



United States Department of Agriculture
Office of Inspector General





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



DATE: September 7, 2012

AUDIT
NUMBER: 02703-0001-10

TO: Ed Knipling
Administrator
Agricultural Research Service

ATTN: Lisa A. Baldus
Associate Deputy Administrator
Administrative and Financial Management

FROM: Gil H. Harden
Assistant Inspector General
for Audit

SUBJECT: Procurement Oversight Audit of the Invasive Plant Research Laboratory
Contract

This report presents the results of the Procurement Oversight Audit of the Invasive Plant Research Laboratory Contract awarded by the Agricultural Research Service (ARS) to SheltonDean, Inc. Your response to the official draft is included in its entirety as an exhibit to this report.

Regis & Associates, PC, was engaged to conduct the audit to ensure that the transparency and accountability requirements of the Recovery Act are met and to ensure that ARS' Recovery Act procurement activities are performed in accordance with Federal Acquisition Regulations, Office of Management and Budget guidance, and Recovery Act requirements. During our oversight of the contract, we reviewed Regis & Associates, PC's report and related documentation. Our review, as differentiated from an audit, in accordance with *Government Auditing Standards* (issued by the Comptroller General of the United States), disclosed no instances where Regis & Associates, PC's audit did not comply, in all material respects, with *Government Auditing Standards*.

Based on your response, we were able to reach management decision on Recommendations 1 and 2. Finding 1 in this report did not contain recommendations because a similar issue was previously reported. Therefore, no further response is necessary. Please follow your agency's

internal procedures in forwarding documentation for final actions to the Office of the Chief Financial Officer.

In accordance with Departmental Regulation 1720-1, final action must be taken within 1 year of each management decision to prevent being listed in the Department's annual Performance and Accountability Report.

We appreciate the courtesies and cooperation extended to us by members of your staff during our audit fieldwork and subsequent discussions.

Attachment

cc: (w/attachment)
Director, Planning and Accountability Division, OCFO

DATE: August 22, 2012

REPLY TO

ATTN OF: 02703-0001-10

TO: Jane A. Bannon
Director
IT Audit Operations
Department of Agriculture, Office of Inspector General

FROM: Regis & Associates, PC /s/

SUBJECT: Procurement Oversight Audit of the Invasive Plant Research Laboratory Contract

The American Recovery and Reinvestment Act of 2009 (the Recovery Act) provided the Department of Agriculture's (USDA) Agricultural Research Service (ARS) with \$176 million to reduce the backlog of facilities critical deferred maintenance projects. On October 9, 2009, ARS' South Atlantic Area Office, located in Athens, Georgia, awarded a sole-source, negotiated, firm fixed price construction contract under the 8(a) Business Development Program¹ for \$446,340 to SheltonDean, Inc. The work to be performed under this contract was to repair and replace mechanical, electrical, and plumbing systems, and the roof of laboratory buildings at the Invasive Plant Research Laboratory, located in Fort Lauderdale, Florida. In addition to the initial contract award, a subsequent contract modification was made for \$8,752, and increased the contract amount to \$455,092. ARS' South Atlantic Area's Acquisition, Procurement, and Property Office personnel performed the procurement activities and contract management functions, including contract award, contractor payment approval, and monitoring of the contractor's Recovery Act reporting. Project monitoring was performed by the contracting officer's representative, who is located at the project site in Fort Lauderdale, Florida. ARS' Financial Management Division (FMD) reported the agency's Recovery Act fund statistics on Recovery.gov, through SharePoint.²

In enacting the law, Congress emphasized the need for the Recovery Act to provide for unprecedented levels of transparency and accountability, so that taxpayers know how, when, and where tax dollars are being spent. To accomplish this objective, the Office of Management and Budget (OMB) issued various implementing guidelines that require Federal agencies receiving Recovery Act funds to post key information on Recovery.gov. In addition, agencies must submit weekly updates, monthly financial status reports, award transaction data feeds, and an agency Recovery Act plan to OMB and the Recovery page of the agency's website.

The Recovery Act also provided USDA's Office of Inspector General (OIG) funding for oversight and audits of USDA programs, grants, and activities funded by the Recovery Act. OMB guidance states that OIGs will perform audits and inspections of their respective agencies'

¹ The Small Business Administration 8(a) Business Development Program was created to assist eligible small disadvantaged business owners to compete in the American economy through business development.

² SharePoint is an electronic database for USDA's Recovery Act data collection.

processes for awarding, disbursing, and monitoring Recovery Act funds, to determine whether safeguards exist for ensuring funds are used for their intended purposes.

To ensure that the transparency and accountability requirements of the Recovery Act are met, USDA/OIG contracted with Regis & Associates, PC, to assist it in ensuring that ARS' Recovery Act procurement activities are performed in accordance with Federal Acquisition Regulation (FAR), OMB guidance, and Recovery Act requirements. This audit was performed in accordance with generally accepted government auditing standards, and standards established by the American Institute of Certified Public Accountants.

During this audit, we reviewed applicable laws and regulations pertaining to procurement activities, contract oversight, and Recovery Act reporting. We also obtained and reviewed ARS' South Atlantic Area Office's organizational documents relating to management controls, policies, and procedures for the procurement and contracting functions, financial management system, and other processes that would ensure compliance with the Recovery Act.

The scope of this audit included a review of the justification for a sole-source acquisition processes for preparing and issuing the solicitation, contractor selection, contract price determination, contract award, contract modification, performance monitoring, and invoice processing and payments to determine whether ARS' South Atlantic Area Office followed Departmental and agency policies and procedures, FAR, and Recovery Act requirements. We performed procedures, as necessary, to determine whether the contract was based on fair and reasonable price estimates, the contract was awarded to a contractor with appropriate qualifications, and processes were in place to ensure that the contractor provided services/products in accordance with contract terms. We also performed a site visit to the project, located in Fort Lauderdale, Florida to assess the project's progress, verify that Recovery Act funds were used for their intended purposes, and conduct interviews with the procurement personnel at the project location that were responsible for contract monitoring. We found ARS' contracting staff, including the contracting officer, contract specialist, and contracting officer's representative, were experienced and qualified to award and monitor the contract.

However, we identified three issues that warrant reporting. We determined that the contracting officer's representative did not fully comply with policies and procedures relating to conflict of interest disclosure and found weaknesses in the invoice approval and payment processes. In addition, although ARS developed new Recovery Act recipient reporting procedures, we found an instance of inaccurate recipient reporting,³ and failure to report contractor information on Recovery.gov for the quarters ending June 30, 2010 and September 30, 2010.

³ This issue was previously reported to ARS in audit reports 02703-01-HQ (issued September 2010) and 02703-04-HQ (issued July 2011).

Finding 1: Conflict of Interest and Financial Disclosure Procedures Not Completed

The contracting officer's representative did not complete the confidential financial disclosure report⁴ and the conflict of interest certification⁵ in a timely manner. In order to avoid involvement in a real or apparent conflict of interest, the Agriculture Acquisition Regulation (AGAR) Advisory #85, *USDA Acquisition Workforce Training, Delegation and Management System* requires that, "USDA acquisition workforce personnel must comply with existing conflict of interest regulations/laws, and file the approved forms as required. At a minimum, all individuals whose duties involve procurement and contracting shall file a financial disclosure statement." The confidential financial disclosure report and the conflict of interest certification forms state that the forms are due within 30 days of designation as an agency representative on any contract. The confidential disclosure report also states that, for annual filers, the report is due no later than February 15, unless the agency grants a filing extension.

The contracting officer's representative was assigned to this project on November 13, 2009, and was required to have completed the annual confidential financial disclosure report before February 15, 2009, and the conflict of interest certification by December 13, 2009.

The contracting officer's representative, who is located in Fort Lauderdale, FL, stated that the ARS Office of Ethics, and the ARS South Atlantic Area Office, did not send him the annual financial disclosure form to fill out in 2009. He also stated that he filled out the conflict of interest form, which was sent to him on November 15, 2010, after construction work had been completed and payments were already made to the contractor.

The control and oversight provided by ARS' Office of Ethics and ARS' South Atlantic Area Office pertaining to the management of conflict of interest and financial disclosure policy implementation was weak. We discussed this issue with the ARS Office of Ethics Officer who stated that their email system failed; as a result of the system failure, many ARS personnel did not receive email correspondence relating to their financial disclosure and conflict of interest status. ARS officials have a responsibility to manage and implement the conflict of interest and financial disclosure policy in order to ensure staff are filing appropriate forms timely, so any conflict of interest can be determined when overseeing contracts, and to enhance the integrity and transparency of the procurement functions in all ARS Area Offices.

Since the contracting officer's representative did not complete the confidential financial disclosure report, and the conflict of interest certification was not filed in a timely manner, ARS' Office of Ethics had no way of determining whether the contracting officer's representative was involved in a real or apparent conflict of interest. This could compromise the integrity of ARS' oversight of the contract and the transparency and accountability envisioned by the Recovery Act.

⁴ Office of Government Ethics Form, OGE 450, the Confidential Financial Disclosure Report, states that the report should be completed on an annual basis no later than February 15.

⁵ Science Ethics Branch Form, SEB 102.

We are not making a recommendation at this time, because a similar issue was noted in a previous contract review.⁶ We recommended that ARS needs to inform all procurement personnel to complete the required Conflict of Interest and Financial Disclosure statements within the required timeframe, and maintain copies of these documents. ARS concurred with our recommendation.

Finding 2: Inadequate Invoice Review Process

We noted that the invoice review process was inadequate. The appointment letter for the contracting officer's representative states that this official will review the contractor invoices and make a recommendation regarding the payment of the invoices to the contracting officer. ARS' Contracts Standard Operating Procedures, CSOP 04-002, *Invoice Handling Procedures*, paragraph 4(c), requires that invoice review and recommendations should be documented. The Procedures state that contracting officer's representatives should "provide their recommendation for approval or disapproval annotated on the invoice and initial and date the invoice."

We reviewed the contract file documentation and found two paid invoices. Though project monitoring reports were also in the contract file, we did not find evidence that the invoices were reviewed by the contracting officer's representative prior to the contracting office paying the invoice. Documentation of review and approval was not available and the invoices did not contain the contracting officer's representative signature as required by ARS' documented operating procedures.

The contracting officer's representative thought an email sufficed to show invoice approval and provided an email string as evidence that construction progress was being monitored. ARS was unable to provide adequate documentation to show the invoices were appropriately reviewed. For example, the contracting officials could not provide the approved invoices or similar documentation constituting that a sufficient review had been done. The contracting officer's representative stated that comments regarding invoices would only be written if there were issues with contractors' invoices, otherwise they were just forwarded to the contracting officer. The contracting officer's representative further stated the reason there were no review comments was because there were no issues with the invoices. Since the contracting officer's representative relied on email rather than annotating the actual invoices, as required by CSOP 04-002, there was no evidence that ARS' procedures were complied with and we cannot be assured that the invoices were properly reviewed and payment to the contractor was warranted.

Recommendation 1

ARS needs to ensure contracting officer's representatives follow policies and procedures currently provided when they review contractor invoices.

⁶A similar issue, Confidential Financial Disclosure statements were not completed timely, was previously reported to ARS in audit report 02703-0002-10 (issued June 2012).

Finding 3: Changes in the Contracting Officer for a Contract Impacts Oversight

ARS' South Atlantic Area Office had paid one invoice, in the amount of \$245,029, 96 days after the due date. According to the contracting officer, this was due to a personnel change in the area office. The initial contracting officer took on a new role in the area office in February 2010. By the time the successor took over the management of the contract and approved the invoice, the designated timeframe for approving the contractor's invoice had elapsed. As a result of not paying the vendor timely, ARS incurred and paid a late payment penalty of \$2,261.

FAR Part 32.904(d)(i) states that, for construction contracts, the due date for progress payments based on contracting officer's approval of the estimated amount and value of work or services performed, including payments for reaching milestones in any project, is 14 days after the designated billing office receives a proper payment request.

Also, the one contract modification made to this contract, totaling \$8,752, was not funded with Recovery Act funds, but was erroneously included in the amount reported to Recovery.gov for the period ending March 31, 2010. The contracting officer did not adequately review and reconcile the information reported by the contractor. The contracting officer had just been assigned management responsibilities for the contract and did not realize that the modification, which was awarded by the previous contracting officer, was funded with non-Recovery Act funds. The amounts reported on Recovery.gov for contract price and disbursements was \$8,752 more than what was recorded in the financial system.

As a result of the condition noted above, the accuracy of USDA's Department-wide totals of Recovery Act financial and activity data for the period ended March 31, 2010 could be adversely affected. We reviewed the contract and disbursement amounts reported on Recovery.gov for the period ending December 31, 2010 and noted the amounts were accurately reported and agreed with the agency's financial system as of that date.

Recommendation 2

ARS should take the necessary action to ensure the transition of a contracting officer to/from a position of responsibility for a contract does not affect oversight.

USDA'S

AGRICULTURAL RESEARCH SERVICE

RESPONSE TO AUDIT REPORT

SUBJECT: Management's Response to Recommendations in Audit Report 02703-0001-10 –
Procurement Oversight Audit of the Invasive Plant Research Laboratory Contract

TO: Gil H. Harden
Assistant Inspector General for Audit
Office of Inspector General

Jon M. Holladay
Deputy Chief Financial Officer
Office of the Chief Financial Officer

FROM: Lisa A. Baldus /s/
Associate Deputy Administrator

The Agricultural Research Service (ARS) provides the following response to audit
Recommendations 1 and 2 in Audit Report 02703-0001-10 – Procurement Oversight Audit of the
Invasive Plant Research Laboratory Contract.

Finding 1: Conflict of Interest and Financial Disclosure Procedures Not Completed

Recommendations addressed in a previous report.

Finding 2: Inadequate Invoice Review Process

Recommendation 1

ARS needs to ensure contracting officer's (COs) representatives follow policies and procedures
currently provided when they review contractor invoices.

Agency Response

ARS is currently drafting a new standard operating procedure for processing invoices. This new
procedure will require all invoice 'approvals' or 'disapprovals' to be documented in writing. It is
estimated that this guidance will be issued in the September/October 2012 timeframe and will be
disseminated to the ARS acquisition workforce.

Finding 3: Changes in the Contracting Officer for a Contract Impacts Oversight

Recommendation 2

ARS should take the necessary action to ensure the transition of a CO to/from a position of responsibility for a contract does not affect oversight.

Agency Response

On July 12, 2012, the ARS Head of Contracting Activity Designee (HCAD) sent a reminder to the Business Service Center Acquisition and Property Branch Chiefs (and cc: the Business Service Center Leadership) of their responsibility to maintain adequate and effective contract oversight when transitioning work between COs. This email is attached to this memo.

Enclosure

cc:

M. Barnes, APD

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