



United States Department of Agriculture
Office of Inspector General
Washington, D.C. 20250



DATE: December 8, 2010

AUDIT
NUMBER: 08703-03-SF (2)

TO: Thomas L. Tidwell
Chief
Forest Service

ATTN: Donna M. Carmical
Chief Financial Officer

FROM: Gil H. Harden /s/
Assistant Inspector General
for Audit

SUBJECT: Pre-Solicitation and Modification Notices Not on the FedBizOpps Website.
Recovery Act – Forest Service Roads, Bridges, and Related Watershed Projects

The American Recovery and Reinvestment Act of 2009 (Recovery Act) authorized \$1.15 billion to be used by the Forest Service (FS) to promote economic recovery by preserving and creating jobs, assisting those most impacted by the recession, and investing in transportation, environmental protection, and other infrastructure. Congress, in enacting the Recovery Act, emphasized the need for accountability and transparency in the expenditure of the funds. Further, on February 18, 2009, the Office of Management and Budget (OMB) issued initial guidance¹ that required Federal agencies to establish rigorous internal controls, oversight mechanisms, and other approaches to meet the accountability objectives of the Recovery Act.

The Recovery Act funded \$650 million for FS' Capital Improvement and Maintenance Program, of which \$271 million was approved for road maintenance and decommissioning, related bridge maintenance and decommissioning, and related watershed restoration and ecosystem enhancement. The Director of FS' Acquisition Management is responsible for implementing processes to ensure the agency complies with the Recovery Act and OMB's related guidance on obligating and disbursing funds. The Department of Agriculture's (USDA) Office of Inspector General (OIG) is also mandated by the Recovery Act to oversee agency activities to ensure Recovery Act funds are spent in a manner that minimizes the risk of improper use.

¹ OMB M-09-10, dated February 18, 2009.

FS established four Economic Recovery Operation Centers (EROCs) across the nation to execute and manage the contracts, grants, and agreements funded under the Recovery Act.² To determine whether the EROCs complied with pertinent laws and regulations, we conducted tests on 44 contracts, including task orders.³ For transparency purposes, Federal regulations require the posting of notices for pre-award and post-award contract actions on the Federal Business Opportunities (FedBizOpps)⁴ website: (1) pre-solicitation⁵ notices for new contracts and for task orders on existing contracts and (2) pre-award modification notices for existing contracts. Of the 44 contracts we reviewed, 32 required FedBizOpps postings.

For these 32 contracts, we found that 8 task orders and modification notices for 4 existing contracts were not posted to FedBizOpps, as required by the Federal Acquisition Regulation (FAR).⁶ Together, these 12 contract actions represented over \$2.4 million that FS awarded without the required postings on the FedBizOpps website (see attachment A). This occurred because the responsible FS contracting officers were not aware of the posting requirement or believed the postings were not required. As a result, the general public was not informed of the proposed expenditures and, therefore, the transparency requirement was not met. This issue, along with any others identified, will be compiled into a final report at the conclusion of our audit.

FAR requires publicizing both pre-award and post-award contract actions, which include task orders and modifications. For pre-award contract actions (before any contract action is awarded), FAR stipulates that agencies must publicize informational notices on the FedBizOpps website if the action exceeds \$25,000.⁷

We reviewed contracts at all four EROCs and found the following inconsistencies where the actions exceeded \$25,000:

- Intermountain EROC did not publicize pre-solicitation notices for five task orders and pre-award modification notices for four existing contracts.
- East EROC did not publicize pre-solicitation notices for three task orders.

Contracting officers at the Intermountain EROC did not believe they were required to publicize pre-solicitation notices for task orders. However, after reviewing FAR and OMB requirements, the contracting officers agreed that they “missed the requirement.” The lead contracting officer from the East EROC told us that some pre-solicitations were not publicized on the FedBizOpps website when contracts were first awarded under the Recovery Act due to an oversight by the contracting staff. She stated that notices were publicized for more recent contracts, which we were able to confirm by checking postings for other contracts from this EROC.

² Southwest EROC in Vallejo, California; Northwest EROC in Portland, Oregon; Intermountain EROC in Denver, Colorado; and East EROC in Atlanta, Georgia.

³ A task order is “an order for services placed against an established contract or with Government sources” (FAR 2.1-14, dated March 31, 2009).

⁴ The FedBizOpps website is used for public display of postings as a “Government Point of Entry [where the Government] identifies proposed contract actions funded in whole or in part by the Recovery Act” (FAR 5.704(2)(b), dated March 31, 2009). The FedBizOpps website can be accessed at www.fbo.gov.

⁵ “Solicitation” means any request to submit offers or quotations to the Government” (FAR 2.1-13, dated March 31, 2009).

⁶ The issue concerning the posting of pre-solicitation notices for task orders was previously reported in our response to a Recovery Accountability and Transparency Board referral, 08703-02-SF, dated November 24, 2009.

⁷ FAR 5.704, dated June 16, 2010.

Contracting officers at the Intermountain EROC also thought that FAR 5.704, which requires posting pre-award modification notices on the FedBizOpps website, was not applicable to existing contracts. However, a FAR official at the U.S. General Services Administration confirmed that these notices must be publicized on the FedBizOpps website, if the contract action exceeds the \$25,000 threshold.

On November 24, 2009, we reported that FS did not publicize pre-solicitation notices on the FedBizOpps website for six task orders and recommended that FS should “immediately notify all contracting officers concerning OMB guidance once it is issued.” FS responded on December 23, 2009, stating that the task orders were issued before the OMB guidance was published and that FS had taken corrective actions on this issue. However, as discussed above, when we interviewed contracting officers in May 2010, some continued to be unaware of the posting requirements.

On June 29, 2010, FS Washington Office representatives told us that they verbally reminded contracting officers to follow FAR and OMB guidance. The FS representatives thought that employee turnover may have contributed to the lack of communication, and they agreed to send written instructions regarding this matter.

Recommendations:

1. Issue written guidance to remind all contracting officers to publicize pre-solicitation notices for task orders on the FedBizOpps website.
2. Issue written guidance to remind all contracting officers to publicize pre-award modification notices for existing contracts on the FedBizOpps website.

Please provide a written response within 5 days that outlines your corrective action on this matter. If you have any questions, please contact me at (202) 720-6495, or have a member of your staff contact Steve Rickrode, Director, Rural Development and Natural Resources Division, at (202) 690-4483.

cc:

Jennifer McGuire, Director of Audit and Assurance, Forest Service
Dianna Capshaw, Internal Quality Assurance, Forest Service
Sandy Coleman, Branch Chief, Forest Service
Janet Roder, OIG Audit Liaison, Forest Service

Attachment A - Missing Notices of Proposed Contract Actions

Sample Contract	Economic Recovery Operations Centers	Date of Award	Contract Amount
FS Did Not Publish Pre-Solicitation Notices for Task Orders on the FedBizOpps Website			
1	Intermountain	9/15/2009	\$50,000
2	Intermountain	6/12/2009	\$45,133
3	Intermountain	6/12/2009	\$358,759
4	Intermountain	6/11/2009	\$100,551
5	Intermountain	11/2/2009	\$43,165
6	East	7/13/2009	\$170,435
7	East	7/13/2009	\$189,565
8	East	7/13/2009	\$240,000
Subtotal			\$1,197,608
FS Did Not Publish Pre-award Modification Notices on the FedBizOpps Website			
9.1	Intermountain	9/28/2009	\$123,901
9.2	Intermountain	8/07/2009	\$58,524
9.3	Intermountain	7/22/2009	\$40,600
10.1	Intermountain	5/06/2010	\$65,038
10.2	Intermountain	1/16/2010	\$25,010
10.3	Intermountain	12/9/2009	\$267,210
10.4	Intermountain	8/24/2009	\$67,001
10.5	Intermountain	8/24/2009	\$292,920
11	Intermountain	9/29/2009	\$187,800
12	Intermountain	11/20/2009	\$79,167
Subtotal			\$1,207,171
Total			\$2,404,779

The table above lists the 12 contract actions for which FS did not publish pre-solicitation or pre-award modification notices on the FedBizOpps website.

Agency's Response

USDA'S

FOREST SERVICE

RESPONSE TO AUDIT REPORT



File Code: 1430

Date: December 21, 2010

Subject: Response to Audit Report No. 08703-03-SF(2) "The Recovery Act - Forest Service Roads, Bridges, and Related Watershed Projects"

To: Gil H. Harden, Assistant Inspector General for Audit

This letter is in response to the Audit Report No. 08703-03-SF(2) The Recovery Act - Forest Service Roads, Bridges, and Related Watershed Projects received on December 8, 2010, from the USDA Office of the Inspector General. The response for each recommendation is the following:

OIG Recommendation #1: Issue written guidance to remind all contracting officers to publicize pre-solicitation notices for task orders on the FedBizOpps website.

Forest Service Response: FS concurs with the recommendation. In June 2010 the Forest Service (FS) Washington Office (WO) issued the attached revised guidance Enclosure A -EROC-AQM Internal Process Plan, which states the responsibilities of the Contracting Officers (COs) at the Economic Recovery Operations Centers (EROCs) to Provide cradle-to-grave acquisition support for projects funded with ARRA funds. The guidance also required procurement analyst to maintain expertise in ARRA policies, procedures and direction from OMB, USDA, and Forest Service. The guidance refers to the Chapter 5 instruction of the FS Recovery guidance for additional information on EROC responsibility. This document has been a living document and several updates have been made throughout the last 2 years. Enclosure B – CHAPTER 5 – GRANTS, AGREEMENTS, CONTRACTS, is the latest version that was last updated on October 5, 2010 and it specifically states the responsibilities of the CO for Pre and Post awards postings.

OIG Recommendation #2: Issue written guidance to remind all contracting officers to publicize pre-award modification notices for existing contracts on the FedBizOpps website.

Forest Service Response: FS agrees with the recommendation. Although FS only agrees with the issues identified for 3 out of the 10 contracts reviewed, we acknowledge that the documentation was not clear and sufficient for all the contracts identified and we will direct the contracting officers to provide complete documentation to explain and support these change order actions. This documentation will be completed by January 14, 2011. Since FS expects to have contract administration for all contracts awarded, in whole or in part, we agree that a reminder should be issued to all contracting officers to publicize pre-award modifications notices. The reminder will be issued by January 31, 2011.

If you have any additional questions, please contact Donna Carmical, Chief Financial Officer, (202) 205-1321, dcarmical@fs.fed.us.

/s/ Donna M. Carmical
DONNA M. CARMICAL
Chief Financial Officer

Enclosures

