



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



DATE: August 3, 2009

REPLY TO
ATTN OF: 08703-0002-SF

TO: Tom Tidwell
Chief
Forest Service

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

SUBJECT: The Recovery Act – FS Facility Improvement, Maintenance & Renovation (1)

The American Recovery and Reinvestment Act of 2009 (Recovery Act) included \$1.15 billion in funds for the Forest Service (FS) to implement projects that directly accomplish its missions of sustaining the nation's forests and grasslands, creating jobs, and promoting U.S. economic recovery. In passing the law, Congress emphasized accountability for and transparency of funds spent through the act. To accomplish this, the Office of Management and Budget (OMB) issued guidance in February 2009 that requires Federal agencies to establish internal controls, oversight mechanisms, and other approaches to meet the Recovery Act's accountability objectives. 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.

In general, the Recovery Act requires USDA's Office of Inspector General to oversee FS' (and other agencies') activities in order to ensure Recovery Act funds are spent in a manner that minimizes the risk of improper use. This memorandum addresses our oversight reviews of FS' capital improvement and maintenance of facility projects (e.g., historic buildings) funded through the Recovery Act. We assessed FS' Recovery Act policies and procedures, as well as its controls over Recovery Act-funded facility improvement and maintenance projects, and discussed relevant issues with regional and national FS officials. We reviewed four of five Recovery Act projects¹ in California, visited FS' Pacific Southwest regional office, and two Pacific Southwest national forests to examine project files and observe work sites. For two of the four projects reviewed, we found that FS' contractors did not adhere to the requirements of the Buy American Act. This issue, and any others identified, will be compiled into a final report at the conclusion of our audit.

The Recovery Act requires that when U.S. construction material (mined, produced, or manufactured) is not available, contractors should follow the Buy American Act. Under this Act,

¹ Funding for these four facilities amounted to \$1.56 million out of a total of \$1.96 million in projects funded under the first 10 percent of funds released by FS.

contractors must obtain a waiver, unless otherwise exempt from the contracting agency which then must publish a notice in the Federal Register to give companies a chance to provide U.S. materials before foreign materials are purchased. ² If no U.S. source material is found, then the contractors can buy foreign construction materials. Essentially, this requirement ensures that U.S. businesses have the opportunity to benefit from Recovery Act funds.

During our visit to two Recovery Act funded facility projects (historical renovations), we found that FS' contractors bought red cedar shakes (shingles) made in Canada without obtaining a waiver from the FS, or having their need for that type of shingle advertised in the Federal Register.

We discussed this issue with a FS official who said that purchasing the Canadian shingles was allowed by OMB guidance since Canada is included in the North American Free Trade Agreement. As a member, OMB allows Canadian product exemptions from the Buy American Act.³ However, Recovery Act regulations limit such exemptions only to projects with an estimated value of \$7.4 million or more.⁴ The two Recovery Act-funded renovation projects were valued at \$500,000 and \$175,000, therefore not exempt.

We concluded that the FS should implement a process to ensure that both contractors and FS contracting officials are aware and follow the Buy American Act's provisions related to the Recovery Act. On July 27, 2009, we discussed this issue with FS' regional officials who agreed with our finding and conclusion. We recommend that FS notify all contractors to comply with the Buy American requirements and to train its contracting officials to monitor Recovery projects for compliance.

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) 720-6945, or have a member of your staff contact Steve Rickrode, Audit Director, Rural Development and Natural Resources Programs, at (202) 690-4483.

² This procedure for unavailable U.S. construction material does not have to be followed if the Federal Acquisition Regulations already list the material as unavailable. (48 CFR pt. 25 "Foreign Acquisition," subpart. 25.6 "American Recovery and Reinvestment Act-Buy American Act-Construction Materials," sec. 25.603 "Exceptions" (Mar. 31, 2009).)

³ OMB M-09-15, Updated Implementing Guidance for the American Recovery and Reinvestment Act of 2009, Appendix 9 "Interim Final Guidance for Federal Financial Assistance, Supplementary Information," (Apr. 3, 2009).

⁴ 2 CFR pt. 176, subpart B "Buy American Requirement under Section 1605 of the American Recovery and Reinvestment Act of 2009," sec. 176.90 "Non-application to acquisitions covered under international agreement" para. (a) (Apr. 23, 2009).



File Code: 1430-1
Route To:

Date: August 21, 2009

Subject: The Recovery Act – Forest Service Facility Improvement, Maintenance & Renovation Response

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

On Thursday, August 6, 2009, the Office of Inspector General (OIG) released a management letter report on “The Recovery Act – Forest Service Facility Improvement, Maintenance & Renovation” audit conducted in Region 5. This letter is to provide the OIG with a response on the recommendation that the “FS notify all contractors to comply with the Buy American requirements and train contracting officials on monitoring Recovery projects for compliance.”

The Forest Service found that the Acquisition Management Staff in Region 5 followed proper procedures when issuing the agreement for historical building maintenance funded with American Recovery and Reinvestment Act (ARRA) funds. The necessary Buy American clauses along with other clauses required by the Recovery Act were included in the agreement. In response to OIG’s finding, the Forest Service will increase training given to partners and contractors to ensure that those receiving ARRA funds and their subcontractors are aware of the full scope of this legislation and will follow the Buy American clauses and other clauses within the Act. In addition, the establishment of the four specialized Economic Recovery Operations Centers (EROCs) will strengthen the management and oversight of ARRA acquisitions. These Centers will provide a unified national approach to ARRA-related acquisitions as well as a pool of highly trained professionals available to provide guidance and consultation to partners and contractors.

Each Region, Station, or Area has been assigned a specific EROC. Each EROC is responsible for executing and managing contracts, tasks orders, grants and agreements in compliance with federal purchasing law. This will ensure compliance and consistency regarding Forest Service acquisition management with all ARRA requirements.

If you have any questions, please contact Dianna Capshaw, the ARRA audit liaison, at 505-563-7171 or dcapshaw@fs.fed.us

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