



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

COMPTROLLER

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

DEC 21 2016

Dear Mr. Dodaro:

This letter reports multiple violations of the Antideficiency Act (ADA), Army case number 15-03 (enclosed), as required by 31 U.S.C. §1351. The violations involved fiscal years (FY) 2004 through 2005 Operation and Maintenance, Army (OMA), and Other Procurement, Army (OPA), funds. The violations totaled \$60.3 million and occurred at the U.S. Army Garrison, Fort Drum, New York. In this case, Army obligated OMA and OPA funds to construct 137 relocatable buildings to support an expanding force structure at Fort Drum. However, the facilities constructed are not relocatable in nature and cannot properly be construed as personal property items. Instead, the facilities should have been considered as military construction and authorized and funded by Congress as such. Consequently, the Army incurred an uncorrectable violation of 31 U.S.C. § 1341(a)(1)(A) and 31 U.S.C. § 1301(a)¹.

Army obligated and expended \$23.6 million of OMA funds to construct 86 buildings referred to as "Unit of Action Facilities." The Unit of Action Facilities were constructed with the intended purpose or function of accommodating an expanded force structure (i.e., additional units) for the 10th Mountain Division at Fort Drum. The Army also obligated and disbursed \$36.7 million of OPA funds to construct an additional 52 relocatable buildings referred to as "Aviation Facilities" to accommodate the expansion of the 10th Mountain Division's Aviation Brigade. The facilities were approved and funded as relocatable buildings rather than as standard military construction. However, the Fort Drum facilities cannot be readily moved, disassembled, stored, or reused. Any attempt to move the buildings would require them to be dismantled. The process of dismantling the buildings would result in substantial damage to many key building components.

¹ 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); 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. 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.



The Unit of Action facilities and Aviation facilities were constructed in response to a sudden increase in force structure at Fort Drum stemming from the Army's overall transformation force. The 137 buildings should have been funded with Military Construction, Army (MCA), as a specified project instead of OMA and OPA funds. Military construction projects exceeding a dollar value of \$1 million (\$750,000 at the time of the violation) are typically funded using the MCA appropriation. In addition, military construction projects exceeding a dollar value of \$3,000,000 (\$2,000,000 at the time of the violation) must generally receive specific authorization from Congress.

The Acting Chief, Tracking Branch, U.S. Army Garrison Fort Drum, Directorate of Public Works; and two program managers, U.S. Army Corps of Engineers, New York District, were found responsible for the 31 U.S.C. § 1341(a)(1)(A) violations. The Acting Chief, Tracking Branch, and one of the program managers are no longer employed by the U.S. Government and discipline was not pursued. The U.S. Army Corps of Engineers, New York District, did not impose disciplinary action against the remaining program manager due to the passage of more than ten years and other mitigating factors. The violations 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 U.S. Army Installation Management Command (IMCOM) now validates and submits requests for relocatable buildings on IMCOM controlled installations (e.g., Fort Drum) and ensures the project approval documentation is fully justified and includes a legal review. The Assistant Chief of Staff, IMCOM, also developed a management control checklist to be used by installations and Army National Guard U.S. Property and Fiscal Officers. Among other things, the checklist requires that controls are established to prevent project costs from exceeding approved funding limits, to ensure that the site is approved in accordance with minor construction policy, and to determine the appropriate fund source.

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