



United States Department of Agriculture
Office of Inspector General





Agricultural Research Service's Contract Closeout Process (Recovery Act)

Audit Report 02703-0001-12

What Were OIG's Objectives

To determine whether ARS used effective and efficient policies and other controls for closing out Recovery Act-funded contracts, and timely identified funds on physically completed contracts that could be put to better use.

What OIG Reviewed

From the 35 Recovery Act contracts ARS reported as physically and administratively complete as of January 10, 2012, we judgmentally selected a sample of 8 contracts (\$7 million of \$17 million), based on administrative location and dollar amounts.

What OIG Recommends

ARS should take actions related to its internal reviews of the procurement process and develop its guidance for documenting that contracts are consistently and timely closed out. ARS also needs to complete its implementation of a contractor evaluation database used Federal-wide, and strengthen its oversight of the contract closeout process. ARS generally agreed with our recommendations, and we accepted management decision on all recommendations.

OIG assessed the Agricultural Research Service's procedures for closing out Recovery Act contracts.

What OIG Found

The Agricultural Research Service (ARS) used American Recovery and Reinvestment Act of 2009 (Recovery Act) funds to award 134 contracts for repairs to critical systems at its research facilities. Through reviews of eight contracts, the Office of Inspector General (OIG) found that ARS timely identified funds on physically completed contracts that could be put to better use. ARS did not allow any funds to expire and obtained the proper releases from the contractors. Further, ARS took additional measures to ensure Recovery Act goals related to transparency and accountability were met.

However, our review disclosed that ARS should strengthen the effectiveness and efficiency of its controls for closing out contracts. For example, ARS' acquisition oversight did not ensure that it properly and timely implemented Federal-wide processes for evaluating contractor performance and sharing information among the Federal acquisition workforce. Also, it did not ensure it achieved desired outcomes, such as the completion of contract closeout, within a 6-month period. This occurred because ARS lacked adequate management oversight over the contract closeout process to ensure that related contracting activities met intended goals. As a result, the Federal procurement workforce lacks necessary information about ARS' contractors' performance, which may result in the selection of a contractor that ARS identified as not performing satisfactorily. Also, ARS cannot confirm that it always closes out contracts in a timely manner, and we cannot state that ARS has effectively taken needed actions to improve its procurement processes.



United States Department of Agriculture
Office of Inspector General
Washington, D.C. 20250



DATE: August 14, 2013

AUDIT
NUMBER: 02703-0001-12

TO: Edward B. Knipling
Administrator
Agricultural Research Service

ATTN: Lisa A. Baldus
Associate Deputy Administrator
Administrative and Financial Management

FROM: Gil H. Harden
Assistant Inspector General for Audit

SUBJECT: Agricultural Research Service's Contract Closeout Process (Recovery Act)

This report presents the results of the subject audit. Your written response to the official draft, dated July 3, 2013, is included in its entirety at the end of this report. Excerpts from this response and the Office of Inspector General's position are incorporated into the applicable sections of the report. Based on your response, we were able to reach management decision on all of the report's recommendations. Therefore, no further response to this office is necessary.

In accordance with Departmental Regulation 1720-1, final action must be taken within 1 year of each management decision to prevent being listed in the Department's annual Agency Financial Report. Please follow your agency's internal procedures in forwarding final action correspondence to the Office of the Chief Financial Officer.

We appreciate the courtesies and cooperation extended to us by members of your staff during our audit fieldwork and subsequent discussions. This report contains publically available information and will be posted in its entirety to our website (<http://www.usda.gov/oig>) in the near future.

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Background and Objectives

Background

The President signed the American Recovery and Reinvestment Act of 2009 (Recovery Act) into law on February 17, 2009. The Department of Agriculture (USDA) received \$28 billion in Recovery Act funding for a number of program areas, including \$176 million for the Agricultural Research Service (ARS) to reduce a backlog of critical deferred maintenance projects. ARS used its Recovery Act funds to award 134 construction and architect-engineer contracts for repairs to critical systems, such as air conditioning, electrical, roofing, and plumbing systems in its research facilities nationwide. ARS had until September 30, 2010, to obligate its Recovery Act funds.

The procurement process through which Federal agencies acquire goods and services, such as the Recovery Act-funded repairs, involves several roles and phases. When the Recovery Act was signed, ARS had procurement personnel organized into two divisions. Personnel within ARS' Facilities Division (FD) focused on construction and architect-engineer contracts. Facilities Contracts Branch (FCB), a branch within FD, was responsible for conducting contract operations in accordance with procurement policies, procedures, and guidance that ARS' Acquisition and Property Division (APD) administers. Operations must also comply with procurement regulations issued in the Federal Acquisition Regulation (FAR). The Office of Federal Procurement Policy (OFPP), a component of the Office of Management and Budget (OMB), provides overall direction to shape the Government's procurement regulations. USDA also issues acquisition regulations to its component agencies as the Agriculture Acquisition Regulation (AGAR).

The last phase of the procurement process is closeout, which occurs when a contract is physically completed (e.g., when repairs are finished)¹ and administrative procedures are completed.² Federal agencies have specific closeout responsibilities. For instance, the FAR provides timeframes for closing out contracts timely and states that contractor performance evaluations shall be prepared.³ The construction and architect-engineer contracts we reviewed were firm-fixed price contracts. The FAR states that firm-fixed price contracts should be closed within 6 months after the date on which the contracting officer receives evidence of physical completion. The FAR also requires that contractor performance evaluations be prepared for construction contracts totaling \$650,000 or more, for architect-engineer service contracts exceeding \$30,000, and for any contract terminated for default, regardless of contract value.⁴

¹ The FAR states a contract is considered to be physically completed when the contractor has completed the required deliveries and the Government has inspected and accepted the supplies or when the contractor has performed all services and the Government has accepted those services. FAR 4.804-4(a)(1)(i), and 4(a)(1)(ii), June 30, 2011.

² Administrative closeout procedures include identification and deobligation of excess funds, final payment, and completion of a contractor performance evaluation.

³ FAR 4.804-1 and FAR, Subpart 42.1502, June 30, 2011 and October 29, 2010, respectively.

⁴ FAR, Subpart 42.1502, October 29, 2010.

The contractor performance evaluations that procurement personnel prepare during the closeout process play a role when awarding Federal contracts.⁵ OMB has stated that making greater and more effective use of contractor performance evaluations is essential to meeting Federal goals related to contractor accountability and improvements to acquisition practices.⁶ OMB subsequently stated, in January 2011, that agencies were to review their existing past performance reporting guidance to ensure that it required assessments that are clear and describe the contractor's performance in the narrative statement justifying the rating.⁷ To collect, maintain, and disseminate contractor performance evaluations, USDA used the National Institutes of Health's (NIH) Contractor Performance System until it was retired on September 30, 2010. In May 2010, OMB mandated that the Contractor Performance Assessment Reporting System (CPARS) would be the single past performance reporting system Federal-wide.⁸ USDA's Office of Procurement and Property Management (OPPM) issued an AGAR update mandating that, as of October 1, 2010, CPARS would be the system USDA used for reporting contractor performance and requiring all USDA agencies to implement and use CPARS.⁹

ARS started a reorganization in July 2011. ARS management stated that a restructuring of its administrative management units, completed February 12, 2012, was necessary in order to provide effective services with fewer resources. They also stated that, over time, flat budgets and an erosion of the purchasing power of agency resources resulted in a structure under which people were "stretched too thin, often times with no back up for their critical functions."¹⁰ Prior to the reorganization, ARS Headquarters had two distinct procurement offices: (1) the Facilities Contracts Branch (FCB) and (2) the Acquisition and Property Division (APD). There were seven area offices under APD that performed contracting functions.¹¹ The reorganization consolidated FCB and APD's area offices into three service centers: the East, West, and National Capital Region Business Service Centers. ARS' Administration and Financial Management organization oversees the Business Service Centers. APD remains responsible for formulating and implementing policies, procedures, and technical guidance for all acquisition and personal property programs under the reorganized structure.

⁵ The Federal Acquisition Streamlining Act (1994) required that a contractor's past performance be considered in the source selection process of granting a Federal contract award.

⁶ OMB Memorandum, *Improving the Use of Contractor Performance Information*, July 29, 2009.

⁷ OMB Memorandum, *Improving Contractor Past Performance Assessments: Summary of the Office of Federal Procurement Policy's Review, and Strategies for Improvement*, January 21, 2011.

⁸ The agencies that sponsor the past performance information retrieval system announced that in May 2010, OMB's OFPP determined that CPARS would be used as the single contractor performance reporting system, Federal-wide. Past Performance Information Retrieval System (PPIRS) website, www.ppirs.gov, retrieved August 1, 2012. The Naval Sea Logistics Center Portsmouth, New Hampshire, maintains this official U.S. Government website.

⁹ AGAR Advisory Number 96, *Contractor Performance Information and Contractor Performance Assessment Reporting System (CPARS) Evaluations*, September 17, 2010.

¹⁰ Agricultural Research Service Memorandum, *Transformation of Administrative Management in ARS*, May 20, 2011.

¹¹ Seven area offices were located in the Mid-South, Midwest, North Atlantic, North Plains, Pacific West, South Atlantic, and South Plains Areas.

Objectives

Our objectives were to determine whether ARS (1) used effective and efficient policies, procedures, practices, and controls for closing out Recovery Act-funded contracts, and (2) timely identified funds on physically completed contracts that could be put to better use.

Section 1: Controls Over the Contract Closeout Process

Finding 1: ARS Has Not Adequately Overseen Contract Closeout

We found that ARS needs to strengthen its policies and processes for contract closeout to ensure the agency proactively manages the acquisition process and provides assurance that the agency complies with all applicable regulations. For example, ARS' acquisition oversight did not ensure that it properly and timely implemented Federal-wide processes for evaluating contractor performance and sharing information among the Federal acquisition workforce. Also, it did not ensure it achieved desired outcomes, such as the completion of contract closeout, within the required 6-month period. This occurred because ARS lacked adequate management oversight over the contract closeout process to ensure that contracting activities met their intended goals. As a result, the Federal procurement workforce lacked the necessary information about the performance of ARS' contractors, which may have resulted in the selection of a contractor that ARS identified as not performing satisfactorily. Also, ARS cannot confirm that it always closes out contracts in a timely manner, and we cannot state that ARS has effectively taken needed actions to improve its procurement processes.

OMB has defined management's responsibilities for establishing and maintaining internal control to achieve the objectives of effective and efficient operations and compliance with applicable laws and regulations.¹² OMB's OFPP has further specified guidelines related to internal controls over the acquisition function, which involves effectively managing the acquisition process throughout contract performance and close-out, and monitoring and providing oversight to achieve desired outcomes.¹³

We determined that ARS did not adequately manage the contract closeout process.

ARS Could Not Show It Took Actions to Address an Internal Procurement Review

In 2009, ARS conducted an internal review of contracting and purchasing operations in one of its procurement divisions, APD. Although ARS policy states that corrective action must be taken in response to any findings and recommendations identified during reviews it conducts periodically and on a rotating basis,¹⁴ we found that ARS could not provide evidence showing it took corrective action in response to a finding related to contract closeout. Specifically, the internal review identified contracts for which closeout had not been completed or was in process for an extended period of time. The report recommended that ARS "survey procurements that need closeout actions performed to identify those never completed or those in process for inordinately lengthy periods." It is unclear whether ARS addressed this recommendation because it did not provide documentation to OIG to verify the status of the survey and if it took action. Without clarification regarding the corrective actions taken, we cannot state that

¹² OMB Circular A-123, *Management's Responsibility for Internal Control*, December 2004.

¹³ OMB OFPP, *Conducting Acquisition Assessments under OMB Circular A-123*, May 2008.

¹⁴ AGAR 401.601(a); Procurement and Property Management Reviews, 210.1-ARS, June 13, 2006.

ARS has effectively taken needed actions to improve deficiencies identified in its procurement processes.

ARS Lacks Support That it Completed Closeouts Timely

ARS did not ensure that contracting officers followed consistent procedures for documenting when a contract was physically complete, the date that establishes the start of the period within which contracting officers are to complete administrative closeout procedures. Although the FAR requires documentation in the files to constitute a complete history of contractual actions,¹⁵ the eight firm fixed-price contract files that we reviewed did not contain supporting documentation identifying the physical completion date. Without support for this date, ARS cannot confirm that it closed out these contracts in a timely manner (i.e., within the 6-month period stated in the FAR).¹⁶ OIG interviews disclosed that procurement personnel had different understandings of the closeout start date because personnel identified various stages of the process as the closeout start date. Personnel cited the final invoice date, final payment date, and a date on the final letter of Government acceptance. Depending on which date ARS personnel selected—to start and, subsequently, complete the closeout process—the closeout period for a contract could vary by up to 8 months.

ARS stated that FCB, area offices, and ARS Headquarters followed different policies and procedures when documenting the closeout of a contract. Now that the reorganization is complete, APD is the only group within ARS issuing acquisition policies. According to ARS, APD is updating existing policies and procedures by reviewing, revising, and combining redundant information and removing information that is not necessary. However, APD has not issued an agencywide policy or procedure for closing out contracts. Therefore, ARS has not clarified for its personnel how they are to document physical completion in their contract files. By documenting physical completion in each contract file and establishing the start of the closeout process, ARS can better ensure that it timely completes the steps necessary to close out all contracts within consistent timeframes.

ARS Did Not Use the Mandated Database for Contractor Performance Evaluations

ARS did not implement CPARS, the Federal system for documenting contractor performance, in a timely manner. While OPPM directed USDA procurement offices to start using the contractor performance reporting system that OMB's OFPP determined would be the single system used Federal-wide, ARS did not start using the database by

¹⁵ Stated purposes for the files containing the records of all contractual actions include providing information for reviews and investigations. FAR, Subpart 4.801, April 1, 2011.

¹⁶ The FAR states that firm fixed-price contracts should be closed within 6 months after evidence of physical completion is obtained. FAR 4.804-1(a)(2), June 30, 2011. ARS policy restates that contracts shall be closed out within 6 months of physical completion, and defines physical completion as when all services called for under the contract are rendered, delivered, and accepted. Facilities Division, Facilities Contracts Branch, Standard Operating Procedures 02-003, November 29, 2011 (Revised May 12, 2008).

the October 1, 2010, implementation date.¹⁷ Instead, ARS decided to delay its implementation of CPARS. Further, during the delay, ARS did not adequately document contractor performance information for later entry into CPARS. It did not document the required narrative comments to support its contractor performance evaluations for the six contracts we reviewed that required them.¹⁸

ARS stated that it delayed its CPARS implementation because it was waiting for authorization to add and train additional personnel to use CPARS, and for the completion of a reorganization that was ultimately completed in February 2012. Six months after the required implementation date for CPARS, FD issued standard operating procedures on documenting contractor performance evaluations. In FD's standard operating procedures, it stated all offices administering construction and architect-engineer contracts were to use an alternative means for reporting contractor performance until OPFM and/or APD issued official guidance.¹⁹ However, OIG determined that these procedures did not adequately address the information required for CPARS. Specifically, the procedures directed personnel to use forms that did not capture the information needed for CPARS, such as the inclusion of quality narratives in positive evaluations.²⁰

Further, the procedures specify that the forms are to be printed and maintained in the contract file. ARS officials explained that Federal procurement personnel needing a copy of a contractor's past performance evaluation had to contact ARS and request the documentation. However, the primary purpose of CPARS is to provide procurement officials across the Federal Government with easily accessible information on contractor performance to use as they issue contracts.

At the start of our audit in March 2012, ARS had not begun to implement CPARS. During the course of the audit, ARS issued guidance, provided training, and began implementing CPARS. According to ARS officials, they are now populating CPARS, as required. However, while ARS has taken this first needed step, as of May 2013, ARS has not yet entered all of the required Recovery Act contract performance evaluations in CPARS.

Given that CPARS is the official repository for contractor performance evaluations,²¹ ARS needs to complete the population of CPARS by entering the evaluations for all

¹⁷ AGAR Advisory Number 96, September 17, 2010. The Past Performance Information Retrieval System website, www.ppirs.gov, retrieved August 1, 2012. The Naval Sea Logistics Center in Portsmouth, NH maintains this official U.S. Government website.

¹⁸ We reviewed 8 of the 35 Recovery Act contracts ARS reported as physically and administratively complete as of January 10, 2012. Of these eight, six were above the dollar threshold at which a contractor performance evaluation was required.

¹⁹ OPFM issued AGAR Advisory Number 96, September 17, 2010, requiring the use of CPARS as of October 1, 2010.

²⁰ DD Form 2626, Performance Evaluation (Construction), and DD Form 2631, Performance Evaluation (Architect-Engineer).

²¹ For construction contracts of \$650,000 or more, and architect-engineer services contracts over \$30,000, the FAR requires agencies to record and maintain contractor performance information. FAR, Subpart 42.1502 & 42.1500, October 29, 2010.

required contracts. By inputting all of the appropriate evaluations, including contracts completed prior to its implementation of CPARS, ARS can provide Federal procurement personnel with the required access to valuable contractor performance information.

Taken together, these weaknesses demonstrate that ARS can improve the effectiveness of ARS' contract closeout function. By conducting additional oversight, including reviews, ARS will be able to verify it is completing the contract closeout process timely and consistently. ARS can strengthen its management controls to ensure that it timely implements regulations, Federal policies, processes, and procedures consistently throughout the organization, and better ensures quality and compliance.

Recommendation 1

Document corrective actions taken for the 2009 internal review.

Agency Response

In its August 1, 2013, response, ARS stated pursuant to the 2009 internal review, by April 30, 2014, it will survey procurements that require close-out actions performed to identify those never completed or those in process for inordinately lengthy periods. In addition, ARS will establish deadlines for completion, and monitor to completion.

OIG Position

We accept ARS' management decision on this recommendation.

Recommendation 2

Develop and implement contract closeout guidance, specifying the event that will start the contract closeout process and the requirements for contract file documentation.

Agency Response

In its August 1, 2013, response, ARS stated it will develop and implement contract closeout guidance specifying the event that will start the contract closeout process and the requirements for contract file documentation by February 28, 2014.

OIG Position

We accept ARS' management decision on this recommendation.

Recommendation 3

Provide a timeline showing when the Contractor Performance Assessment Reporting System (CPARS) will be fully implemented for all required contracts.

Agency Response

In its August 1, 2013, response, ARS stated all applicable Research, Education, and Economics procurements (per Federal Acquisition Regulation Subpart 42.1502) from October 1, 2010 to present have been entered into CPARS; agency personnel actively assess contracts in the system.

OIG Position

We accept ARS' management decision on this recommendation.

Scope and Methodology

To accomplish our audit objectives, we identified 134 ARS construction contracts and architect-engineer contracts funded with the \$176 million the Recovery Act appropriated to the agency to reduce a backlog of critical, deferred maintenance projects. ARS used an Excel spreadsheet to track the award and progress of its Recovery Act projects and to support data provided to the Department on a quarterly basis. The scope of this review did not include verifying and validating this data. From this spreadsheet, we determined that, as of January 10, 2012, ARS reported that 35 of the 134 contracts were closed out.

From these 35, we judgmentally selected a sample of 8 contracts, based on the administrative location and dollar amount. Specifically, we selected two administrative locations that had closed both construction and architect-engineer contracts.²² From these two locations, which had closed the most contracts, we selected the two highest-dollar construction contracts and the two highest-dollar architect-engineer contracts. The 8 contracts we reviewed constituted 23 percent of the 35 contracts, and accounted for approximately \$7 million of \$17 million (41 percent) of the Recovery Act contracts ARS reported as closed out at the time.

Our fieldwork began in March 2012 and ended in May 2013. We performed fieldwork at ARS' FD Headquarters office in Beltsville, Maryland, and the North Plains Area Office in Ft. Collins, Colorado.

To accomplish our objectives we:

- Reviewed applicable laws, regulations, agency procedures and guidance, Governmental Accountability Office reports, and prior OIG reports.
- Interviewed ARS procurement personnel involved in the contract closeout process, including personnel responsible for monitoring and oversight, contracting officers, contracting officer representatives, and procurement technicians.
- For the eight selected contracts, we reviewed the contract files, which included closeout documentation, such as contract completion statements, contractor performance evaluations, contract closeout determination letters, contractor's release statements, and financial documents.

We conducted this performance audit in accordance with generally accepted government auditing standards. Those standards require that we plan and perform our 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 we obtained provides reasonable basis for our findings based on our audit objectives.

²² When our fieldwork began, ARS had nine procurement offices, including seven area offices located nationwide, and two divisional offices in Beltsville, Maryland.

Abbreviations

AGAR.....	Agriculture Acquisition Regulation
APD.....	Acquisition and Property Division
ARS.....	Agricultural Research Service
CPARS.....	Contractor Performance Assessment Reporting System
FAR.....	Federal Acquisition Regulation
FCB.....	Facilities Contract Branch
FD.....	Facilities Division
NIH.....	National Institutes of Health
OFPP.....	Office of Federal Procurement Policy
OIG.....	Office of Inspector General
OMB.....	Office of Management and Budget
OPPM.....	Office of Procurement and Property Management
Recovery Act.....	American Recovery and Reinvestment Act of 2009
USDA.....	Department of Agriculture

**USDA'S
AGRICULTURAL RESEARCH SERVICE'S
RESPONSE TO AUDIT REPORT**

August 1, 2013

SUBJECT: Management's Response to Recommendations in Audit Report 02703-0001-12-
Agricultural Research Service's Contract Closeout Process

TO: Gil H. Harden
Assistant Inspector General for Audit
Office of Inspector General

Jon M. Holladay
Deputy Chief Financial Officer
Office of the Chief Financial Officer

FROM: Lisa A. Baldus /s/
Associate Deputy Administrator

The Agricultural Research Service (ARS) provides the following response to audit Recommendations 1, 2, and 3 in Audit Report 02703-0001-12- Agricultural Research Service's Contract Closeout Process

Finding 1: ARS Has Not Adequately Overseen Contract Closeout

Recommendation 1

Document corrective actions taken for the 2009 internal review.

ARS Response:

Pursuant to the 2009 internal review, by April 30, 2014, ARS will survey procurements that require close-out actions performed to identify those never completed or those in process for inordinately lengthy periods. In addition, ARS will establish deadlines for completing and monitor to completion.

Recommendation 2

Develop and implement contract closeout guidance, specifying the event that will start the contract closeout process and the requirements for contract file documentation.

ARS Response:

ARS will develop and implement contract closeout guidance specifying the event that will start the contract closeout process and the requirements for contract file documentation by February 28, 2014.

Recommendation 3

Provide a timeline showing when the Contractor Performance Assessment Reporting System (CPARS) will be fully implemented for all required contracts.

ARS Response:

All applicable Research, Education, and Economics procurements (per Federal Acquisition Regulation Subpart 42.1502) from October 1, 2010 to present have been entered into CPARS; agency personnel actively assess contracts in the system.

cc:

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