



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

COMPTROLLER

NOV 30 2015

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 14-01 (enclosed), as required by 31 U.S.C. § 1351. The violation involved Fiscal Year (FY) 2011 Procurement, Marine Corps (PMC) and Operation and Maintenance, Marine Corps (OMMC) funds. The violation totaled \$7.8 million and occurred at Marine Corps Base Camp Lejeune, North Carolina. In this case, the total military construction project was improperly funded with PMC and OMMC appropriations, instead of military construction (MILCON) appropriations. Accordingly, obligations incurred for this project were not authorized and resulted in a violation of 31 U.S.C. § 1341(a)(1)(A).

The obligation of \$7.8 million of PMC and OMMC funds that were used to construct a training facility to replicate a commercial sea vessel, formally named the “Joint Maritime Training System,” violated the Purpose Statute. It was mistakenly believed that the training facility was a relocatable building and as personal property could be financed with OMMC and PMC funds. In fact, the support structure was permanently affixed by cement to the concrete foundation, and it constituted a major military construction. The use of PMC and OMMC funds to finance the training facility, commonly known as the “Ship on Land,” was not consistent with the authorized purpose of the appropriations and resulted in an incurable violation of the Purpose Statute (31 U.S.C. § 1301). PMC and OMMC funds cannot be used to fund a major MILCON project. Under the provisions of Title 10, military departments may only carry out major MILCON projects (in FY 2011, the cost of which exceed \$2 million each) that are specifically authorized by Congress (10 U.S.C. § 2802(a)). Once a major MILCON project is properly authorized, it must be funded from an appropriation available to pay for the cost of the project. In general, MILCON appropriations are made available for specified major MILCON projects authorized by current law, specifically those projects approved by Congress in the authorization acts for the same year as the appropriations acts. In this case, the “Ship on Land” project was not authorized by Congress in the FY 2011 National Defense Authorization Act (P.L. 111-383), so funds were not appropriated for the project. In the Government Accountability Office’s (GAO) view, such failure resulted in an ADA violation as no appropriated funds were made available for obligation and expenditure for the project costs.<sup>1</sup>

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<sup>1</sup> Although the circumstances described herein constitute a violation of 10 U.S.C. § 2802(a), 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](http://www.justice.gov/sites/default/files/olc/opinions/2007/04/31/epa-light-refreshments13_0.pdf)); and DOJ OLC



Mr. Robert Ream was found responsible for the 31 U.S.C. §1341(a)(1)(A) violation. Mr. Ream is no longer employed by the United States Government and discipline was not pursued. The violation contained no willful or knowing intent on the part of the responsible individual to violate the ADA.

To prevent a recurrence of this type of violation, the Marine Corps employees currently involved with financial and acquisition initiatives received supplemental training concerning military construction efforts and ADA violations. This training is in addition to existing Department of the Navy Fiscal Law and Budget Execution courses. Additionally, the Marine Corps will require all Contracts and Financial Management Personnel to complete Defense Acquisition University course "Construction Contracting" (CON-244). This course focuses on construction contracting issues involving acquisition planning, contract performance management, funding, environmental concerns, construction contract language, and construction contracting in the commercial setting.

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

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letter, "Re: Whether the Federal Aviation Administration's Finalizing and Implementing of Slot Auction Regulations Would Violate the Anti-Deficiency Act," October 7, 2008. However, given GAO's views to the contrary, consistent with section 145.8 of OMB Circular A-11, DoD is submitting this report in its entirety to the President, the Congress, and the Comptroller General.