



Homeland Security

August 21, 2013

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

Re: U.S. Coast Guard *Antideficiency Act* Violation No. DHS-10-03

Dear Mr. Dodaro:

This letter is being transmitted to report violations of the *Antideficiency Act* (ADA), as required by Section 1351 of Title 31, United States Code (31 U.S.C. § 1351). From Fiscal Years (FY) 2005-2009, violations of 31 U.S.C. § 1341(a) totaling \$1,741,327.46 occurred in the U.S. Coast Guard (USCG) Operating Expenses (OE) appropriation, Treasury Appropriation Fund Symbols (TAFS) 705/0610, 706/0610, 707/0610, 708/0610, and 709/0610, due to a misunderstanding of fiscal and procurement law. USCG identified the violations on December 18, 2009, during the course of a preliminary transaction review of the Patrol Forces Southwest Asia (PATFORSWA) vehicle acquisition transactions.

In fiscal years 2005-2009, USCG's OE appropriation established funding "for purchase or lease of not to exceed 25 passenger motor vehicles" in support of PATFORSWA operations in Bahrain and Kuwait. The USCG attempted to enter into interagency lease agreements with the Navy, which would allow the Navy to retain ownership of the vehicles and prevent USCG from exceeding the limit. To fund the agreements, the USCG used military interdepartmental purchase requests (MIPRs). However, these MIPRs were executed as Category II, Direct Citation of Funds as opposed to Category I, Reimbursement. This allowed for the payment of lease invoices to be drawn directly from USCG funds, as opposed to reimbursing the Navy for the expense, and resulted in a commercial lease agreement between USCG and Avis Rent a Car. As a result, USCG violated the *Antideficiency Act* (31 U.S.C. § 1341(a)) by exceeding the limit of vehicles that Congress authorized them to purchase or lease for this purpose.

A thorough review of USCG Acquisition Procedures current during the period of the violations uncovered a lack of clarification in those procedures, which ultimately contributed to the violations. USCG has concluded that Mr. Robert S. Horowitz was responsible for the violations because he served as the Head of Contracting Activity at the time of the violations.

and was responsible for acquisition procedures. Due to the nature of the violations and the fact that Mr. Horowitz has since retired, USCG did not pursue disciplinary action. The Department has determined that the violations contained no willful or knowing intent on the parties to violate the ADA. To prevent future violations USCG is clarifying its acquisition procedures and has implemented an aggressive training and information campaign for all involved personnel to further increase visibility and improve awareness of appropriate acquisition procedures.

The Department of Homeland Security (DHS) has taken several additional measures to prevent recurrence of this type of violation. The Department has issued an Interagency Acquisition Guide to ensure awareness of current policies and regulations for contracting officers, specifically relating to Interagency Acquisitions. USCG has also revised internal controls and implemented a new monitoring program to ensure compliance with established policy and procedures for long-term vehicle leases. Part of this process is increasing communications to the relevant personnel, many of whom hold positions that turn over frequently. DHS will continue to ensure that the appropriate personnel are made aware of the appropriate policies and procedures on a regular, ongoing basis.

DHS did not have a Department-wide funds control policy in place when these violations occurred. On February 12, 2010, DHS strengthened its Department-wide funds control policy when the DHS Chief Financial Officer signed the *Administrative Control of Funds* regulation. While the USCG funds control policy was in place at the time of the violations, it was not adequate to prevent this violation. The USCG has subsequently published an interim *Administrative Control of Funds* policy that conforms to the approved DHS policy. DHS will continue to further enhance applicable regulations and policies and will ensure that the appropriate personnel are trained accordingly.

An identical copy of this letter is being sent to the President, President of the Senate, the Speaker of the House of Representatives, and Director of OMB.

Yours very truly,

A handwritten signature in black ink, appearing to read "Janet Napolitano", with a long horizontal flourish extending to the right.

Janet Napolitano