



UNITED STATES DEPARTMENT OF AGRICULTURE  
OFFICE OF INSPECTOR GENERAL  
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DATE: November 12, 2009

REPLY TO  
ATTN OF: HY-0813-0006

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 –Reduction of Hazardous Fuels, Alamogordo,  
New Mexico, American Recovery and Reinvestment Act of 2009

We conducted a contract compliance review based on referrals (RATB-R-0009) 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 verify that the contract was a task order to an existing contract. The RATB also indicated that there was no description of services provided in the synopsis and that, based on the award amount, the award merited further review.

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 fixed price, non-competitive, indefinite-delivery/indefinite quantity (ID/IQ) contract with the Mescalero Apache Tribe, Mescalero, New Mexico (AG-04GG-C-08-9223) on June 1, 2006. On March 13, 2009, Task Order Number 0901 (AG-53-7512-06-01; award amount \$909,379) was placed against AG-04GG-C-08-9223 as part of the 16 Springs Stewardship Project. Stewardship contracts are defined in a 16 U.S.C. 2104 Note and are entered into with private persons or other public or private entities to perform services to achieve land management goals for the national forests and the public lands that meet local and rural community needs. Task Order Number 0901 was for major fuels reduction (biomass management treatment, bid for saw timber and pulp). FS entered into AG-53-7512-06-01 with the Mescalero Apache Tribe as authorized by the Tribal Forest Protection Act (Public Law 108-278, July 22, 2004), which allow the Secretary of Agriculture to enter into non-competitive contracts with Indian Tribes meeting project selection criteria established in the Act to carry out projects on National forest land to protect Indian forest land, rangeland, or tribal communities when National forest lands are bordering or adjacent. The purpose of the contract was the removal of downed wood, along with the cutting and removal of unhealthy trees throughout the Lincoln National Forest to help reduce the risk of forest fires. The removal of downed wood also involved the trading of timber for these services to offset costs.

The contract was funded with Recovery Act funds designated for “Wildland Fire Management” in order to protect communities from large unnaturally severe fires and contribute to the restoration of fire-adapted ecosystems, thereby helping to foster fire-adapted communities well into the future. 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.

## **Results of Review**

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

- Contract Type:** FS entered into a fixed price, non-competitive, indefinite-delivery/indefinite quantity (ID/IQ) contract with the Mescalero Apache Tribe, Mescalero, New Mexico (AG-04GG-C-08-9223) on June 1, 2006. On March 13, 2009, Task Order Number 0901 (AG-53-7512-06-01; award amount \$909,379) was placed against AG-04GG-C-08-9223 as part of the 16 Springs Stewardship Project. Task Order Number 0901 was for major fuels reduction (biomass management treatment, bid for saw timber and pulp).

**Description of Service in Synopsis:** The description of the contracting action is a required data element in a synopsis posted on FedBizOpps (FBO) (Federal Acquisition Regulation (FAR) 5.207(a) (16)). Descriptions should include a clear and concise description of the supplies or services being procured (FAR 5.207 (c)). While we noted that the synopsis in the award notice

posted in FBO did not identify the supplies or services being procured, the title of the action, “Recovery Act, Stewardship contract under the Tribal Forest Protection Act to reduce hazardous fuels,” provides a basic description of the service being provided. The Contracting Officer (CO) indicated that he modified the award notice information in the Federal Procurement Data System (FPDS) to include additional information about the services provided under the contract. The FPDS Description of Requirement field in the award notice now reads, “TAS::12 1118::TAS ARRA Recovery Project Task 0902, for the purpose of reducing hazardous fuels, and fuel reduction, cut, skid and deck whole trees to Landings”.

In addition, we noted other issues related to the procurement:

1. **Reporting:** 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) and presolicitation notices, under task or delivery order contracts, are to be posted in FBO for information purposes (OMB Initial Implementing Guidance (M-09-10) at 6.2 (1)).<sup>1</sup> There was no presolicitation notice posted in FBO for this award.

The OMB guidance issued on February 18, 2009, required agencies to make publicly available summaries of all contracts or orders over \$500,000 and link them to Recovery.gov. (OMB Initial Implementing Guidance (M-09-10) at 6.2 (4))<sup>2</sup>, and 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)).<sup>3</sup> These requirements applied to the contract in question; however FS was unable to comply with the requirements as compliance was not technically possible since Recovery.gov was not yet set up to accept this information.

2. **Contractor Responsibility:** The Contracting Officer (CO) indicated that he determined that the Mescalero Apache Tribe was responsible and capable of performing the requirements of the contract. We found in our review that there was no indication in the contract file that the

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<sup>1</sup> 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 5.20. 74 Fed. Reg. 14633, 14638.

<sup>2</sup> As of March 31, 2009, the FAR, 5.705(a), requires agencies to publicize the award notices for contracts and orders over the same amount and ensure the description includes a narrative of the products and services that is clear and unambiguous to the general public 74 Fed. Reg. 14633, 14638.

<sup>3</sup> 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.

Excluded Parties List (EPL) was checked prior to the award (March 13, 2009) as is required in FAR 9.405. We noted in our review that the evaluation of proposal memorandum (May 23, 2006) for AG-04GG-C-08-9223 states that the EPL was checked and that Mescalero Apache Tribe was not on the EPL at the time of the award. The CO informed us that he did check the EPL prior to the award, but did not document the results of the inquiry in the contract file.

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. 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

Director, Rural Development and Natural Resources Division – Audit, OIG