



United States Department of Agriculture
Office of Inspector General





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



DATE: June 7, 2012

AUDIT
NUMBER: 02703-0007-HQ

TO: Ed 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 National Center for Agricultural Utilization
Research Contract

This report presents the results of the Procurement Oversight Audit of the National Center for Agricultural Utilization Research Contract, awarded by the Agricultural Research Service to Bernard Johnson Corporation. 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 the Agricultural Research Service's 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.

Attachment

cc: (w/attachment)
Director, Planning and Accountability Division, OCFO

DATE: May 8, 2012

REPLY TO
ATTN OF: 02703-0007-HQ

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 National Center for Agricultural Utilization
Research 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. ARS added \$2 million in Recovery Act funds to an existing contract with Bernard Johnson Corporation for architect and engineering services¹ for the Renovation of the Center Wing of the National Center for Agricultural Utilization Research, located in Peoria, Illinois. ARS' Facilities Division in Beltsville, Maryland, performed the procurement activities and contract management, including award of task order modifications, contractor payment approval, and monitoring of the contractor's Recovery Act reporting. ARS' Financial Management Division (FMD) reported the agency 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. 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 in ensuring that ARS' Recovery

¹ The architect and engineering services included redesign and construction management for the Peoria, Illinois renovation project.

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

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' 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, task order award modifications, performance monitoring, and invoice processing and payments to determine whether ARS followed departmental and agency policies and procedures, FAR and Recovery Act requirements. We performed procedures, as necessary, to determine whether the modifications were 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 found ARS' contracting staff, including the contracting officer, contract specialist, and contracting officer's technical representative, were experienced and qualified to award and monitor the contract and no issues were noted in these areas that would warrant reporting.

However, we identified three issues that warrant reporting. ARS applied Recovery Act funds for payment of non-Recovery Act items. ARS' contracting officer did not include adequate release of claims language in six task order modifications, and modification award notices were not publicized in a timely manner on FedBizOpps.gov.

Finding 1: Incorrect Application of Funds and Discrepancies in Recovery Act Reporting

The Prime Recipient information on Recovery.gov relating to the total amount invoiced and received 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 \$848,237, which was reported in ARS' financial system. However, \$824,322 was reported on Recovery.gov for the same period. The amount of disbursements reported on Recovery.gov is \$23,915 less than the amount recorded in the financial system for Recovery Act funds.

The discrepancy occurred because a payment for a non-Recovery Act line item on a contractor invoice was inadvertently made with Recovery Act funds. The contracting officer did not adequately communicate with Financial Management Division regarding the appropriate fund to be applied in the payment of the non-Recovery Act line item. Also, ARS did not review and reconcile Recovery Act data, including contractor's data, for accuracy and consistency with information reported on the financial system, prior to reporting on Recovery.gov.

We brought this error to the attention of ARS' management, and noted that ARS has attempted to implement corrective actions, as of November 30, 2011, by applying non-Recovery Act funds to pay for a Recovery Act funded portion of a subsequent invoice. However, we determined that a more appropriate approach would have been for ARS to prepare journal entries, with the right transaction codes, to correct the error. We noted that ARS' Contracts Standard Operating Procedures, CSOP 04-002, *Invoice Handling Procedures*, does not address situations involving multiple sources of funding and when an invoice contains line items funded with different sources. ARS should clearly delineate and indicate the appropriate funds to be used in the payment of separately funded line items on an invoice, prior to disbursement of funds and reporting on Recovery.gov.

As a result of the condition noted above, the accuracy of USDA's Department-wide total of Recovery Act financial and activity data for the quarter ending September 30, 2010 could be adversely affected.

OMB's *Initial Implementing Guidance for the Recovery Act (M-09-10)*, states "...given the high priority placed on the accurate display of information related to Recovery Act on Recovery.gov, agencies are responsible for 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." The guidance also requires agencies to separately track expenditures relating to Recovery Act funding within their financial system.

Recommendation 1

ARS should adequately review and reconcile Recovery Act data, including contractors' data, for accuracy and consistency with information reported on the financial system, prior to reporting on Recovery.gov.

Recommendation 2

ARS should revise their CSOP 04-002, *Invoice Handling Procedures*, to address when multiple sources of funding are being used on a project, and when an invoice contains line items funded with different appropriations, to ensure proper reporting.

Recommendation 3

ARS should prepare journal entries with appropriate transaction codes to correct the errors.

Finding 2: Release of Claim Was Not Included on Contract Modifications

Six modifications did not include clear release of claims language releasing the government from all liabilities that could arise under the change order, as required by FAR and ARS' Contract Specialist Handbook. During the course of the contract, there was a change in contracting officers. When questioned about the required language not being in the modification, the contracting officer who took over the management of the contract pointed out that he had included similar language in each modification. We noted that the changed verbiage did not meet the requirements of the FAR and ARS' guidance because the modified language did not specifically release the Federal government from additional liability. As a result of not including the prescribed release of claims language in the contract modifications, ARS may be exposed to the risk of additional claims resulting from controversies arising from the supplemental change order agreements.

FAR part 43.204 (c) (2) and ARS' *Contract Specialist Handbook*, Chapter 9.4.4 states that "to avoid subsequent controversies that may result from a supplemental agreement containing an equitable adjustment as the result of a change order, the contracting officer should include, in the supplemental agreement, a release similar to the following: 'In consideration of the modification(s) agreed to as complete equitable adjustments for the work called for above, the Contractor hereby releases the Government from any and all liability under this contract for further equitable adjustments attributable to any facts or circumstances that could arise under the contract for the work above.'"

We examined the modified 'release of claims' language that the contracting officer referred to and determined that it did not say the government is released from all liabilities associated with the change order, since it did not convey the same meaning as the language in FAR part 43.204 (c) (2) and ARS' Contract Specialist Handbook Chapter 9.4.4.

Recommendation 4

ARS should instruct all contracting officers to include the standard release of claims language in all bilateral modifications as required by FAR part 43.204 (c) (2) and ARS' *Contract Specialist Handbook*, Chapter 9.4.4. The specific modifications should be corrected by adding the appropriate release of claims language.

Finding 3: Delayed Publication of Task Order Modification Award Notices

ARS awarded task order modifications, and publicized the award notices on FedBizOpps.gov, as required by FAR part 5.7. However, the notices were not publicized in a timely manner. A modification was awarded on January 8, 2010 for \$48,388, and the award was publicized on FedBizOpps.gov on May 6, 2010, 118 days after the award date. Another modification was awarded on May 5, 2010 for \$29,270, and the award was publicized on FedBizOpps.gov on June 30, 2010, 55 days after the award date. We noted ARS reported other contract actions such as the initial contract award within one day.

In explaining the guiding principles of Recovery Act reporting, OMB's *Updated Implementing Guidance for the Recovery Act (M-09-15)* states, that "timely and accurate information reporting by the Federal agencies provides both the Congress and taxpayers an ability to track and monitor all Recovery funds with the level of transparency and accountability envisioned in the Act."

We discussed this condition with the contracting officer, and he stated that the untimely publication must have been an oversight, since he was uncertain as to why the delays occurred. He agreed that all publications of task orders, including modification award notices, on FedBizOpps.gov should have been done within a few days of the modification's execution.

The ability of the taxpayer to track and monitor all Recovery funds with the level of transparency and accountability envisioned in the Act is impaired when award notices are not publicized in a timely manner on FedBizOpps.gov.

We are not making a new recommendation at this time, because this issue was noted in a previous contract review.³ We recommended that ARS' management should take the necessary action to provide complete and timely reporting for Recovery Act contracts posted on FedBizOpps.gov and strengthen managerial reviews. ARS concurred with these recommendations and has revised its Standard Operating Procedure 02-005, *Posting Solicitations and Other Announcements and Notices on FedBizOpps*, to include Recovery Act actions.

³ This issue was noted in audit report 02703-05-HQ, issued September 30, 2011.

USDA'S

AGRICULTURAL RESEARCH SERVICE

RESPONSE TO AUDIT REPORT

April 23, 2012

SUBJECT: Management's Response to Recommendations in Audit Report 02703-0007-HQ – Procurement Oversight Audit of the National Center for Agricultural Utilization Research 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 through 4 in Audit Report 02703-0007-HQ – Procurement Oversight Audit of the National Center for Agricultural Utilization Research Contract.

Finding 1: Incorrect Application of Funds and Discrepancies in Recovery Act Reporting

Recommendation 1

ARS should adequately review and reconcile Recovery Act data, including contractors' data, for accuracy and consistency with information reported in the financial system prior to reporting on Recovery.gov.

Agency Response

We concur and will also continue to send out reminders to the Contracting Officers (COs) to review and reconcile all data. The next reminder will be sent on/about April 17, 2012.

Recommendation 2

ARS should revise their CSOP 04-002, *Invoice Handling Procedures*, to address when multiple sources of funding are being used on a project, and when an invoice contains line items funded with different appropriations, to ensure proper reporting.

Agency Response

Since this review was done, ARS has undergone a reorganization that became effective on February 12, 2012. As a result, the Facilities Contracts Branch (FCB) which issued this guidance no longer exists and the CSOP will not be revised. However, COs will be advised to closely review all invoices to ensure that the correct accounting code is used. This reminder will be sent on/about April 17, 2012. This recommendation, though, will be forwarded on/about April 17, 2012, to the Acquisition and Property Division (APD) to include in their guidance to the Agency if/when they consolidate policies.

Recommendation 3

ARS should prepare journal entries with appropriate transaction codes to correct the errors.

Agency Response

We concur. The contract payment files will be corrected by April 30, 2012.

Finding 2: Release of Claim Was Not Included on Contract Modifications

Recommendation 4

ARS should instruct all contracting officers to include the standard release of claims language in all bilateral modifications as required by FAR Part 43.204(c) (2) and ARS' *Contract Specialist Handbook*, Chapter 9.4.4. The specific modifications should be corrected by adding the release of claims language.

Agency Response

We concur. A contract modification will be issued to incorporate the proper release of claims language for the previous modifications by April 30, 2012.

cc:

R. Herchak, FD

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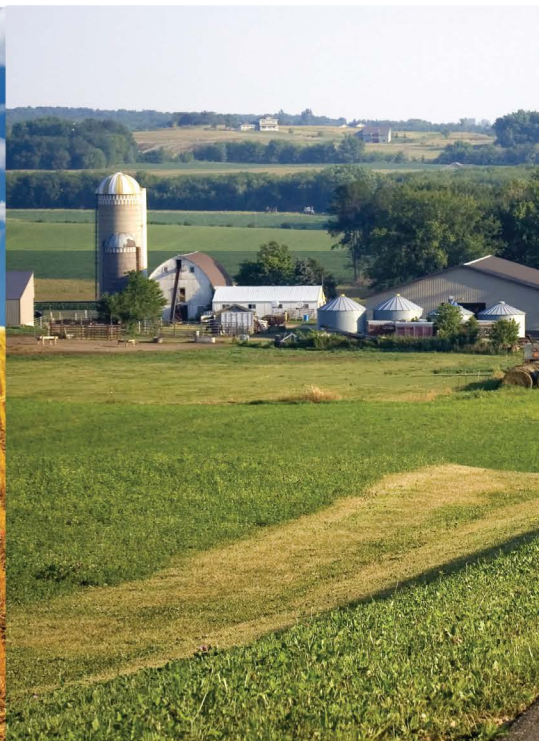
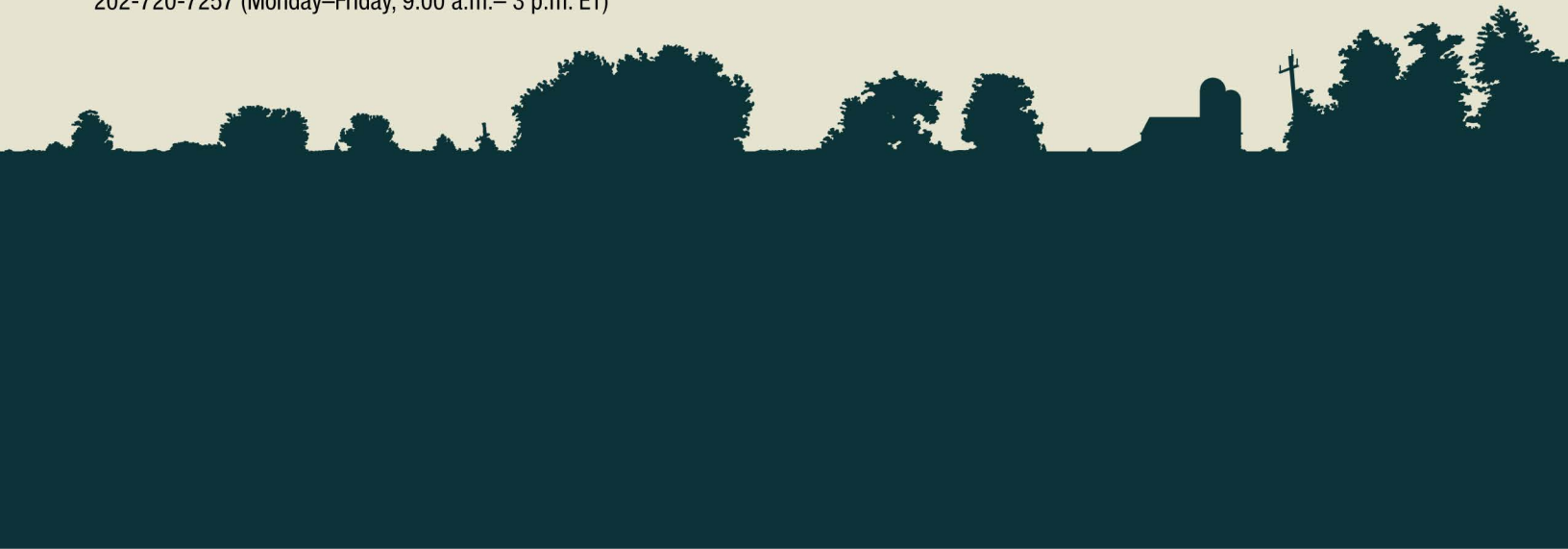
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