



AMERICAN BATTLE MONUMENTS COMMISSION

Courthouse Plaza II, Suite 500
2300 Clarendon Boulevard
Arlington, VA 22201-3367

Established by Congress 1923

October 15, 2010

The President
The White House
Washington, D.C. 20500

Dear Mr. President:

This letter is to report a violation of the *Antideficiency Act*, as required by section 1341(a) of Title 31, United States Code. I am reporting this violation in my capacity as Secretary of the American Battle Monuments Commission.

The violation occurred in the Commission's Salaries and Expenses account (74X0100) and Trust Fund account (74X8569). The violation concerned provisions that obligated the Government to indemnify parties against losses (i.e., open ended indemnification clause) in a June 1999 contract that the Commission entered into for administration and services for temporary workers retained by the Commission primarily to support the staffing increase necessary for the National World War II Memorial undertaking authorized by Public Law 103-32. This was a five year contract and was amended for an additional five years in June 2004. This contract was cancelled on August 9, 2009.

The violation was discovered during the annual audit of the Commission by the Government Accountability Office for fiscal year 2009. It was reported by the Government Accountability Office in their report, GAO-10-399, dated March 1, 2010. Commission staff that wrote and approved this contract are no longer employed with the Commission and no disciplinary action was taken.

The Commission agrees with the Government Accountability Office that the provision was a violation of the *Antideficiency Act*. There is no evidence that the violations were willful or knowing. The Commission, at that time, erroneously believed that the provision did not give rise to an *Antideficiency Act* violation. The Commission accepts that the contract provisions should not have been accepted because they contained an open-ended hold-harmless clause which subjected the Commission to potentially unlimited liability.

This contract, as noted above, was cancelled on August 9, 2009. This type of provision is cited in section 145.2 of Office of Management and Budget Circular No. A-11 as a reportable violation of the *Antideficiency Act*. No funds were expended in violation of the *Antideficiency Act*.

The Commission is taking remedial action. I have directed the following:

- Implement a review of all contracts in order to ensure compliance with all legal requirements;
- Conduct training for appropriate Commission staff;

- Develop a new system of administrative control of funds, in conjunction with implementing a new financial management system, to ensure compliance with the *Antideficiency Act* and to be approved by the Office of Management and Budget;
- Undertake a staffing review to consider Commission requirements for contracting and purchasing; and
- Provide status reports to the Commission's Chief of Staff on these actions.

I am sending letters to the Speaker of the House of Representatives, the President of the United States Senate, and the Comptroller General of the United States as required by Office of Management and Budget Circular No. A-11.

Most respectfully,



Max Cleland
Secretary



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October 15, 2010

The Honorable Nancy Pelosi
Speaker of the House of Representatives
H-232, US Capitol
Washington, DC 20515

Dear Madam Speaker:

On April 16, 2010, I reported to you a violation of the *Antideficiency Act* in the Commission's Salaries And Expenses account (74X0100) and Trust Fund account (74X8569). The violation concerned provisions in a June 2004 contract. I have additional information concerning the violation that I need to report. Specifically, the Commission has found that this violation occurred earlier than reported in my April 16th letter.

The June 2004 contract was a renewal of a June 1999 contract. This violation, which concerned provisions that obligated the Government to indemnify parties against losses (i.e., open ended indemnification clause), actually began in a June 1999 contract. The contract provided administration and services for temporary workers primarily to support the staffing increase necessary for the National World War II Memorial undertaking authorized by Public Law 103-32. The 1999 contract was a five year contract, renegotiated in June 2004 for an additional five years, and was cancelled on August 9, 2009.

As we found for the June 2004 contract, the Commission finds that the provision was a violation of the *Antideficiency Act*. There is no evidence that the violations were willful or knowing. The Commission, at that time, erroneously believed that the provision did not give rise to an *Antideficiency Act* violation. As noted in my April 16th letter, the Commission accepts that the contract provisions should not have been accepted because they contained an open-ended hold-harmless clause which subjected the Commission to potentially unlimited liability. This type of provision is cited in section 145.2 of Office of Management and Budget Circular No. A-11 as a reportable violation. No funds were expended in violation of the *Antideficiency Act*. Finally, the Commission is continuing the remedial actions that I directed on April 16th.

I am sending identical letters to the President of the United States Senate and the Comptroller General of the United States.

Most respectfully,

Max Cleland
Secretary



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October 15, 2010

The Honorable Joseph R. Biden, Jr.
President, United States Senate
S-212, US Capitol
Washington, DC 20510

Dear Mr. President:

On April 16, 2010, I reported to you a violation of the *Antideficiency Act* in the Commission's Salaries And Expenses account (74X0100) and Trust Fund account (74X8569). The violation concerned provisions in a June 2004 contract. I have additional information concerning the violation that I need to report. Specifically, the Commission has found that this violation occurred earlier than reported in my April 16th letter.

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As we found for the June 2004 contract, the Commission finds that the provision was a violation of the *Antideficiency Act*. There is no evidence that the violations were willful or knowing. The Commission, at that time, erroneously believed that the provision did not give rise to an *Antideficiency Act* violation. As noted in my April 16th letter, the Commission accepts that the contract provisions should not have been accepted because they contained an open-ended hold-harmless clause which subjected the Commission to potentially unlimited liability. This type of provision is cited in section 145.2 of Office of Management and Budget Circular No. A-11 as a reportable violation. No funds were expended in violation of the *Antideficiency Act*. Finally, the Commission is continuing the remedial actions that I directed on April 16th.

I am sending identical letters to the Speaker of the House of Representatives and the Comptroller General of the United States.

Most respectfully,



Max Cleland
Secretary