



**Department of the Interior
Office of Inspector General**



Advisory Report



Bighorn Canyon National Recreation Area (OIG Photo)

National Park Service

Administration of the Contract to Build a Breakwater Dock and Log Boom Fairway at Bighorn Canyon National Recreation Area

**Report No. Q-CX-NPS-0004-2007
January 2008**



United States Department of the Interior

OFFICE OF INSPECTOR GENERAL
Central Region
134 Union Blvd, Suite 510
Lakewood CO 80228

January 25, 2008

Memorandum

To: John Norway
Termination Contracting Officer

From: Jack Rouch
Regional Audit Manager

Subject: Advisory Report, Administration of the Contract to Build a Breakwater Dock and Log Boom Fairway at Bighorn Canyon National Recreation Area

The attached report presents our observations concerning the National Park Service's (NPS) contract administration from our audit of the contractor's settlement costs (Report No. Q-CX-NPS-0004-2006). The purpose of this audit was to determine whether claimed settlement costs were allowable under applicable federal laws and regulations, allocable to the contract and incurred in accordance with the terms and conditions of the subject contract, and reasonable and supported by contractor records.

The scope of our audit did not include an evaluation of NPS' administration of the contract; however, during our audit, we observed deficiencies in NPS' administration of the contract that we wanted to bring to your attention. Specifically, we found that NPS did not effectively administer the contract because it:

- Disregarded indications that the contractor may not have been qualified.
- Issued an incomplete and inaccurate contract.
- Ineffectively monitored the contract and maintained inadequate contract files.

These issues were not included in our audit report, unless they directly affected our conclusions on the claimed settlement costs. Additionally, these issues relate only to the audited contract and we did not determine whether they represent systemic issues in NPS' management of contracts.

We suggest that park superintendents and other NPS managers be advised of the lessons to be learned from the Bighorn Canyon National Recreation Area experience so

that similar mistakes can be avoided on future construction projects undertaken at the parks. To assist in that effort, we have prepared our advisory report as a PowerPoint presentation that can be used as a training aide. The report provides eight suggestions for addressing these issues in the future. We are prepared to assist in your efforts to broadcast this information. Specifically, we would make available to you one of our team members to present the material and discuss any questions your staff may have regarding the information.

Because the advisory report does not provide formal recommendations, a written response is not required. We wish to thank officials from the Intermountain Region and Bighorn Canyon National Recreation Area for their assistance in obtaining the information needed to prepare this presentation. If you have any questions regarding our review or the presentation, please feel free to contract me at (303) 236-9243.

Attachment



Office of Inspector General Department of the Interior



Administration of the Contract to Build a Breakwater Dock and Log Boom Fairway at Bighorn Canyon National Recreation Area

Observations

National Park Service
January 2008



Introduction



- In September 2004, the National Park Service (NPS) awarded a firm-fixed price design-build contract to an 8(a) company for design, fabrication and installation of a modular floating breakwater dock.
- In March 2006, NPS terminated the contract for the convenience of the Government because:
 - ★ The parties did not have a mutual understanding of the importance of a complete design and dock system, and
 - ★ The Government team had lost confidence that the contractor could perform the work.



Issue



- In June 2006, the Termination Contract Officer (TCO) requested an audit of the Prime Contract Termination Settlement Proposal and Subcontract Settlements. As part of the Termination audit, we found that NPS did not effectively administer the contract. Specifically, NPS:
- ★ Disregarded indications that the contractor may not have been qualified.
 - ★ Issued an incomplete and inaccurate contract.
 - ★ Ineffectively monitored the contract and maintained inadequate contract files.



Contractor Qualifications



NPS disregarded indications that the contractor may not have been qualified and awarded the contract in order to use available FY 2004 funding.



Contractor Qualifications



- Deficiencies in the contractor's proposals suggested the contractor did not understand the requirements and was not qualified. Specifically:
 - ✦ The Contractor's proposals were returned as incomplete at least twice, once for missing 15 key items.
 - ✦ Despite several square footage changes, the contractor's overhead bid amount didn't change. Specifically, NPS changed the square footage requirements at least 4 times, ranging from 3,792 square feet to 6,060 square feet. Neither the Contracting Officer (CO) nor the Contracting Officer's Representative (COR) questioned why the overall overhead bid amount remained unchanged.



Contractor Qualifications



- Neither the CO nor the COR requested a Certificate of Competency from the Small Business Administration to ensure the contractor could handle the specialized work.
- NPS selected a contractor with no experience building docks even though the Request for Proposal (RFP) required the contractor have 10 years experience with dock building.



Contractor Qualifications



- Both the CO and the COR were satisfied with the selection of the contractor, despite the fact it lacked dock building experience, because it originally proposed using a highly qualified subcontractor.
- Due to a lack of funding, NPS later disapproved use of the originally proposed highly qualified subcontractor.



Contractor Qualifications



➤ FY 2005 funds would not be available to complete the project. Therefore, in order to use available FY 2004 funds, the CO issued the contract despite:

- ✦ Reservations about the contractor's prior experience and qualifications.
- ✦ Questions about its proposal.



Contract Issues



NPS issued an incomplete and inaccurate contract.



Contract Issues



- The contract did not contain required Federal Acquisition Regulation (FAR) clauses including:
 - ✦ The Termination Clause allowing termination for the convenience of the Government.
 - ✦ The Changes Clause allowing equitable adjustment of price due to scope changes.



Contract Issues



- The contract did not contain clear specifications and drawings.
- The contract did not contain safety factors later forced on the contractor.
- The contract did not contain standards for submittals.
- The contract stated that standard materials were to be used but the COR rejected submittals indicating more specialized materials were to be used.



Contract Issues



- The contract did not contain a description of the invoice or progress payment process.
- Period of performance was set at 60 days despite the fact that the government estimate had a 5 month period of performance. The contract records contained no explanation for this significant difference.



Contract Issues



- The contract had significant mathematical errors that resulted in unnecessary payments to the contractor. For example, the contract allowed 10 percent for overhead. However, due to math errors, the contractor was actually paid 14 percent.
- NPS improperly used repair and rehabilitation money for this new construction.



Contract Administration



NPS had:

- Ineffective monitoring.
- Significant communication problems.
- Inadequate contract files.



Contract Monitoring



- The COR did not effectively or fairly evaluate contractor submittals. Specifically, the COR:
 - ✦ Requested unreasonable safety parameters.
 - ✦ Dictated design parameters that should have been left to the discretion of the contractor.
 - ✦ Requested excessive support for facts and figures used by the contractor in its submittals.
- The CO obtained a second opinion on the COR's evaluation of the submittals. The second opinion stated the COR inappropriately rejected submittals that were actually in accordance with contract specifications.



Communication



- NPS made verbal agreements with the contractor that resulted in numerous misunderstandings.
- The COR made constructive changes to the contract that were never ratified and verbal Notices to Proceed that were never approved by the CO.
- The CO and the COR routinely bypassed the prime contractor and dealt directly with the subcontractor and supplier. As a result, the prime contractor was sometimes unaware of what the subcontractor or supplier was doing or what NPS expected.



Communication



- Formal Notification to Proceed was vague and unclear on what work was being authorized. As a result:
 - ✦ The contractor believed it had authorization for the build phase.
 - ✦ NPS believed it had only authorized the design phase.



Contract Documentation



- NPS did not maintain adequate contract documentation, specifically:
 - ★ Submittals were returned to the contractor without comment or notation of deficiencies and/or approval.
 - ★ The CO did not ensure that all parties to the contract received a complete and final copy of the approved contract.
 - ★ The CO did not properly file documents into an official contract file. When administration of the contract was transferred to the TCO, all documents arrived loose in a box.



Contract Documentation



- ★ The CO did not obtain the necessary approvals, required by the FAR, to have the same company perform both the design and build phases.
- ★ There was no documentation in the contract file to support rates (i.e., overhead) negotiated with the contractor.
- ★ The contract file did not contain the required Individual Acquisition Plan or the Evaluation Criteria for Award.



Conclusion



- NPS terminated the contract because it lacked confidence in the contractor's ability to perform.
- NPS wasted approximately \$159,000 as a result of this inappropriate contract award.



Suggestions



- NPS should use sound business judgment when evaluating potential contractors. Contractors should not be accepted simply because the end of the fiscal year is close.
- NPS should not accept a proposal based heavily on a subcontractor's ability. The only contractual agreement that NPS can enforce is with the prime contractor.
- NPS should not begin the RFP process until a static requirement and scope of work have been established.



Suggestions



- NPS should implement controls to ensure that repair and rehabilitation funds are not used for new construction projects.
- NPS should reiterate to all its contracting officers the importance of maintaining a complete contract file and of ensuring all required elements are included in each contract.
- NPS should seek and follow the advice of experienced professionals when undertaking significant construction projects.



Suggestions



- NPS should reiterate to all COs and CORs that verbal agreements and/or verbal directions to the contractor are to be strictly limited.
- NPS should ensure that all CORs assigned to oversee contractor activities, especially on highly specialized contracts, have the experience and background necessary to effectively evaluate the contractor's work.