



UNITED STATES DEPARTMENT OF AGRICULTURE
OFFICE OF INSPECTOR GENERAL

Northeast Region

Suite 2-2230

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



DATE: October 22, 2009

REPLY TO
ATTN OF: HY-0813-0007

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 – Hazardous Materials Building, Seward, Alaska
American Recovery and Reinvestment Act of 2009

We conducted a contract compliance review based on a referral (RATB-R-0012) 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 determine whether the contract was a negotiated best value procurement that was competitively awarded under the Small Business Administration's (SBA) Business Development Program 8(a) Program (8(a) Program) and whether the contracting officer provided a rationale for awarding the action if it was not both fixed price and competitively awarded.

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 AG-0489-C-09-0007 (March 27, 2009; award amount \$52,459.06) with G & S Management Services, LLC, Willow, Alaska, for the installation of a Hazardous Materials Storage Building at the Kenai Lake Work Center in Seward, Alaska. FS had another contract with G & S Management Services, LLC (AG-0120-C-08-0004 awarded in September 2008) negotiated under the SBA 8(a) Program for five similar buildings located in the Chugach National Forest with the same specifications. Work to be performed under AG-0489-C-09-0007 included backfilling and leveling the area, installing of a concrete slab for the new hazardous materials storage building, furnishing and installing the new hazardous materials storage building, and connection of power to the new hazardous materials storage building. 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 FS 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:

1. Contract Type, Competition Requirements:

AG-0489-C-09-0007 is a fixed price, sole source contract awarded to G & S Management Services, LLC, a SBA 8(a) certified contractor, that was negotiated under the SBA 8(a) Program. Sole source SBA 8(a) awards are authorized under Federal Acquisition Regulation (FAR) 6.302-5(b) (4). Sole source SBA awards are issued with other than full and open competition in accordance with the SBA 8(a) Program (15 U.S.C. 637) and are awarded in accordance with FAR 19.808-1. Agencies are permitted to use authorized small business contracting programs, like the SBA’s 8(a) 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)). The Memorandum of Negotiation indicates that the contract is the result of a negotiations resulting from Request for Proposal AG-012-S-09-0006. The initial proposal was for \$56,476.95, the negotiated price was \$52,459.06 and the government estimate was \$55,000. FS had another contract with G & S Management Services; LLC (AG-0120-C-08-0004) negotiated under the 8(a) Program in September 2008 for five similar buildings with the same specifications.

2. **Reporting Requirements for Contracts that are not both Fixed Price and Competitively Awarded:**

As of March 31, 2009, FAR 5.705(b) 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). The award date was March 27, 2009, prior to this requirement. The OMB guidance issued on February 18, 2009, that was in effect at the time of the award, 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 was both fixed-price and competitively awarded. (OMB Initial Implementing Guidance (M-09-10) at 6.2 (5), 6.1 (6)). 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, we found other issues related to the procurement:

1. **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, also 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.

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

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.