



UNITED STATES DEPARTMENT OF AGRICULTURE
OFFICE OF INSPECTOR GENERAL

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DATE: September 25, 2009

REPLY TO
ATTN OF: HY-0813-0003

TO: Thomas Tidwell
Chief
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 – Bathroom Remodel Project, Rhinelander,
Wisconsin - American Recovery and Reinvestment Act of 2009

We conducted a contract compliance review based on referrals (RATB-R-0008) 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). We were specifically asked to look at the contract because the RATB indicated that the award amount merited further review and because no further description of services was found in the synopsis other than the description of "new RHSO door replacement and bathroom remodel". The RATB also asked us to determine if the Contracting Officer followed the proper transparency requirements of OMB Guidance chapter 6.2, dated February 18, 2009.

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 the 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 McNeil West Construction Inc., Antigo, Wisconsin: AG-4419-C-09-0001 (March 13, 2009; one award amount \$196,596) to renovate an old Department of Transportation building in Rhinelander, Wisconsin, that the FS had recently purchased so it would be suitable for use as a Forest Supervisor's Office, the headquarters building for the Chequamegon-Nicolet National Forest. The building is a large building, approximately 18,000 square feet, that house up to 65 employees. McNeil West Construction Inc., was successfully performing a heating, ventilation and air conditioning (HVAC) contract on the building at the time of the award. The work to be performed under AG-4419-C-09-0001 included installing doors that had key card access; renovating four new restrooms to make them compliant with the requirements of the Americans with Disabilities Act (ADA); and installing a new water heater, new sinks, a mechanical room, a kitchen appliance hookup and a drinking fountain. 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. This contract was among the projects that were identified by the Forest Service 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 historically underutilized business zone (HUBZone) award authorized under Federal Acquisition Regulation (FAR) 6.302-5(b)(6). HUBZone sole source awards are issued with other than full and open competition as authorized by statute under the HUBZone Act of 1997 (15 U.S.C. 657a) and are awarded in accordance with FAR 19.1306.

Results of Review

The following are the results of our review of the issues raised by the RATB:

1. **Award Amount and Project Description in Synopsis:** The description of services in the synopsis of the award notice posted in FedBizOpps (FBO) stated that the award was for a "new RHSO door replacement/bathroom remodel." RHSO stands for Rhinelander Supervisor's Office. The contract is for updated security of the entire Forest Supervisor's Office, which is the Forest headquarters building, by installing new doors and a wireless access system (six wireless locks and four exit devices), including testing, setting up, certifying and training employees on the use of the system for \$96,542. The contract is also to completely remodel four new restrooms so they are ADA compliant, and install a new water heater, new sinks, a drinking fountain, a mechanical room and a kitchen appliance hookup for \$100,054. The description of the project in the award notice may not have fully described the

scope of the project, which may have raised concerns about the project and the price of the contract. The review noted that FS determined the contract price was fair and reasonable as McNeil West Construction Inc.'s pricing was five percent less than the government estimate of \$207,635.

2. **Chapter 6.2 of OMB Guidance of 2/18/09:** The OMB guidance issued on February 18, 2009, details actions, beyond standard practice, that agencies must take related to solicitation of offers and award of contracts under the Recovery Act.

The OMB guidance issued on February 18, 2009, required agencies to post presolicitation notices in 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 award.

The OMB guidance issued on February 18, 2009, also required agencies to include the word "Recovery" as the first word in the Title field in FBO announcements preceding the remaining title. The FBO award notice for this contract did not contain the word "Recovery" in the title field (OMB Initial Implementing Guidance (M-09-10) at 6.2 (2)).² However, the FBO award announcement synopsis indicates the project was fully funded by the Recovery Act and contains a Recovery Act project number: ARRA CIM-0913-1.

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)).³ This requirement applied to the contract in question and was not done by FS because at the time the contract was let, this was not technically possible as Recovery.gov was not yet set up to accept this information.

¹ As of March 31, 2009, the 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.

² As of March 31, 2009, FAR 5.705 (c) now requires contracting officers shall use the instructions at www.fedbizopps.gov to identify actions funded in whole or in part by the Recovery Act. 74 Fed. Reg. 14633, 14638.

³ 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.

In addition, we found other issues related to the procurements:

1. **Contractor Responsibility**: The Contracting Officer (CO) indicated that she determined that the McNeil West Construction Inc., was responsible and capable of performing the requirements of the contract. McNeil West Construction Inc. had successfully performed other contracts in the Chequamegon-Nicolet National Forest and was performing a contract on the same building when this contract was executed. 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 (March 13, 2009) as is required in FAR Part 9.405. We noted in our review that the Excluded Parties List was checked by FS on March 18, 2009 and documented in the contract file.
2. **Environmental 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: [52.223-15](#) - Energy Efficiency in Energy-Consuming Products, [52.223-1](#) - Biobased Product Certification, [52.223-2](#) - Affirmative Procurement of Biobased Products Under Service and Construction Contracts, [52.223-4](#) - Recovered Material Certification, [52.223-17](#) - Affirmative Procurement of EPA-designated Items in Service and Construction Contracts, [52.223-9](#) - Estimate of Percentage of Recovered Material Content for EPA-designated Items, [52.223-6](#) - Drug-Free Workplace, [52.223-11](#) - Ozone-Depleting Substances, and [52.223-5](#) - Pollution Prevention and Right-to-Know Information (Alternate II). FS modified the contract to include these clauses on June 24, 2009.

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 modified the contract to address the relevant 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:

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