



OFFICE OF INSPECTOR GENERAL



DEPARTMENT OF THE INTERIOR

RECOVERY OVERSIGHT ADVISORY

A Critical Point Evaluation Product





RECOVERY OVERSIGHT OFFICE

Washington, DC 20240

MAR 29 2010

To: Chris Henderson
Senior Advisor to the Secretary for Economic Recovery and Stimulus

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

Subject: Recovery Oversight Advisory – Problems with Recovery Act Purchase Order
10181RM578 for Program Management Services (ROO-ROA-FWS-5001-2010)

To safeguard taxpayer dollars, Congress provided us with funding to oversee and ensure accountability of the \$3 billion appropriated to the Department of the Interior (DOI) in the American Recovery and Reinvestment Act of 2009 (Recovery Act). We are focused on: preventing fraud, waste, and mismanagement; reducing misuse of dollars through early detection; and ensuring transparency in our oversight efforts. As part of our collaboration with the Department, this advisory discusses concerns with Purchase Order 10181RM578 to Alpha-Boulder, LLC of Littleton, CO, by the U.S. Fish and Wildlife Service (FWS).

The Recovery Accountability and Transparency Board¹ referred the July 6, 2009 award to us for further review. We found that FWS did not comply with all Federal Acquisition Regulation and Recovery Act requirements regarding the procurement of program management services.

Please provide a written response within 30 days of receipt of this advisory detailing the corrective actions that the Department and FWS plan to take to implement the recommendations, including targeted completion dates.

We will post this advisory on our Web site (www.doioig.gov/recovery) and Recovery.gov. Information contained in this advisory may also be included in our semiannual reports to Congress. If you have any questions, please do not hesitate to contact me.

Background and Findings

On April 4, 2007, Alpha-Boulder, LLC received a blanket purchase order agreement (BPA)² with FWS to provide management services. Five “calls,” or orders, were issued under this agreement and several of them were modified during the period of performance. The last call

¹ The Act created the Recovery Accountability and Transparency Board “to coordinate and conduct oversight of covered funds to prevent fraud, waste, and abuse.” It is led by a chairman and is composed of Inspectors General.

² Blanket purchase order agreement number 982107A013.

under this BPA (order number 101819X223) began February 3, 2009, and was scheduled to end August 31, 2010, and was funded by annual appropriations.

The FWS contracting office decided to issue a new purchase order so that work for Recovery Act program management services could be funded with Recovery Act funds rather than annual appropriations. FWS drafted a solicitation for this requirement and posted it on FedBizOps.gov. The Recovery Act directs agencies to use competitive procedures “to the maximum extent practicable” for contracts funded under the Act. The solicitation met the requirements for fair and open competition. On July 6, 2009, Alpha-Boulder was awarded purchase order (PO) number 10181RM578.

We identified a number of problems with these awards and their associated files:

- At the time of the award, pricing should have been established for the entire period of the BPA, from April 3, 2007, until March 14, 2012. The BPA award document states in section A.1 SCHEDULE OF ITEMS AND PRICES, “Prices effective from date of award of BPA through 14 March 2008” and provides the hourly rate for management consulting services and for facilities support services. Pricing for the remaining period of the BPA was not definitized. Therefore, calls 982108Y190 and 982108Y206, as well as the call 1018119X223, issued on February 3, 2009, were issued without official rates in place. In addition, an increase in the hourly rate was approved on February 5, 2009, without documentation to support this change.
- In addition, amounts from calls 982108Y190 and 982108Y206 were deobligated. These calls were drafted as fixed-price calls. If deliverables were completed under a true fixed-price award, the contractor is due the entire agreed-upon price for those deliverables. If these calls were drafted as fixed-price, that would imply that deobligation is inappropriate unless the scopes of the calls were reduced by mutual agreement.
- The period of performance for the base period of the PO is July 7, 2009 to July 6, 2010, which overlaps the period of performance for the last call under the BPA (both are in effect from July 7, 2009 to July 6, 2010). These two agreements, one funded under the Recovery Act and one funded under annual appropriations, exist for the same scope of work, by one individual, over the same time period. Since the scopes of work for both agreements were general in nature, there could be confusion over which agreement would be charged for the actual work performed.
- The PO did not contain “ceiling price” language as required by Federal Acquisition Regulation (FAR) 16.601(d)(2) and 16.602.
- The PO, in error, specifically excluded travel to and from the Portland, OR FWS contract office and had no line item for reimbursement of travel costs; however, FWS officials said that they intend for the contractor to travel to the Portland, OR office at the Government’s expense.

- FWS did not appoint a contracting officer representative (COR)³ for the PO activity. Contracting personnel stated that they are unsure how the program personnel plan to monitor progress.

FWS represented the BPA and the PO as firm-fixed-price vehicles. FWS officials stated that "Firm fixed price is highly encouraged at all times especially under the Recovery Act. Time and materials gives the contractor no incentive to work efficiently. Time and materials typically does [sic] not make good business sense for our needs as we do not do research and development contracting at this office." According to the FWS officials, they never considered using a time-and-materials contract. We think, however, that in some cases, the contracting office actually used a labor-hour vehicle, which is a variation of the time-and-materials contract and was incorrect in representing the vehicle as fixed-price. The last call of the BPA and the PO included a fixed hourly labor rate, and the language used in those awards is typical of labor-hour agreements. We were informed that FWS intends to procure labor hours from Alpha-Boulder based on assignments given to Alpha-Boulder by FWS engineers. Bureau staff indicated that the 2,000 hours requested in the PO were a general estimate because the exact hours needed were unknown. The contractor would only be paid for hours worked. Given these circumstances, the award is based on a labor-hour agreement and was not a fixed-price contract.

The PO is reported on the Federal Procurement Data System-Next Generation as a fixed-price contract; however, payment under a fixed-price contract would not be dependent on the number of hours worked. A labor-hour contract would enable the bureau to pay only for the hours worked. Non-fixed-price awards, such as labor-hour contracts, are required to be reported by FAR 5.705(b) and Section 1554 of the Recovery Act.⁴ The FAR requires that an award notice for a non-fixed-priced contract provide the rationale for using a non-fixed-price vehicle. Section 1554 requires reporting of any award that is not a fixed-price contract on the Recovery.gov website. The Government incurs increased risk of performance with labor-hour vehicles, which makes the need for a COR to monitor the contract even more critical. Furthermore, FAR 12.207(b)(1)(II)(A) requires that the contracting officer execute a determination and findings (D&F) for a non-fixed-price contract. A D&F was never executed for this PO.

The problem of misidentifying contract types is not confined to FWS; the Government Accountability Office (GAO) issued a report on this subject.⁵ GAO noted that officials across Government agencies mistakenly assumed that the fixed-labor rate in time-and-materials contracts makes these fixed-price contracts. They also noted that D&Fs were rarely used for the contracts they reviewed. GAO recommended that clarification be given regarding the use of fixed-price and time-and-material contracts and that contracting officials receive guidance on the requirements of FAR 12.207.

³ A COR is an authorized representative of a contracting officer who performs certain contract administration functions, which help to ensure the Government and contractor comply with the contract's terms and conditions.

⁴ The Recovery Act, Division A, Title XV, Subtitle D, Section 1554.

⁵ *Minimal Compliance with New Safeguards for Time-and-Material Contracts for Commercial Services and Safeguards Have Not Been Applied to GSA Schedules Program*. June 2009, GAO-09-579.

The FWS contracting office acknowledged the errors related to travel and the period of performance. On July 20, 2009, the contracting office executed a modification on the last call, which added funds to pay the last invoice for work under that call and ended the period of performance effective July 3, 2009. On July 22, 2009, although FWS did not believe it was required, FWS appointed a certified COR to the project. On August 13, 2009, the contracting office issued a second modification that clarified the statement of work and added a travel line to the PO, explaining that travel should be paid in accordance with the Joint Federal Travel Regulations.

Recommendations

We recommend that FWS:

1. Issue guidance on the proper establishment of rates and associated non-labor costs for blanket purchase orders.
2. Modify the PO to accurately characterize the purchase order type and implement the publication requirements of FAR 5.705(b) and Section 1554 of the Recovery Act.
3. Document a D&F for the purchase order in accordance with FAR 12.207.

We recommend that the Department:

1. Review a sample of fixed-price agreements awarded by the bureaus to ensure that they are not time-and-material or labor-hour contracts and that required support is present in procurement files.
2. Communicate the difference between fixed-price and time-and-materials and labor-hour contracts to contract officials through training and/or in written form.
3. Ensure proper execution of D&Fs for time-and-material and labor-hour contracts.

cc: Deputy Secretary, Department of the Interior
Assistant Secretary – Policy, Management and Budget
Director, Office of Acquisition and Property Management
Acting Director, Office of Financial Management
Acting Director, U. S. Fish and Wildlife Service
U. S. Fish and Wildlife Service Recovery Act Coordinator
U. S. Fish and Wildlife Service Audit Liaison
Departmental GAO/OIG Audit Liaison
Audit Liaison, Office of the Secretary

Report Fraud, Waste, and Mismanagement



Fraud, waste, and mismanagement in government concerns everyone: Office of Inspector General staff, Departmental employees, and the general public. We actively solicit allegations of any inefficient and wasteful practices, fraud, and abuse related to Departmental or Insular Area programs and operations. You can report allegations to us in several ways.



By Mail:

U.S. Department of the Interior
Office of Inspector General
Mail Stop 4428 MIB
1849 C Street, NW
Washington, D.C. 20240

By Phone:

24-Hour Toll Free	800-424-5081
Washington Metro Area	703-487-5435

By Fax:

703-487-5402

By Internet:

www.doioig.gov/hotline