



UNITED STATES DEPARTMENT OF AGRICULTURE  
OFFICE OF INSPECTOR GENERAL

Northeast Region  
Suite 2-2230

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



DATE: November 12, 2009

REPLY TO

ATTN OF: HY-0813-0009

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 – Toilet Demolition Project, Pueblo, Colorado  
American Recovery and Reinvestment Act of 2009

We conducted a contract compliance review based on referrals (RATB-R-0018) 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 competitive and fixed price and why Federal Acquisition Regulation (FAR) case rule (2009-10) was not followed as there was no rationale for awarding the contract.

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 Hartland Excavation, Inc., Colorado Springs, Colorado: AG-82BH-S-09-0011 (April 15, 2009; award amount \$52,530) to remove and demolish vault

toilets and backfill the removal sites at campground locations across the Pike and San Isabel National Forest in Colorado.

This contract was a fixed price Service-Disabled Veteran-Owned Small Businesses (SDVOSB) set-aside that utilized full and open competition after exclusion of sources as authorized under FAR 6.206. SDVOSB set-aside awards are authorized by statute under the Veterans Benefits Act of 2003 (15 U.S.C. 657f) and are awarded in accordance with FAR 19.1405.

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:**

This contract was a fixed price Service-Disabled Veteran-Owned Small Businesses (SDVOSB) set-aside that utilized full and open competition after exclusion of sources as authorized under FAR 6.206. SDVOSB set-aside awards are authorized by statute under the Veterans Benefits Act of 2003 (15 U.S.C. 657f) and are awarded in accordance with FAR 19.1405. 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)). Thirteen proposals were received as a result of the solicitation. Hartland Excavation, Inc. received an exceptional overall rating and was awarded the contract based on the Evaluation Panel’s recommendation. FS determined that awarding the contract to Hartland Excavation, Inc. represented the best value to the Government based on Hartland Excavation, Inc.’s exceptional past performance, experience, work plan, progress schedule, and fair and reasonable price that was below the Government estimate.

#### **2. FAR Case Rule 2009-10 - No Rationale for Awarding Contract**

The FAR has been changed to implement contract-related Recovery Act requirements. These changes were implemented through interim rules in the Federal Acquisition Circular (FAC) 2005-32 (74 Fed. Reg. 14621), published in the Federal Register on March 31, 2009. FAR Case 2009-10 is the interim rule that creates a new FAR 5.7 to implement Office of

Management and Budget (OMB) guidance regarding presolicitation synopses and award announcements for actions awarded using Recovery Act funds. FAR 5.705(b) requires that, regardless of dollar value, if the contract action is not both fixed-price and competitively awarded, the award notice must include in the description the rationale for using other than a fixed-price and/or competitive approach (74 Fed. Reg. 14636, 14638). Since this contract was both fixed-price and competitively awarded, FAR 5.705(b) is not applicable.

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

- 1. Contractor Responsibility:** The Contracting Officer (CO) indicated that he determined that Hartland Excavation, 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 (April 15, 2009) as is required in FAR 9.405. We noted in our review that the Excluded Parties List was checked by FS on June 1, 2009 and the negative result was documented in the contract file. The CO informed us that he did check the EPL prior to the award, but did not print the EPL report.
- 2. Recovery Act FAR Clauses:** The solicitation dated March 13, 2009, contained Recovery Act clauses that were available to the field at the time and these clauses were included in the contract dated April 15, 2009. 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 Fed. Reg. 14621), published in the Federal Register on March 31, 2009. The contract includes a reference to the FAR Cases in FAC 2005-32. However, not all of the updated clause language and clauses now required in the FAR were included in the contract.<sup>1</sup>

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

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<sup>1</sup> The contract excluded clause 52.203-15 (Whistleblower Protection – FAR 3.9), clause 52.204-11 (Reporting Requirements – FAR 4.15) and the required alternate II to clause 52.212-5 (GAO/IG Access - FAR 12.301).