



UNDER SECRETARY OF DEFENSE
1100 DEFENSE PENTAGON
WASHINGTON, DC 20301-1100

SEP 28 2015

COMPTROLLER

The Honorable Gene Dodaro
Comptroller General of the United States
Washington, DC 20548

Dear Mr. Dodaro:

This letter reports a violation of the Antideficiency Act (ADA), Navy case number 14-02 (enclosed), as required by 31 U.S.C. § 1351. The violation involved fiscal years (FYs) 2010 and 2011 Operation and Maintenance, Navy (OMN) funds. The violation totaled \$1.57 million and occurred at the Naval Support Activity Bahrain, Isa Air Base (IAB), Kingdom of Bahrain. The Department of the Navy (DON) funded Special Projects Program RM10-9256 (RM10-9256), Design-Build (D-B) Utilities Improvements, IAB, Bahrain, to provide a primary and secondary electrical distribution system and connection to the Bahraini electrical grid. The scope of work for RM10-9256 was misclassified and improperly funded with OMN funds which resulted in a violation of 31 U.S.C. § 1301(a), 10 U.S.C. § 2805(b), and 31 U.S.C. § 1341(a)(1)(A).^{1,2}

In FY 2010 DON obligated \$1.52 million of OMN funds to construct an electrical distribution system (EDS) to provide IAB Logistics Support Area (LSA) with reliable electrical power through connection to the Kingdom of Bahrain electrical grid. The scope of work replaced, reconfigured, and upgraded IAB's LSA electric transmission system, and also expanded the installation's primary electrical distribution system grid and increased the capability and capacity. In FY 2011 Navy obligated an additional \$56,000 of OMN funds to connect 65 IAB buildings located in the LSA to the EDS which constituted incremental construction costs. The additional work commenced in FY 2011 was interdependent with the EDS and the cost should have been added to the overall EDS cost. Section 2805(b) of title 10, U.S.C., provides authority for the use of operation and maintenance appropriations to finance unspecified minor military construction projects costing not more than \$750,000. Program RM10-9256's work classification was mistakenly scoped as minor construction in the amount of \$717,000 and restoration and repairs in the amount of \$1.09 million. However, there were no repairs scheduled in RM10-9256 for the existing IAB electrical transmission system; the work instead consisted entirely of unspecified minor military construction. Program

¹ The Government Accountability Office (GAO) takes the position that a violation of a funding restriction in an authorizing statute or authorizing legislation (10 U.S.C. § 2805 (b)) results in a violation of the Antideficiency Act.

² Although the circumstances described herein constitute a violation of an authorizing statute, the Department of Justice (DOJ) Office of Legal Counsel (OLC) has concluded that "a violation of a statutory restriction on spending does not violate [the ADA] where the restriction is not 'in an appropriation.'" See also: DOJ OLC opinion, "Use of Appropriated Funds to Provide Light Refreshments to Non-Federal Participants at EPA Conferences," April 5, 2007 (http://www.justice.gov/sites/default/files/olc/opinions/2007/04/31/epa-light-refreshments13_0.pdf); and DOJ OLC letter, "Re: Whether the Federal Aviation Administration's Finalizing and Implementing of Slot Auction Regulations Would Violate the Anti-deficiency Act," October 7, 2008. In this case, however, there were insufficient funds in the unspecified minor military construction accounts for the RM10-9256 at the time the error was discovered, resulting in an ADA violation.




RM10-9256 constructed a new electric power utility system, providing increased capability and capacity for the LSA through distribution from and connection with the power grid of Bahrain. OMN funds for a project with a total cost exceeding \$1.5 million was not consistent with the authorized purpose of such appropriation under 10 U.S.C. § 1301(a). The project should have been funded with military construction funds that were made available for FY 2010 unspecified minor military construction projects that cost more than \$750,000 and less than or equal to \$2 million (10 U.S.C. § 2805(a)).

Three individuals were responsible for the 31 U.S.C. §1341(a)(1)(A) violation: Captain (CAPT) Jeffrey L. Borowy, Civil Engineer Corps (CEC); Lieutenant Commander (LCDR) Gregory P. Jennings, CEC; and Mr. Drew Aitken, Naval Facilities Engineering Command (NAVFAC). CAPT Borowy is no longer on active duty. Mr. Aitken is no longer employed by DON. For disciplinary action, LCDR Jennings received administrative corrective measures in the nature of having to familiarize himself with agency and departmental regulations regarding contracts and expenditures of funds. The violation contained no willful or knowing intent on the part of the responsible individuals to violate the ADA.

To prevent a recurrence of this type of violation, the NAVFAC Engineering major command issued a Naval Engineering Training and Operating Procedure and Standard # 18 instruction to formalize the process for the acceptance of funding documents by NAVFAC Comptrollers for projects exceeding \$500,000 and defined the project development and review requirements. NAVFAC Atlantic also developed a computer based ADA training course to assist personnel involved in the development and execution of projects and to better understand ADA principles. The training is a requirement of all personnel involved with financial and acquisition initiatives.

Identical reports are also being submitted to the President through the Director of the Office of Management and Budget, President of the Senate, and Speaker of the House of Representatives.

Sincerely,



Michael McCord

Enclosure:
As stated