



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



DATE: April 14, 2011

AUDIT
NUMBER: 08703-2-SF (4)

TO: Thomas L. Tidwell
Chief
Forest Service

ATTN: Donna M. Carmical
Chief Financial Officer
Forest Service

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

SUBJECT: The Recovery Act – Forest Service Facility Improvement, Maintenance and Rehabilitation (4) – Davis Bacon Act Violations at the Coronado National Forest, Arizona; Clearwater National Forest, Idaho; and Northern Research Station Laboratory, Wisconsin

The American Recovery and Reinvestment Act of 2009 (Recovery Act) provided the Department of Agriculture (USDA) with \$28 billion in funding.¹ Of this amount, \$1.15 billion was specifically allotted to the Forest Service (FS) to fund projects that directly accomplish its mission of sustaining the nation's forests and grasslands, creating jobs, and promoting U.S. economic recovery. Congress, in enacting the Recovery Act, emphasized the need for accountability and transparency in the expenditure of funds. Further, on February 18, 2009, the Office of Management and Budget (OMB) issued initial guidance that required Federal agencies to establish rigorous internal controls, oversight mechanisms, and other approaches to meet the accountability objectives of the Recovery Act.² OMB issued additional guidance on April 3, 2009, to clarify existing requirements and establish additional steps that must be taken to facilitate the accountability and transparency objectives of the Recovery Act. Moreover, OMB emphasized that, due to the unique implementation risks of the Recovery Act, agencies must take steps, beyond standard practice, to initiate the additional oversight mechanisms.³ The USDA's

¹ Public Law 111-5, February 17, 2009.

² Office of Management and Budget Memorandum M-09-10.

³ Office of Management and Budget Memorandum M-09-15.

Office of Inspector General (OIG) was charged with the responsibility of overseeing FS and other agencies' activities to ensure Recovery Act funds are spent in a manner that minimizes the risk of improper use.

The Recovery Act included \$650 million for FS' Capital Improvement and Maintenance Program, of which \$246 million was approved for facilities improvement, maintenance, and renovation. From March through September 2009, FS approved 176 facility projects nationwide. We statistically selected 20 of these facility projects for review. Thus far, we have completed reviewing 14 facility projects⁴ and have found 3 projects in which FS contractors violated the Davis-Bacon Act (DBA)⁵ prevailing wage requirement. These three projects are: (1) *Forest Wide Recreation Site Restroom Facility Replacement* at the Coronado National Forest (CNF) in Tucson, Arizona; (2) *Clearwater County Facility Projects* at the Clearwater National Forest (CWNF) in Orofino, Idaho; and (3) *Improved Energy Use and Facility Maintenance at Rhinelander and Harshaw Farm, Wisconsin* at the Northern Research Station Laboratory (NRSL) in Rhinelander, Wisconsin.

For these three projects, FS contracting officers awarded 62 contracts, totaling \$7.9 million. We statistically reviewed 22 of 62 contracts, totaling about \$3.2 million. We visited the FS Economic Recovery Operation Centers (EROC)⁶ to examine the contract files and interview FS contract officials. We visited CNF, CWNF, and NRSL to see the project sites, to review project documentation, and to interview key staff.

Our review found that 3 out of 15 construction contractors working on these projects violated the DBA prevailing wage requirement. The DBA prevailing wage is the combination of the basic hourly rate and fringe benefits required to be paid to various classes of laborers and mechanics employed on construction projects, based on a specific geographic area. These violations occurred because FS contracting officials either did not review or adequately review the contractors' payrolls.⁷ FS contracting officials explained that the reviews were either not conducted or were not adequate because of workload and a lack of payroll review guidance.

⁴ As of January 2011, we had completed 14 projects. We have since completed additional projects and have identified additional DBA violations, which will be included in our final report.

⁵ DBA (Title 40 U.S.C.3141-3148) established the requirement for paying prevailing wages on all Federal construction contracts over \$2,000; these contracts must include provisions for paying workers on-site no less than the locally prevailing wages and benefits paid on similar projects.

⁶ FS established four EROCs across the country: Southwest EROC in Vallejo, California; Northwest EROC in Sandy, Oregon; Intermountain EROC in Denver, Colorado; and East EROC in Atlanta, Georgia. The EROCs are responsible for executing and managing the contracts, grants, and agreements under the Recovery Act. We visited the Southwest, Intermountain, and East EROCs for the subject projects respectively during the week of May 24, 2010, October 4, 2010, and July 26, 2010.

⁷ Federal construction contractors and subcontractors are required to submit weekly payrolls to the FS. The payrolls contain the name and social security number of each laborer, his or her job classification, and hourly rates of wages paid. Ultimately, contractors are responsible for ensuring subcontractors pay their laborers at least the DBA prevailing wages.

Consequently, eight laborers were underpaid 56 percent for a total of \$6,219.⁸ These issues, along with any others identified, will be compiled into a final report at the conclusion of our audit.

According to Department of Labor (DOL) guidance⁹ for Recovery Act funded projects, “Federal agencies must ensure that recipients of assistance under the Recovery Act require contractors and subcontractors to pay laborers and mechanics employed by contractors on Recovery Act-assisted construction projects at least the prevailing wages as determined under the DBA.” In addition, the guidance states, “Federal contracting or assistance-administering agencies have the primary responsibility for the enforcement of Davis-Bacon and related Acts to ensure that laborers and mechanics are paid at least the prevailing wage rates required by covered contracts.” Furthermore, the Federal Acquisition Regulation (FAR)¹⁰ requires the contracting officer to ensure compliance with labor standards requirements applicable to the contract. Regular compliance checking includes employee interviews, on-site inspections, payroll reviews, and data comparison. These checks will help to determine whether the contractor issued payroll using correct rates of pay, established proper fringe benefits, fulfilled posting requirements, and submitted payrolls timely, accurately, and consistently.

Our review of the contractors’ payrolls identified laborers whose wages and fringe benefits were significantly less than the DBA prevailing rates. At NRSL, a carpentry subcontractor working on the project underpaid four laborers by 62 percent for a total of \$5,060. At CWNF, an electrical contractor underpaid both laborers on the project by 65 percent for a total of \$1,030. At CNF, we found that a landscape subcontractor underpaid two laborers by 9 percent for a total of \$129.

We informed each of the FS contracting officers for the three projects and their representatives of the DBA violations. We verified the underpaid amount with the FS contracting officials and they agreed that the contractors did not pay the DBA prevailing wages to laborers. Although the contracting officials for these three projects were all aware of their responsibility,¹¹ they were unsure how to complete a thorough payroll review, due to a general lack of guidance. Consequently, FS contracting officials for the NRSL project did not discover that the carpentry subcontractor was underpaid; for the CWNF project did not verify whether two laborers classified as apprentices were registered in a bona fide apprenticeship program;¹² and for the

⁸ The contractors paid a total of \$4,919 in wages to the eight laborers. However, the contractors should have paid the DBA prevailing wages of \$11,138.

⁹ Department of Labor Employment Standards Administration Memorandum No. 207, dated May 29, 2009.

¹⁰ FAR Subpart 22.406-7, Compliance Checking, dated December 7, 2007.

¹¹ FAR 22.406-6(c)(1), dated December 7, 2007, states, “The contracting officer shall examine the payrolls and payroll statements to ensure compliance with the contract and any statutory or regulatory requirements.” Forest Service Handbook 6309.11 Sections 04.4-12, dated January 1991, states, “The Contracting Officer’s Representative (COR) shall receive and audit the weekly payrolls for construction of public works to assure proper job classifications, hours, and rates.”

¹² FAR 52.222-9(a)(i)(3), dated July 8, 2005, states, “Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed in (a bona fide apprenticeship program registered with DOL or with a State Apprenticeship Agency)...shall be paid not less than the applicable wage determination for the classification of work actually performed.”

CNF project, did not interview the laborers or obtain supporting documentation (i.e. paystubs) to validate the wages.

To remedy the DBA violations, the FS contracting officers notified the three contractors to pay the corrected wages to the laborers. Contractors on the CWNF and CNF projects subsequently paid the corrected wages; however, the contractor on the NRSL project was nonresponsive. The FS contracting officer referred this DBA violation to the Department of Labor, Wage and Hour Division.¹³

We also discussed this issue with the FS team leaders¹⁴ at the EROCs. The team leaders agreed that these DBA violations could have been prevented or resolved earlier if the contracting officials had thoroughly reviewed the contractors' payrolls. They also agreed that it would be beneficial for contracting officials to have specific guidance to perform payroll reviews, since both FAR and the FS Handbook do not state how payroll reviews are to be performed. Therefore, we recommend that FS: (1) issue specific guidance to its contracting officials that explains how to conduct payroll reviews and handle DBA violations; and (2) ensure FS contracting officials review all contractors' and subcontractors' payrolls before making payments to them.

Please provide a written response within 5 days outlining your proposed corrective action for this issue. If you have any questions, please contact me at (202) 720-6945, or have a member of your staff contact Bill Henderson, Acting Director, Rural Development and Natural Resources Division, at (202) 720-6945.

cc:

Jennifer McGuire, Director of Audit and Assurance, Forest Service
Linda Smith, Supervisory Accountant, Forest Service
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Sandy Coleman, Branch Chief, Forest Service
Janet Roder, OIG Audit Liaison, Forest Service

¹³ The DOL Wage and Hour Division is responsible for enforcing the prevailing wages for Government construction contracts.

¹⁴ The EROC team leaders are responsible for supervising FS staff administering Recovery Act-funded projects. We discussed this issue with the Southwest, Intermountain, and East EROCs team leaders respectively on March 31, 2011; February 1, 2011; and February 11, 2011.

Agency's Response

USDA'S

FOREST SERVICE

RESPONSE TO AUDIT REPORT



Forest
Service

Washington
Office

1400 Independence Avenue, SW
Washington, DC 20250

File Code: 1430

Date: April 21, 2011

Subject: Response to Audit Report No. 08703-2-SF (4) The Recovery Act – Forest Service Facility Improvement, Maintenance and Rehabilitation (4) – Davis Bacon Act (DBA) Violations at the Coronado National Forest, Arizona; Clearwater National Forest, Idaho; and Northern Research Station Laboratory, Wisconsin

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

This letter is in response to Audit Report No. 08703-2-SF (4) referenced in the subject line, received on April 15, 2011, from the US Department of Agriculture Office of the Inspector General. The response for each recommendation is as follows:

OIG Recommendation 1: Issue specific guidance to contracting officials that explains how to conduct payroll reviews and handle Davis Bacon Act (DBA) violations.

Forest Service Response: FS concurs with the recommendation. Forest Service Handbook (FSH) 6309.11, 04.4 items 12 and 13 address Contracting Officer Representative responsibilities in regards to contract administration which includes a list of tasks, such as audit of weekly payrolls for construction of public works to assure proper job classifications, hours, and rates. Guidance is also provided to advise the Contracting Officer on action to take in the event wage problems are identified. A reminder to comply with this guidance will be issued to contracting officials, including Contracting Officers and Contracting Officer Representatives by May 31, 2011.

OIG Recommendation 2: Ensure FS contracting officials review all contractors' and subcontractors' payrolls before making payments to them.

Forest Service Response: FS concurs with the recommendation. In accordance with FAR 22 the Contracting Officer is responsible for management of all aspects of payment. As described in the response in recommendation 1, FSH 6309.11 delineates the responsibility to the Contracting Officers Representative to review weekly payrolls. The letter to be issued in response to recommendation 1 will also include guidance to contracting officials to address this recommendation.

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

/s/ Karren Alexander (for)
DONNA M. CARMICAL
Chief Financial Officer

