



INSTALLATION REPORT OF AUDIT

F2009-0071-FDM000

**American Recovery and Reinvestment
Act of 2009 Requirements
South Carolina United States Property
and Fiscal Officer
Columbia, SC**

Atlantic Area Audit Office

17 September 2009

INTRODUCTION

On 17 February 2009, the President signed into law the *American Recovery and Reinvestment Act of 2009*, with the express purpose of stimulating the economy. The Recovery Act provided the Department of Defense with \$3.4 billion for facilities sustainment, restoration, and modernization projects. As of June 2009, the 169th Fighter Wing awarded one military construction project totaling \$1.5 million using Recovery Act funding.

OBJECTIVES

The Department of Defense Inspector General requested this centrally directed audit to determine whether South Carolina United States Property and Fiscal Officer personnel properly managed Recovery Act Facilities Sustainment, Restoration, and Modernization requirements. Specifically, we determined whether contracting personnel:

- Met the Recovery Act program goal of fostering contract competition and expeditiously awarding contracts.
- Included all new *Federal Acquisition Regulation* clauses in Recovery Act contracts.
- Reported contract information so it was transparent to the public.
- Met the Recovery Act program goals by creating or retaining jobs and establishing a plan to validate contractors completed quarterly reporting requirements.
- Properly performed and maintained records of contractor verifications.

CONCLUSIONS

South Carolina United States Property and Fiscal Officer contracting personnel properly managed Recovery Act Facilities, Sustainment, Restoration, and Modernization requirements in one of five areas reviewed. Specifically, contracting personnel competitively solicited and expeditiously awarded the Recovery Act contract (Tab A, page 1). However, personnel did not:

- Include all new *Federal Acquisition Regulation* clauses in Recovery Act contracts. Properly including all applicable FAR clauses helps ensure that contractors bidding on and accepting contracts are aware of the

Recovery Act requirements, and are able to complete Recovery Act requirements. (Tab B, page 2).

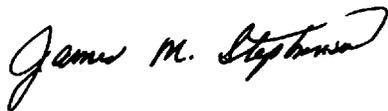
- Report contract information so that it was transparent to the public. Reporting contract information so that it is transparent to the public is essential for compliance with the Recovery Act and Federal Acquisition Regulation. (Tab C, page 5).
- Establish a plan to validate contractors completed quarterly reporting requirements. Validating contractors are meeting quarterly reporting requirements is crucial to ensure the benefits of using Recovery Act funds are transparent to the public. (Tab D, page 6).
- Properly perform and maintain records of contractor verifications. Without the proper contractor verification, the federal government may be liable for contract award grievances, which could result in unnecessary government litigation and legal fees. (Tab E, page 8).

MANAGEMENT CORRECTIVE ACTIONS

During the audit, contracting personnel implemented seven corrective actions to help correct the conditions identified by audit. (Reference the individual tabs for specific management corrective actions). Therefore, no further recommendations are necessary.

MANAGEMENT'S RESPONSE

Management officials agreed with the audit results and corrective actions taken are responsive to the issues included in this report. Therefore, this report does not contain disagreements requiring elevation for resolution.



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BACKGROUND

President Obama indicated multiple goals for the Recovery Act. Among them were to foster competition and award projects expeditiously, to place money into the economy quickly in order to jump start the economy. Additionally the Act directs that the money will be managed and expended so as to achieve the purposes of the Act, including commencing expenditures and activities as quickly as possible consistent with prudent management. To meet this intent, 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.

The North and South Carolina United States Property and Fiscal Officer (USPFO) contracting offices work together to provide joint contracting services for all North and South Carolina Army and Air National Guard organizations. The North Carolina USPFO is responsible for award of Multiple Award Task Order Contracts (MATOCs) for North and South Carolina. However, the South Carolina contracting office generally performs the majority of contracting actions on behalf of the 169th Fighter Wing at McEntire Joint National Guard Base, including MATOC task/delivery orders. Further, the South Carolina USPFO performed contracting actions in support of the 169th Fighter Wing's Recovery Act sustainment and minor construction project titled *Add/Alter Vehicle Maintenance Complex, Building 210*, in June 2009.

AUDIT RESULTS 1 — COMPETITION AND TIMELINESS

Condition. The South Carolina USPFO contracting personnel competitively solicited and expeditiously awarded the Recovery Act contract. Specifically, during the solicitation phase, 14 contractors competed for delivery order award under the Multiple Award Task Order Contract. Further, as of 25 June 2009, the contract for the Vehicle Maintenance Complex project had been awarded within 42 days of solicitation.

Cause. This positive condition occurred because the USPFO Contracting Officer and USPFO management made this Recovery Act project a priority.

Impact. As a result, the Air Force is meeting two of the five goals of the Recovery Act by fostering competition and expeditiously awarding contracts.

BACKGROUND

The Federal Acquisition Regulation (FAR) is the primary regulation for use by all Federal Executive agencies in their acquisition of supplies and services with appropriated funds. To implement controls over Recovery Act funding and reinforce the goals of the act, the Government established FAR clauses specifically related to Recovery Act contract actions. The National Guard Bureau Principal Assistant Responsible for Contracting (NGB/PARC) provides contracting guidance for wing and United States Property and Fiscal Officer contracting personnel. The North and South Carolina USPFO contracting offices work together to provide joint contracting services for all North and South Carolina Army and Air National Guard organizations. Contracting officials are required to insert applicable clauses in all new contracts funded by the Recovery Act, as well as modifying existing contracts to include the new Recovery Act FAR clauses. Per the NGB/PARC, these clauses include:

- FAR 52.203-15, *Whistleblower Protection Under the American Recovery and Reinvestment Act of 2009*.
- FAR 52.204-11, *Recovery Act Reporting Requirements*.
- FAR 52.225-21, *Required Use of American Iron, Steel, and Manufactured Goods – Buy American Act – Construction Materials*.
- FAR 52.225-22, *Notice of Required Use of American Iron, Steel, and Other Manufactured Goods – Buy American Act – Construction Materials*.
- FAR 52.244-6, *Subcontracts for Commercial Items and Commercial Components*.
- FAR 52.215-2, *Audit and Records – Negotiation*.
- FAR 52.222-6, *Davis-Bacon Act*.
- FAR 52.212-4, *Contract Terms and Conditions – Commercial Items*.
- FAR 52.212-5, *Contract Terms and Conditions Required to Implement Statutes or Executive Orders – Commercial Items*.

AUDIT RESULTS 2—FEDERAL ACQUISITION REGULATION CLAUSES

Condition. The South Carolina USPFO Contracting Officer did not include all applicable FAR clauses in the Recovery Act contract for the *Add/Alter Vehicle Maintenance Complex* construction project at McEntire Joint Air National Guard base. Specifically, the Multiple Award Task Order Contract (MATOC) and the associated contract delivery order for this project were missing at least three required FAR clauses. For example, the contracting documents did not contain:

- FAR clause 52.212-4, *Contract Terms and Conditions – Commercial Items*.
- FAR clause 52.212-5, *Contract Terms and Conditions Required to Implement Statutes or Executive Orders – Commercial Items*.
- Project-specific clauses from FAR Part 23, *Environment, Energy, and Water Efficiency, Renewable Energy Technologies, Occupational Safety, and Drug-Free Workplace*.

Cause. This occurred because:

- The NGB/PARC did not provide guidance for contracting personnel detailing procedures for contract reviews for FAR clause inclusion.
- The NGB/PARC recently released a new template for MATOCs to North and South Carolina USPFO contracting offices, but the template did not include all appropriate clauses. Further, the North Carolina USPFO contracting office completed the new MATOC contract using this template and did not ensure all appropriate clauses were included.
- The South Carolina USPFO Contracting Officer also did not identify the missing FAR clauses when they received the MATOC contract from the North Carolina USPFO and appropriately include them in the contract delivery order because she assumed they were already included in the MATOC contract, as is the normal procedure.

Impact. Properly including all applicable FAR clauses helps ensure that contractors bidding on and accepting contracts are aware of the Recovery Act requirements, and are able to complete Recovery Act requirements.

Audit Comment. The issue concerning NGB/PARC guidance for contracting personnel detailing procedures for contract reviews for FAR clause inclusion cannot be corrected at this level. Therefore, this concern will be forwarded to the Audit Control Point for review and possible inclusion in an Air Force or Air National Guard level report of audit.

Management Corrective Actions. South Carolina USPFO personnel implemented two corrective actions, which should correct the condition identified by audit. Specifically, as of 2 September 2009, the contracting officer:

- Notified the North Carolina USPFO of missing MATOC contract FAR clauses and requested coordination to amend the MATOC contract to include missing clauses as soon as possible.
- Amended the contract delivery order to include missing FAR clauses.

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

BACKGROUND

The Federal Business Opportunities website 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 Procurement Data System* (FPDS) is the Federal government's central source of procurement information. All contract actions, including task/delivery orders, must be posted to the FPDS. Additionally, Recovery Act program contract actions will be tracked using the "Description of the Requirements" data element, which must include the Treasury Account Symbol.

The Federal Acquisition Regulation (FAR) Part 5.704, *Publicizing-pre-award*, paragraph (a)(2) requires all contract actions over \$25,000 to be posted to Federal Business Opportunities, as well as any contract action, regardless of amount, which was not awarded both competitively and firm, fixed price. The FAR outlines the specific posting requirements for these actions.

AUDIT RESULTS 3 — TRANSPARENCY

Condition. The United States Property and Fiscal Officer (USPFO) Contracting Officer did not report contract information so it was transparent to the public. Specifically, for the *Add/Alter Vehicle Maintenance Complex* project, the USPFO Contracting Officer did not post all required information to the FPDS. For example, a review of the Treasury Account Symbol report disclosed neither the solicitation nor the contract award was properly posted in FPDS more than 2 months after contract award.

Cause. This occurred because the USPFO Contracting Office encountered system technical difficulties when attempting to post delivery order solicitation and contracting actions in FPDS. Specifically, the primary Multiple Award Task Order contract was improperly coded and the FPDS would not allow the delivery order report to be posted without the proper parent contract in the system.

Impact. Reporting contract information so that it is transparent to the public is essential for compliance with the Recovery Act and Federal Acquisition Regulation.

Management Corrective Actions. The South Carolina USPFO personnel implemented two corrective actions, which should correct the condition identified by audit. Specifically, as of 2 September 2009, the contracting officer:

- Requested a technical solution from the NGB/PARC on how to properly code and post the Multi Award Task Order contract to the FPDS.
- Posted the correctly coded Multi Award Task Order contract and associated delivery order to the FPDS.

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

BACKGROUND

Federal Acquisition Regulation (FAR) 52.204-11, Recovery Act Reporting Requirements, requires contractors receiving Recovery Act funds to report quarterly certain information regarding the amount of money expended, percent of project completion, salaries of particular personnel, and the number of jobs created/retained. Contractors are required to post the report to www.federalreporting.gov by 10 October 2009, and then the “Agency” (Department of Defense in this case) has 20 days to review the reports for obvious errors/omissions and post them to www.recovery.gov.

The FAR 4.1501 (c) and (d), *Procedures*, and FAR 4.1502, *Contract clause*, state contracting officers shall ensure the contractor complies with the reporting of the Recovery Act requirements included in FAR 52.204-11. Quality Assurance Evaluators (QAEs) develop plans to inspect the construction site for contract worker attendance, materials delivered to the work site, contractor equipment on hand, and work or testing accomplished or planned. The QAE maintains this data on AF Form 1477, *Construction Inspection Record*, as a daily record of monitoring.

The National Guard Bureau Principal Assistant Responsible for Contracting (NGB/PARC) provides contracting guidance for wing and United States Property and Fiscal Officer contracting personnel. However, there is limited guidance on how contracting and QAE personnel should validate contractors are in compliance with Recovery Act program reporting requirements.

AUDIT RESULTS 4 — CONTRACTOR REPORTING REQUIREMENTS

Condition. Contracting personnel did not establish a plan to validate contractors will complete quarterly Recovery Act program reporting requirements. Specifically, although the South Carolina United States Property and Fiscal Officer (USPFO) Contracting Officer added the FAR clause to the contract delivery order requiring the contractor to report the number of jobs created/retained, they do not have plans to ensure the contractor actually reports these numbers or validate the numbers reported. For example, the Contracting Officer did not develop a contract Quality Assurance Surveillance Plan or alternative surveillance plan for the QAE to use to ensure appropriate contractor reporting per FAR 52.204-11.

Cause. This condition occurred because the Recovery Act does not specify guidance or procedures for personnel to verify contractor reporting. Further, the NGB/PARC did not provide either the Contracting Officer or QAE guidance on how to verify the contractor completes reports or how to validate the specific information the reports contain.

Impact. Validating contractors are meeting quarterly reporting requirements is crucial to ensure the benefits of using Recovery Act funds are transparent to the public.

Audit Comment. The issues concerning Recovery Act specification and NGB/PARC guidance or procedures for personnel to verify contractor reporting cannot be corrected at this level.

Therefore, this concern will be forwarded to the Audit Control Point for review and possible inclusion in an Air Force or Air National Guard level report of audit.

Management Corrective Actions. The South Carolina USPFO personnel implemented two corrective actions, which should correct the condition identified by audit. Specifically, as of 3 September 2009, contracting personnel:

- Coordinated with wing QAE personnel and developed a contract Quality Assurance Surveillance Plan detailing contractor performance standards and the QAE and contracting officer's surveillance plan to ensure appropriate contractor reporting per FAR 52.204-11.

- Developed incentives to withhold partial payment if the contractor does not comply with reporting requirements. Specifically, the Federal Acquisition Regulation 52.232-5(e), *Payment under Fixed Price Construction Contracts*, allows the contracting officer to retain a maximum of 10 percent of the amount of the payment until satisfactory progress is achieved to protect the government's interest.

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

BACKGROUND

United States Property and Fiscal Officer (USPFO) contracting personnel review three contracting systems to verify contractors are suitable for government contracts and to prevent potential contract award to unauthorized contractors. Contracting officers must maintain copies of verification documents in the contract data file. Verifications include reviews of the following systems:

- The *Central Contractor Registration* (CCR) is the primary registrant database for the Federal government. Any organization wishing to do business with the Federal government under a FAR-based contract must be registered in CCR before being awarded a contract.
- The *Online Representation and Certifications Application* (ORCA) is a complementary system to CCR. Any contractor required to be registered in CCR must also be registered in ORCA.
- The *Excluded Parties List System* (EPLS) documents information on parties excluded from receiving Federal contracts and certain subcontracts. The nature of the Recovery Act and its transparency requirements mandates contractors receiving Recovery Act funds are not on this list.

The North Carolina USPFO contracting office is responsible for contractor verification of Multiple Award Task Order Contracts (MATOCs) for North and South Carolina. The South Carolina USPFO contracting office must obtain and maintain copies of all verifications performed in their local delivery order contract files.

AUDIT RESULTS 5 — CONTRACTOR VERIFICATIONS

Condition. The USPFO Contracting Officer did not properly perform and maintain records of contractor verifications. Specifically, the Recovery Act contract file contained CCR, ORCA, and EPLS verification documents, but all documents were dated after the contract award.

Cause. This condition occurred because North Carolina USPFO contracting personnel did not properly maintain the original contractor verification printouts performed in March 2009 or provide them to the South Carolina USPFO Contracting Officer before the new MATOC contract delivery order was awarded 25 June 2009.

Impact. Although verification in August 2009 showed the contractor was listed in CCR and ORCA, and was not listed in EPLS, due to the lack of transparency identified in Tab C, the public could not validate through public notifications whether contractors were authorized to perform government work at the time the contract was awarded. Without the ability to search for this information, the public, including other prospective contractors, could potentially file

contract award grievances, which could result in unnecessary government litigation and legal fees.

Management Corrective Action. During the audit fieldwork, the South Carolina USPFO personnel implemented one corrective action, which should correct the condition identified by audit. Specifically, as of 2 September 2009, the contracting officer established procedures to obtain and file original contractor verification documents prior to contract award.

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

AUDIT SCOPE

Audit Coverage. To determine whether United States Property and Fiscal Officer contracting personnel properly managed Recovery Act Facilities Sustainment, Restoration, and Modernization (FSRM) requirements, we reviewed contracts, military construction project data, and other documentation dated from December 2002 to August 2009. We performed audit field work from 25 August to 2 September 2009 and issued a draft report to management on 16 September 2009. To accomplish the audit objectives, we obtained and reviewed a *Commander's Resource and Integration System (CRIS)* report identifying funds obligated and distributed for Recovery Act projects, the delivery order solicitation, the Multiple Award Task Order Contract (MATOC), and the task/delivery order and modifications. We then compared the CRIS report to the delivery order and modifications to determine if authorized and disbursed funds matched amounts contracted. In addition:

- **Competition.** To determine if contracting personnel properly competed the Recovery Act contract and performed expeditious contract award, we determined whether new contracts were awarded or personnel used existing contracts. We reviewed solicitation documents in the delivery order contract file to determine the solicitation method used. To determine if the delivery order contract was properly competed, we analyzed contract bid information, contracting officer bid analysis, and contract award decision documents. To determine if contracting personnel expeditiously awarded contracts, we reviewed solicitation and award documents in the contract file to determine the number of days between the solicitation and award.
- **Federal Acquisition Regulation Clauses.** To determine whether all new *Federal Acquisition Regulation* clauses were incorporated into new and existing contracts, we reviewed the delivery order solicitation, the Multiple Award Task Order Contract, and the task/delivery order and modifications and compared inclusions to Recovery Act guidance.
- **Transparency.** We reviewed the information listed for each project posted on the Federal Business Opportunity website and the *Federal Procurement Data System*-posted *American Recovery and Reinvestment Act Report* to determine whether contract information was posted so it was transparent to the public. In addition, we reviewed MATOC and delivery order contract files and analyzed contracting officer posting coordination, including Memorandums for Record documenting posting concerns.
- **Contractor Reporting Requirements.** We reviewed contract files and interviewed contracting personnel to determine the timeline of contract award, and determine if they established plans to validate the information contained in the contractor's quarterly reports. In addition, we reviewed the project Quality Assurance Evaluator's (QAEs) AF Forms 1477, *Construction Inspection Records*, to determine the extent of construction execution monitoring accomplished.

- **Contractor Verifications.** To determine if the contracting personnel properly performed and maintained records of contractor verifications, we obtained and reviewed Central Contractor Registration (CCR), Online Representation and Certifications Application (ORCA), and Excluded Parties List System (EPLS) verification documents, and compared them to the MATOC and delivery order award dates.

Criteria. To accomplish the objectives, we reviewed all available Recovery Act guidance, including Public Law 111-5 on *The American Recovery and Reinvestment Act of 2009*, Office of Management and Budget guidance, Air Force Deputy Assistant Secretary for Contracting and Assistant Secretary for Acquisition guidance, *Federal Acquisition Regulations*, and the US Small Business Administration Office of the Inspector General Recovery Act Oversight Framework guidance.

Sampling Methodology. The Department of Defense Inspector General developed an American Recovery and Reinvestment Act military construction sample based on predictive analysis of critical risk factors (a form of judgmental sampling). The factors were summed for each location and selections were made based on the highest risk factors. The Air Force Audit Agency received a list of all Air Force Recovery Act FSRM projects, to include Family Housing, Air Force Reserves, and Air National Guard. This list contained 1,548 projects at 107 locations valued at \$1.15 billion. The Audit Agency then judgmentally selected all locations with a project over \$7.5 million, resulting in six locations. We then selected 14 additional locations using a simple random sample, for a total of 20 audit locations. McEntire Joint National Guard Base was selected in the predictive analysis performed by the Department of Defense Inspector General.

Computer Assisted Auditing Tools and Techniques. We used computer-assisted auditing tools and techniques to interpret, analyze, and summarize our audit results. Specifically, we downloaded the Treasury Account Symbol (TAS) report dated 5 August 2009 from the Federal Procurement Data System (FPDS). We used the *Microsoft Excel*® 'Filter' function to determine the number of Recovery Act contract items. Specifically, in the *Microsoft Excel*® version of the report, we filtered the report data by Contracting Agency Name and searched for the Department of the Air Force. We then further filtered the report by the TAS Major Program, and selected 3830 for the Air National Guard Military Construction appropriation. We also performed the same steps for the Department of the Army, as United States Property and Fiscal Officer contracts are reported under the Army. We did not identify any appropriation 3830 contracting actions in FPDS for the 169th Fighter Wing. In addition, we sorted audit source documents to determine the date range of documents reviewed.

Data Reliability. We extensively relied on computer-generated data contained in the *Commanders Resource Integration System* and *Electronic Data Access*. We did not evaluate the systems' general and application controls. However, we established the data's reliability by comparing physical evidence and available manual records to determine whether the data was sufficiently reliable to support the audit conclusions. Based on these tests, we concluded that the data were reliable in meeting the audit objective.

Auditing Standards. We accomplished this audit in accordance with generally accepted government auditing standards and, accordingly, included tests of management controls over documentation of transactions, document retention, and management oversight.

Discussion with Responsible Officials. We discussed/coordinated this report with the South Carolina United States Property and Fiscal Officer; South Carolina United States Property and Fiscal Officer Contracting Officer; Commander, 169th Fighter Wing, Commander, 169th Mission Support Group; Commander, 169th Civil Engineer Squadron, and 169th Financial Management (Comptroller) and other interested officials. We advised management that this audit was part of an Air Force-wide evaluation of *American Recovery and Reinvestment Act of 2009* facilities sustainment, restoration, and maintenance projects (Project F2009-FD1000-0516.000). Therefore, selected data not reflected in this report, as well as data contained herein, may be included in a related Air Force or Air National Guard report of audit.

PRIOR AUDIT COVERAGE

A review of audit files and contact with installation officials disclosed no other audit reports issued to the South Carolina United States Property and Fiscal Office by the Department of Defense or Air Force Inspectors General, the Government Accountability Office, or any audit agency within the past 5 years that related to our specific audit objectives.

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