



United States Department of Agriculture
Office of Inspector General





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



DATE: December 21, 2011

AUDIT
NUMBER: 02703-0008-HQ

TO: Ed Knipling
Administrator
Agricultural Research Service

ATTN: Robert H. Magill, Acting Director
Financial Management Division
Acting Chief Financial Officer, REE

FROM: Gil H. Harden /s/
Assistant Inspector General
for Audit

SUBJECT: Procurement Oversight Audit of National Center for Agricultural Utilization
Research Contract

Attached is a copy of the final report on the subject audit. On December 13, 2011, we were notified by ARS that an exit conference was not necessary to discuss the subject draft audit report. The finding noted in this report has been previously reported; therefore, no recommendation was made. No further response for this audit is necessary.

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: December 14, 2011

REPLY TO

ATTN OF: 02703-0008-HQ

TO: Jane A. Bannon
Audit Director
IT Audit Operations and Departmental Management
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 U.S. Department of Agriculture's (USDA) Agricultural Research Service (ARS) with \$176 million to reduce the backlog of facilities' critical deferred maintenance projects. On January 19, 2010, ARS awarded a contract for \$14,170,000 to Core Construction Services of Illinois, to perform a major renovation of the Center Wing of the National Center for Agricultural Utilization Research phases 3 and 4, located in Peoria, Illinois. ARS' Facilities Division in Beltsville, Maryland, performed the procurement activities and contract management functions, including contract award, contractor payment approval, and monitoring the contractor's Recovery Act reporting. ARS' Financial Management Division (FMD) reported agency Recovery fund statistics on Recovery.gov, through SharePoint.¹

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 were met, USDA/OIG contracted with Regis & Associates, PC, to assist in ensuring that ARS' Recovery

¹ SharePoint is an electronic database for USDA's Recovery Act data collection.

Act procurement activities were 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; contract award and 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 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 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 one issue that warrants reporting. During the course of our review of the contract files, we noted that ARS' Contracting Officer did not request legal review of the contract solicitation.

Finding 1: 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 contracts that are expected to exceed \$500,000. Also, the Internal Control Plan² for the Research, Education, and Economics (REE)³ 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 National Center for Agricultural Utilization Research Repairs project was a contract, awarded at an initial contract price of \$14,170,000. The DR 5000-4 states that a legal review should have been performed. However, ARS' Facilities Division did not request a legal review of the solicitation.

² 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.

³ 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.

ARS' Facilities Division Contracting Officer stated that prior to awarding the contract, a determination was made that a legal review was not necessary. The Contracting Officer further stated that the determination not to seek legal review of the solicitation was based on the solicitation document's format and language presented to the OGC in February 2009. No response was received from OGC. Also, the Contracting Officer believes that the contract requirements for this project were typical of the construction work repetitively procured by the Facilities Contracts Branch, and that there were no complex legal issues to be considered. 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.⁴ We recommended that ARS request and obtain a legal review of solicitations, with project specific data, for negotiated contracts that are expected to exceed \$500,000. ARS officials concurred with this recommendation.

Thank you for the courtesies extended to the audit staff during the course of this audit. No response is necessary.

⁴ This issue was previously reported to ARS in audit report 02703-04-HQ, July 1, 2011.

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