



U.S. Department of Agriculture

Office of Inspector General



**Procurement Oversight Audit of
Architect-Engineer Services Contract Awarded
by Agricultural Research Service to Delta
Engineers & Architects, P.C.**

Audit Report 02703-05-HQ
September 2011



U.S. Department of Agriculture
Office of Inspector General
Washington, D.C. 20250



DATE: September 30, 2011

AUDIT
NUMBER: 02703-05-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 Architect-Engineer Services Contract
Awarded by Agricultural Research Service to Delta Engineers &
Architects, P.C.

This report presents the results of the Procurement Oversight Audit of Architect-Engineer Services Contract awarded by Agricultural Research Service to Delta Engineers & Architects, P.C. 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 Recommendations 1 and 2, the only recommendations contained in this report. A second finding was noted in this report but did not contain recommendations because the issue was corrected during the course of the audit. No further response for this report is necessary.

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

DATE: September 29, 2011

REPLY TO
ATTN OF: 02703-05-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 Architect-Engineer Services' Contract
Awarded by Agricultural Research Service to Delta Engineers &
Architects, P.C.

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 29, 2009, ARS awarded a sole-source, negotiated, firm-fixed price Architect-Engineer services contract to Delta Engineers & Architects, P.C., to provide bid phase and construction management services for the replacement of the chiller, generator, and underground storage tank at the USDA Jean Mayer Human Nutrition Research Center for Aging (HNRCA), located in Boston, Massachusetts. The contract, including modifications, amounted to \$256,636. ARS' Facilities Division in Beltsville, Maryland, performed the procurement activities and contract management, including issuance of the solicitation, contract award, contractor payment approval, and monitoring of the contractor's Recovery Act reporting. ARS' Financial Management Division (FMD) reported the agency Recovery Act 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'

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

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 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 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 noted that the contract was awarded on a sole-source basis because ARS determined that the contractor possessed unique qualifications. According to the ARS Contracting Officer, the original engineering documents for the project were signed, sealed, and dated by a professional engineer employed by Delta Engineers & Architects, P.C., who prepared and approved the documents. As such, the contractor assumed liability for the design represented by the engineering project documents. In order to maintain a single source of liability, any corrections, revisions, or additions made to the project design were required to be made by the professional engineer, or a company representative, who originally signed and sealed the documents. Consequently, ARS' management determined that it was in the best interest of the government to contract with Delta Engineers & Architects, P.C., to perform the bid phase and construction management services in order to mitigate the risks that could arise from errors and/or deficiencies with the design of the project. We agree with the justification for awarding the contract on a sole-source basis, and no issues were noted.

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 two issues that warrant reporting. We noted that ARS' Facilities Division delayed the publication of a contract modification on FedBizOpps.gov, and did not

include the modification price in the post-award notice. 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.²

Finding 1: Incomplete and Delayed Publication of Contract Modification Award Notice

ARS awarded a contract modification and publicized the award notice on FedBizOpps.gov. However, the notice was not publicized in a timely manner and the dollar amount was not disclosed, as required by FAR, part 5.207. The modification was awarded on January 8, 2010, for \$200,221, and notification that an award occurred was publicized on FedBizOpps.gov on April 15, 2010, 97 days after the award, and the dollar amount was not included. We noted ARS reported other contract actions within one day and we do not consider 97 days timely.

ARS has a Standard Operating Procedure (CSOP 02-005), *Posting Solicitations and Other Announcements and Notices on FedBizOpps*, that requires its Contracting Officer to post contract actions on FedBizOpps.gov in accordance with FAR part 5.

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 ARS' Lead Contract Specialist, and he stated that, after the draft notice of award went through ARS' management approval process, it did not get posted immediately on FedBizOpps.gov as a result of an oversight by the Contract Specialist. When the error was later identified during ARS' management review of the contract file, the notice of award, noting the rationale for awarding the modification on a non-competitive basis was posted, however, the dollar amount was not included, as required in FAR, part 5.207.³ ARS' management review process was not effective, resulting in contractual actions not being processed in a timely manner and not disclosing the dollar amount.

The ability of the taxpayer to track and monitor all Recovery Act 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, and when the contract modification price is not included.

Recommendation 1

ARS needs to take necessary action to provide complete and timely reporting for Recovery Act contracts posted on FedBizOpps.gov.

² This issue was previously reported to ARS in audit report 02703-04-HQ.

³ As required by FAR 5.207(a)(12).

Recommendation 2

ARS' managerial reviews need to be effective, thus ensuring compliance with applicable contract regulations.

Finding 2: Contractor's Invoice Was Not Paid in a Timely Manner

At the completion of audit fieldwork, ARS' Facilities Division had paid 13 contractor invoices, with a total value of \$252,004, which represented about 98 percent of total contract price of \$256,636. We did note that one proper invoice, in the amount of \$4,015.50, was paid 71 days after the due date.

FAR part 32.904(c)(i) states that, the due date for making payments under fixed-price Architect- Engineer contracts is the 30th day after the designated billing office receives a proper invoice from the contractor.

The Contracting Officer stated that the payment was late 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 \$38.17.

We are not making any recommendations 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

September 28, 2011

SUBJECT: Management's Response to Recommendations in Audit 02703-05-HQ – Procurement Oversight Audit of Architect-Engineer Services' Contract Awarded by the Agricultural Research Service to Delta Engineers & Architects, PC

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 Recommendations 1 and 2 in Audit 02703-05-HQ –Procurement Oversight Audit of Architect-Engineer Services' Contract Awarded by the Agricultural Research Service to Delta Engineers & Architects, PC

Finding 1: Incomplete and Delayed Publication of Contract Modification Award Notice

Recommendation 1

ARS needs to take necessary action to provide complete and timely reporting for Recovery Act contracts posted on FedBizOpps.gov (FBO).

Agency Response

Additional oversight will be provided to ensure complete and timely reporting for Recovery Act contracts posted on FBO. Management is registered on FBO and subscribes to daily notices from FBO such that when ARRA actions are posted, notices are emailed to management. We are monitoring all actions and notices. ARS will revise CSOP 02-005, *Posting Solicitations and Other Announcements and Notices on FedBizOpps*, to include ARRA actions.

Recommendation 2

ARS' managerial reviews need to be effective, thus ensuring compliance with applicable contract regulations.

Agency Response

See Response to Recommendation 1.

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

cc:

R. Herchak, FD