



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

RECOVERY

RECOVERY OVERSIGHT ADVISORY


Bureau of Land Management Contract with the Chicago
Horticultural Society



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

JUL 15 2010

To: John C. 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 – Bureau of Land Management Contract with the Chicago Horticultural Society (ROO-ROA-BLM-3004-2010)

This advisory, regarding the Bureau of Land Management (BLM) contract for Trained Native Seed Collection (Contract No. L10PC00437), is part of our ongoing efforts to oversee and ensure the accountability of funding appropriated to the U.S. Department of the Interior (DOI) in the American Recovery and Reinvestment Act of 2009 (Recovery Act).

Please provide a written response to this advisory within 30 days of receipt detailing the corrective actions BLM will implement to meet our recommendations, as well as targeted completion dates and the title(s) of the official(s) responsible for implementation.

We will post this advisory on our website (www.doi.ig.gov/recovery/) and Recovery.gov. Information contained in this advisory may also be included in our semiannual reports to the Congress. Please contact me if you have any questions.

Background and Findings

On March 11, 2010, BLM awarded Contract No. L10PC00437 to the Chicago Horticultural Society, doing business as the Chicago Botanical Gardens (CBG) of Glencoe, IL. The contract was for seed collection services to be provided by intern labor and was executed as a sole source firm-fixed-price contract based on a monthly "intern price."

We noted an inconsistency between the Sources Sought Notice and the Statement of Work, which was incorporated in the contract. The Sources Sought Notice required that contractors provide interns for the seed collection services who were both "trained in native plant identification" and in possession of a four-year college degree. The Statement of Work stipulated only that college degrees were preferred and allowed for the training of seed collectors. It is noted, however, that the Statement of Work is unclear as to whether the seed collectors will be paid with government funds during their training time. These more restrictive requirements in the Sources Sought Notice could have dissuaded potential offerors, who may have expressed an interest if they had known the actual terms of the contract.

According to page 2 of the Statement of Work, the award was identified as a firm-fixed-price contract even though the Statement of Work contained a time-and-materials pricing provision. The Statement of Work states:

“Monthly intern price” is for 160 working intern hours. Contractor shall adjust the price accordingly when any intern’s work hours are less for any reason – such as absences due to health, family, personal, or work issues. Contractor shall reduce the monthly intern price by a percentage that relates to such absences and is in proportion to the number of hours missed over the number “160.” [e.g. number of hours missed divided by 160] Hours shall be documented clearly by Contractor on the monthly invoices for each intern so that the BLM COR can verify invoice pricing based on the monthly intern price and any percentages thereof.

By providing that the price of the contract could be adjusted based on the level of effort or hours, this provision is inconsistent with the definition of a firm-fixed-price contract. FAR 16.202-1 states, “A firm-fixed-price contract provides for a price that is not subject to any adjustment on the basis of the contractor’s cost experience in performing the contract.”

Inaccurately labeling contract types is not unique to BLM. The Government Accountability Office (GAO) issued a report on misidentified contracts.¹ GAO noted that officials across government agencies mistakenly assume that the fixed-labor rate in time-and-materials contracts constitutes a firm-fixed-price contract.

The contractor previously provided the same services for seven years under cooperative agreements. Provisions ordinarily incorporated in cooperative agreements were present in this contract. The period of performance for this contract was from February 24, 2010 to August 14, 2011. Part of this time period precedes the award date of March 11, 2010. While it is permissible for a recipient to initiate performance before a grant is awarded and still be eligible for reimbursement, there is no authority under contracts outside of ratification.²

The contract indicates that equipment purchased for this job will be part of the monthly rate charged by the contractor and will remain with the contractor upon completion of the contract. The Statement of Work specifies that, “Any such equipment purchased as a part of this contract shall be owned by the CBG at the termination of the contract.” We found that the program lead is under the impression that some of the equipment will be retained by the government. While retention of the equipment may be allowable for grants, it is considered government property under a contract.³

Item 4 of the Statement of Work, incorporated as an attachment to the contract, indicates that the cost of equipment purchased for this job is included in the monthly intern price used to establish the amount of Contract Line Item Number (CLIN) 1. An equipment charge is also included in CLIN 2, and presumably the equipment is acquired using government funds. This

¹ *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.

² E.g., 2 C.F.R. § 215.25(e)(1); 43 C.F.R. § 12.934; 48 C.F.R. § 1.602-3.

³ 48 C.F.R. § 52.245-1.

could lead to double billing, because equipment is included in the labor rates and also billed separately.

The amount of the monthly intern price times the total intern months of performance does not equal the amount obligated under Contract Line Item Number (CLIN) 1 for trained native seed collection interns. The reimbursable travel, seed collection equipment, and shipping expense does not equal the amount obligated for the CLIN 2. The contracting officer indicated the narrative in the SF 1449 and the contract attachments are correct. While the total obligated amount of the contract is correct, the contracting officer recorded the amounts for each CLIN incorrectly. The contract should be modified accordingly.

Recommendations

We recommend that BLM:

1. Determine whether the contract is firm-fixed-price or time and materials and execute the contract accordingly;
2. Verify whether services were performed prior to the obligation of the funds and contract award, and, if necessary, take actions to address the issue;
3. Perform a modification to correct the mathematical error relating to the allocation of costs for CLIN 1 and CLIN 2 and address any double billings for equipment; and
4. Consult with the Office of the Solicitor to determine the appropriate action regarding ownership of property acquired using government funds.

cc: Deputy Secretary, Department of the Interior
Director, Bureau of Land Management
Assistant Secretary, Policy, Management, and Budget
Director, Office of Acquisition and Property Management
Acting Director, Office of Financial Management
Recovery Coordinator, Bureau of Land Management
Department GAO/ OIG Audit Liaison
Audit Liaison, Office of the Secretary
Audit Liaison, Bureau of Land Management

Report Fraud, Waste, and Mismanagement



Fraud, waste, and mismanagement in government concern everyone: Office of Inspector General staff, Departmental employees, and the general public. We actively solicit allegations of any inefficient and wasteful practices, fraud, and mismanagement 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
Washington Metro Area

800-424-5081
703-487-5435

By Fax:

703-487-5402

By Internet:

www.doioig.gov