



OFFICE OF INSPECTOR GENERAL



DEPARTMENT OF THE INTERIOR

# RECOVERY OVERSIGHT ADVISORY

*A Critical Point Evaluation Product*






## RECOVERY OVERSIGHT OFFICE

Washington, DC 20240

JUN 29 2009

To: Chris Henderson  
Senior Advisor to the Secretary for Economic Recovery and Stimulus

From: Robert A. Knox   
Assistant Inspector General, Recovery Oversight Office

Subject: Recovery Oversight Advisory – Observations on BIA Road Maintenance Program  
(ROO-ROA-BIA-2003-2009)

Congress provided us with funding to oversee and ensure accountability of the \$3 billion appropriated to the Department of the Interior (Department) in the American Recovery and Reinvestment Act of 2009 (Recovery Act or Act). To help safeguard these taxpayer dollars, we are focused on: preventing fraud, waste, and abuse of recovery and reinvestment dollars; early detection to reduce the impact of misuse when it does occur; and ensuring transparency in our oversight efforts. In a spirit of collaboration with the Department as it implements the massive programs envisioned under the Act, this advisory informs you of our observations on Recovery Act activities that will be carried out under the Bureau of Indian Affairs' (BIA) road maintenance program.

The Department and the bureaus receiving money under the Recovery Act have engaged in significant efforts to identify the projects to receive funding. Road maintenance is a program area in the "construction" category of funding in the Recovery Act for BIA. We undertook a preliminary review of BIA's plans for implementing Recovery Act road maintenance activities in part because of concerns raised by a Flash Report we issued<sup>1</sup> on the highway construction program in the Alaska Regional Office. This report disclosed significant deficiencies in contract, financial, and construction management. We also noted in the report that funds designated for a specific project had been spent on another project without proper modification of contracts. The report recommended that corrective actions be implemented before the Office received Recovery Act funds for construction.

While our current review focuses on the road maintenance program rather than on road construction, it is our understanding that both the maintenance and construction programs are managed and executed largely by the same staff in BIA. We are therefore concerned that the conditions in Alaska described in our Flash Report and the causes for them could affect the implementation of Recovery Act funding in Alaska. We are also concerned that these conditions

<sup>1</sup> *BIA Alaska Regional Indian Roads Reservation Program Rife with Mismanagement and Lacking Program Oversight*. (February 2009). WR-IV-BIA-0001-2009.

could exist in other BIA regional or agency offices and could affect the road maintenance program.

In undertaking our current preliminary review, we met with the BIA Division of Transportation (Division) and budget officials to discuss the road maintenance project selection process and the anticipated program administration processes. Additionally, we visited two regional Division offices. We also reviewed several documents, including a March 27, 2009, and a May 9, 2009, list of proposed Recovery Act road maintenance projects; tribal single audits for fiscal years 2006 and 2007; Indian Affairs' (IA) draft risk mitigation plan; and the Office of Acquisition and Property Management's draft decision paper regarding compliance with the Single Audit Act. We provided the Department with a draft of our observations, to which IA and BIA officials responded. We capture in this advisory the information provided in their response.

## **Project Selection**

To help guide the bureau's preparation of lists of project to fund with Recovery Act appropriations, the Department issued a document titled "Economic Recovery Template and Guidance for Project Lists." This document included general guidance and an excel spreadsheet template in which to list projects and several data elements—outlined in the guidance—for each project.<sup>2</sup> On the BIA project list (dated May 9, 2009), BIA officials have proposed using Recovery Act funding for 541 road and bridge maintenance projects with an estimated cost of \$142.5 million. BIA officials told us that they selected projects from the historical deferred maintenance list to provide a fair distribution of funds to tribes in all geographic regions.

Based on a March 27, 2009, road project list that we initially received, we identified 42 projects with a budget of \$1,000 or less. We expressed concern that these projects were too small to administer effectively and that the transaction costs for these small projects could exceed the value of the projects. We also observed that funding larger projects could have a greater economic impact. A Division official stated that the smaller projects were components of larger projects, but that they were separated from the larger project to comply with guidance on compiling the project lists. The guidance directed the bureaus to identify projects by congressional districts and states. The more current May 9, 2009, project listing consolidated many of the smaller projects with the respective larger projects, effectively reducing the list of projects with a value of \$1,000 or less to nine, which are valued at \$4,520. The revised project list addresses our original concerns.

During field visits to the regions, however, both regional Division engineers with whom we met expressed concern that the road maintenance projects selected may not address the most urgent local needs. Their assessment of local needs was based on conditions and volume of use on the roads and bridges. Further, they expressed concern that estimated budgets may be insufficient to accomplish project tasks because the estimates were based on data that was current in the 4<sup>th</sup> quarter of 2008. Supplies and other costs, according to the engineers, have

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<sup>2</sup> Data elements include, among others, fiscal year in which deferred maintenance or line item constructions projects are planned for funding in the bureau five year plans; state; project elements (including health and safety, energy efficiency/green buildings, use of renewable energy sources, youth/community service, national icons, and treasured landscapes); proposed procurement instrument; National Environmental Policy Act (NEPA) compliance completed; permitting and consultation completed.

increased since then. The Division engineers were not directly involved in the project selection for Recovery Act funding. A Division headquarters official stated that the headquarters staff involved in selecting projects for Recovery Act funding considered existing road conditions as well as an average daily usage factor.

While the official from Division headquarters acknowledged that situations could arise where funding might be better allocated to different projects, he stressed that regional engineers must consult with headquarters before using funds for other projects. The need to consult with headquarters would also apply if funding needed to be reallocated into or out of a project on the approved project list.

The concerns over the project lists and processes for developing and changing them indicate that communications could be improved. The need for two-way communication between Division headquarters and the regions cannot be overemphasized. The Federal Acquisition Regulation (FAR) emphasizes the importance of team effort in a successful acquisitions process, with reference to “teamwork unity of purpose” and “open communication” amongst those organizational components that have a stake in the successful completion of the procurement process.<sup>3</sup> In addition, our recent advisory on past Departmental weaknesses reported the need for effective communications and teaming.<sup>4</sup>

Another component to effective planning is ensuring all preliminary processes, such as environmental reviews required under the National Environmental Policy Act (NEPA), are completed. We observed that many project data fields required by the Department in its guidance, including some related to preliminary reviews and work, are incomplete. For example, projects were not assigned priorities and several data fields, including “Contracts,” “NEPA Compliance,” and “Permitting,” contained the same answer for all projects. These answers were inconsistent with what Division officials stated. These observations remain true for the May 9, 2009, revised project list. It is important not only for effective planning, but also to ensure transparency and compliance, that projects be described accurately in accordance with applicable guidance.

## **Program Administration and Risk Management**

Equally as important as effective planning during the project selection and early implementation phase is effective program administration and risk management. BIA must take positive action to ensure the competence and capability of its regional and agency offices to administer Recovery Act funds allocated to road maintenance projects. It must also ensure it has plans to identify and mitigate risks. Such oversight and risk management are required by Section 2.7 of OMB’s “Updated Implementing Guidance for the American Recovery and Reinvestment Act of 2009” (M-09-15, April 3, 2009), which states “Agencies must describe processes in place for senior managers to regularly review the progress and performance of major programs, including identifying areas of risk and completing corrective actions.” Section 2.8(j) of the

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<sup>3</sup> FAR, 48 C.F.R. Chapter 1, Part 1.102-3 Acquisition team

<sup>4</sup> *Addressing Past Areas of Vulnerability in Department of the Interior Programs*. (June 1, 2009). ROO-ROA-MOA-1006-2009.

Guidance also requires that managers be held accountable for achieving Recovery Act program goals.

BIA has taken a positive step in this regard by holding a conference of regional transportation officials in April 2009 to review issues related to the Recovery Act. Additionally, a headquarters official at the Division stated that they anticipate releasing a Recovery Act handbook in June 2009 for regional officials. The development of a Recovery Act handbook, which will include sections on program planning, contract administration, and risk mitigation, can help to ensure consistent project administration at the regional level and provide stronger project transparency and accountability. BIA must also ensure that it has adequate insight at both the field and national level over project performance on the ground to ensure project dollars are spent as intended.

BIA has also taken a positive step to identify and mitigate potential risks with Recovery Act funds by considering the results of “single audits.” Entities that expend \$500,000 or more a year in financial assistance are required to undergo annual reviews known as single audits. These audits help to provide assurance that the federal funds were used appropriately and identify internal control weaknesses in a tribe’s transaction cycles. Accordingly, single audit findings can help in assessing the risk that a tribe would improperly use Recovery Act funds and the degree of oversight needed at the regional level during project implementation. Additionally, tribes that did not obtain a required single audit could be considered a higher risk. During fiscal years 2006 and 2007, 98 and 74 tribes, respectively, had single audits with reported material weaknesses with federal program funds.

During our meetings with BIA on road maintenance projects, Division officials stated that BIA will give respective tribes the right of first refusal for projects funded under the Recovery Act. Tribes that had not had single audits performed or that had deficiencies identified in their single audits will not be automatically excluded from receiving funds, but will be considered on a case by case basis. We expressed in our draft advisory a concern that if BIA were to contract with such entities, adequate oversight mechanisms must be in place to address the increased risk of fraud, waste, and resulting lack of accountability.

After we issued our draft advisory, IA informed us that they reviewed each tribe’s single audit report and, based on the findings identified, assigned an overall risk score of “High”, “Medium”, or “Low”. IA has developed a draft risk mitigation plan that incorporates the scores into monitoring levels for the respective tribes. The draft plan prescribes that tribes participating in Recovery Act programs that received a score of “High” should be monitored monthly. Tribes with “Medium” and “Low” scores should be monitored quarterly and semi-annually, respectively. This oversight requirement applies to each of the respective Recovery Act programs at BIA. Relating the risk level to specific oversight requirements in this way can help to provide uniformity throughout the regions and the programs. It can also help to ensure a higher level of accountability where tribes with a poor record of single audit findings have been contracted to perform the project work. We encourage BIA to ensure the risk management strategy works in practice as Recovery Act projects move toward implementation, and to capture lessons for activities conducted under regular appropriations if risk is in fact mitigated.

## Equipment Purchases

As mentioned above, BIA offers tribes a right of first refusal to perform road maintenance projects. If a tribe declines, BIA must perform the road maintenance project through the respective Division regional office. If this happens, regional road engineers anticipate they may need to purchase heavy equipment such as trucks and graders. Regional officials expressed concern that there were no procedures in place for obtaining headquarters approval for purchasing equipment with Recovery Act funds. Delays in getting approval could result in delays in equipment delivery, and subsequent delays in completion of the projects, since manufacturers may be backlogged with orders from other agencies, states, and local communities receiving Recovery Act road maintenance and construction funding.

A Division official mentioned that the Recovery Act handbook to be issued in June 2009 will include the process for submitting equipment requests. Included in the process will be the region's responsibility to fully justify the equipment, taking into consideration such factors as: equipment utilization beyond the Recovery Act, potential useful life, annual maintenance costs, and regional capacity to perform maintenance. We also encourage the Division to require that, during the justification process, consideration be given to leasing equipment, as it may provide a more timely solution to enable project completion. The FAR provides that leasing may "serve as an interim measure when the circumstances require immediate use of equipment to meet program or system goals."<sup>5</sup> Such consideration would have to be done in accordance with the prescribed process.

We do not require an official response to this advisory, but we will post it on our website ([www.doioig.gov](http://www.doioig.gov)) and [Recovery.gov](http://Recovery.gov). Information contained in this advisory may also be included in our semi-annual reports to Congress. Please feel free to contact me if you have any questions.

cc: Acting Assistant Secretary – Policy, Management and Budget  
Assistant Secretary, Indian Affairs  
Director, Office of Acquisition and Property Management  
Director, Office of Financial Management  
Departmental GAO/OIG Audit Liaison  
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<sup>5</sup> FAR, Part 7.402 Acquisition methods

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