



UNITED STATES DEPARTMENT OF AGRICULTURE
OFFICE OF INSPECTOR GENERAL

Northeast Region

Suite 2-2230

5601 Sunnyside Avenue, Stop 5300
Beltsville, Maryland 20705-5300



DATE: September 25, 2009

REPLY TO

ATTN OF: HY-0813-0002

TO: Thomas Tidwell
Thomas Tidwell
USDA Forest Service
Washington, D.C.

THROUGH: Dave Dillard
Executive
Forest Service Recovery Team
Washington, D.C.

FROM: BRIAN L. HAASER /s/
Special Agent-in-Charge
for Investigations

SUBJECT: Contract Compliance Review – Solar Panels, Forest Supervisor’s Office,
Nelsonville, Ohio - American Recovery and Reinvestment Act of 2009

We conducted a contract compliance review based on referrals (RATB-R-0001) from the Recovery Accountability and Transparency Board (RATB) staff of a contract let by the Department of Agriculture’s (USDA) Forest Service (FS) and funded by the American Recovery and Reinvestment Act of 2009 (Recovery Act). The RATB referral did not identify any specific area of concern.

This review is part of a series of contract compliance reviews we are doing as a result of referrals from the RATB. In each, we reviewed relevant documentation and talked to contracting personnel. We reviewed any specific areas of concern raised by the RATB, checked for compliance with the Contract Checklist put together by the RATB and verified the contract type used.

Project Summary

FS entered into a contract with D.J. Group Inc., Beverly, Ohio: AG-55N9-C-09-0002 (March 13, 2009) to furnish and install solar panels on the Forest Supervisor's Office in the Wayne National Forest, Nelsonville, Ohio (award amount \$398,000). The Forest Supervisor's Office is the FS headquarters for the Wayne National Forest and is approximately 15,000 square feet and houses up to 80 permanent and seasonal employees. The contract was modified on March 23, 2009, to change the contract number to AG-4419-C-09-0004 in order to correctly code it with a Recovery Act number. The contract was funded with Recovery Act funds designated for "Capital Improvement and Maintenance," for priority road, bridge and trail maintenance and decommissioning, including related watershed restoration and ecosystem enhancement projects; facilities improvement, maintenance and renovation; remediation of abandoned mine sites; and support costs necessary to carry out this work. The contract was among the projects that were identified by FS as ones that could be acted upon within 7 days of the enactment of the Recovery Act.

The contract in question was a fixed price, sole source Service-Disabled Veteran-Owned Small Businesses (SDVOSB) contract awarded pursuant to Federal Acquisition Regulation (FAR) 6.302-5(b)(6).

FS had previously installed 50 solar panels on the Forest Supervisor's Office during fiscal years 2007 and 2008 and had already planned on purchasing and installing additional solar panels on the building prior to the enactment of the Recovery Act. This contract should bring the total solar panels on the Forest Supervisor's Office to more than 300 panels that will generate 50 percent of the building's power. The project is part of an overall nationwide effort to reduce the Federal government's energy consumption. The Energy Independence and Security Act of 2007 require Federal agencies to reduce their energy consumption by 30 percent by 2015, compared to 2003 energy use. The purpose of the contract is to convert electric power services from the local power company to a more environmentally friendly on-site power generation.

Results of Review

We found the following issues related to the procurements:

1. **Lack of Documentation Supporting the Use of Sole Source Contract Type:** This contract was awarded on a sole source basis to D.J. Group Inc., a Service-Disabled Veteran-Owned Small Business (SDVOSB) concern. Sole source SDVOSB awards are authorized under FAR 6.302-5(b)(6). Sole source SDVOSB awards are issued with other than full and open competition as authorized by statute under the Veterans Benefits Act of 2003 (15 U.S.C. 657f) and are awarded in accordance with FAR 19.1406. Agencies are permitted to use authorized small business contracting programs, like the Small Business Administration's SDVOSB Program, for Recovery Act funded projects (OMB Initial Implementing Guidance (M-09-10) at 6.1(6); OMB Updated Implementing Guidance (M-09-15) at 6.1(6)).

FS has worked with D.J Group Inc., on nine different projects in the Wayne National Forest and has found its work to be excellent and noted that it finishes its projects on time and on budget. FS would recommend D.J. Group Inc., as a contractor for future work. Prior to the solicitation being issued and Recovery Act funding becoming available, discussions were already underway between representatives of the Wayne National Forest and the D.J. Group Inc., for this project.

Our review found that there was no specific documentation in the contracting file to show that D.J. Group Inc. was the only SDVOSB contractor that could satisfy the project requirements as defined in FAR 19.1406. The Contracting Officer (CO) informed us that he did perform market research that showed that D.J. Group Inc. was the only SDVOSB contractor that had shown an interest in working with FS in the area of the project that could provide fair and reasonable pricing. A market research memorandum prepared after the contract was awarded indicates that the source was identified as a SDVOSB and given the need for expedited response, no further market survey was needed. We note that there is nevertheless nothing in the file that documents the finding required by FAR 19.1406.

2. **Contractor Responsibility:** The CO told us that he determined that the D.J. Group Inc. was responsible and capable of performing the requirements of the contract. We found in our review that there was no indication in the contracting file that the Excluded Parties List (EPL) was checked prior to the award as is required in FAR Part 9.405. However, the CO told us that he always checks the EPL prior to award and believed that a copy of the results of the inquiry should have been in the file. Our review, however, did not find any EPL query results. FS checked the EPL on April 25, 2009, after the initiation of our review.
3. **Contract Clauses:** The following applicable FAR Part 23, Environmental, Energy and Water Efficiency, Renewable Energy Technologies, Occupational Safety, and Drug Free Workplace clauses applicable to the contracts were omitted: [52.223-5](#) - Hazardous Material Identification and Material Safety Data, [52.223-16](#) - IEEE 1680 Standard for the Environmental Assessment of Personal Computer Products, [52.223-11](#) - Ozone-Depleting Substances, [52.223-5](#) - Pollution Prevention and Right-to-Know Information (Alternate II). FS has modified the contract to include the clauses identified above. The required contract clause for sole source SDVOSB acquisitions, FAR 52.219-27, was omitted from the contract. FS is not adding this clause to the contract as the work has been completed and accepted by the FS and final payment is currently pending.
4. **Reporting:** The OMB guidance issued on February 18, 2009, required agencies to post presolicitation notices in FedBizOpps (FBO) for any Recovery Act funded project meeting the FAR Part 5 threshold (\$25,000) (OMB Initial Implementing Guidance (M-09-10) at 6.2 (1)).¹ There was no presolicitation notice posted in FBO for this project.

¹ As of March 31, 2009, FAR 5.704 now requires agencies to publicize notices of proposed contract actions in accordance with the procedures of FAR 5.201. 74 Fed. Reg. 14633, 14638.

The OMB guidance issued on February 18, 2009, also required agencies to post in a special section of the website “Recovery.gov” a summary of any contract or order (or modification to an existing contract or order) using Recovery Act funds, including a description of the required products and services, unless the contract or order is both fixed-price and competitively awarded. (OMB Initial Implementing Guidance (M-09-10) at 6.2 (5)).² This requirement applied to the contract in question and was not done by FS; however, at the time the contract was let, this was not technically possible as Recovery.gov was not yet set up to accept this information.

In addition, the OMB guidance issued on February 18, 2009, required agencies to enter the Treasury Account Symbol (TAS) in the description field when entering data into the Federal Procurement Data System (FPDS) (OMB Initial Implementing Guidance (M-09-10) at 6.2 (3)).³ FS did not put the TAS in the description field of the FPDS Award Notice.

The synopsis in the award notice posted in FBO on March 13, 2009, indicated that the project was to furnish and install solar panels on the Supervisor’s Office in the Wayne National Forest, Nelsonville, Ohio. The description of the project is accurate. However, the description may not have fully described the scope of the project as the Forest Supervisor’s Office is the FS headquarters building that is a approximately 15,000 square feet and houses up to 80 permanent and seasonal employees.

This compliance review determined, in the areas reviewed, that the contracts substantially complied with the FAR and the new Recovery Act requirements, with the few noted exceptions. FS has modified the contract as detailed above to address the issues identified during our review. As a result, we are closing our file.

If you have any questions, please call William G. Squires, Jr., Assistant Special Agent-in-Charge, at (212) 264-8400.

cc:

Assistant Inspector General for Investigations, OIG
Regional Inspector General for Audit, NER, OIG
Director, Law Enforcement and Investigations, Forest Service
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² As of March 31, 2009, FAR 5.705(b) now requires that for any Recovery Act funded action that is not both fixed-price and competitively awarded, the award notice must include in the description the rationale for using other than a fixed-priced and/or competitive approach. 74 Fed. Reg. 14633, 14638.

³ As of March 31, 2009, FAR 4.605 now requires contracting officers, when entering data into FPDS, to follow instructions at <https://www.fpds.gov> to identify any actions funded in whole or in part by the American Recovery and Reinvestment Act of 2009. 74 Fed. Reg. 14633, 14638.