



UNITED STATES DEPARTMENT OF AGRICULTURE
OFFICE OF INSPECTOR GENERAL

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DATE: November 12, 2009

REPLY TO

ATTN OF: HY-0813-0008

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 – Roadside Vegetation Removal, California
American Recovery and Reinvestment Act of 2009

We conducted a contract compliance review based on referrals (RATB-R-0015) 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 why the award was not posted in the Federal Procurement Data System (FPDS) and to look into a transparency issue. The transparency issue relates to the improper identification of the award recipient of the contract as Tumblin' D Enterprises when the Central Contractor Registration (CCR) database and Data Universal Numbering System (DUNS) databases do not contain a Tumblin D' Enterprises, but do contain a business by the name of Tumbling D Enterprises associated with the award recipient's address. The transparency issue arises in that FPDS has a contract history for Tumbling D Enterprises, but not for Tumblin' D Enterprises and improper identification of the award recipient's business can result in a lack of transparency of the actual contract award recipient.

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 Tumblin' "D" Enterprises¹, Yreka, California: AG-9A47-C-09-0001 (April 8, 2009) for mechanical roadside vegetation removal on the Six Rivers National Forest on a minimum of 100 miles (Lower Trinity Roads) to a maximum of 320 miles (Lower Trinity, Orleans and Gasquet roads) award amount \$326,304. 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 fixed price and awarded after full and open competition after exclusion of large businesses as it is a Small Business (SB) Set-Aside contract authorized under FAR 6.203 and awarded pursuant to FAR 19.502-2. Twenty quotes were received as a result of a Request for Proposal. The contract was awarded after a competitive negotiation among five contractors who submitted pricing within the government estimate to allow the maximum number of roads to be brushed. FS awarded the contract as a result of an evaluation based on technical capability, quality control, past performance and price.

Results of Review

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

- 1. Federal Procurement Data System (FPDS) Award Notice:** The award notice was posted in FPDS on April 8, 2009, and the vendor's name is listed as Tumblin' D Enterprises and the contractor's name from the contract is listed as Tumblin D Enterprises.

¹ The Department of Defense Central Contractor Registry (CCR), Dun and Bradstreet System (D & B) (the company that issues Data Universal Numbering System numbers (DUNS)), and the award recipient as Tumblin' D Enterprises. See discussion under Transparency Issue, supra.

2. Transparency Issue: Our review noted that the award recipient's name in several contractor databases was incorrect. The Department of Defense Central Contractor Registry (CCR), Dun and Bradstreet System (D & B) (the company that issues Data Universal Numbering System numbers (DUNS)), and the Online Representations and Certifications Application (ORCA) system lists the name of the award recipient as Tumbling D Enterprises. The name on the proposal logo is Tumblin' "D" Roadside Brushing. The name on the proposal is Tumblin' "D" Enterprises. The name in the Award Recommendation memorandum, contract and the invoices submitted to the FS is Tumblin' D Enterprises. The FPDS award notice lists the vendor's name as Tumbling D Enterprises and the contractor's name from the contract is listed as Tumblin D Enterprises. The FedBizzOpps (FBO) award notice list the contractor as Tumblin D Enterprises. The FBO Agency Guide does not specifically indicate whether the contractor's name in FBO award notices has to be the award recipient's name as listed in CCR or associated with the reported DUNS number or the name on the contract, if they differ. According to the Federal Service Help Desk, technical support for FBO, FBO instructions do not indicate which name needs to be in the FBO award notice. Recovery.gov, the government's official website that provides data related to Recovery Act spending, lists that award recipient as Tumbling D Enterprises in the contract award summary for this award. The owner of Tumblin' "D" Enterprises told us the company name is Tumblin' "D" Enterprises and that is the name that appears in their corporate records, business filings and on the company's bank account. The owner of Tumblin "D" Enterprises did not have an explanation as to why CCR, D & B and ORCA list the company as Tumbling "D" Enterprises and indicated that the listing of the company name as Tumbling D Enterprises is a mistake and that he would look into the issue.

In addition, we noted 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, required agencies to post presolicitation notices in FedBizOpps (FBO) for any Recovery Act funded project meeting the FAR Part 5 threshold (\$25,000); presolicitation notices for 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)).² There was no presolicitation notice posted in FBO for this award.

² 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.

2. **Recovery Act FAR Clauses:** The FAR has been changed to implement contract-related Recovery Act requirements. These changes were implemented through interim rules in the FAC 2005-32 (74 FR 14621), published in the Federal Register on March 31, 2009. Our review noted that not all of the clauses now detailed in FAC 2005-32 and required in the FAR were included in the original contract. The contract included Recovery Act required clauses 52.204-11 and the amended 52.212-5 (Reporting Requirements – FAR 4.1502). The contract excluded clauses 52.203-15 (Whistleblower Protection – FAR 3.907-7) and Alternate I to clause 52.215-2 (GAO/IG Access - FAR 15.209(b) (2)). FS modified the contract on October 22, 2009, to include the clauses identified above.

3. **FAR Part 23 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: 52.223-1 – Biobased Product Certification and 52.223-11 - Ozone-Depleting Substances. FS modified the contract on October 22, 2009, to include the clauses identified above.

This compliance review determined, in the areas reviewed, that the contract 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:

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