



THE SECRETARY OF VETERANS AFFAIRS
WASHINGTON

November 21, 2012

The Honorable Gene L. Dodaro
Comptroller General of the United States
U.S. Government Accountability Office
441 G Street, NW
Washington, DC 20548

Dear Mr. Dodaro:

This letter is to report a violation of the Antideficiency Act, as required by section 1351 of title 31, United States Code (U.S.C.).

A violation of section 1341(a) of title 31, U.S.C. occurred in the Department of Veterans Affairs (VA) Construction, Minor Projects appropriation (Department of Treasury account symbol 36X0111) in the amount of \$14,911,468. This account funds construction projects with total costs less than or equal to \$10 million. The violation occurred at the VA Medical Center (VAMC) in Miami, Florida, in fiscal year 2009 when the Construction, Minor Projects appropriation was used to fund what constituted a major construction project costing more than \$10 million. The officers responsible for this violation were Ms. Mary Berrocal, former VAMC Director, Ms. Pamela Kelley, Contracting Officer, and Ms. Selma Rapoport-Zolotas, Chief of Engineering, from the Miami VAMC.

The violation resulted when a series of obligations in VA's Construction, Minor Projects appropriation were determined to be related, interdependent work comprising a single major construction project at a cost exceeding \$10 million. All major construction projects require Congressional authorization and appropriations in accordance with section 8104 of title 38, U.S.C. and the annual appropriation for Construction, Major Projects (Treasury account symbol 36X0110). Initially, two independent minor construction projects were developed to accomplish a phased renovation of the Miami VAMC surgical suite. These two projects were combined during the design phase and a construction contract was awarded for a single construction project. By combining two minor construction projects into a single major construction project, additional impact costs were incurred that should have been funded in the construction contract.

In sum, combining the minor projects resulted in total project costs exceeding \$10 million, thereby making this a major construction project under 38 U.S.C. §8104 and the annual appropriation for Construction, Major Projects. As an initial matter, this meant that funds in the Construction, Minor Projects account were not legally available for this major project. Moreover, funds in the Construction, Major Projects account were also not legally available for this project, and that is because the statutory requirements for a major construction project (in section 8104 and the annual appropriation) had not

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been satisfied. Accordingly, the obligation and expenditure of funds for this project constituted a violation of the Antideficiency Act under 31 U.S.C. §1341(a).

An Administrative Board of Investigation was convened to review the circumstances and events leading to this violation. VA has determined that the violation contained no willful or knowing intent on the part of the responsible officers of the Miami VAMC to violate the Antideficiency Act. However, the responsible officers failed to recognize that the separate related activities constituted a single major construction project requiring statutory authorization and funding through the Construction, Major Projects appropriation. The former VAMC Director has retired from Federal service and the other employees who were determined to have been responsible have received appropriate disciplinary action.

VA modified its minor construction project approval process to prevent similar violations from occurring in the future. Any minor construction project that is part of a phased and independent construction effort will not be approved or funded until the prior, independent project is at least 95 percent financially complete. This new procedure will prevent VA officials from combining funds allocated for two projects into a single project. Safeguards have also been implemented to prevent the scope of minor construction projects from escalating above the \$10 million minor construction project limitation. As part of this new policy, there will be a design review of minor construction projects at the 50 percent and 95 percent completion stages. This will allow for review of the design prior to going out for bid to ensure it is within the scope of the original approved project. Additionally, VA has implemented an audit process whereby 20 percent of VA medical centers will have all active construction projects audited annually for their compliance with laws and regulations.

Similar letters are being sent to the President, the President of the Senate, and the Speaker of the House of Representatives.

Sincerely,



Eric K. Shinseki