



INSTALLATION REPORT OF AUDIT

F2010-0004-FBL000

**American Recovery and Reinvestment Act
Air National Guard Military Construction
United States Property and Fiscal Office
Topeka KS**

Midwest Area Audit Office

14 October 2009

INTRODUCTION

On 17 February 2009, the President signed the American Recovery and Reinvestment Act (Recovery Act) into law. The purpose of the Recovery Act is to stimulate the economy and create or retain jobs. The 190th Air Refueling Wing received \$4.1 million of Recovery Act funds to repair and add to the base fire station. Since this Military Construction project exceeds the warrant level of the 190th Air Refueling Wing Contracting Officer, the United States Property and Fiscal Office Contracting Office is responsible for administering the contract. Using an existing multiple award task order contract, the United States Fiscal and Property Office issued a task order valued at \$4.146 million on 27 August 2009, after onsite audit fieldwork was completed.

OBJECTIVES

The overall objective of this centrally directed audit was to determine whether officials properly managed Recovery Act Military Construction requirements. Specifically, we determined whether United States Property and Fiscal Office contracting personnel:

- Reported required contracting information on the Federal Business Opportunities website.
- Met Recovery Act goals by fostering competition and expeditiously awarding contracts.
- Included Recovery Act Federal Acquisition Regulation clauses in the request for proposals.

CONCLUSIONS

Overall, United States Property and Fiscal Office contracting officials effectively managed Recovery Act Military Construction requirements. Specifically, officials posted all required information related to the request for proposals on the Federal Business Opportunities website. In addition, contracting personnel used an existing multiple award task order contract to foster competition and award the contract expeditiously. However, contracting personnel did not include Recovery Act Federal Acquisition Regulation clauses in the request for proposals. As a result, contractors bidding on and accepting the contract may not have been fully aware of the Recovery Act requirements, and may not be able to fulfill or abide by them. (Tab A, page 1)

RECOMMENDATIONS We made two recommendations to improve Recovery Act contracting processes. (Reference the individual tab for specific recommendations.)

MANAGEMENT'S RESPONSE We provided this report to the United States Property and Fiscal Officer and other interested officials (reference Appendix II). Management officials agreed with the audit results and concurred with the issues as presented in the report.



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	<u>Page</u>
EXECUTIVE SUMMARY	i
TAB	
A Federal Acquisition Regulation Clauses	1
APPENDIX	
I Audit Scope and Prior Audit Coverage	3
II Points of Contact and Final Report Distribution	5

BACKGROUND

The Recovery Act includes a number of new provisions to be implemented in Federal Government contracts. Contracting officers must include Recovery Act Federal Acquisition Regulation (FAR) clauses in solicitations and contracts funded in whole or in part with Recovery Act funds. The new clauses relate to Whistleblower Protection, Contractor Reporting Requirements, special Buy American Act Requirements, and expanded audit access to records.

AUDIT RESULTS 1 – RECOVERY ACT FAR CLAUSES

Condition. United States Property and Fiscal Office (USP&FO) contracting personnel did not include Recovery Act FAR clauses in the solicitation for the fire station project. Specifically, personnel did not include the new clauses in the request for proposals for the task order.

Cause. USP&FO personnel stated they did not include the Recovery Act FAR clauses in the request for proposals because they informed potential bidders of the Recovery Act clauses at the pre-bid conference. However, personnel did not have meeting minutes to support this statement. They planned to include the clauses in the task order when it was awarded.

Impact. As a result, contractors bidding on and accepting the contract may not have been fully aware of the Recovery Act requirements, and may not be able to fulfill or abide by them. In addition, the contractors may not have realized the additional costs involved with these clauses and may not have bid accurately. For example, special contractor reporting requirements may increase administrative costs; likewise, heightened buy American rules may increase the cost of materials. As a result, the contractor awarded the task order may request additional funds to meet the requirements of the FAR clauses.

Audit Comment. During the audit, we recommended USP&FO personnel award the task order without the new clauses and then modify it to include the clauses, because the changes could affect the cost of the contract. However, USP&FO personnel issued the task order, incorporating the clauses without a task order modification.

Recommendations. The Contracting Officer, USP&FO, should:

- **Recommendation A.1.** Coordinate with legal personnel to determine whether incorporating the Recovery Act FAR clauses into the task order without a modification was appropriate and take corrective action if necessary.
- **Recommendation A.2.** Establish procedures to ensure new contract provisions are incorporated in writing in future solicitations or requests for proposals.

Management Comments. The USP&FO concurred with the audit results and recommendations and approved the following management comments.

- **Recommendation A.1.** “The contracting officer contacted the National Guard Bureau Principal Assistant Responsible for Contracting (NGB PARC) Office for guidance and was advised to award the Task Order with all required language including the FAR Act clauses rather than issuing a modification after award to include the clauses. We followed the NGB PARC recommendation and awarded with all required language. However, as recommended by the audit we will forward the task order to our legal office for review and take corrective action if necessary. (CLOSED)

- **Recommendation A.2.** “The contracting officer discussed the requirements with staff and will ensure new contract provisions are incorporated in writing in future solicitations or requests for proposals. (CLOSED)”

Evaluation of Management Comments. Management comments addressed the issues identified in the audit result, and corrective actions taken should resolve the issues.

AUDIT SCOPE

Audit Coverage. To determine whether officials properly managed Recovery Act Military Construction requirements, we interviewed applicable personnel and reviewed documentation dated between November 2004 and August 2009. We conducted the audit from August to September 2009 and provided management a draft report on 23 September 2009. We conducted this audit in accordance with generally accepted government auditing standards and included such tests of internal controls as considered necessary under the circumstances. Specifically, we evaluated internal controls related to documentation of contracting actions. To evaluate Recovery Act Military Construction contracting requirements, we conducted the following audit tests.

- To determine whether personnel reported required contracting information on the Federal Business Opportunities website, we reviewed the synopsis and request for proposals posted on the website.
- To determine whether personnel met Recovery Act goals by fostering competition and expeditiously awarding contracts, we reviewed contract files and discussed the type of contracting method used with contracting personnel.
- To determine if contracting personnel included Recovery Act Federal Acquisition Regulation (FAR) clauses in the request for proposals, we reviewed the original multiple award task order contract and the request for proposals for the new FAR clauses.

Criteria. We used the following criteria to accomplish this audit:

- Public Law 111-5, *The American Recovery and Reinvestment Act of 2009*, 19 February 2009.
- Office of Management and Budget Memorandum M-09-15, *Updated Implementing Guidance for the American Recovery and Reinvestment Act of 2009*, 3 April 2009.
- FAR, Part 52, various dates.

Sampling Methodology. The Department of Defense Inspector General (DoDIG) developed the sample based on predictive analysis of critical risk factors (a form of judgmental sampling). The audit control point received a sample of 13 Military Construction transactions, including the 190th Air Refueling Wing's fire station project. We did not use computer assisted auditing tools and techniques (CAATTs) to complete this audit.

Data Reliability. We did not rely on computer-generated data to support audit conclusions.

Auditing Standards. We conducted this performance audit in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the

Audit Scope and Prior Audit Coverage

audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

Discussion with Responsible Officials. We discussed and/or coordinated this report with the United States Property and Fiscal Officer (USP&FO), the USP&FO contracting officer, and other interested officials. We advised management this audit was part of an Air Force-wide evaluation, American Recovery and Reinvestment Act, Air National Guard Military Construction, Project F2009-FD1000-0659.000. Therefore, selected data not contained in this report, as well as data contained herein, may be included in a related Air Force and/or Air National Guard Report of Audit. Management's formal comments were received on 14 October 2009, and are included in this report.

PRIOR AUDIT COVERAGE

Our review of audit files and contact with the audit focal point disclosed no other audit reports were issued to the USP&FO for Kansas by any audit agency during the past 5 years that related to our audit objectives.

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PROJECT NUMBER

We accomplished this audit under project number F2009-FD1000-0659.008.

FREEDOM OF INFORMATION ACT

The disclosure/denial authority prescribed in AFPD 65-3 will make all decisions relative to the release of this report to the public.