



U.S. GENERAL SERVICES ADMINISTRATION
Office of Inspector General

June 8, 2012

MEMORANDUM FOR DALE ANDERSON
ACTING REGIONAL COMMISSIONER, PBS
NORTHWEST/ARCTIC REGION (10P)

FROM: ADAM GOOCH *Adam Gooch*
REGIONAL INSPECTOR GENERAL FOR AUDITING
GREAT LAKES REGION (JA-5)

SUBJECT: Administration of Boiler System Replacement Project in Support of
the American Recovery and Reinvestment Act of 2009¹ at the
Ketchikan Federal Building, Ketchikan, Alaska
Memorandum Number A090184-57

As part of our oversight of projects funded via the American Recovery and Reinvestment Act of 2009 (Recovery Act), we identified two areas of concern related to the administration of this project. First, ten employees were working onsite without security clearances. Second, missing payroll records, labor standard interviews, and apprentice program enrollment documentation called into question whether employees were paid appropriate wages.



Ketchikan Federal Building

The following is a basic history of the project. On September 15, 2010, Public Buildings Service (PBS) awarded a \$4,524,902 task order (GS-P-10-10-LT-5122) to Southwest Construction and Property Management of South San Francisco, California. On September 28, 2010, PBS awarded task order GS-P-10-10-LT-0051 for Construction Management Assist (CMA) and Construction Commissioning services to Bratslavsky Consulting Engineers, Anchorage, Alaska for \$349,232.60. Both orders were for a boiler system replacement project.

Region 10 PBS officials provided a response to our memo listing corrective actions taken since our visit. We have incorporated the response below.

¹ The American Reinvestment and Recovery Act of 2009 (Recovery Act) provides the General Services Administration (GSA) with \$5.55 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 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.

Ten contractor employees worked onsite without security clearances

We determined during our review that ten employees who worked on the contract did not have the required security clearances.

Homeland Security Presidential Directive 12 establishes a common identification standard for Federal employees and contractors. This directive 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 systems. "Temporary contractors...those contractors employed for six months or less...[who] need routine access to non-public areas of GSA-controlled facilities) shall either undergo a law enforcement check or must be escorted, at the minimum."

Region 10's Security Clearance Desk Guide² defines stricter guidelines and states that

...[S]hort-term contractor employees who perform work for no more than ten (10) consecutive days or require only intermittent (irregular) access are not required to undergo a personnel security investigation, provided the contractors are accompanied by a fully adjudicated escort...When a GSA Requesting Official determines a contractor will require access to federal space for more than ten (10) days but less than six (6) months the contract employee is required to submit to a National Agency Check (NAC) personnel security investigation.

We reviewed security clearances for prime and subcontractor employees, and compared these to sign in and out sheets for the building and payroll records. We found that ten³ employees (seven from the prime contractor, and three from subcontractors) worked onsite for more than ten days without the security clearances required by Region 10.

Lack of adequate security clearances for prime and subcontractor employees could put the occupants of the building, as well as the public, at risk.

Region 10 officials concurred that "an employee that works in an occupied facility for more than ten days should have obtained a NAC clearance pursuant to the R10 Security Clearance Desk Guide." Also, GSA searched the FPS database, and determined that of the ten employees, five had proper clearances (two of which were not timely), one had an unfavorable review, and four had no record. It also said that "[T]he lack of security clearance was an oversight by the Project Manager and Construction Management firm that were managing this activity. GSA will establish better procedures to ensure compliance on future projects."

We contacted Region 10 personnel to help us resolve inconsistencies between the region's response above and documentation provided. After receiving additional documentation we

² The Desk Guide "standardizes the security clearance process for all contractors across GSA's Region 10 and ensures that all of our offices and personnel are following the same common criteria and policies. It is intended to provide a greater sense of security, increase efficiency, reduce fraud and to protect the personal privacy of our customer agencies and contract companies."

³ Although sign in/sign out sheets show eleven employees lacking security clearances, one, from the Construction Manager, could not be verified through payroll records since the Construction Manager's work was not subject to Davis-Bacon and no payroll records were received.

concluded that of the ten individuals, six had proper clearances (two of which were not timely), one had an unfavorable review, and three had no record.

Incomplete records call into question wage rates paid to workers

We were unable to find labor standard interviews, some payroll records, and evidence of enrollment in an apprentice program in the file. We contacted PBS personnel and asked them to provide us these documents but did not receive a response. Incomplete or missing payroll records prevent GSA from being able to determine whether employees working on the project were paid the appropriate wage determination rates.

No labor standard interviews found in the file

The Statement of Work in the CMA task order required the company to conduct labor standard interviews. Labor standard interviews are necessary to correctly classify employees and ensure that they are being paid according to Davis-Bacon Act⁴ requirements. By not ensuring that these interviews were conducted, PBS is missing a crucial step in verifying that the proper rates are being paid.

The CMA task order requires performance of labor standard interviews in the scope of work:

Interview employees of the construction contractor and subcontractor for proper classification and rate of pay as required by regulations issued by the Department of Labor implementing construction labor standards (29 CFR, Part 5). Submit interview information on a "Labor Standards Interview" form. Confirm that the construction contractor has posted the effective wage rate decision at the site.

The construction progress meeting minutes from June 28, 2011, refer to five labor standard interviews having been conducted. However, we found no labor standard interviews in the files we reviewed.

Region 10 officials agreed that conducting labor interviews is essential to verifying payment of proper wage rates in accordance with the applicable Department of Labor Wage Rate Determination. The response added that the construction management firm had completed five labor interviews on June 15, 2011 and another five labor interviews on October 5, 2011. Region 10 officials thought that these labor interview records had been provided to the Office of Inspector General (OIG) on January 19, 2012, but after receiving the memo, discovered this was not the case. The missing documents were provided on May 23, 2012.

We have reviewed the response and the documentation provided, and conclude that labor interviews are now complete.

⁴ The Davis-Bacon Act as amended, requires that each contract over \$2,000 to which the United States or the District of Columbia is a party for the construction, alteration, or repair of public buildings or public works shall contain a clause setting forth the minimum wages to be paid to various classes of laborers and mechanics employed under the contract. Under the provisions of the Act, contractors or their subcontractors are to pay workers employed directly upon the site of the work no less than the locally prevailing wages and fringe benefits paid on projects of a similar character.

Payroll incomplete for one contractor

One subcontractor (C & H Mechanical Insulation) performed work onsite for 21⁵ weeks, according to the sign in and sign out sheets for the project. However, we only found payroll records through the week ending September 10, 2011, or 16 weeks, in the file. Five weeks of payroll were missing.

Lack of payroll records prevents GSA from being able to determine whether employees working on the project were paid the wage determination rates on the contract, as required by the Davis-Bacon Act.

In its response, Region 10 officials “agreed that failure to submit payroll records is a violation of the Davis Bacon Act and further prevents the contracting agency from determining that proper wages are being paid to mechanics and laborers.” Region 10 officials stated that they believed the missing records had been sent by the prime contractor to the OIG on Nov. 30, 2011; however, that was not the case. The missing documents were provided on May 23, 2012.

We reviewed the missing records and conclude that payroll records are now complete.

Evidence of enrollment in apprentice program not found

According to payroll records, the prime contractor employed one apprentice⁶ for four weeks on the project. Our examination of payroll records showed the employee was paid from 69 percent to 72 percent of the wage determination rate for the four week period.⁷ However, we were unable to find evidence of enrollment in an apprentice program for that employee in the file, despite mention of “apprentice verification” in the construction progress meeting minutes of July 19, 2011. Federal Acquisition Regulation 52.222-9 allows for an apprentice to be paid less than the wage determination rate when registered in an apprenticeship program registered with the Department of Labor. If such a worker is registered on payroll as an apprentice without evidence of enrollment in such a program, then the contractor shall pay the apprentice at least the applicable wage determination rate for the applicable job category. Without such evidence, PBS cannot verify that the apprentice was paid an appropriate wage.⁸

In its response, Region 10 officials “agreed that employment of an apprentice and payment of less than journeyman wage rate must be evidenced by registration of the apprentice in a bona fide apprenticeship program with a statement of the wage rate level to be paid.” They thought the prime contractor had sent the apprenticeship paperwork to the OIG on November 30, 2011. After receiving the memo, they determined this was not the case. A copy of the letter from the State of California, Department of Industrial Relations, Division of Apprenticeship Standards, stating that [the employee in question] is registered with the State of California as an apprentice was provided to the OIG on May 23, 2012.

⁵ Pay period ending May 28, 2011 to pay period ending Oct. 15, 2011

⁶ A qualified apprentice, according to the Department of Labor, is: “A person employed and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Bureau of Apprenticeship and Training, or with a State Apprenticeship Agency recognized by the Bureau, or [a] person in the first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been properly certified to be eligible for probationary employment as an apprentice.”

⁷ The employee’s hourly pay rate varied during the four-week period of review.

⁸ According to the Department of Labor, “The proper wage rates to be paid to apprentices and trainees are those specified by the particular programs in which they are enrolled, expressed as a percentage of the journeyman rate on the wage determination.”

We reviewed the letter and determined that the employee in question was registered in an apprenticeship program for the time period worked as required by FAR 52.222-9.

We appreciate the support that has been provided throughout this review. If you have any questions about this memorandum, please contact me at (312) 353-0500 or Hilda Garcia at (312)-353-6695.

Report Distribution

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