



UNITED STATES DEPARTMENT OF AGRICULTURE
OFFICE OF INSPECTOR GENERAL
Northeast Region
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DATE: October, 2, 2009

REPLY TO
ATTN OF HY-0813-0005

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 – Tree Thinning, Deschutes National
Forest, Oregon - American Recovery and Reinvestment Act of 2009

We conducted a contract compliance review based on referrals (RATB-R--0009) 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). The RATB indicated that based on the contract amount, the contract merited further review. We were specifically asked to determine if the contract was a task order to an existing contract, the place of performance, if the award was competed, and if the award was a fixed price 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

The Forest Service (FS) entered into a firm fixed price indefinite-delivery/indefinite quantity (ID/IQ) contract with Melcher Logging Company, Sweet Home, Oregon: AG-04GG-C-08-9223 (September 3, 2008). On March 16, 2009, Task Order Number 6 (AG-0489-C-09-9000) was placed against AG-04GG-C-08-9223 for seven items: tree thinning, biomass removal, thinning and piling, light mowing, heavy mowing, riparian thinning with commercial materials and riparian thinning without commercial materials. The purpose of the contract is forest restoration.

Results of Review

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

Contract Type, Place of Performance, Competition Requirements

AG-04GG-C-08-9223 is a firm fixed price indefinite-delivery/indefinite quantity (ID/IQ) contract and AG-0489-C-09-9000 with Melcher Logging Company (March 16, 2009) was the sixth task order placed against the contract. This project is part of the Head Stewardship project on the Sisters Ranger District in the Deschutes National Forest in Oregon. The project includes multiple restoration activities on 4,336 acres over 8 years. AG-04GG-C-08-9223 was awarded after full and open competition after exclusion of large business as it is a Total Small Business (SB) Set-aside contract awarded pursuant to FAR 19.502-2. In executing AG-04GG-C-08-9223, an acquisition strategy was required and employed since the project cost was estimated to be \$2,800,000. There was a Technical Evaluation Board that evaluated four proposals. Melcher Logging Company was awarded the contract based on a combination of a strong technical proposal and reasonable pricing. The task order contains seven items: tree thinning, biomass removal, thinning and piling, light mowing, heavy mowing, riparian thinning with commercial materials and riparian thinning without commercial materials. Pricing on the task order was pre-established. The contract was funded with Recovery Act funds designated for "Wildland Fire Management" in order to protect communities from large, unnaturally severe fires and contribute to the restoration of fire-adapted ecosystems, thereby helping to foster fire-adapted communities well into the future. This contract was among the projects that were identified by the Forest Service as ones that could be acted upon within 7 days of the enactment of the Recovery Act.

In addition, we noted other issues related to the procurement:

Reporting

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)).¹ There was no presolicitation notice posted in FBO for this award.

The OMB guidance issued on February 18, 2009, required agencies to make publicly available summaries of all contracts or orders over \$500,000 and link them to Recovery.gov - OMB Initial Implementing Guidance (M-09-10) at 6.2 (4).² This requirement applied to the contract in question; however, at the time the contract was let, this was not technically possible as Recovery.gov was not yet set up to accept this information.

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 [REDACTED].

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

¹ 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 As of March 31, 2009, the FAR, 5.705(a), requires agencies to publicize the award notices for contracts and orders over the same amount and ensure the description includes a narrative of the products and services that is clear and unambiguous to the general public 74 Fed. Reg. 14633, 14638.