



OFFICE OF  
**INSPECTOR GENERAL**  
U.S. DEPARTMENT OF THE INTERIOR

RECOVERY

# RECOVERY OVERSIGHT ADVISORY

Acquisition Procedures on the Barrier Beach Restoration



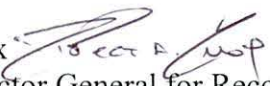
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**INSPECTOR GENERAL**  
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**JAN 12 2012**

Memorandum

To: Rhea S. Suh  
Assistant Secretary for Policy, Management and Budget

Through: Mary Pletcher  
Department Recovery Act Coordinator

From: Robert A. Knox   
Assistant Inspector General for Recovery Oversight Office

Subject: Recovery Oversight Advisory – Acquisition Procedures on the Barrier Beach  
Restoration  
Report No. RO-C-FWS-072-2011

This advisory, regarding acquisition procedures on the Barrier Beach Restoration on Long Beach West in Stratford, CT, is part of our ongoing effort to oversee and ensure the accountability of funding appropriated to the U.S. Fish and Wildlife Service (FWS) in the American Recovery and Reinvestment Act of 2009 (Recovery Act).

**Background**

FWS spent \$909,000 under the Recovery Act to remove 37 cottages and restore beach and dune habitat on 35 acres of municipal property on Long Beach West belonging to the Town of Stratford, CT. The cottages, which were mostly unoccupied and deteriorating since 1996, are the remnants of a former summer community.

To carry out this project, FWS entered into a cooperative agreement with the Town of Stratford, CT. Stratford agreed, among other things, to maintain the property in its natural undeveloped state and to repay the project funds if the property were sold without the appropriate restrictive covenants defined in the cooperative agreement. FWS agreed to commit funds to site remediation and habitat restoration.

Stratford previously entered into an option agreement to sell the property to a non-profit organization, which would then sell it to FWS. This agreement is effective from December 5, 2008 to December 31, 2014.

## **Findings**

### *Solicitation of the Associated Multiple-Award Contract*

We found that the contracting procedures used to acquire habitat restoration services for \$175,000 (later modified to \$60,000) to Ducks Unlimited (DU) were not in accordance with the Federal Acquisition Regulation (FAR). The habitat restoration services were acquired using the FWS Region III Multiple Award Indefinite–Delivery/Indefinite Quantity (IDIQ) contract 301817D007. The Multiple Award IDIQ allows the award of task orders to DU and Pheasants Forever on a rotating basis or through a self-nomination process. The ordering procedures were established in advance agreements as part of the negotiation process, subsequent to the solicitation and prior to award. Only two firms expressed interest in the solicitation, and the advance agreements were executed in order to establish a fair process for awarding tasks to the two parties. The agreements were signed by both parties. According to the contracting officer, such agreements are typical in such situations.

We found that these order placement procedures were not specified in the solicitation for the IDIQ as required by FAR 16.505(b)(1)(ii)(D), which states the contracting officer must “...include the [order placement] procedures in the solicitation and the contract.” The use of an advance agreement is also unusual. Advance agreements are addressed in FAR 31.109(a) and are referenced in the context of cost principles and procedures. The use of an advance agreement to define order placement procedures is inappropriate.

### *Issuance of the Task Order*

DU was selected as the contractor for habitat restoration work in accordance with the rotating task order placement procedure. The task order was issued with a firm fixed-price on August 27, 2010.

Upon award of the task order, FWS and DU agreed that further negotiations were needed to finalize the scope of work. Portions of DU’s previous proposal were rejected because the work was duplicative and “appeared to be extremely ‘mapping heavy.’” We found that FWS needed to obligate funds for the task by September 30, 2010, in order to meet the requirement in the Recovery Act, but this reason is insufficient for awarding an undefined scope of work. Subsequently, FWS was forced to abandon the habitat restoration project and transfer project funds to the demolition contractor, when hazardous materials were discovered on-site and additional funds were needed to remove contaminated soil.

Price reasonableness for the task was determined using the historical cost approach, but the price negotiation memorandum did not document the price reasonableness as required by 16.505(b)(3), using the policies and methods at FAR 15.406-3(a)(11). The price negotiation memorandum does mention two prior projects, but no historical cost data on those projects is included in the memorandum, so it is unclear how these projects were used to determine price reasonableness.

Schedule B of the habitat restoration task order identifies it as a firm fixed-price order. FWS officials also stated that the contract was a firm fixed-price task order, not to exceed \$175,000. The price negotiation memorandum indicates that the task order will be a not-to-exceed level of effort task order (a cost-type order) and that it will be monitored on a time and materials basis (a practice for cost-type orders). These contradictory statements imply confusion in the FWS contracting process. According to FAR 16.202-2, a fixed-price task order is appropriate when, "...acquiring other supplies or services on the basis of reasonably definite functional or detailed specifications," yet the scope of work in this case was undefined when the task order was issued.

## **Recommendations**

We recommend that FWS:

Include in future acquisition and financial assistance training information regarding:

- The differences and implications of fixed-price and cost-type contracts or task orders;
- How to conduct and document determinations of price reasonableness; and
- How to specify order placement procedures in solicitations for all task order contracts.

Please provide a written response to this advisory within 30 days of receipt detailing the corrective actions the department will implement to meet our recommendations, as well as targeted completion dates and title(s) of the official(s) responsible for implementation. We will post this advisory on our Web site ([www.doioig.gov/recovery/](http://www.doioig.gov/recovery/)) and on [Recovery.gov](http://Recovery.gov). Information contained in this advisory may also be included in our semiannual reports to Congress. We performed our work in accordance with the applicable Quality Standards for Inspection and Evaluation adopted by the Council of the Inspectors General on Integrity and Efficiency. Please contact me if you have any questions

cc: Deputy Secretary, U.S. Department of the Interior  
Director, Office of Executive Secretariat and Regulatory Affairs  
Director, Office of Acquisition and Property Management  
Acting Director, Office of Financial Management  
Director, U.S. Fish and Wildlife Service  
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