



United States Department of Agriculture
Office of Inspector General





United States Department of Agriculture
Office of Inspector General
Washington, D.C. 20250



DATE: June 18, 2012

AUDIT
NUMBER: 02703-0002-10

TO: Edward B. Knipling
Administrator
Agricultural Research Service

ATTN: Lisa A. Baldus
Associate Deputy Administrator
Administrative and Financial Management

FROM: Gil H. Harden
Assistant Inspector General for Audit

SUBJECT: Procurement Oversight Audit of Red River Valley Agricultural Research
Center Contract

This report presents the results of the Procurement Oversight Audit of the Red River Valley Agricultural Research Center Contract, awarded by the Agricultural Research Service (ARS) to Pro-Mark Services, Inc. Your written response to the official draft report, dated April 23, 2012, is included in its entirety as an exhibit to this report.

Regis & Associates, PC, was engaged to conduct the audit to ensure that the transparency and accountability requirements of the Recovery Act are met and to ensure that ARS' Recovery Act procurement activities are performed in accordance with Federal Acquisition Regulations, Office of Management and Budget guidance, and Recovery Act requirements. During our oversight of the contract, we reviewed Regis & Associates, PC's report and related documentation. Our review, as differentiated from an audit, in accordance with *Government Auditing Standards* (issued by the Comptroller General of the United States), disclosed no instances where Regis & Associates, PC's audit did not comply, in all material respects, with *Government Auditing Standards*.

Based on your response, we were able to reach management decision on all recommendations in the report. Finding 3 in this report did not contain recommendations because the issue was previously reported. Therefore, no further response is necessary.

In accordance with Departmental Regulation 1720-1, final action must be taken within 1 year of each management decision to prevent being listed in the Department's annual Performance and

Accountability Report. Please follow your agency's internal procedures in forwarding documentation for final actions to the Office of the Chief Financial Officer, Director, Planning and Accountability Division.

We appreciate the courtesies and cooperation extended to us by members of your staff during our audit fieldwork and subsequent discussions.

DATE: May 8, 2012

REPLY TO
ATTN OF: 02703-0002-10

TO: Jane A. Bannon
Audit Director
IT Audit Operations Division
Department of Agriculture, Office of Inspector General

FROM: Regis & Associates, PC /s/

SUBJECT: Procurement Oversight Audit of Red River Valley Agricultural Research Center Contract

The American Recovery and Reinvestment Act of 2009 (the Recovery Act), provided the Department of Agriculture's (USDA) Agricultural Research Service (ARS) with \$176 million to reduce the backlog of facilities critical deferred maintenance projects. On September 30, 2009, ARS' Colorado Area Office located in Fort Collins, Colorado awarded a sole-source, negotiated, firm fixed-price construction contract under the 8(a) Business Development Program¹ for \$1,226,333 to Pro-Mark Services, Inc. This contract was to replace laboratory facilities heating, ventilating, and air conditioning systems and components at the Red River Valley Agricultural Research Center, located in Fargo, North Dakota. In addition to the initial contract award, subsequent contract modifications were made for work that included the relocation of switches, thermostats, and a fire alarm panel and the rework of wiring that totaled \$285,252, and increased the contract amount to \$1,511,585. ARS' Colorado Area Office performed the procurement activities and contract management functions, including contract award, contractor payment approval, and monitoring of the contractor's Recovery Act reporting. Contract monitoring was performed by the Supervisory Mechanical Engineer, who was located at the project site in Fargo, North Dakota. ARS' Financial Management Division (FMD) reported the agency's Recovery fund statistics on Recovery.gov, through SharePoint.²

In enacting the law, Congress emphasized the need for the Recovery Act to provide for unprecedented levels of transparency and accountability, so that taxpayers know how, when, and where tax dollars are being spent. To accomplish this objective, the Office of Management and Budget (OMB) issued various implementing guidelines that require Federal agencies receiving Recovery Act funds to post key information on Recovery.gov. In addition, agencies must submit weekly updates, monthly financial status reports, award transaction data feeds, and an agency Recovery Act plan to OMB and to the Recovery page of the agency's website.

The Recovery Act also provided USDA's Office of Inspector General (OIG) funding for oversight and audits of USDA programs, grants, and activities funded by the Recovery Act.

¹ The Small Business Administration 8(a) Business Development Program was created to assist eligible small disadvantaged business owners compete in the American economy through business development.

² SharePoint is an electronic database for USDA's Recovery Act data collection.

OMB guidance states that OIGs will perform audits and inspections of their respective agencies' processes for awarding, disbursing, and monitoring Recovery Act funds, to determine whether safeguards exist for ensuring funds are used for their intended purposes.

To ensure that the transparency and accountability requirements of the Recovery Act are met, USDA/OIG contracted with Regis & Associates, PC, to assist it in ensuring that ARS' Recovery Act procurement activities are performed in accordance with Federal Acquisition Regulations (FAR), OMB guidance, and Recovery Act requirements. This audit was performed in accordance with generally accepted government auditing standards, and standards established by the American Institute of Certified Public Accountants.

During this audit, we reviewed applicable laws and regulations pertaining to procurement activities, contract oversight, and Recovery Act reporting. We also obtained and reviewed ARS' Colorado Area Office organizational documents relating to management controls, policies and procedures for the procurement and contracting functions, financial management, and other processes that would ensure compliance with the Recovery Act.

The scope of this audit included a review of the contractor's responsibility determination; processes for preparing and issuing the solicitation, contractor selection, contract price determination, contract award, contract modification, contract performance monitoring, and invoice processing and payments to determine whether ARS' Colorado Area Office followed departmental and agency policies and procedures, FAR, and Recovery Act requirements. We performed procedures, as necessary, to determine whether the procurement was based on fair and reasonable price estimates, that the contract was awarded to a contractor with appropriate qualifications, and that processes were in place to ensure that the contractor provided services/products in accordance with contract terms. We noted that the modifications which totaled \$285,252 were adequately reviewed and justified for Recovery Act funding purposes. We found ARS' Colorado Area Office's contracting staff, including the contracting officer, contract specialist, and contracting officer's representative, were experienced and qualified to award and monitor the contract.

However, we identified three issues that warrant reporting. We noted that the contracting officer did not complete a Confidential Financial Disclosure Report³ in a timely manner. In addition, although ARS developed new Recovery Act recipient reporting procedures, we found an instance of inaccurate recipient reporting and in addition noted that the contracting officer did not request a legal review of the solicitation.⁴

Finding 1: Confidential Financial Disclosure Statement Not Completed Timely

ARS' contracting officer in Fort Collins, Colorado did not complete a Confidential Financial Disclosure Report timely, and there was no evidence indicating that he was granted a filing

³ Office of Government Ethics Form, OGE 450.

⁴ These two issues were previously reported to ARS in audit reports 02703-01-HQ and 02703-02-HQ issued September 2010; 02703-03-HQ issued May 2011; 02703-04-HQ issued July 2011; and 02703-06-HQ issued August 2011.

extension. This contract was awarded on September 30, 2009, and the contracting officer should have completed the Confidential Financial Disclosure Report by October 30, 2009. However, the report was not completed until August 12, 2010.

To avoid involvement in a real or apparent conflict of interest, the Agriculture Acquisition Regulation (AGAR) Advisory #85, *Acquisition Workforce Training, Delegation, and Management System*, requires that, “acquisition workforce personnel must comply with existing conflict of interest regulations/laws, and file the approved forms as required. At a minimum all individuals whose duties involve procurement and contracting shall file a financial disclosure statement.” The Confidential Financial Disclosure Report states that the statement is due within 30 days of assuming a position designated for filing, unless the agency requests it earlier or grants a filing extension.

The contracting officer stated that when he was appointed to the contract, ARS’ Headquarters, Office of Ethics, failed to communicate with him in a timely manner, regarding the filing of the confidential financial disclosure report.

Since the financial disclosure report was not filed in a timely manner, ARS’ Office of Ethics had no way of determining whether the contracting officer was involved in a real or apparent conflict of interest. This could compromise the level of transparency and accountability envisioned by the Recovery Act.

Recommendation 1

ARS needs to inform all procurement personnel to complete the required Conflict of Interest and Financial Disclosure statements within the required timeframe, and maintain copies of these documents.

Finding 2: Discrepancies in Prime Recipient Report

The Prime Recipient information on Recovery.gov, relating to the total amount invoiced and received by the contractor, was not supported by the invoices in the contract file, and it also did not agree with the information recorded in ARS’ financial system. Specifically, we noted that, as of September 30, 2010, the contractor invoiced and was paid \$1,197,192, which was reported in ARS’ financial system. However, \$1,158,628 was reported on Recovery.gov for the same period. The amount of disbursements reported on Recovery.gov is \$38,564 less than the amount recorded in the financial system. We noted the last contractor invoice for the quarter ending September 30, 2010 for \$38,564 was not included in the amount reported on Recovery.gov, and the contracting officer did not detect this omission during the review of contractor information.

The contracting officer did not adequately review and reconcile the information reported by the contractor, prior to it being reported on Recovery.gov. We discussed this discrepancy with the contracting officer and he stated it was an oversight. As a result of the condition noted above, the accuracy of USDA’s Department-wide totals of Recovery Act financial and activity data for the quarter could be adversely affected.

Inaccurate recipient information reporting had been noted in previous contract reviews,⁵ resulting in ARS issuing Policy Guidance Memorandum PGM-10-001, *ARRA Recipient Data Quality Review Guidance*, to correct the condition. However, we determined the contracting officer did not follow the guidance in communicating the reporting discrepancy to the contractor. According to the newly issued guidance, the contracting officer is required to verify the total Federal amount of Recovery Act funds invoiced and received by the contractor. This figure should reflect the cumulative amount of funds that were paid out, as of the end of the reporting period, as per the Status of Funds reports generated by ARS' Financial Management Division.

OMB's *Initial Implementing Guidance for the Recovery Act (M-09-10)*, states that "...given the high priority placed on the accurate display of information related to the Recovery Act on Recovery.gov, agencies are responsible for a pre-dissemination review of all information that will appear on Recovery.gov. All agencies must ensure all reporting related to Recovery Act funding is complete and accurate and complies with the agency's Information Quality Act guidelines."

Also, *USDA's Procedure for Review of the Recovery Act, Section 1512, Recipient Reported Information*,⁶ requires Agencies/Departments review recipient data in order to ensure that information reported on Recovery.gov is accurate. According to ARS' newly released PGM-10-001, *ARRA Recipient Data Quality Review Guidance*, dated March 31, 2010, Area and Facilities Contracts Branch (FCB) Contract Specialists are required to review recipient reports, provide formal review comments to the contractor, and follow up on review comments to ensure that the contractor has corrected any errors identified during the review process.

Recommendation 2

ARS needs to review and reconcile contractor data prior to it being reported on Recovery.gov, in order to ensure accuracy and consistency. Noted errors should be communicated to the contractor in a timely manner and tracked for correction.

Finding 3: Legal Review Procedures for Contract Actions Were Not Performed

USDA's Departmental Regulation, DR 5000-4, *Legal Review of Contractual Actions*, establishes procedures for determining when to request a legal review of contractual actions. The regulation requires the legal review of solicitations for negotiated contracts that are expected to exceed \$500,000. Also, the *Internal Control Plan*⁷ for the *Research, Education, and Economics (REE)*⁸

⁵ Audit report 02703-01-HQ, and 02703-02-HQ, were both issued on September 15, 2010.

⁶ The Office of the Chief Financial Officer issued the *USDA's Procedure for Review of American Recovery and Reinvestment Act, Section 1512, Recipient Reported Information*.

⁷ The Internal Control Plan specifies procedures that are to be followed at each step of the procurement process, assuring that procurement policy objectives are being met and that quality standards are being upheld.

⁸ REE is the USDA mission area that provides oversight and guidance to its agencies which include ARS, the National Institute of Food and Agriculture, the Economic Research Service, and the National Agricultural Statistics Service.

Acquisition Program states that legal reviews are required for all actions identified in DR 5000-4 to ensure legal sufficiency of the solicitation and contract award documents.

The Red River Valley Agricultural Research Center's project was a sole source, negotiated contract, awarded at an initial contract price of \$1,226,333, and DR 5000-4 states that a legal review should have been performed. ARS' Facilities Division did not request a legal review of the solicitation. We noted that ARS had sent a solicitation boilerplate, which did not contain contract specific data, to the Office of General Counsel (OGC) for review in February 2009, and OGC did not send any review comments or recommendations. ARS concluded that a legal review was not necessary because no review comments were received from OGC regarding the boilerplate. However, we determined even if a legal review was done on the boilerplate solicitation, ARS should have had a legal review of the solicitation, which contained the contract specific data. Also, ARS should follow up with OGC if no response is received to ensure there are no legal issues.

As a result of not performing a legal review of the solicitation, ARS could be exposed to unintended legal consequences related to the contract. Also, ARS is not in compliance with the Department's regulation and its own guidance, which is designed to protect it from legal risks.

We are not making a recommendation at this time, because this issue was noted in a previous contract review. We recommended that ARS should request and obtain a legal review of solicitations, with project specific data, for negotiated contracts that are expected to exceed \$500,000. ARS officials agreed with our recommendation.

USDA'S

AGRICULTURAL RESEARCH SERVICE

RESPONSE TO AUDIT REPORT

April 23, 2012

SUBJECT: Management's Response to Recommendations in Audit Report 02703-0002-10 – Procurement Oversight Audit of Red River Valley Agricultural Research Center Contract

TO: Gil H. Harden
Assistant Inspector General for Audit
Office of Inspector General

Jon M. Holladay
Acting Chief Financial Officer
Office of the Chief Financial Officer

FROM: Lisa A. Baldus /s/
Associate Deputy Administrator
Administrative and Financial Management

The Agricultural Research Service (ARS) provides the following response to audit Recommendations 1 and 2 in Audit Report 02703-0002-10 – Procurement Oversight Audit of the Red River Valley Agricultural Research Center Contract.

Finding 1: Confidential Financial Disclosure Statement Not Completed Timely

Recommendation 1

ARS needs to inform all procurement personnel to complete the required Conflict of Interest and Financial Disclosure statements within the required timeframe, and maintain copies of these documents.

Agency Response

We concur and will pass this recommendation on to the Human Resources Division on/about April 30, 2012, to include these forms in their New Employee Orientation and/or On-Boarding Procedures.

Finding 2: Discrepancies in Prime Recipient Report

Recommendation 2

ARS needs to review and reconcile contractor data prior to it being reported on Recovery.gov, in order to ensure accuracy and consistency. Noted errors should be communicated to the contractor in a timely manner and tracked for correction.

Agency Response

We concur. Reminders are sent, and will continue to be sent, several times prior to the beginning of each reporting period and again during the reporting period. The next reminder will be sent on/about April 17, 2012.

cc:

R. Herchak, FD

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