



United States  
Department of  
Agriculture

Forest  
Service

Pacific  
Northwest  
Region

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**File Code:** 1510

CCC# 10-04

**Date:** August 16, 2010

Honorable Ron Wyden  
United States Senator  
911 N.E. 11th Suite 630  
Portland, OR 97232

Dear Senator Wyden:

Thank you for your July 27, 2010, letter on behalf of a constituent who expressed concern regarding forestry work done under the American Recovery and Reinvestment Act (ARRA). You state that you have been informed that the Forest Service, in some cases, continues to award ARRA contracts to employers that are utilizing H-2B visa workers and request clarification regarding this matter.

There are no provisions in any contract, Recovery Act or regular program, which addresses employing only U.S. Citizens. Any individual, regardless of citizenship, may be employed under federal contracts so long as they are legally authorized to be employed. The contractor is required to comply with all federal laws regarding employment of individuals and verifying that they do have legal status for employment.

Depending on the specifics of the solicitation and criteria used to select the contractors, selection factors likely included such things as past performance, experience, price, etc. The solicitation may have also included criteria that addressed contractor capacity and crew strength. The selection would be based on the contractor who provided the overall best value to the government. It is also possible that a solicitation could have included technical factors providing preference for local contractors to conduct various types of work including: forest hazardous fuels reduction; watershed or water quality monitoring or restoration; wildlife or fish population monitoring; or habitat restoration or management as authorized by Section 413 of the Department of Interior, Environment, and Related Agencies Appropriations Act of 2010 (Public Law 111-88).

With any award, we are required to do a price analysis among bids/offers and the independent government cost estimate (IGCE). The majority of our actions have other evaluation criteria so all the information is looked at to insure a best value for the government. Further scrutiny is warranted in the event there is a seriously low price, particularly in comparison with the other bidders and the IGCE, and even more particularly when the price is the determining factor. Often the bidder is asked to verify the bid and insure that it is what they intended to offer. A Contracting Officer may reject a bid that is considered to be unreasonable. For labor intensive service contracts, labor is obviously a major cost, so a bid/offer significantly low relative to other offers or the IGCE would raise a concern and cause the Contracting Officer to scrutinize the offer carefully.



We are not aware of any situation where *who* a contractor hires was a factor in a source selection. Contractors are free to hire whomever they choose so long as they comply with all federal laws and regulations in the employment of those individuals. Service Contract Act provisions, Migrant and Seasonal Workers Protection Act provisions, and all other federal and state laws are applicable to contactors who work for the agency.

If you have questions or need additional information, please contact Susan Prentiss, Assistant Director, Recovery Act, Acquisition Management, (208) 365-3136 in our National Office or Lisa Freedman, Regional Executive for Economic Recovery, (503) 808-2271 in my office.

Sincerely,

*/s/ Lisa E. Freedman (for):*

MARY WAGNER  
Regional Forester

cc: Charles Hill,  
Margaret Petersen  
Kathy Anderson  
Susan Prentiss  
Lisa Freedman