 741(1986); 59 Comp. Gen. 518 (1980).

the ADA total initially reported in the internal review by approximately \$800,000.

The Coast Guard initiated two corrective actions to minimize its ADA violations. First, the Coast Guard corrected inappropriate charges where funding was available in the correct appropriations. These corrections reduced the ADA amount by approximately \$500,000. Second, the Coast Guard issued a stop-work order on design changes in 2010. This order reduced obligations by approximately \$300,000 by reducing the work required of the contractor.

As illustrated in Table 1, we determined that the Coast Guard incurred 20 ADA violations totaling approximately \$7 million. The Coast Guard does not have the funding available to correct these deficiencies. In addition, the Coast Guard still owes the contractor approximately \$1 million for partial work completed before it issued the stop-work order.

Table 1. RB-M *Anti-Deficiency Act* Total

Anti-Deficiency Related Transaction Number	Number of Transactions Affected	Anti-Deficiency Amounts Identified
1002	9	\$5,505,259 ³
1003ac	1	\$217,944
1003bc	1	\$108,972
1009	9	\$877,775
Totals	20	\$6,709,950

We tested RB-M acquisition expenditures for FYs 2004 through 2010 to ensure that no other ADA violations occurred in addition to those identified during the Coast Guard’s internal review. We reviewed 84 expenditures totaling approximately \$252 million and found no additional ADA violations.

The Coast Guard initiated corrective actions to prevent future ADA violations. It revised its acquisition policies and procedures to require contracting officers to identify future liabilities or use a 10% standard set-

³ Adjustment made due to an agreement between the contractor and the government to assess the value for partial work completed on transaction number 1002 (ECP-009). The total amount spent on transaction number 1002 was \$5.9 million; however, there was a reduction to this amount for \$1,356,320 as a partial termination for convenience. Subsequently, a termination proposal settlement was reached for a value of \$1,024,551, which was \$331,769 lower than the partial termination for convenience, \$1,356,320.

aside. However, this guidance does not fully address all requirements for future liability determinations. The revised acquisition guidance does not identify all responsible parties necessary to make accurate future liability determinations. In addition, it does not require future liability revisions at regular intervals, nor does it address whether funding for future liabilities should be held at the Coast Guard headquarters or with the Project Residence Office.

The Coast Guard has updated training requirements to include appropriations law training for acquisition staff, including funds managers and contracting officers. This training requirement was added to ensure that acquisition staff understand the guidelines and requirements for appropriations. We reviewed training files to ensure that acquisition staff had completed this course and found that all but two staff members had done so. These two remaining staff are scheduled to complete the training in February 2011.

The Coast Guard has also revised its general process for contract administration. On the basis of the ADA violations identified in the RB-M project, the Coast Guard's Office of Resource Management now requires secondary review of large acquisitions initiated at the Project Resident Office. Fund managers at the Project Resident Office must now receive approval from acquisition management before issuing change or delivery orders to the contracting officer.

Conclusion

We concur with the conclusions from the Coast Guard's internal investigation identifying ADA violations for FYs 2004 through 2009. The Coast Guard's lack of policies, procedures, and training led to the improper use of appropriations for design changes. The Coast Guard has instituted changes to the required training for acquisition staff, which provide funds managers and contracting officers the knowledge to recognize requirements for expending appropriations. However, the Coast Guard needs to provide further clarification in its guidance on future liabilities.

Recommendations

We recommend that the Coast Guard's Assistant Commandant for Resources and Chief Financial Officer:

Recommendation #1: Report the 20 ADA violations totaling approximately \$7 million to the DHS Secretary in compliance with

ADA reporting requirements. For each violation, the report should include the title and Treasury symbol (including fiscal year) of the appropriation or fund account, the amount involved, the date the violation occurred, the type of violation, the primary reason or cause, and the names of the responsible parties, including the funding officials (headquarters funds managers) and obligating officials (contracting officers).

Recommendation #2: Revise the Coast Guard's standard operating procedures on future liabilities to include the following:

- Initial future liability determinations should be made by contracting officers, funds managers, program managers, and the engineering group.
- Initial future liability determinations should be reviewed and revised at regular intervals to ensure accuracy.
- A determination should be made to specify if funding for future liabilities should be held at the Coast Guard headquarters or with the Project Residence Office.

Management Comments and OIG Analysis

Coast Guard's Comments to Recommendation #1:

Concur. As required, the Coast Guard has reported on each violation to include the title, Treasury symbol, amount, the date violations occurred, the type of violation, the primary reason or cause, and the responsible officials. The Coast Guard provided us with a copy of its letter to the Deputy Chief Financial Officer of Homeland Security identifying the violations. The Coast Guard also provided draft transmittal letters for use in advising the President, the Director of the Office of Management and Budget (OMB), Congress, and the Comptroller General per OMB Circular A-11, section 145.

OIG Analysis:

The Coast Guard's corrective actions satisfy the intent of the recommendation, and we consider it resolved and closed.

Coast Guard's Comments to Recommendation #2:

Concur. The Coast Guard revised its policy to provide clarity for future liabilities to ensure consistent application of the policy

throughout the Coast Guard. The Coast Guard included the relevant sections of the CG-9 Acquisition Financial Standard Operating Procedures with the revised procedures on future liabilities.

OIG Analysis:

The Coast Guard's corrective actions satisfy the intent of the recommendation, and we consider it resolved and closed.

Appendix A

Purpose, Scope, and Methodology

The objective of our audit was to determine whether ADA violations occurred through improper use of appropriations during the administration of the Response Boat-Medium project between FYs 2004 and 2009.

The Coast Guard provided its universe of 117 RB-M contract actions totaling about \$260 million, funded and executed from June 21, 2006, through September 20, 2010. Included within this universe were 26 transactions identified by the Coast Guard as potential ADA violations totaling approximately \$7.8 million, as well as 7 transactions where the Coast Guard took actions to correct the ADA violations. We tested all 26 potential violations to determine (1) whether the Coast Guard properly identified the transactions as ADA violations, (2) the responsible parties who authorized the expenditures, and (3) whether any of the ADA violations were correctable based on available funding. To ensure that there were no additional ADA violations, we selected, reviewed, and tested all transactions from FYs 2004 to 2010 that were not included in the Coast Guard's internal review. They included 84 additional transactions totaling approximately \$252 million. In addition, we reviewed the Coast Guard's acquisition policies and procedures, prior audit reports, and other applicable laws and regulations. Finally, we examined *DHS Appropriation Acts* for FYs 2005 through 2010 for the Coast Guard's Acquisition Construction & Improvement account.

We interviewed officials at the Coast Guard's headquarters in Washington, D.C., at the Coast Guard's RB-M Project Resident Office in Kent, Washington, and at the Coast Guard's RB-M Contracting Office in Marinette, Wisconsin.

We relied on Coast Guard computer-processed data that contained information on the potential ADA violation universe, including accounting and appropriation data for its RB-M project. We conducted limited tests on this information by verifying all 117 contract actions back to the source contract documentation. In addition, we validated the Coast Guard's universe of 26 potential ADA violations. On the basis of these tests, we concluded that the data were sufficiently reliable for addressing our audit objective.

We performed our audit between September and December 2010. We conducted the audit pursuant to the *Inspector General Act of 1978*, as amended, and according to generally accepted

Appendix A
Purpose, Scope, and Methodology

government auditing standards. These standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide for a reasonable basis for our findings and conclusions based on our audit objectives. We believe the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

We would like to thank the Coast Guard for the cooperation and courtesies extended to our staff during this review.

Appendix B Management Comments to the Draft Report

U.S. Department of
Homeland Security

United States
Coast Guard

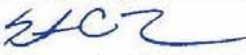


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MEMORANDUM FOR: Anne L. Richards
Assistant Inspector General for Audits

FROM: 
Rear Admiral Keith A. Taylor
Assistant Commandant for Resources and
Chief Financial Officer
U.S. Coast Guard

SUBJECT: *United States Coast Guard's Reported Antideficiency Violation for
the Response Boat-Medium Major Acquisition Project for Fiscal
Years 2004 Through 2009 – FOR OFFICIAL USE ONLY (FOUO)
OIG Project No: 10-155-AUD-USCG*

This memorandum transmits the Coast Guard's comments to the draft Office of Inspector General (OIG) Report, Project No: 10-155-AUD-USCG

My point of contact is CAPT Frank H. Kingett, Chief Office of Resource Management. He can be reached at (202) 372-3550 if you have any questions.

Attachments: (1) Response to Recommendations
(2) Financial Standard Operating Procedures, Revision 3.5
(3) Notification memo to DHS reporting violations

Appendix B
Management Comments to the Draft Report

UNITED STATES COAST GUARD (USCG) STATEMENT
ON DEPARTMENT OF HOMELAND SECURITY
INSPECTOR GENERAL DRAFT REPORT
OIG 10-155 DATED 14 FEB 2011

TITLE: UNITED STATES COAST GUARD'S REPORTED ANTI-DEFICIENCY VIOLATION FOR THE RESPONSE BOAT-MEDIUM MAJOR ACQUISITION PROJECT FOR FISCAL YEARS 2004 THROUGH 2009 – FOR OFFICIAL USE ONLY (FOUO). OIG PROJECT NO: 10-155-AUD-USCG

Recommendation #1: Report the 20 ADA violations totaling approximately \$7 million to the DHS Secretary in compliance with ADA reporting requirements. For each violation, the report should include the title and Treasury symbol (including fiscal year) of the appropriation or fund account, the amount involved, the date the violation occurred, the type of violation, the primary reason or cause, and the names of the responsible parties, including the funding officials (headquarters funds managers) and obligating officials (contracting officers).

CG Response: The Coast Guard concurs with the recommendation. As required, the Coast Guard has reported on each violation to include the title, Treasury symbol, amount, the date violations occurred, the type of violation, primary reason or cause and the responsible officials (Encl 3).

Recommendation #2: Revise the Coast Guard's standard operating procedures on future liabilities to include the following:

- Initial future liability determinations should be made by contracting officers, funds managers, program managers, and the engineering group.
- Initial future liability determinations should be reviewed and revised at regular intervals to ensure accuracy.
- A determination should be made to specify if funding for future liabilities should be held at the Coast Guard headquarters or with the Project Residence Office.

CG Response: The Coast Guard concurs with the recommendation. The Coast Guard's revised policy provides clarity for future liabilities to ensure consistent application of the policy throughout the Coast Guard (Encl 2). An excerpt of the CG-9 Acquisition Financial Standard Operating Procedures, Revision 3.5 is provided.

ENCLOSURE(1)

Appendix CFY 2004 Through 2009 *Anti-Deficiency Act* Violations**FY 2004 Through 2009 *Anti-Deficiency Act* Violations**

Item Count	Transaction Number	Total
1	CLIN 1002 – 1	\$396,000
2	CLIN 1002 – 2	\$352,000
3	CLIN 1002 – 3	\$308,000
4	CLIN 1002 – 4	\$1,067,640
5	CLIN 1002 – 5	\$482,160
6	CLIN 1002 – 6	\$206,640
7	CLIN 1002 – 7	\$482,160
8	CLIN 1002 – 8	\$2,105,400
9	CLIN 1002 – 9	\$500,000
10	CLIN 1003ac	\$217,944
11	CLIN 1003bc	\$108,972
12	CLIN 1009	\$150,000
13	CLIN 1009 – 1	\$14,000
14	CLIN 1009 – 2	\$42,308
15	CLIN 1009 – 3	\$340,000
16	CLIN 1009 – 4	\$29,238
17	CLIN 1009 – 5	\$28,123
18	CLIN 1009 – 6	\$14,106
19	CLIN 1009 – 7	\$130,000
20	CLIN 1009 – 8	\$130,000
		⁴ (\$ 62,972)
		⁵ (\$ 331,769)
Grand Total		\$6,709,950

⁴ Adjustment made due to agreement to deobligate ECP-009 for transaction number 1002 by \$62,972.

⁵ Adjustment made due to an agreement between the contractor and the government to assess the value for partial work completed on transaction number 1002 (ECP-009). The total amount spent on transaction number 1002 was \$5.9 million; however, there was a reduction to this amount for \$1,356,320 as a partial termination for convenience. Subsequently, a termination proposal settlement was reached for a value of \$1,024,551, which was \$331,769 lower than the partial termination for convenience, \$1,356,320.

Appendix D
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Appendix E
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