OFFICE OF INSPECTOR GENERAL

DEPARTMENT OF THE INTERIOR

RECOVERY OVERSIGHT ADVISORY

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

From: Robert A. Knox
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Subject: Recovery Oversight Advisory – Staffing of the Acquisition and Property Management Office and the Solicitor's Office (ROO-ROA-MOA-1005-2009)

Congress provided us with funding to oversee and ensure accountability of the $3 billion appropriated to the Department of the Interior (Department or Interior) 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 observations regarding staffing in the Acquisition and Property Management Office (PAM) and the Solicitor's Office (SOL). Specifically, we make observations regarding the adequacy of staff resources in PAM and SOL – in numbers and skills – to fulfill their responsibilities in implementing the Recovery Act.

We do not require an official response to this advisory, but we will post it on our website (www.doioig.gov) and 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.

Background

The majority of Recovery Act funding in Interior will be awarded under contracts and financial assistance agreements. Our past work demonstrates that these awarding vehicles are a vulnerable area for the Department. The amount of money that will be awarded under the Recovery Act and the pace at which it will be awarded heightens the vulnerability to fraud, waste, misuse of funds, and poor performance. The Department spent approximately $6.9 billion in fiscal year (FY) 2008 on contracts and financial assistance awards. [1] The Department will award up to $3 billion in FYs 2009 and 2010 in contracts and financial assistance under the Recovery Act alone, an increase of almost 50 percent.

The Department has also determined that Recovery Act funds granted under contracts and financial assistance awards have inherent risks. To address and mitigate these risks, the Department developed strategies and communicated them to the bureaus on April 23, 2009, in "Department of the Interior Guidance Release ARRA-2009-01" (ARRA-2009-01). The guidance creates and defines certain Recovery Act requirements for the bureaus, including a requirement to develop acquisition and financial assistance plans. It also outlines review processes—including reviews to be performed by PAM and SOL—for the plans and for Recovery Act contracts and financial assistance awards.

We commend the Department for instituting a policy that requires additional reviews for contracts and financial assistance awards, given the Department's past problems in these areas and the heightened scrutiny on Recovery Act spending. However, for ARRA-2009-01 to be effective, both PAM and SOL must be adequately staffed to complete required reviews timely and with value added. Both offices will also need to ensure they have an effective plan to complete the required reviews and to avoid becoming a bottleneck in the review process or missing the opportunity to conduct needed reviews. While both offices have certain responsibilities for reviewing contracts and financial assistance awards funded with regular (i.e., non-Recovery Act) appropriations, as outlined in ARRA-2009-01, both offices will have increased responsibility for reviewing contracts and financial assistance awards made under the Recovery Act.

To determine whether PAM and SOL have sufficient resources to fulfill their respective Recovery Act duties, we: 1) researched the responsibilities of PAM and SOL enumerated in the Departmental Manual; 2) reviewed our prior reports that had findings and recommendations related to PAM and SOL; 3) researched the additional requirements PAM and SOL would assume under the Recovery Act; and 4) interviewed PAM and SOL officials.

Acquisition and Property Management Office Staffing

Under standard operations, PAM is responsible "for all policy aspects of Department-wide functions related to acquisition and Federal Assistance, real and personnel property, space management policy, …fleet management and related automated systems" (Departmental Manual

[1] Information obtained from USASpending.gov on April 29, 2009. The $6.9 billion includes approximately $3.7 billion in contracts and $3.2 billion in federal assistance awards.

112 DM 11.1). The office also has responsibility for suspension and debarment activities.[2] Each one of these responsibilities is vital to effective management of the systems, assets, and processes required by the Department and its bureaus to carry out their varied missions. The passage of the Recovery Act could substantially add to PAM's routine functions. PAM anticipates approving bureau acquisition review plans, monitoring specific programs (potentially including site visits), and interacting with the various functional groups established to implement the Recovery Act, including the "External Reporting and Compliance" and the "Program and Project Management" Recovery groups.

Currently, PAM has a staff of 39 to implement its many vital responsibilities, including 13 devoted to the Financial Business Management System and additional program analysts, engineers, and management analysts. There are also six vacant positions at the present time. To implement new responsibilities under the Recovery Act, PAM initially requested nine additional full-time positions. These positions include two staff dedicated to suspension and debarment; two procurement analysts; two data systems analysts; one grant analyst; and two additional engineers. We offer observations below for the Department to consider as it makes the determination on positions to approve in PAM.

While we have not conducted sufficient analysis to recommend specific staffing levels, we agree there is a critical need for suspension and debarment staff. We suggest that sufficient staff be acquired to fully support any cases that may arise. The need for a robust suspension and debarment program in the Department is more critical than ever, given the dollars awarded under the Recovery Act and the associated potential for unethical behavior, but it is not a newly identified need. In June 2008, we issued a white paper entitled *The Urgent Need to Create a DOI Suspension & Debarment Program*. The paper described current Department efforts to meet the requirements of Executive Order 12549, Debarment and Suspension. We concluded that the Department "does not have a functional or effective suspension and debarment program…" We recommended, among other actions, that, "The Department . . . commit the necessary resources to fund and establish a suspension and debarment program." Suspension and debarment provide a mechanism to protect the government from business relations with dishonest, unethical, or otherwise irresponsible persons and entities. Suspension and debarment can only work as a protective mechanism, however, if the Department devotes adequate attention and resources to taking actions in this area.

We also believe additional staff can assist PAM to address areas for improvement on which we reported in the past. In 2005, we issued *Framework Needed to Promote Accountability in Interior's Grants Management (Report No. W-IN-MOA-0052-2004, August 2005*). We urged PAM to establish a process to ensure complete and accurate entry of all grant financial and program information into the Financial Business and Management System; establish a mechanism to detect and correct inaccurate grant financial and program information; develop a "hands on" approach to monitoring grant awards; develop a certification program for all employees who award grants; and develop an Interior-wide electronic grants handbook. While a response to the evaluation was not required, we learned that PAM attempted to address the issues identified, but could not reach a consensus with the bureaus on the appropriate policies

[2] Suspension and debarment are actions that the Federal government takes to prevent certain businesses and individuals from obtaining government contracts and other transactions, such as grants.

to implement and actions to take. The heightened accountability and transparency under the Recovery Act on spending not only by government agencies, but also by the recipients of federal funds through contracts and financial assistance vehicles, present a unique opportunity and incentive to both the Department and bureaus to reach agreement on ways to address past vulnerabilities identified. Implementing the recommendations we made in our 2005 report may require additional resources for the PAM office.

The issuance of ARRA-2009-01 is a positive step by the Department in addressing past vulnerabilities pertaining to contracts and financial assistance awards and associated risks identified by the Department in Recovery Act implementation. We are optimistic that such a policy identifies and begins to clarify the central role of PAM in Recovery Act implementation. We remain concerned, however, over PAM being excluded in a meaningful way from certain key processes early in Recovery Act planning. The Department and bureaus engaged in a significant effort to identify projects on which to spend Recovery Act funds, using several criteria for selection, including the nature of the project and the completion of various pre-requisites for initiating work. The Recovery Act requires the majority of Interior's funding to be obligated by September 30, 2010, so selecting projects that are ready to be implemented is a critical component to successful implementation. One key consideration in determining whether a project is ready for implementation is whether adequate planning has been completed, a process with specific requirements under the Code of Federal Regulations for both contract and federal assistance awards. PAM was not involved early on in the development of Recovery Act project lists, despite the central role of acquisition and federal assistance in implementing these projects. Additionally, bureau risk assessment and acquisition plans were not finalized when we conducted our review. The limited involvement of PAM in early efforts could lead to additional effort needed as projects move toward implementation.

We also agree with PAM on their assessment of the need for additional staff if the office assumes a predominant role moving forward in gathering, compiling, monitoring and reporting on grants and contracts funded under the Recovery Act. However, not all of PAM's roles in Recovery Act implementation and oversight have been clearly defined yet. ARRA-2009-01 defines PAM's role in the acquisition phase of an award life-cycle, but it does not address PAM's responsibility to monitor project execution or reporting. Furthermore, it provides no estimate of the number of award actions that will require review. Such uncertainty leads to difficulty in clearly identifying precise staffing levels required. These concerns are shared by the PAM officials we interviewed.

An additional observation we made is the ARRA 2009-01 guidance states that PAM has two weeks to respond to a bureau submission. The bureaus are permitted to assume concurrence if PAM does not respond within the time constraint. Such a policy makes it even more imperative that PAM is adequately staffed to conduct the required reviews.

In sum, given the information currently available, we believe PAM's request for nine additional staff is not unreasonable. However, we also believe additional clarification could assist officials in PAM and other Department offices to assess more accurately the appropriate staffing levels in PAM. Given the uncertainty over the level of effort required to review project award actions and how much oversight of specific projects will be required throughout the project execution phase, PAM is limited in its ability to prepare a complete staffing plan and secure support either internally or through agreements with other bureaus and agencies. Therefore, we suggest that the roles to be assumed by PAM in support of the Recovery Act be specified in greater detail, particularly given oversight responsibilities of the Department's Executive Steering Committee and Task Force and of the bureaus. In addition to presenting PAM with a barrier to accurately identifying appropriate staffing levels, without definition of clear roles and responsibilities, we are concerned about unnecessary duplication of efforts that could impede successful execution of Recovery Act projects.

Solicitor Office Staffing

The legal work of the Department of the Interior is performed under the supervision and direction of the Solicitor, who is appointed by the President (43 U.S.C. 1455). On a routine basis (i.e., on actions not specifically related to the Recovery Act), SOL is responsible "for managing the Department's Ethics Office and resolves FOIA Appeals…, [while providing] sound legal services to fulfill the Department's diverse and wide-ranging mission." ARRA-2009-01 also identifies a role for SOL in the review of Recovery Act contracts and financial assistance awards, described in more detail below. Given vulnerabilities identified in our past work, we believe SOL will need a sound plan to ensure it can meet the responsibilities identified in ARRA-2009-01.

We described above our report on grants in the Department and the need for improvement in that area. In our audit report, *Proper Use of Cooperative Agreements Could Improve Interior's Initiatives for Collaborative Partnerships, Report Number W-IN-MOA-0086-2004*, (January 2007), we also identified numerous problems with the use of cooperative agreements in the Department. Most troubling, perhaps, was the frequent improper use of cooperative agreements instead of contracts. We recommended that the Deputy Secretary and Assistant Secretary – Policy, Management, and Budget (PMB) "establish an Interior-wide policy to require, in conjunction with bureau solicitors, reviews of all proposed cooperative agreements to ensure that (a) the bureau has the legal authority, (b) there is substantial involvement by both parties to the agreement, (c) the correct legal instrument is used, and (d) all authorities and responsibilities, deliverables, cost budgets, and time frames for completing agreement objectives are clearly delineated."

In response to our report, the Assistant Secretary – PMB, cited, in part, the March 2006 Departmental Manual (DM), part 505, chapter 2.8.D (release 3706). This policy requires Solicitor review of "all proposed grants and cooperative agreements that obligate or may obligate in excess of $750,000 of government funds or of which the bureau or office otherwise seeks legal review." However, in January 2008, 505 DM 2.8.D (release 3784) was issued and superseded release 3706. The 2008 language is vague and could be interpreted by bureaus to mean that Solicitor review of grants and cooperative agreements occur at their discretion.

The ARRA-2009-01 guidance eliminated the discretionary nature of Solicitor review of financial assistance awards created by the 505 DM 2.8.D (release 3784) for all Recovery Act awards. SOL now has a clear authority and responsibility for reviewing "(a) all proposed grants or cooperative agreements that obligate or may obligate in excess of $500,000, and (b) any change to an existing agreement/action to incorporate Recovery funds, <u>regardless of dollar</u>

amount" (emphasis added in the original). The guidance states that the review will be completed "normally within seven (7) workdays."

Past problems identified in both grants and cooperative agreements make the Department's policy to require reviews by SOL for Recovery Act funds awarded through these vehicles prudent. SOL must be prepared, however, to handle a potential surge in workload from the new requirement. Currently, SOL has 313 attorneys. To implement new responsibilities, SOL has asked regional and field offices to provide projected staffing needs. Approximately one-third of the offices had replied to the request at the time of our review. The replies indicate staffing estimates will be difficult to determine without knowing the number of award actions that will require review. The bureaus have identified thousands of projects to implement with Recovery Act funds, but there is not a one-to-one correlation between Recovery Act funds and awards. Some projects may use more than one award and one award could cover multiple projects.

Despite the uncertainty over the number of awards that will need to be reviewed, the Solicitor is considering several methods to hire employees to assist with the increased workload. As we stated regarding staffing levels for PAM, the particular staffing level in SOL is a management decision that will need to be made by the Department. We offer observations below for the Department to consider as it makes the determination on positions to approve in SOL.

The SOL told us that the current goal established by ARRA-2009-01 for the SOL to complete Recovery Act financial assistance award reviews within seven days of receipt will be difficult with currently available staff. While the number of additional employees needed for Recovery Act work is unknown at this time, SOL was working to hire three new employees at the time of our review. These employees will be hired to perform normal operations, but they will be leveraged for Recovery Act work. A portion of the current staff will also be able to perform Recovery Act reviews. As bureaus transition from selection of projects to implement with Recovery Act funding to implementing those projects, the Department could work with the bureaus to gain clarity on the numbers of reviews that the Solicitor (and PAM) will be expected to review.

Even more important than the number of employees available to conduct reviews, in our opinion, are their qualifications and knowledge to complete a rigorous review. Employees asked to review Recovery Act financial assistance awards may require some basic training. The office is currently working to establish several online resources and obtain hardcopy text resources, which would benefit employees carrying out financial assistance award reviews. However, to ensure consistency, SOL should consider acquiring internal services or the services of a contractor to provide training on financial assistance agreements (i.e., grants and cooperative agreements) to ensure that all SOL employees have a background to conduct these new reviews. Such training needs could be met now, before solicitations are announced and before awards are made. Finally, to leverage its limited assets, SOL might want to consider identifying a cadre of financial assistance and procurement experts that less experienced attorneys could call upon for guidance and assistance.

As a final note, we have some concern in the guidance's statement that SOL will review awards "normally within seven (7) workdays." The guidance is not clear that bureaus may not assume concurrence if SOL does not respond within seven workdays.

cc: Acting Assistant Secretary – Policy, Management and Budget
Director, Office of Acquisition and Property Management
Director, Office of Financial Management
Departmental GAO/OIG Audit Liaison
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