



U.S. Department of Agriculture
Office of Inspector General
Washington, D.C. 20250



DATE: November 24, 2009

REPLY TO
ATTN OF: 08703-2-SF

TO: Thomas L. Tidwell
Chief
Forest Service

ATTN: Janet M. Roder
Dianna Capshaw
Audit Liaisons

FROM: Robert W. Young /s/
Assistant Inspector General
for Audit

SUBJECT: Contract Compliance Review – Apache-Sitgreaves National Forest, Arizona
(Hoyer Campground Facility Reconstruction Project)

We conducted a contract compliance review based on a referral (RATB-R-0019) from the Recovery Accountability and Transparency Board (RATB). The referral concerned five task orders issued for a reconstruction project funded by the American Recovery and Reinvestment Act of 2009 (Recovery Act) and administered by the U.S. Department of Agriculture’s Forest Service (FS).¹ According to the referral, these task orders lacked the required “Recovery Act identifying information” and the “descriptions of deliverables were not provided.” Our review determined that the FS did not: (1) follow the Office of Management and Budget’s (OMB) guidance to publicize pre-solicitation announcements in FedBizOpps² (FBO), and (2) post the required descriptions of deliverables under the FBO Synopsis as required by the Federal Acquisition Regulation³ (FAR).

We analyzed the Hoyer Campground Facility Reconstruction Project files and determined that this Recovery-funded project had a total of six task orders.⁴ We interviewed FS’ contracting personnel and other designated representatives at the Apache-Sitgreaves National Forest office located in Springerville, Arizona, and the FS’ Southwest Economic Recovery Operations Center (EROC)⁵ in Vallejo, California. We visited the FS Apache-Sitgreaves National Forest to review project files and to observe the completed Hoyer Campground project site. We compared the

¹ Public Law 111-5, 123 Stat. 170, “Forest Service Capital Improvement and Maintenance,” dated February 17, 2009.

² FedBizOpps is a government website that allows Federal buyers to publicize government-wide procurement opportunities over \$25,000.

³ Subpart 5.301(4), dated March 31, 2009.

⁴ Five of the six orders were referred by the RATB.

⁵ The six task orders we reviewed were awarded prior to the creation of the EROCs.

RATB’s Contract Checklist⁶ to relevant contract documentation to identify any issues regarding administration of the six task orders.

Background

The Recovery-funded reconstruction project at the Hoyer Campground was approved under the first 10-percent or “shovel ready projects” to reconstruct toilet structures and roads at the campground. The FS Southwest Region Office notified the Apache-Sitgreaves National Forest on March 11, 2009, that the project was approved and to complete the contract awards by March 13, 2009 — a 2-day turnaround. Contracting officials at the National Forest awarded a total of six Recovery - funded task orders under pre-existing Indefinite Delivery Indefinite Quantity (IDIQ) contracts. The IDIQ contracts were awarded via full and open competition.⁷ Table 1 below lists the six task orders.

Table 1: Recovery Funded Orders for the Hoyer Campground Reconstruction Project

RATB No.	Task Order No.	Vendor Name	Order Amount
1. AG-82X9-B-08-0010 (Blanket Purchase Agreement)	Delivery Order No. AG-9702-D-09-0007	CXT Inc.	\$193,077
2. AG-8173-C-07-0014	AG-9702-D-09-0006	Conco Concrete Specialists	\$250,000
3. AG-8173-C-07-0008	AG-9702-D-09-0003	Sug Rogers Construction	\$248,188
4. AG-9702-D-09-0022	AG-9702-D-09-0005	Highland Trucking	\$235,990
5. AG-9702-D-09-0018	AG-9702-D-09-0004	V Mountain Construction	\$249,034
6. GS-07F-9714G (Not part of the referral)	Purchase Order No. AG-9702-D-09-0008	RJ Thomas MFG Co. Inc.	\$35,832

Results of Review

We conducted a site visit to the Hoyer Campground and observed that the reconstruction project was completed. Except for the exceptions noted below, the task orders complied with the Recovery Act and FAR requirements:

No Pre-solicitation Announcements: We determined that the FS did not post pre-solicitation announcements in FBO for all six task orders listed in Table 1 above. Five of the six task orders were awarded on March 12, 2009 and the remaining one was awarded on March 13, 2009. We discussed this issue with a FS official⁸ who stated that on March 13, 2009, the Federal Register did not contain any rules or procedures for awarding funds against procurement instruments for Recovery projects. He further stated he was not aware of the latest OMB guidance and that it was not a standard practice for a contracting officer to search the OMB website for acquisition guidance. In general, FS contracting officers relied on the FAR as their primary source

⁶ Issued on June 1, 2009.

⁷ “Full and open competition” means that all responsible sources are permitted to compete (i.e., the IDIQ contracts were not set-asides for small business).

⁸ The official was the contracting officer at the Apache-Sitgreaves National Forest.

reference. They also review the Federal Register for new rulings concerning Recovery Act related contracts.

The OMB Recovery guidance,⁹ Section 6.2, issued on February 18, 2009, states “pre-solicitation notices must be posted on FBO in accordance with FAR Subpart 5, including applicable dollar thresholds. Under the [Recovery Act], pre-solicitation notices are required for any order, meeting the FAR Part 5 dollar thresholds . . .”¹⁰ The purpose of the OMB guidance is “to promulgate an initial set of government-wide requirements and guidelines that Federal agencies must immediately implement or prepare for in order to effectively manage activities under the [Recovery Act].”¹¹

However, the OMB Recovery guidance was not published in the Federal Register until March 31, 2009. Therefore prior to that date, the FS contracting officer was unaware he needed to post pre-solicitation announcements in FBO for all six task orders.

No Description of the Deliverables: For all six task orders, we determined the FS did not provide descriptions of the deliverables in the Synopsis posted under FBO on April 15, 2009. We discussed this issue with the FS contracting official who said when the task orders were awarded the FAR did not require a synopsis for a contract action (i.e. a task order) under an IDIQ contract.

The Recovery requirement under FAR Subpart 16.505 (a)(10), dated March 31, 2009, requires contracting officers to “publicize orders funded in whole or in part by the [Recovery Act] of 2009 . . .,” which require contracting officers to include a narrative of the products and services (including construction) that is clear and unambiguous to the general public in FBO.

Recommendations

1. Due to delays in OMB publishing guidelines in the Federal Register, immediately notify all contracting officers concerning OMB guidance once it is issued.
2. Require the Apache-Sitgreaves National Forest to provide descriptions of the deliverables in the Synopsis posted under FBO for the six task orders as required by FAR.

Please provide a written response within 5 days that outlines your corrective actions on this matter. If you have any questions, please contact me at (202) 720-6945 or Steve Rickrode, Audit Director, Rural Development and Natural Resources Programs, at (202) 690-4483.

cc:

Executive, Recovery Team, Forest Service

Assistant Director, Investigations, RATB

Assistant Director, Procurement and Grant Compliance, RATB

⁹ Initial Implementing Guidance for the American Recovery and Reinvestment Act of 2009

¹⁰ The dollar threshold is \$25,000.

¹¹ OMB (M-09-10) Initial Implementing Guidance for the American Recovery and Reinvestment Act of 2009, dated February 18, 2009.



File Code: 1430-1

Date: December 23, 2009

Route To:

Subject: Contract Compliance Review - Apache-Sitgreaves National Forest, Arizona
(Hoyer Campground Facility Reconstruction Project); OIG Report #08703-2-SF

To: Robert W. Young, Assistant Inspector General For Audit

This letter is in response to the subject Office of Inspector General (OIG) report dated November 24, 2009. The report cites that Forest Service (FS) was not in compliance with interim guidance pertaining to contract awards in relation to funding from the American Recovery and Reinvestment Act of 2009 (ARRA). The report specifically states that FS failed to comply with the recovery guidance issued by the Office of Management and Budget (OMB) in the Federal Acquisition Regulations on March 31, 2009. The OMB Recovery Guidance required federal agencies to specifically identify ARRA funded projects in the project description in procurement advertisements. The task orders identified in the report were issued on March 12, 2009, or 19 days prior to the issuance of the OMB Recovery Guidance. It is the FS conclusion that the task orders were issued appropriately and in accordance with guidance in effect at that time of their issuance.

In regards to the report's recommendations, the FS has addressed the recommendations and considers the corrective actions completed. For Recommendation 1, the FS established four specialized Economic Recovery Operations Centers (EROCs) that are responsible for the management of ARRA related acquisitions and provide guidance to the ARRA Contracting Officers on OMB updates related to federal purchasing law and applicable recovery act legislation. Regarding Recommendation 2, the FS assigned the Apache-Sitgreaves National Forest to the Southwest EROC center to assure ARRA related acquisitions comply with applicable recovery act legislation.

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

/s/ Thomas L. Tidwell
THOMAS L. TIDWELL

