



U.S. Department of Agriculture

Office of Inspector General



Procurement Oversight Audit of Southeast Poultry Research Laboratory, Replacement of Critical Mechanical Systems Serving Buildings 1, 4, and 34; Contract Awarded by Agricultural Research Service to Peachtree Mechanical, Inc.

Audit Report 02703-04-HQ
July 2011



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



DATE: July 1, 2011

AUDIT
NUMBER: 02703-04-HQ

TO: Ed Knipling
Administrator
Agricultural Research Service

ATTN: Michelle Garner
Acting Director
Financial Management Division

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

SUBJECT: Procurement Oversight Audit of Southeast Poultry Research Laboratory,
Replacement of Critical Mechanical Systems Serving Buildings 1, 4, and 34;
Contract Awarded by Agricultural Research Service to Peachtree Mechanical,
Inc.

This report presents the results of the Procurement Oversight Audit of Southeast Poultry Research Laboratory, Replacement of Critical Mechanical Systems Serving Buildings 1, 4, and 34; Contract awarded by Agricultural Research Service to Peachtree Mechanical, Inc. Your response to the official draft 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 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 are able to reach management decision on Recommendation 1, the only recommendation contained in this report. There were several findings noted in this report without associated recommendations because the same issues were previously reported. Therefore, no further response is necessary. Please follow your agency's internal procedures in forwarding documentation for final actions to the Office of the Chief Financial Officer.

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.

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

DATE: June 28, 2011

REPLY TO
ATTN OF: 02703-04-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 Southeast Poultry Research Laboratory, Replacement of Critical Mechanical Systems Serving Buildings 1, 4, and 34; Contract Awarded by Agricultural Research Service to Peachtree Mechanical, Inc.

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 October 8, 2009, ARS awarded a sole-source, negotiated, firm fixed-price construction contract under the 8(a) Business Development Program¹ for \$2,224,341 to Peachtree Mechanical, Inc., to replace the critical mechanical, electrical, and plumbing systems serving buildings 1, 4, and 34 at the Southeast Poultry Research Laboratory, located in Athens, Georgia. In addition to the initial contract award, subsequent contract modifications were made that totaled \$213,308, and increased the contract amount to \$2,437,649. The contract was about 99 percent completed, and the payments to the contractor totaled \$2,402,300, as of March 31, 2011. ARS' Facilities Division in Beltsville 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 Act 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.

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' organizational documents relating to management controls, policies and procedures for the procurement and contracting functions, financial management system, and other processes that would ensure compliance with the Recovery Act.

The scope of this audit included a review of the justification for a sole-source acquisition; processes for preparing and issuing the solicitation, contractor selection, contract price determination, contract award, 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, contracting 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 four issues that were previously reported to ARS. We noted that ARS' Facilities Division did not document the acquisition planning performed, request a legal review of the solicitation, or properly publicize the rationale for awarding the contract on a sole-source, non-competitive basis.³ In addition, though ARS developed new Recovery Act recipient reporting procedures, we found an instance of inaccurate recipient reporting.⁴ During the course of our review of this contract, we also noted that ARS was assessed a late payment fee due to a prompt payment issue.

Finding 1: ARS' Acquisition Planning Process Should be Formalized

During our audit, we reviewed Peachtree Mechanical, Inc.'s contract file to assess the existence and adequacy of acquisition planning for the Southeast Poultry Research Laboratory repair project. We noted there was no formal, structured, and clearly communicated acquisition

³ These issues were previously reported to ARS in audit report 02703-03-HQ.

⁴ This issue was previously reported to ARS in audit reports 02703-01-HQ and 02703-02-HQ.

planning process developed, which includes the establishment of thresholds for when a formal acquisition plan should be prepared. We also noted that the contract file contained incomplete acquisition planning documentation. Specifically, there was no evidence of any acquisition planning meetings being conducted prior to the release of the solicitation depicting how the overall approach for awarding the procurement was established.

FAR part 7, Acquisition Planning, requires agencies to perform acquisition planning in order to ensure that the government meets its needs in the most effective, economical, and timely manner. FAR 7.103, Agency Head Responsibilities, states that the agency head or designee shall prescribe procedures for “establishing criteria and thresholds at which increasingly greater detail and formality in the planning process is required as the acquisition becomes more complex and costly, specifying those cases in which a written plan shall be prepared.” Additionally, Agriculture’s Acquisition Regulation (AGAR)⁵ states that the Head of Contracting Activity⁶ (HCA) shall develop procedures to comply with FAR part 7.103.

The conditions noted above resulted because acquisition planning guidance was not provided to, or implemented in, ARS’ procurement function. Specifically, it was noted that ARS’ Head of Contracting Activity had not issued procedural guidance on how to implement FAR part 7, Acquisition Planning; as mandated by AGAR 48 CFR Chapter 4, part 407(1)(103). ARS’ HCA stated that ARS HCA's office had not issued the required procedure because he felt that the guidance first needs to be developed at the departmental (USDA) level. Based on departmental policy guidance, ARS’ HCA would issue acquisition planning procedures for use in ARS. However, we determined that ARS’ HCA should have issued acquisition planning procedural guidance to ARS Facilities Division, with or without a departmental (USDA) policy guidance. AGAR part 402.101 defines the HCA who has the responsibility for issuing the acquisition planning guidance; it states that, “the Head of Contracting Activity means the official who has overall responsibility for the contracting activity (i.e., Chief, Forest Service; Administrator, Agricultural Research Service; etc), or the individual designated by such an official to carry out the functions of the HCA.”

As a result of not utilizing a formal, structured, and clearly communicated acquisition planning process, which includes the establishment of thresholds defining when a formal acquisition plan should be prepared, there is an increased risk that ARS may not meet its procurement needs in the most effective, economical, and timely manner. There is also the risk that decisions and actions may not reflect sound business judgment that protects the government’s interests. Furthermore, there is the risk that in the absence of a structured and clearly communicated acquisition planning process, appropriate agency oversight may not occur at critical decision points, such as approval of decisions taken at the initial planning meeting, major changes to the acquisition strategy during the procurement process, and the development of government estimates.

⁵ 48 CFR Chapter 4, part 407 (1) (103).

⁶ AGAR part 402.101 states that the Head of Contracting Activity means the official who has overall responsibility for managing the contracting activity (i.e. Chief, Forest Service; Administrator, Agricultural Research Service; etc.) or the individual designated by such an official to carry out the functions of the HCA.

We are not making any new recommendations at this time because this issue was noted in a previous contract review. We recommended that ARS' Head of Contracting Activity issue procedural guidance regarding acquisition planning and ARS' Facilities Division should implement the procedural guidance issued by ARS' Head of Contracting Activity.

Finding 2: 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 Plan⁷ for Research, Education, and Economics (REE)*⁸ *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 Southeast Poultry Research Laboratory Repairs project was a sole source, negotiated contract, awarded at an initial contract price of \$2,224,341, 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.

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 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.

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.

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.

We are not making a recommendation at this time, because this issue was noted in a previous contract review. 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.

Finding 3: The Rationale for Awarding the Contract on a Sole Source Basis Was Not Included in the Award Notice

ARS publicized the contract post-award notice on FedBizOpps.gov, indicating that a contract funded by the Recovery Act was awarded to an 8(a) Business Development Program contractor, on a sole-source basis. However, it did not include the rationale for awarding the contract on a sole-source basis in the post-award publication on FedBizOpps.gov.

According to FAR 5.705(b), *Publicizing Post-Award*, if a contract action is not both fixed-priced and competitively awarded, the agency is required to publicize the award notice and include in the description, the rationale for using other than a fixed-priced and/or a competitive approach. These guidelines further state that when a contract or order is awarded pursuant to a small business contracting authority (e.g., 8(a) Business Development Program), the rationale for not using competition must be included in the award notice.

The Contracting Officer stated that he thought the documentation of the rationale was not required for contracts awarded under the SBA 8(a) Business Development Program, since the non-competitive approach was authorized by statute, for contracts under \$3.5 million. However, we determined that the Contracting Officer should have included the rationale for awarding the contract on a sole-source basis in the post-award publication, as required by FAR 5.705(b).

By excluding the rationale for not using competition for this contract, awarded pursuant to SBA's 8(a) Business Development Program, the Recovery Act's requirements for enhanced transparency in the contracting process to the public was impaired. ARS' rationale for awarding the contract as sole source was justified. However, they should have stated the reason for not using competition on FedBizOpps.gov as required by FAR 5.705(b).

We are not making a new recommendation at this time, because this issue was noted in a previous contract review. We recommended that ARS' management comply with FAR part 5.7, to ensure that Contracting Officers report the rationale for awarding contracts in the post-award notice on FedBizOpps.gov. This includes contracts awarded under the SBA 8(a) Business Development Program on a sole source basis.

Finding 4: Discrepancies in Prime Recipient Report

The Prime Recipient information on Recovery.gov relating to the total amount invoiced and received 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 December 31, 2010, the contractor invoiced and was paid \$2,236,087, which was reported in ARS' financial system. However, \$236,087 was reported on Recovery.gov for the same period. The amount of

disbursements reported on Recovery.gov is \$2 million less than the amount recorded in the financial system.

Inaccurate recipient information reporting had been noted in previous contract reviews,⁹ resulting in ARS issuing a Policy Guidance Memorandum PGM -10-001, *ARRA Recipient Data Quality Review Guidance*, to correct the condition. However, we determined that the guidance was not fully implemented.

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*,¹⁰ 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 follow up on review comments, to ensure that the contractor has made appropriate changes to correct any errors identified during the review process.

ARS' Contracting Specialist reviewed the contractor information that was reported on FederalReporting.gov, and detected the inaccuracy. She notified and requested the contractor to correct the error. However, the Contract Specialist did not adequately follow up with the contractor to ensure that the discrepancy was corrected prior to the contractor information being reported on Recovery.gov.

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 period ended December 31, 2010 could be adversely affected.

Recommendation 1

ARS' management should also ensure that contractors' data is sufficiently reviewed and, when errors are detected, there should be adequate follow up with contractors to correct the errors in a timely manner, in order to enhance the accuracy and consistency of information reporting.

⁹ Audit report 02703-01-HQ, and 02703-02-HQ, were both issued on September 7, 2010.

¹⁰ 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*.

Finding 5: Contractor’s Invoice Was Not Paid Timely

At the completion of audit fieldwork, ARS’ Facilities Division had processed nine contractor invoices for payment totaling \$2,402,300. However, we noted that one invoice, in the amount of \$460,325, was paid 16 days after the due date.

FAR Part 32.904(d)(i) states that, for construction contracts, the due date for progress payments based on Contracting Officer’s approval of the estimated amount and value of work or services performed, including payments for reaching milestones in any project, is 14 days after the designated billing office receives a proper payment request.

The Financial Management Division official stated that the late payment was due to technical difficulties that ARS experienced in payment processing, when it changed its accounting system from Foundation Financial Information System (FFIS) to Financial Management Modernization Initiative (FMMI).

As a result of not paying the vendor in a timely manner, ARS incurred and paid a late payment interest penalty of \$997.37.

We are not making any recommendation since ARS has resolved the technical difficulties it had in payment processing by successfully changing its accounting system from FFIS to FMMI. We reviewed subsequent contractor invoices and noted that they were all paid in a timely manner.

Agency's Response

USDA'S

Agricultural Research Service

RESPONSE TO AUDIT REPORT

June 13, 2011

SUBJECT: Management's Response to Recommendations in Audit 02703-04-HQ – Procurement Oversight Audit of Southeast Poultry Research Laboratory, Replacement of Critical Mechanical Systems Serving Building 1, 4, and 34; Contract Awarded by the Agricultural Research Service to Peachtree Mechanical, Inc.

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

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

FROM: Michelle D. Garner, Acting Director /s/
Financial Management Division
Acting Chief Financial Officer, REE

The Agricultural Research Service (ARS) provides the following response to audit Recommendation 1 in Audit 02703-04-HQ Procurement Oversight Audit of Southeast Poultry Research Laboratory, Replacement of Critical Mechanical Systems Serving Building 1, 4, and 34; Contract Awarded by ARS to Peachtree Mechanical, Inc.

Finding 4: Discrepancies in Prime Recipient Report

Recommendation 1

ARS' management should also ensure that contractors' data is sufficiently reviewed and, when errors are detected, there should be adequate follow-up with contractors to correct the errors in a timely manner, in order to enhance the accuracy and consistency of information reporting.

Agency Response

ARS will ensure contractors' data is sufficiently reviewed and adequate follow-up is conducted to ensure errors are corrected in a timely manner. Errors were identified in this Contractor's report and the Contractor was notified by e-mail of the needed correction. As a result of

communication breakdowns associated with impassible/hazardous weather conditions in the area where the Contractor is located, as well as changes in, and schedules of, the assigned Contracting Officers during the reporting period, the correction was not made in a timely manner.

A checklist (that includes reviewing the award amounts) was provided in Procurement Guidance Memorandum (PGM) 10-001, ARRA Recipient Reporting Data Quality Review Guidance dated March 31, 2010, and recommended for use by all Contracting Officers in reviewing Recipient Reports. Regular reminders regarding the responsibility to conduct reviews of Recipient Reports are provided to all Contract Specialists prior to and during the Government Review and Comment period. These reminders emphasize that any errors are to be communicated to the Contractor within the FederalReporting.gov system and followed up to ensure correction in a timely manner.

Questions regarding this memorandum can be directed to Linnette Williams, Financial Management Division on 301-504-1294, or via e-mail at Linnette.Williams@ars.usda.gov.

cc:

R. Herchak, FD