



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



DATE: December 31, 2009

REPLY TO
ATTN OF: 08703-0001-Hy

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: Recovery Accountability and Transparency Board Contract Referrals

The American Recovery and Reinvestment Act of 2009 (the "Recovery Act") included almost \$1.2 billion in funds for the Forest Service to implement projects that directly accomplish its mission of sustaining the nation's forests and grasslands. Congress, in enacting the Recovery Act, emphasized the need for accountability and transparency in the expenditure of these funds. To this end, the Recovery Act legislation included provisions to create the Recovery Accountability and Transparency Board (the "Board"). Congress established the Board to coordinate and conduct oversight activities designed to prevent fraud, waste, and abuse of Recovery Act funds.

The Office of Management and Budget (OMB) issued guidance on February 18, 2009, that required Federal agencies to establish rigorous internal controls, oversight mechanisms, and other approaches to meet the accountability and transparency objectives of the Recovery Act.¹ In response, the Forest Service formed the Economic Recovery Team and made it responsible for coordinating the processes designed to ensure agency compliance with the accountability and transparency requirements of the Recovery Act, as well as OMB guidelines. Our role, as mandated by the Recovery Act, is to oversee agency activities and to ensure funds are expended in a manner that minimizes the risk of improper use.

The Board's oversight efforts have included the monitoring of contracts Government-wide to identify suspicious activity. In performing this oversight, the Board identified such activity with

¹ On April 3, 2009, OMB issued "Updated Implementing Guidance for the American Recovery and Reinvestment Act of 2009."

nine Forest Service contracts involving capital improvement and maintenance projects, which it referred to us in July and August 2009, and requested that we examine the details of those contracts. Our objective was to verify that the contracts were awarded properly based on the Board's concerns. This memorandum is one of a series that reports the results of our examination of the nine Recovery Act contracts, totaling over \$4.5 million.

The Board examined and compared information posted on the Federal Business Opportunities (FBO) website, the Federal Procurement Data System (FPDS), and the Central Contractor Registration (CCR) system. The Board's analysis identified several concerns with the nine contracts. These included (1) the possible duplication of a Recovery Act contract to a prior contract awarded by the Forest Service, (2) a contract that was de-obligated and re-issued for the same amount, (3) a contract posted on the FBO website with a North American Industry Classification System (NAICS) code that was different than the code in the CCR system, (4) the lack of Forest Service officials' consideration of a contractor's past performance when vetting a contract, (5) contract information that was not timely entered into the FBO website, and (6) inconsistent and incomplete information for the contracts that was posted to the FBO website.

We reviewed supporting documentation related to the nine contracts and interviewed applicable agency contracting officials to address the concerns of the Board. Our audit work did not identify any duplication of contracts or irregularities in the procurement process related to the nine contracts. We did find that agency contracting officials had not considered a contractor's past performance when vetting a contract; had not timely entered information into the FBO website for seven of the nine contracts; and had not posted accurate or complete contract information on the FBO website for all nine contracts.

The Board was particularly concerned that two contracts (AG-4419-D-09-0003 and AG-447U-D-09-0160 (a non-Recovery Act award)) awarded to Henson Enterprises on February 16 and March 16, 2009, in the amounts of \$43,355 and \$43,357, respectively, duplicated the same work. The Board's review determined that the contractor's name, identification number, contract amounts, and description and location of work information were identical in the FPDS for both contracts. The contracts were awarded to remove ruts and potholes from the same gravel roads in the Mark Twain National Forest.² We compared the two contracts and found that the work to be performed was the same. However, we did find a difference; one contract was for work in the spring while the other was for the same work in the fall. Thus, we concluded that the contracts were not for duplicate work and informed Forest Service officials of our work. They agreed with our conclusion.

The Board was concerned about another contract (AG-0489-D-09-0015) because it was de-obligated on May 18, 2009 and re-issued on May 19, 2009. The Forest Service awarded this contract to Ketchikan Ready-Mix & Quarry, Inc., on May 1, 2009, in the amount of \$421,700, for a road surfacing project. We reviewed supporting documents for the contracts and found that the original contract was established as a task order when it should have established as a stand-alone contract. The contracting officer informed us that this error occurred because of the volume of work at the time and was corrected by de-obligating and re-issuing the contract. We concluded that there were no irregularities with the contracts.

² The roads were located within the 11 Point Ranger District.

The Board also referred this contract (AG-0489-D-09-0015 to Ketchikan Ready-Mix & Quarry, Inc.) because the NAICS code posted on the FBO website did not match the code listed in the CCR system and the Online Representation and Certification Application system.³ The Board was concerned that the contractor was not eligible to perform the type of construction work specified in the contract. The NAICS code specified in the contract was for highway, street, and bridge construction. The NAICS codes specified in the CCR system were for construction, mining and forestry machinery and equipment rental and leasing and for land subdivision. The contracting officials responsible for this contract stated that the contractor had performed similar work for the Forest Service in the past, and was eligible and qualified to perform the work. Further, Forest Service officials stated that there was no requirement that a matching NAICS code had to be included in the CCR system. We reviewed the Federal Acquisition Regulation and also found no such requirement. Thus, since this contractor had performed similar work in the past for the agency, we concluded that it was eligible to complete the contract.

For contract AG-4419-D-09-0018, the Board was concerned that agency contracting officials had not considered a contractor's past performance when vetting the contract. The contract was awarded to CBS Surveying and Mapping, Inc., on June 25, 2009, in the amount of \$65,035, for boundary line surveys in the Frances Marion National Forest. Specifically, the Board questioned whether the Forest Service considered a prior performance problem for this contractor when awarding this contract. Departmental regulation, AGAR Advisory Number 88, requires contracting officials to use the National Institute of Health Contract Procurement System (NIHCPS) when awarding contracts. The NIHCPS provides information on contractors' past performance.

We questioned the contracting officer responsible for this contract about the actions taken to determine the past performance of the contractor. The contracting officer stated that a review of the contractor's past performance was limited to checking the General Service Administration's Excluded Party List System. Our examination of that system disclosed that it only lists contractors who have been debarred or suspended from doing business with the Federal government. It does not provide the names of contractors with past performance deficiencies. We concluded that the contracting officer's actions were insufficient to determine that the contractor had been charged with negligence for a surveying error. According to Washington officials, they were not monitoring contracting staffs' use of the NIHCPS when awarding contracts.

For seven of the nine contracts, the Board was concerned because Forest Service officials had not posted contract information into the FBO website in a timely manner. (See exhibit A for the seven contracts.) In several instances, a significant time period had elapsed before contract information was entered into the FBO website. For instance, the Board referred contract AG-4419-D-09-0003 to us, in part, because it had been awarded on March 16, 2009, but not entered into the FBO website until June 25, 2009, more than 3 months later. The Federal Funding and Transparency Act of 2006 requires the posting of information on the FBO website within 30 days after awarding a contract.⁴

³ Contractors use this system to certify eligibility for specific construction areas.

⁴ Public Law 109-282.

We discussed the circumstances involving each contract with agency contracting officials. They stated that, in each instance, the reason for the untimely input was that staff was busy with other Recovery Act work. We questioned Washington officials about guidance provided to field staff about the timely input of contract information into the FBO website. They stated that the FBO website was used only to advertise contracts prior to the Recovery Act. The contracting officials also did not worry about information they posted on it because it did not affect the validity of the contract. In our view, even though the Federal Funding Accountability and Transparency Act requires that information be posted to the FBO website within 30 days, the Recovery Act has recommended more stringent transparency goals to ensure that contract information is available to the general public in a timely manner. Thus, the Forest Service should implement procedures to ensure that contract information is posted on the FBO website within a minimum of two business days.

The Board's most common reason for referral, reflected in eight of the nine contracts, involved the posting of inaccurate and incomplete information to the FBO website. It had identified the suspicious information after comparing data entered into the FPDS and the FBO website. We examined the documents used by contracting officials to enter actual contract information into FPDS and, to a lesser extent, to the CCR system, and compared the information on those documents to the FBO website. Our objective was to determine if the Board's suspicions had merit.

We determined that information in the FBO website did not always accurately reflect actual contract data for the nine contracts. We attributed this to agency contracting officials' errors when entering contract information into the FBO website. However, we did not find any instances of intentional abuse by contracting officials or irregularities in the procurement process. For most of the Board's referrals, the errors involved inaccuracies related to the presentation of the contractor's name or address, the nature or location of the work, and the contract amount. (See exhibit A for a detailed breakdown of the errors in the FBO website.)

One Board referral involved four contracts (AG-4419-D-09-0014, AG-4419-D-09-0015, AG-4419-D-09-0016, and AG-4419-D-09-0017), totaling over \$1.6 million, that were awarded to or at least appeared to be awarded to, different companies to perform work at the same location. The contracts were awarded for road and facility maintenance needed after the January 2009 snowstorms in Kentucky. Our examination of agency records disclosed that contracting officials had awarded the contracts to a contractor that (1) was acquired by another company after initiating the contract, and (2) completed work at several different facilities in the same town. The reporting problems in the FBO website stemmed from contracting officials not revising the contractor's information once they became aware of the change in company ownership. Further, the contracting officials had not entered the physical location into the FBO website for all of the contracts.

Another Board referral (contract no. AG-0489-D-09-0015 to Ketchikan Ready-Mix & Quarry, Inc., on May 1, 2009, in the amount of \$421,700, for a road surfacing project) involved a contract where the name of the contractor posted on the FBO website did not match the contractor name in the CCR system. The contracting officials had used the company name Ketchikan Ready Mix when posting the award on the FBO website. However, when checking for this name in the CCR system, the Board identified that Ketchikan was doing business as Hal's Equipment and Supplies, Inc. We searched the CCR system using Ketchikan Ready Mix and

were unable to find any matches. However, when we used the complete name of the company, Ketchikan Ready-Mix & Quarry, Inc., we found the same information as the Board. Our examination of contract records and discussion with agency contracting officials determined that Hal's Equipment and Supplies, Inc., was a division of Ketchikan Ready-Mix & Quarry, Inc., that was created to conduct business with the Federal Aviation Administration. Thus, we concluded that there was no problem with the contractor performing the work and informed Forest Service officials of our work. They agreed with our conclusion.

Overall, we concluded that the primary reason for the errors and inaccuracies was that contracting officials were not reconciling contract information in FPDS to contract information entered and posted to the FBO website. The supervisory contracting officials we met with stated that they had not realized the importance of performing a reconciliation or second party review of the information posted on the FBO website. In light of the transparency goals of the Recovery Act, it is our view that the Forest Service should implement these or an alternative control to ensure that accurate information is provided to the public on the FBO website. The internal control deficiencies included in this memorandum will be compiled into a final report at the conclusion of our audit.

We discussed the details of our reviews for the nine contracts and our conclusions regarding the deficiencies with Washington officials on September 1, 2009. They generally agreed with our conclusions and agreed to implement corrective actions. We recommend that the Forest Service require:

- contracting officials to reconcile information posted on the FBO website to contract information in FPDS for all contracts awarded since March 2009;
- supervisory contracting officials to review the accuracy of contract information posted on the FBO website; and
- contracting officials to verify that contractors have an acceptable NIHCPSP past performance rating prior to awarding contracts.

Please provide a written response within 5 business days outlining your proposed corrective action for these deficiencies. If you have any questions, please contact me at (202) 720-6945, or have a member of your staff contact Steve Rickrode, Director, Rural Development and Natural Resources Division, at (202) 690-4483.

cc:

Executive, Recovery Team, Forest Service

Assistant Director, Investigations, Recovery Accountability and Transparency Board

Assistant Director, Procurement and Grant Compliance, Recovery Accountability and Transparency Board

Exhibit A- Information Discrepancies on the FBO Website

Contract Number	Deficiency On FBO Website
AG-0489-D-09-0015	D
AG-4419-D-09-0003	D and E
AG-4419-D-09-0004	B, D and E
AG-4419-D-09-0013	A,B, and D
AG-4419-D-09-0014	A,B,C,D, and F
AG-4419-D-09-0015	A,B,D, and F
AG-4419-D-09-0016	A,B, C, D, and F
AG-4419-D-09-0017	A,B,C,D, and F
AG-4419-D-09-0018	G

Key:

- A** - The contractor's address was incorrect or missing on the FBO website.
- B** - The contractor's name posted on the FBO website was either inaccurate or incomplete, which precluded initial identification in the CCR system.
- C** - The contract award amount on the FBO website was incorrect.
- D** - The location where work was completed was not included on the FBO website synopsis.
- E** - The contract was not posted within 30 days of award to the FBO website.
- F** - The incorrect contract award date was posted to the FBO website.
- G** - The Board's concerns did not involve discrepancies on the FBO website

Exhibit B- Agency Response



Forest
Service

Washington
Office

1400 Independence Avenue, SW
Washington, DC 20250

File Code: 1430-1

Date: January 19, 2010

Route To:

Subject: Response to Recovery Accountability and Transparency Board (RATB) Contract Referral; OIG Report 08703-0001-Hy

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

This letter is in response to the subject Office of Inspector General (OIG) memorandum dated December 31, 2009. Per the memorandum, OIG conducted a review of nine Forest Service contracts referred by RATB. The review noted some instances where FS did not fully comply with the intent of the Federal Funding Accountability and Transparency Act (FFATA) of 2006.

The Forest Service concurs with the audit recommendations and is implementing the following corrective actions. The agency will:

- Provide direction to all Contracting Officers to insure compliance with the timeliness of FBO reporting. FAR does require FBO post award notice and FS will make all attempts to reconcile prior awards with FBO.
- Augment the Internal Processing Plan to require a second level review of compliance with the regulations for publicizing actions and performing spot checks of the FBO site, to verify the accuracy of the posted information.
- Remind all Contracting Officers that they are required by AGAR Advisory 88 that NIHCPS be used when required by FAR. FAR does not generally require use of NIHCPS for the lowest price technically acceptable selection process; Part 8, 13, 14, & 16. However, not all FS contractors will have a past performance history. FAR allows Contracting Officers latitude in evaluating past performance as long as the evaluation is documented.

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

/s/ Hank Kashdan

THOMAS L. TIDWELL
Chief

cc: Donna M Carmical
Rita Stevens
Laurie Lewandowski
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Dave Dillard