



INSTALLATION REPORT OF AUDIT

F2010-0012-FDM000

**American Recovery and Reinvestment
Act of 2009
United States Property & Fiscal Office
Buckhannon, WV**

Atlantic Area Audit Office

1 December 2009

INTRODUCTION

On 17 February 2009, the President signed into law the American Recovery and Investment Act 2009. This provided the Department of Defense with \$2.3 billion in Military Construction projects and \$3.4 billion in Facilities Sustainment, Restoration, and Modernization projects. Of the \$2.3 billion in Military Construction Funds, the 167th Airlift Wing, West Virginia Air National Guard, Martinsburg, West Virginia received \$4.3 million to construct a C-5 Avionics Shop.

OBJECTIVES

We performed this centrally directed audit to determine if the United States Property & Fiscal Office contracting officer properly managed Recovery Act Military Construction – active air guard base requirements. Specifically, we determined whether contracting personnel:

- Reported information so it was transparent to the public.
- Met the program goals of the Recovery Act by fostering competition, expeditiously awarding contracts, and creating or retaining jobs.
- Included all *Federal Acquisition Regulation* clauses in Recovery Act solicitations and contracts.

CONCLUSIONS

The United States Property & Fiscal Office contracting officer effectively managed the solicitation to construct the C-5 Avionics shop at the 167th Airlift Wing, West Virginia Air National Guard, in two of the three areas reviewed. Specifically, contracting personnel:

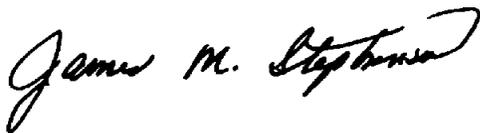
- Reported information so it was transparent to the public. Specifically, personnel posted all solicitation documents for the construction of the C-5 Avionics Shop to the Federal Business Opportunities website. Posting the solicitation and solicitation documents on the Federal Business Opportunities web site allows prospective eligible contractors to view the solicitation requirements, and allows contractors to develop competitive contract bids. (Tab A, page 1)
- Met the program goals of the Recovery Act by fostering competition, expeditiously awarding contracts, and creating or retaining jobs. To illustrate, the solicitation identified bid procedures that would foster competition,

expedite the award of a contract and the specifications were developed to create and/or retain jobs. Proper solicitation procedures and contract award procedures aid in the prevention of inadequate competition, unqualified contract bidders, and possible over-runs and delays in construction once the award has been made. Further, fostering competition, expediting the award of a contract, and developing specifications to create and/or retain jobs provides reasonable assurance the goals of the *American Recovery and Reinvestment Act of 2009* will be met. (Tab A, page 1)

- Did not include all clauses required by the *Federal Acquisition Regulation* in the contract solicitation documents. For example, *Federal Acquisition Regulation* clause 52.244-6, *Subcontracts for Commercial Items and Commercial Components* was not included in the solicitation document. Including all required clauses in the solicitation and contract document ensures contractors who bid on and accept contracts are aware of the specific clause requirements and can fulfill or abide by the requirements of the clauses. (Tab B, page 3)

RECOMMENDATIONS We made three recommendations to improve the processes for management of *The American Recovery and Investment Act 2009*. (Tab B, page 3)

MANAGEMENT'S RESPONSE Management officials agreed with the overall audit results and recommendations. The corrective actions taken are responsive to the issues and recommendations in this report. Therefore, this report does not contain disagreements requiring elevation for resolution.



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BACKGROUND

Federal Business Opportunities is the single government point-of-entry for Federal government procurement opportunities over \$25,000. This website contains all Federal government solicitations and contract awards.

The *Federal Acquisition Regulation* requires all contract actions over \$25,000 to be posted on the Federal Business Opportunities website. Solicitations and contract awards must be posted on this site with enough information to obtain the highest number of bidders. The website allows vendors and buyers access to opportunities for Federal contracts, including American Recovery and Reinvestment Act contracts.

The President indicated multiple goals for the American Recovery and Reinvestment Act. Among them were to (1) award projects quickly, putting the money into the economy quickly; (2) foster competition; and (3) create and/or retain jobs. On 4 March 2009, the President issued a memorandum stating it is the policy of the Federal Government that executive agencies not engage in non-competitive contracts except in those circumstances where their use can be fully justified and where appropriate safeguards have been put in place to protect the taxpayer. President Obama has indicated a preference for competitive, firm, fixed price contracts as they provide the least risk to the government, thereby reducing taxpayer risk.

AUDIT RESULTS 1—TRANSPARENCY

Condition. United States Property & Fiscal Office contracting personnel reported information so it was transparent to the public. Specifically, personnel posted all solicitation documents for the C-5 Avionics Shop construction project to the Federal Business Opportunities website.

Cause. This positive condition occurred because United States Property & Fiscal Office contracting personnel properly posted the solicitation documents on the Federal Business Opportunities web site as required by the Federal Acquisition Regulation.

Impact. Posting the solicitation and solicitation documents on the Federal Business Opportunities web site allows prospective eligible contractors to view the solicitation requirements, and allows contractors to develop competitive contract bids.

AUDIT RESULTS 2 – PROGRAM GOALS

Condition. United States Property & Fiscal Office contracting personnel met the program goals of the Recovery Act by fostering competition, expeditiously awarding contracts, and creating or retaining jobs. The solicitation identified bid procedures that would foster competition, expedite the award of a contract. In addition, procedures were in place to monitor jobs created and/or retained. For example:

- The Invitation for Bid utilized sealed bid procedures to maximize contractor participation and full and open competition.

- The intended award format is a firm-fixed price contract.¹
- To foster competition, the contract was set-aside for small businesses vice a sole source requirement.
- Sealed bid procedures expedite the award of a contract, as the lowest qualified bid is selected for award and bidder negotiations are not required.
- Procedures were in place to monitor jobs created and/or retained for the C-5 Avionics project.

Cause. This positive condition occurred because contracting and civil engineer personnel had the necessary knowledge and experience to ensure proper contract solicitation and award under the Federal Acquisition Regulation. In addition, they were aware of the *American Recovery and Reinvestment Act of 2009* requirements prior to preparation of the specifications and solicitation.

Impact. Proper solicitation procedures and contract award procedures aid in the prevention of inadequate competition, unqualified contract bidders, and possible over-runs and delays in construction once the award has been made. Further, fostering competition, expediting the award of a contract, and developing specifications to create and/or retain jobs provides reasonable assurance the goals of the *American Recovery and Reinvestment Act of 2009* will be met.

¹ A solicitation document was issued; however, the contract has not yet been awarded. Therefore, issues related to contract award are not addressed in this report other than to address the intent of the solicitation for contract award.

BACKGROUND

The *Federal Acquisition Regulation* is the principal set of rules in the *Federal Acquisition Regulation System*. This system consists of sets of regulations issued by agencies of the Federal government of the United States to govern what is called the "acquisition process," which is the process through which the government purchases ("acquires") goods and services. New *Federal Acquisition Regulation* clauses were developed to help achieve the goals of the American Recovery and Reinvestment Act. In addition, other mandatory *Federal Acquisition Regulation* clauses are required to be included in solicitations and contracts.

AUDIT RESULTS 3 – FEDERAL ACQUISITION REGULATION CLAUSES

Condition. United States Property & Fiscal Office contracting personnel did not include all clauses required by the *Federal Acquisition Regulation* in the contract solicitation documents. Specifically, *Federal Acquisition Regulation* clause 52.244.6, *Subcontracts for Commercial Items and Commercial Components* was not included in the solicitation document.

Cause. This condition occurred because contracting personnel determined the scope of the project was not a commercial item; therefore, they did not include any clauses that pertained to commercial item contracts. However, the clause 52.244.6, *Subcontracts for Commercial Items and Commercial Components* is specifically required in contract documents that are not commercial in nature.

Impact. Including all required clauses in the solicitation and contract document ensures contractors who bid on and accept contracts are aware of the specific clause requirements and can fulfill or abide by the requirements of the clauses.

Recommendations: The United States Property & Fiscal Officer should:

- **Recommendation B.1.** Include the Federal Acquisition clause 52.244.6, *Subcontracts for Commercial Items and Commercial Components*, in the resulting contract.
- **Recommendation B.2.** Request a legal review of the solicitation and contract documents to determine the legal ramifications of including the clause in the contract and not the solicitation.
- **Recommendation B.3.** Require the contract review committee to review the contract document prior to award to ensure the clause is included.

Management Comments. The United States Property & Fiscal Officer for West Virginia concurred with the audit results and recommendations and stated:

- **Recommendation B.1.** "Federal Acquisition Regulation clause 52.244.6, *Subcontracts for Commercial Items and Commercial Components* was included in the awarded

- contract; which was issued 28 September 2009. Action Completed: 28 September 2009. (CLOSED)
- **Recommendation B.2.** “The Contracting Officer requested a legal review, which was completed by the West Virginia National Guard Judge Advocate General (JAG) office. The JAG’s review indicated possible ramifications could include increase costs or contractor protests based on the change. That statement notwithstanding; the contractor has agreed to the contract and has no concerns regarding the change between the solicitation and the awarded contract. Action Completed: 6 November 2009. (CLOSED)
- **Recommendation B.3.** “The contract went through a full review to ensure the clause was included prior to contract award. Future reviews will be enhanced to ensure all clauses are properly included in solicitations and contract. Action Completed: 6 November 2009. (CLOSED)”

Evaluation of Management Comments. The corrective actions taken are responsive to the issues and recommendations in this tab.

AUDIT SCOPE

Audit Coverage. To accomplish the audit objectives, we reviewed spreadsheets and supporting documentation covering the period 13 February through 4 August 2009. In addition, we reviewed the American Recovery and Reinvestment Act of 2009 for specific requirements. We interviewed United States Property & Fiscal Office, civil engineer, financial management and National Guard Bureau personnel. We conducted the audit from 5 August through 17 September 2009 and issued management a draft report on 7 October 2009.

- **Transparency.** To determine the transparency of the solicitation documents, we searched the Federal Business Opportunities website <http://www.fbo.gov> to determine if the solicitation documents had been posted by the United States Property & Fiscal Office for contractor access.
- **Program Goals.** To determine the bid procedures used, we interviewed the contracting officer and reviewed the solicitation document to determine the type of bid document issued and the set-aside requirements. In addition, we reviewed the specifications of work to determine if they were written to promote the creation and retention of jobs.
- **Federal Acquisition Regulation Clauses.** To determine if the Federal Acquisition Regulation clauses required by the American Recovery and Investment Act 2009 were included in the solicitation/contract document, we retrieved a copy of the solicitation and completed and identified each Federal Acquisition Regulation clause.

Sampling Methodology. We did not use statistical techniques to analyze data or project audit results. The Department of Defense Inspector General developed an American Recovery and Reinvestment Act military construction sample based on predictive analysis of the critical risk factors (a form of judgmental sampling). The Air Force Audit Agency received a sample of 13 military construction projects at Air Force bases from the Inspector General. The C-5 Avionics shop was one of the 13 projects.

Computer Assisted Auditing Tools and Techniques. We used computer assisted auditing tools and techniques to filter, calculate and total the sampled item costs and determine data and cost accuracy. Specifically, we were provided a *Microsoft Excel*[®] spreadsheet by the audit control point. We used the filter, calculate and total functions to determine if the project cost estimate data provided by the audit client was accurate.

Data Reliability. Although we relied on computer generated data from the *Automated Civil Engineer System – Project Management Module* for construction project data, the *Wide Area Workflow* for solicitation documents, and the *Commander’s Resource Integration System* for

financial data to support our audit results and conclusions, we did not evaluate the adequacy of the systems' general and application controls. We did not rely on information from *Parametric Cost Estimating System*, instead we established the data's reliability by comparing available manual records, such as solicitation documents, the *Federal Acquisition Regulation*, and the Federal Business Opportunities website to determine whether the data were sufficiently reliable to support audit conclusions.

Auditing Standards. We accomplished audit work in accordance with generally accepted government auditing standards. Accordingly, we included tests of internal controls, such as reviews of appropriate validation documentation, as well as the accurate and timely recording of the validation process. Further, we evaluated other internal controls as considered necessary under the circumstances.

Discussion with Responsible Officials. We discussed/coordinated this report with the United States Property & Fiscal Office; Commander, 167th Airlift Wing; Vice Commander, 167th Airlift Wing; Commander, 167th Civil Engineer Squadron; Comptroller, 167th Airlift Wing; and other interested officials. Management was advised this was part of an Air Force-wide evaluation of projects selected for funding under *the American Recovery and Investment Act 2009*; 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 National Guard report of audit. Management's formal comments were received on 6 November 2009 and are included in this report.

PRIOR AUDIT COVERAGE

We did not identify any Air Force Audit Agency; Office of the Inspector General, Department of Defense; or United States Government Accountability Office reports issued to the United States Property & Fiscal Office or the 167th Airlift Wing within the past 5 years that related to our specific objectives.

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PROJECT NUMBER

We accomplished this audit under project number F2009-FD1000-0659.007.

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.