



U.S. GENERAL SERVICES ADMINISTRATION  
Office of Inspector General

---

June 18, 2010

MEMORANDUM FOR SHAPOUR EBADI

DEPUTY REGIONAL COMMISSIONER, ST. ELIZABETHS (WP)

FROM:

PAUL MALATINO

A handwritten signature in black ink, appearing to read "P. Malatino", is written over the printed name.

DIRECTOR, OFFICE OF SPECIAL PROJECTS (JA)

SUBJECT:

HHS environmental obligations under an existing memorandum of understanding covering the West Campus of Saint Elizabeths

In the course of this office's ongoing oversight of the Department of Homeland Security (DHS) Headquarters Consolidation project at the Saint Elizabeths campus, a project partially funded under the American Recovery and Reinvestment Act of 2009 (ARRA), it has come to our attention that the Department of Health and Human Services (HHS) may in fact be responsible for the cost of soil remediation at the site. Excavation for the U.S. Coast Guard Headquarters, currently underway, includes a contract line item for soil remediation, negotiated under Modification #7 of the Clark Construction Group Contract, Contract #GS11P09MKC0051. The modification as awarded was obligated against ARRA funding. The requirement description for this modification was to "fund removal of hazardous and contaminated soil from the USCG HQ worksite, Saint Elizabeths Campus". It was valued at \$28.9 million. Based on an existing Memorandum of Understanding (MOU) between GSA and HHS, it appears likely that HHS bears responsibility for the cost of this action. If so, it is imperative that the ARRA funding be reversed and redeployed to another objective before the end of the current fiscal year to avoid forfeiture. We recommend that you pursue reimbursement for this cost and any similar future costs.

The MOU in question, dated December 9, 2004, defined roles and responsibilities arising under the transfer of Saint Elizabeths West Campus from HHS to GSA. In part, the MOU states that:

"... In accordance with the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. § 9601, *et seq.*, ...HHS acknowledges that additional remediation based on current studies may be required on the Property, and shall be funded (an amount presently estimated by GSA to be approximately \$150,000) by GSA from monies transferred to GSA as described in Section IV.A.3. of this MOU. ...**HHS warrants 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.**

For purposes of this Section IV.A.1., the term “hazardous substance” does not include such materials in use on the Property at the time of transfer, such as lead based paint, asbestos, arsenic as located near or in the cemetery, and polychlorinated biphenyls (PCBs) (e.g. in use in transformers), and other contamination which may be present or is later discovered in or on the fixtures or building structures located on the Property, for which responsibility shall rest with GSA....”

We recommend the following actions:

1. Refer this matter to the PBS Office of Legal Counsel to determine if HHS should be liable for the soil remediation covered under Modification #7 of the Clark Contact.
2. If it is determined that HHS is liable for these remediation costs, the Project Team should initiate discussion with HHS for the purpose of cost recovery.
  - a) If HHS does not have current appropriation funding available to cover these costs, HHS should be requested to include these costs in a future request for appropriations.
  - b) If HHS agrees to reimburse GSA for the costs of this remediation, GSA should immediately reverse the existing ARRA funding obligation and expenses incurred and then obligate them against the DHS Consolidation project (BA 51).

We appreciate the cooperation and accessibility of your staff, and will continue with our oversight activities. If you wish to discuss this or any other aspect of our work in more detail, please don't hesitate to contact me.