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United States Department of State  
and the Broadcasting Board of Governors  
Office of Inspector General

# Report of Audit

## Review of Security Upgrade Construction Project in Havana, Cuba

Report Number AUD/PPA-05-15, June 2005

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## SUMMARY

The Office of Inspector General (OIG) received a hotline complaint alleging that the Bureau of Overseas Buildings Operations (OBO) did not properly manage the Havana, Cuba, compound security upgrade construction project. The complainant alleged that contractor expenses of about \$4.4 million<sup>1</sup> yielded little in actual construction. The complaint further alleged that costly delays were the result of OBO's "mismanagement from the start," by directing the contractor to mobilize in Havana in June 2002, without first having a signed agreement with the Cuban government. By the time the Cuban government agreed to support the project with needed manpower and equipment in April 2003, OBO had terminated the project and would not reverse its decision. OIG's review evaluated the validity of these allegations concerning OBO's management of the Havana project.

The review confirmed that OBO managers allowed the contractor to mobilize in June 2002, without having obtained a U.S. government preapproved agreement with the Cuban subcontractor as required by the BRS base contract. Subsequently, the contractor was only able to perform a limited amount of work, without substantial progress on the project. Although OBO had developed comprehensive compound security upgrade requirements for the project, the plan became partially unworkable because OBO and post officials did not receive an acceptable and timely support agreement prepared by the Cuban government's subcontractor to BRS.

In Cuba, construction projects that use Cuban equipment, supplies, and services require that requesters obtain a jointly approved support agreement from the Cuban government. When the Cuban government delayed by over one year in providing a proposed support agreement, OBO officials and the CO appropriately raised concerns. The contracting officer's representative (COR) stated in a letter,

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<sup>1</sup>The \$4.4 million represents the termination claim from Brown and Root Services (BRS), a division of Kellogg Brown & Root, as of February 2004. As of July 8, 2003, the contractor had been paid more than \$2.9 million, and it filed a termination claim for an additional \$1.5 million in October 2003. In May 2004, OIG told the contracting officer (CO) that the BRS claim was not submitted on a total cost basis and therefore could not be certified for payment consideration in accordance with Federal Acquisition Regulation (FAR) Part 52.249-2(e). BRS submitted revised claims in February 2004 for \$4.4 million and in March 2005 for \$4.2 million.

dated March 25, 2003, to the OBO Director: "While Post continues to negotiate with [the Cuban government] for support, the contractor has experienced a 78-day delay and is incurring costs of approximately \$7,000 per day without making substantial progress on the project."

OBO has two options to consider when it restarts the Havana security upgrade project: One option is to manage the restart of the entire project, and the other is to break up the project into smaller phases, with the post managing the initial phase. Whatever option is chosen, OIG is recommending the post obtain all agreements, licenses, and permits in a timely manner from the Cuban government to ensure that the required equipment, supplies, and services are approved and available before the contractor begins work.

OBO and the post concurred with the recommendations, and their responses are included as Appendices to this report.

## PURPOSE, SCOPE, AND METHODOLOGY

The purpose of the review was to evaluate a hotline allegation concerning the Havana compound security upgrade construction project. The complainant alleged that OBO mismanaged the Havana project because the contractor expended about \$4.4 million that yielded little in actual construction. The complainant also indicated that OBO was responsible for the costly delays by "mismanagement from the start," by directing the contractor to mobilize in Havana in June 2002, without first having a signed agreement with the Cuban government.

OIG reviewed the security upgrade construction contract with BRS<sup>2</sup> for the period September 29, 2001, through its termination date on April 9, 2003, with paid contract expenditures of about \$2.9 million. The review included related files, such as solicitation documents, contract modifications, CO contract files, COR project files, weekly and monthly contractor reports to the Department, and the correspondence files of the Bureau of Western Hemisphere Affairs (WHA) desk officer for Cuba. OIG reviewed BRS's February 2004 termination claim for pertinent information, as another OIG team is auditing the claim.

OIG held discussions with officials about the contract, including the CO in the Bureau of Administration's Office of Logistics Management, Office of Acquisitions Management; the COR in OBO; and the WHA desk officer for Cuba. To understand and evaluate the process OBO used to manage and monitor the security upgrade construction program and the Havana project, OIG met with various OBO officials from the Security Management Division and Construction and Commissioning Division and reviewed pertinent documentation. For information about the construction project and the termination claim, OIG visited BRS financial officials in Arlington, Virginia, and reviewed related documentation. During the July 2004 visit to Havana, OIG met with Department officials, including the chief of mission, management officer, and general services officer. In Havana, OIG also located and inspected construction materials purchased under the contract.<sup>3</sup> OIG's work was conducted in Washington, D.C., from February through

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<sup>2</sup>Contract no. SFBOAD-99-D0016, task order 57 with BRS.

<sup>3</sup>There were 29 containers of windows, doors, and building supplies in the warehouse in Cuba. OIG inspected the containers against a Department manifest and had one container opened and verified the contents to the contract inventory list.

November 2004, and at the U.S. Interests Section in Havana from July 12 to 14, 2004.

OIG conducted its review in accordance with government auditing standards and included appropriate tests of management controls to the extent necessary to satisfy the objectives of the inquiry. The Office of Audits, Procurement, Property and Administrative Support Division performed this review in coordination with the Office of Security and Intelligence Oversight.

In November 2004, OIG provided OBO, the post, and the CO with a draft of this report for comment. In December 2004, based on OBO's comments, OIG met with OBO officials and the CO to clarify issues and discuss new information received after the conclusion of audit fieldwork. OIG provided OBO with a revised draft report, and OBO provided revised comments on April 20, 2005. This report incorporates their comments, as appropriate. OBO's response to this report is included as Appendix A. The post concurred with the findings of the November 2004 draft report, and its response is included as Appendix B. Also, both OBO and the post concurred with the two report recommendations.

## BACKGROUND

In response to the August 1998 bombings of the U.S. embassies in Nairobi and Dar es Salaam, the Congress provided the Department with approximately \$1.5 billion in emergency supplemental appropriations<sup>4</sup> to improve security worldwide. Principally, the funds were to be used to develop an emergency security program that would rebuild the embassies in Nairobi and Dar es Salaam, relocate other high-risk embassies and consulates, and improve security at embassies and consulates worldwide. As part of this initiative, on April 23, 1999, the Department awarded an indefinite-delivery, indefinite-quantity contract to BRS to provide worldwide security upgrade construction services on a task order basis.

On September 29, 2001, the CO awarded fixed-price task order 57 to BRS with a value of \$5.5 million for the Havana compound security upgrade construction project and an estimated completion date of February 2, 2003. The task order called for the contractor to build two new compound access controlled buildings; upgrade the perimeter walls, fences, lighting, cameras, windows, doors, and technical security systems at the main building; and provide similar upgrades at the annex building. (See photo.)



**Cubans protesting the U.S. presence at Havana Interests Section**

<sup>4</sup>Omnibus Consolidated and Emergency Supplemental Appropriations Act of 1999 (Pub. L. No. 105-277).

The Immigration and Naturalization Service (now the Department of Homeland Security, U.S. Citizenship and Immigration Services) and the Department's Bureau of Population, Refugees, and Migration were to fund approximately \$1.4 million of the nonsecurity upgrades at the annex building.

The following is a chronology of major events for the security upgrade construction project in Havana.

<b>Date</b>	<b>Contract Action</b>
Sept. 29, 2001	Fixed-price task order to BRS for \$5.5 million, with a contract completion date of February 2, 2003
Sept. 29, 2001	Modification 1, task order increase to \$6.1 million, no justification given
Oct. 22, 2001	Modification 2, Notice to BRS to proceed with work as of October 15, 2001
Feb. 11-13, 2002	Preconstruction conference in Havana, including meeting with the Cuban government support officials
June 17, 2002	Onsite contractor mobilization in Havana
Sept. 28, 2002	Modification 3, task order increase to \$9.03 million, with a new contract completion date of October 10, 2003
Dec.10, 2002	Sixteen of the 29 secure containers arrive in Havana from the United States
Jan. 2, 2003	BRS submitted a delay claim for 78 days and \$390,889 (Note: Now included in the March 2005 \$4.2 million claim.)
April 11, 2003	Termination notice to BRS, effective April 9, 2003
April 22, 2003	Post received a proposed agreement on behalf of BRS for project construction with Cuban government. This agreement was initially requested during a December 2001 meeting, and again during a February 2002 meeting.
June 27, 2003	BRS departs Cuba
Oct. 27, 2003	BRS submits termination claim of \$4.5 million
Feb. 25, 2004	BRS submits a revised termination claim of \$4.4 million
May 25, 2004	CO notifies BRS of disapproval of termination proposal based on OIG's preliminary review of the October 2003 termination proposal
March 2005	OIG final audit report on the BRS termination proposal AUD/CG-05-22
March 2005	BRS submits a revised termination claim of \$4.2 million

Source: Data from OBO.

## FINDINGS

Project reviews by OBO management and the CO resulted in the CO's terminating the compound security construction upgrade contract for the U.S. government's convenience because the contractor was not able to make substantial progress toward completion. The primary reason for contract termination is attributable to the requirement that construction projects needing Cuban equipment, supplies, or services require a formal written agreement from the Cuban government. During the approximately 18 months of waiting for an approved agreement, BRS performed the planning and scheduling of activities, the procurement and shipping of required materials, and some communications cabling work. However, BRS could not complete the project. This was because the post, OBO, and BRS worked under the premise that the essential agreement with the Cuban government agency, Cubalse, for the equipment and labor services required to perform the upgrades would soon be approved, but it was not.

The CO terminated the contract with BRS for the convenience of the U.S. government on April 9, 2003, based on OBO's recommendations. On April 22, 2003, the post received a proposed agreement from the Cuban government. Even though the post and WHA presented their case to OBO to continue the project, OBO and CO officials indicated that it was not a prudent business decision to rescind the notice to terminate the contract and restart the project. OBO's and the CO's position was that the terms of the proposed agreement were not contractually and politically acceptable; the agreement was incomplete, and it was between the Cuban government and the post instead of BRS.

Owing to continued security concerns, the post's goal is to restart the project as soon as possible. OBO told OIG that it would restart a phased security construction upgrade project for Havana during FY 2005.

### **Obtaining Agreement From the Cuban Government**

OBO was aware of BRS's requirement to have an agreement with the government of Cuba before the mobilization of BRS in Havana in June 2002. OBO management and the CO have said that they understood the risks associated with early mobilization of BRS, but during risk analysis project meetings, it was determined that the need to continue with the delayed security upgrade project at the

post was worth the potential risks. The contractor's status reports also identified this as a primary concern. The CO said that full mobilization was a management decision with OBO based on post assurances that the Cuban government was preparing a proposed agreement in a timely manner.

With assurances from post that a timely agreement would be obtained, the CO issued a notice to proceed to BRS on October 22, 2001. The April 23, 1999, worldwide security upgrade contract with BRS allowed only for a full notice to proceed to be issued by the CO. In the future, similar contract situations might be better served with a limited notice to proceed and a delayed onsite mobilization. A limited notice would have also allowed the contractor to procure the long-lead items, enter into subcontract agreements, obtain the required permits from the Departments of Commerce and Treasury, and set up its infrastructure for doing business in Cuba. Once the agreement between BRS and the Cuban government (as approved by the United States) was signed, the CO could then issue the notice to proceed.

Under this contract, OIG recognizes that to exercise such an option, the CO would have been required to negotiate a bilateral modification with BRS. Without such a modification, OIG recognizes that issuing a limited notice to proceed might have resulted in a contractor delay claim.

The BRS work plan reviewed by OBO at the February 11-13, 2003, preconstruction conference recognized that BRS and its American subcontractor were only able to perform limited onsite activities because the project required the significant use of Cuban workers and equipment. Documentation provided by the post confirmed to OBO the prerequisite that all local materials, equipment, and labor services required for the project in Cuba must be procured in advance through an agreement with Cubalse.

OIG found that OBO managers closely monitored the progress of the project and raised concerns as construction continued to be delayed. One COR letter to a senior project official, dated March 25, 2003, stated: "While Post continues to negotiate with [the Cuban government] for support, the contractor has experienced a 78-day delay and is incurring costs of approximately \$7,000 per day without making substantial progress on the project."

OIG also found that the post disagreed with the CO's decision to terminate the project on April 9, 2003, as recommended by OBO, even though the post did not receive until April 22, 2003, a proposed draft agreement from the Cuban government to provide construction support. Upon receipt of the agreement, the post

and WHA asked OBO to rescind the notice to terminate the contract and to restart the project, considering the compelling security needs. OBO management and the CO concluded, however, that the terms of the proposed agreement were not acceptable, the agreement was incomplete, and it was inappropriate between the Cuban government and the post instead of BRS.

During an earlier review of OBO's compound security upgrade program,<sup>5</sup> OIG noted that OBO often initiated security upgrade projects before all permits, licenses, and agreements were finalized. In that report, OIG recommended that OBO develop a "to-do list" of activities that need to be resolved before the project is started. In a letter dated November 17, 2004, OBO agreed with OIG's recommendation and, in the future, will send posts a copy of the site visit minutes with the actions required of the post and request concurrence from posts before starting a project.

The lessons learned from this project should lead to a successful restart. There are two options under consideration by OBO: One is for OBO to manage the restart of the project; the other is for the project to be broken into phases, with phase 1 managed by the post. If OBO decides to issue the contract and manage the project, it should coordinate with the post before issuing a notice to proceed to the contractor in order to avoid repeating the problems of the initial project. The contractor should not mobilize onsite until the agreement with Cubalse is revalidated and approved and the issues surrounding the agreement are fixed. If OBO and the post decide to proceed with a post-managed project, then the post will have the responsibility for resolving any issues with the Cuban government in coordination with OBO and the CO.

As of July 2004, about \$4.5 million in funding remained for the Havana project, pending the settlement of the contract termination claim by BRS. When the claim is settled, OBO should reprogram the excess funding for use in other security upgrade projects. OBO informed OIG that the proposed FY 2005 compound security budget has \$4.5 million in new funds for a restart of the Havana upgrade project.

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<sup>5</sup>*Review of the Management of Compound Physical Security Upgrades* (AUD/PPA-04-37, Aug. 2004).

**Recommendation 1:** OIG recommends that the Bureau of Overseas Buildings Operations, in coordination with the U.S. Interests Section in Havana, ensure that the post has obtained an approved agreement with the Cuban government to provide the required equipment, supplies, and services before a notice to proceed is issued for construction of future compound security upgrades.

OBO agreed with the recommendation, stating that it would work with the post to obtain an agreement with the Cuban government before proceeding with the security upgrade project.

On the basis of OBO's response, OIG considers the recommendation resolved. It can be closed when OBO provides OIG with documentation that the post reached agreement with the Cuban government before OBO gives notification to proceed with a security upgrade project.

**Recommendation 2:** OIG recommends that the Bureau of Overseas Buildings Operations notify the administrative contracting officer that after the contract termination claim is settled on contract no. S-FBOAD-99-D0016, task order 57 (Havana security construction upgrade project), the remaining balance should be de-obligated.

OBO agreed with the recommendation, stating that it would work with the contracting officer to resolve the termination claim and transfer the remaining funds to new security upgrade projects.

On the basis of OBO's response, OIG considers this recommendation resolved. It can be closed when OBO provides OIG with documentation showing the transfer of funds.

## RECOMMENDATIONS

**Recommendation 1:** OIG recommends that the Bureau of Overseas Buildings Operations, in coordination with the U.S. Interests Section in Havana, ensure that the post has obtained an approved agreement with the Cuban government to provide the required equipment, supplies, and services before a notice to proceed is issued for construction of future compound security upgrades.

**Recommendation 2:** OIG recommends that the Bureau of Overseas Buildings Operations notify the administrative contracting officer that after the contract termination claim is settled on contract no. S-FBOAD-99-D0016, task order 57 (Havana security construction upgrade project), the remaining balance should be de-obligated.



APPENDIX A



United States Department of State

Director of the Bureau  
of Overseas Buildings Operations

Washington, D.C. 20520

APR 28 2005

UNCLASSIFIED  
MEMORANDUM

TO: OIG - Amb. Cameron Hume

FROM: OBO - Charles E. Williams *Wz8*

SUBJECT: OBO Review of Draft Audit Report on the *Review of Security Upgrades Construction Projects in Havana, Cuba, Report Number AUD/PP-05-15, April 2005*

Thank you for transmitting a copy of the subject draft report for our review and comment. We appreciate the opportunity and want to thank the OIG for the collaborative effort experienced in achieving mutual understanding of this most difficult and unique project. OBO agrees with the report and with the two recommendations made by the OIG. Please do not hesitate to contact me if you need further information.



APPENDIX B

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COM DCM RSO CG MGT GSO

USINT HAVANA  
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DEPARTMENT FOR OIG/PPA - FGRINNAN

E.O. 12958: N/A  
TAGS: AMGT, ABLD  
SUBJECT: RESPONSE FROM POST TO DRAFT OIG REPORT -  
REVIEW OF SECURITY UPGRADE CONSTRUCTION PROJECT,  
HAVANA, CUBA

From Post's perspective, the draft audit report titled Review of Security Upgrades Construction Project in Havana, Cuba represents an accurate accounting of the events concerning the project.

CASON

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