



OFFICE OF INSPECTOR GENERAL



DEPARTMENT OF THE INTERIOR

RECOVERY OVERSIGHT ADVISORY

A Critical Point Evaluation Product





United States Department of the Interior

OFFICE OF INSPECTOR GENERAL
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Memorandum

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

From: Mary L. Kendall *Mary L. Kendall*
Acting Inspector General

Subject: Addressing Past Areas of Vulnerability in Department of the Interior Programs
(ROO-ROA-MOA-1006-2009)

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, our Recovery Oversight Office identified past vulnerabilities found in the Department, which we discuss in this advisory. The Department and its bureaus should place particular emphasis on addressing these areas to help ensure successful implementation of projects undertaken with Recovery Act funds. We based our observations on work we have performed in the Department and an assessment of the areas relevant to Recovery Act efforts.

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.

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

Executive Summary

The Department has taken positive steps to ensure effective Recovery Act implementation, such as hiring a Senior Advisor to the Secretary for Economic Recovery and Stimulus, overseeing the development of lists of projects to be implemented by the six bureaus and one program receiving Recovery Act funding, and establishing various governing bodies for Recovery Act implementation. The majority of the projects will be competed through contracts and financial assistance agreements. The Department will need to persist in its diligence as it transitions from planning to award of contracts and financial assistance agreements and then to oversight of Recovery Act projects. Our past work has identified areas of vulnerability in the Department, and we describe below those areas that are particularly relevant to Recovery Act efforts. To help guard against fraud, waste, or mismanagement, and to ensure Recovery Act dollars achieve the impact intended, the Department should consider its areas of vulnerability in the context of Recovery Act implementation, and take appropriate steps to address them.

An appropriate ethical tone from the top. Recent ethical lapses in the Department demonstrate the importance of setting an appropriate tone from the top, particularly in the Recovery Act's environment of heightened transparency and accountability. The Department's reputation has been called into question by scandals such as former lobbyist Jack Abramhoff's inappropriate connections with Department officials. Although the majority of the leadership and staff at the root of such scandals have left the Department, such ethical lapses serve as a reminder of the potential outcomes that can result from insufficient conscientiousness by senior officials and each Department employee. The Department should ensure it continues to communicate the importance for all officials and employees to abide by the high ethical standards established for government employees and for Recovery Act implementation. It should also take swift and decisive action to address any identified lapses in ethical behavior.

Acquisition of goods and services through contracts and the use of financial assistance awards for public purposes. The majority of Recovery Act funding in Interior will be awarded under contracts and financial assistance agreements. Our past work demonstrates that these awards are a vulnerable area for the Department, particularly given the amount of money that will be awarded under the Recovery Act and the pace at which it will be awarded. We have found that the following factors, among others, are important to successful acquisitions but have not always been practiced consistently in the Department: 1) ensuring effective up-front teaming and communication among officials engaged in acquisition and financial assistance, program staff at the headquarters and field level, budget officials, and others with a stake in the outcome of the acquisition; 2) maintaining documentation throughout the contract administration and grant monitoring processes to promote accountability and proper use of funds; 3) planning beyond the obligation of funding to implementation of projects; 4) maximizing the use of competition in the source selection process; 5) ensuring appropriate use of awarding vehicles; and 6) taking appropriate steps in contract administration and grant monitoring to guard against fraud and waste as well as poor performance. It is imperative that the Department be aware of and address these problems as it implements Recovery Act projects.

Funding flowing to Indian tribes through BIA. Due to the number and types of problems we have identified in recent reviews in Indian country and the \$500 million going to the tribes through the Bureau of Indian Affairs (BIA) under the Recovery Act, we believe this funding

warrants additional oversight attention by the Department. For example, 36 (47 percent) of the 77 “single audit” reports we reviewed for tribal entities (including tribal governments, tribal schools, and tribal associations) were delinquent during fiscal year (FY) 2008. Single audits are mandatory reviews of entities that receive federal assistance funds and help to ensure accountability of federal funds awarded to non-federal entities. One tribal entity that failed to have a single audit performed for seven years suffered the loss of \$50 million in trust funds over a ten year period. Ensuring adequate oversight over funds awarded to tribes will be an area of vulnerability that the Department should take action to mitigate to ensure that the funding is spent on intended projects and benefits the intended recipients.

Health and safety. The Department has identified health and safety as a priority for project selection under the Recovery Act. According to our analysis of draft bureau project lists, approximately \$1.7 billion has been identified for projects with a health and safety component, a known management challenge in the Department. We have found threats in the past to the health and safety of Department employees and visitors of Department land and property. The Department has an opportunity to address some of its health and safety problems with the Recovery Act funding. It will be important for the Department to track closely efforts made in this area to ensure accountability and effective mitigation of the past health and safety problems we have identified.

Background

The Recovery Act provides \$1 billion for the Bureau of Reclamation (BOR); \$750 million for the National Park Service (NPS); \$500 million for Bureau of Indian Affairs (BIA); \$320 million for the Bureau of Land Management (BLM); \$280 million for the U.S. Fish and Wildlife Service (FWS); and \$140 million for the U.S. Geological Survey (USGS). The bureaus¹ may use up to 5 percent of their funding for administrative costs. The Act appropriates an additional \$490 million to the Department of Transportation for Interior roads, as well as funding in other Departments that will consult with Interior on allocation. Collectively, these funds will be spent on habitat restoration, facilities and roads improvements and construction, scientific equipment, water infrastructure in western states, and improving conditions in Indian Country. The majority of funds must be obligated by September 30, 2010.

The President of the United States, in a memorandum titled “Ensuring Responsible Spending of Recovery Act funds” (issued March 20, 2009), and the Office of Management and Budget (OMB), in its “Updated Implementing Guidance for the American Recovery and Reinvestment Act of 2009” (issued April 3, 2009) (M-09-15), emphasized the importance of merit-based decision-making when disbursing Recovery Act funds. Specifically, OMB’s guidance directs departments and agencies to develop transparent, merit-based selection criteria to guide their actions when committing, obligating, or expending Recovery Act funds for grants and other financial assistance vehicles.

OMB’s guidance and the President’s memorandum also emphasize the importance of achieving long-term public benefits and optimizing economic and programmatic results from Recovery Act expenditures. Specifically, OMB states that agencies should support projects that:

- Will deliver programmatic results, based on a demonstrated ability to do so;
- Optimize economic benefit and the number of jobs created or saved; and
- Invest in projects that will yield long-term benefits, such as technological advances in science, transportation, environmental protection, energy independence, and educational quality.

Finally, OMB states that agencies should consider additional public policy objectives, such as supporting small and disadvantaged businesses, engaging in sound labor practices, promoting local hiring, and engaging with community-based organizations.

Meeting these directives in the timeframes envisioned under the Recovery Act will be challenging. To help ensure effective implementation, the Department has taken a number of important steps. It has hired a Senior Advisor to the Secretary for Economic Recovery and Stimulus to lead the implementation of the Recovery Act for the Department. The Secretary has also established a Task Force and plans to establish a Recovery Act Executive Board and Recovery Act Executive Steering Committee. The Executive Board will be responsible for the

¹ This statement applies to all Interior bureaus that received funding under Title VII. BOR received its funding under Title IV, so different standards for administrative costs apply.

highest level of governance, for making significant reallocation decisions, and for resolving significant cross-cutting issues. The Steering Committee will be and the Task Force is responsible for various implementation activities under the Recovery Act. Each bureau has established or is in the process of establishing a bureau oversight structure. The Department and bureaus that received funding under the Act have also undertaken significant efforts to identify projects for implementation. The Office of Acquisition and Property Management has developed and issued policies that include controls to ensure accountability of the financial assistance agreements and contracts awarded under the Recovery Act. We commend the Department for these efforts.

We also commend Department officials for their willingness to work with us as we engage them early in their planning and implementation process. We are engaging in an unprecedented level of on-going communication with Department officials. We routinely meet with senior Department officials, including the Senior Advisor to the Secretary for Economic Recovery and Stimulus; the Acting Assistant Secretary for Policy, Management, and Budget; and the Senior Procurement Executive and Director of Acquisition and Property Management. We also attend the Department's Recovery Act Task force meetings and subgroup meetings. We have provided feedback, both informally and in the form of Recovery Oversight Advisories, on the Department's project lists, program plans, risk management strategies, performance management, and other areas. As the Department and bureaus proceed with their diligent efforts to ensure accountability in Recovery Act implementation, this advisory offers lessons learned and areas of vulnerability identified from the past several years of our work in the Department.

The Department's early diligence will need to continue as it and the bureaus move from planning to awarding contracts and financial assistance agreements, and to overseeing project implementation. The Department spent approximately \$6.9 billion in FY 2008 on contracts and federal assistance awards. The Department will award up to \$3 billion in FYs 2009 and 2010 in contracts and federal assistance under the Recovery Act alone, an increase of almost 50 percent. As stated in the various bureau program plans, which were developed as part of the transparency and accountability requirements under the Act, "the investment required to handle the increase in funding will strain Interior's on-board resources." The Department is in the process of identifying ways to address some of this strain, such as sharing staff and expertise across bureaus, hiring term and temporary staff, and reemploying knowledgeable annuitants. The Department can also focus its limited resources on areas of known vulnerability and identify and learn from practices that have yielded favorable results in the past. We hope this advisory provides insights that can assist the Department to do so as it continues with planning and implementation of Recovery Act projects.

Vulnerabilities Requiring Department Attention

Setting an Appropriate Ethical Tone

Senior leadership plays a key role in setting and maintaining the ethical tone in the Department. Setting an appropriate ethical tone communicates to all Department employees the importance of acting in ways that ensure agency objectives are achieved. Setting an appropriate "tone from the top" will also help senior Department officials to meet the high standards of

transparency and accountability in the Recovery Act. Ethics has been an area for improvement in Interior in recent years. The Department has, in fact, been plagued with high-profile ethical lapses by senior leadership. While these senior leaders are no longer with the Department, their lapses remain an important reminder for current leadership of the importance of acting with integrity in both fact and appearance.

One of the most high profile cases of an ethical lapse in the Department involved J. Steven Griles, who served until January 2005, as the second-highest ranking official with the Department. Mr. Griles pled guilty to Obstruction of Proceedings before the United States Senate, in violation of 18 U.S.C., Section 1505. The Interior Inspector General (IG) at the time of the plea stated that “former Deputy Secretary J. Steven Griles was ready and willing to serve as Jack Abramoff’s ‘man inside Interior.’ In retrospect, all the warning signs were there.” The IG publicly released a 146-page report in 2004 detailing the results of a two year investigation into Griles’ ethical lapses. The report included information, for example, on allegations that Mr. Griles manipulated the procurement process for BLM contracts with Advanced Power Technologies, Inc., a company with which he had associations when he was employed as a lobbyist. The report also contained information on a dinner party hosted by Mr. Griles’ former business partner to acquaint newly appointed Department officials with each other. The business partner was a prohibited source who represented several clients interested in doing business with the Department.

As recently as December 2008, we issued a report on our investigations into Endangered Species Act (ESA) decisions influenced by the former Deputy Assistant Secretary for Fish and Wildlife and Parks (FW), Julie MacDonald. We concluded that MacDonald’s zeal to advance her agenda had caused considerable harm to the integrity of the ESA program and to the morale and reputation of her office, as well as potential harm to individual species. Her heavy-handedness in inserting herself into ESA decisions has cast doubt on nearly every ESA decision issued during her tenure. Of the 20 decisions we reviewed, her potential influence jeopardized 13 of them. MacDonald did not act alone. We reported on support she received from three other officials and former officials in the Department. These actions resulted in the unnecessary expenditure of hundreds of thousands of dollars to re-issue decisions and litigation costs to defend decisions that, in at least two instances, the courts found to be arbitrary and capricious.

While the Inspector General has gone on record stating that 99.9 percent of Interior employees are hard-working, ethical, and well-intentioned, we have also identified instances of ethical lapses in groups of employees in the Department. The Minerals Management Service’s (MMS) is responsible for collecting, accounting for, and distributing revenues received from federal and Indian lands. One option is for MMS to receive the royalties as the actual product (royalty-in-kind). Investigations into the MMS’s Royalty-In-Kind (RIK) Program revealed that 19 RIK marketers and other RIK employees (approximately 33 percent of the staff) had socialized with, and had received a wide array of gifts from, oil and gas companies with whom the employees were conducting official business. Two of the employees who accepted gifts also held unauthorized outside employment. We also discovered a culture of substance abuse and promiscuity in the RIK program. Several staff admitted to illegal drug use and illicit sexual encounters. In sum, our investigation revealed an organizational culture lacking acceptance of government ethical standards, inappropriate personal behavior, and a program lacking the necessary internal controls to prevent unethical and unlawful behavior.

We also reported on our investigation into allegations of improper relationships between senior Office of Special Trustee (OST) officials and the principals of Chavarria, Dunne & Lamey (CD&L), a contractor for OST. The three most senior ranking officials in the OST engaged in extensive outside social activity with executives of CD&L, including exchange of gifts of meals and drinks, taking out-of-town trips, playing golf together on an almost weekly basis, and exchanging hospitality at personal residences. While our investigation into allegations received in 2006 that CD&L failed to produce required deliverables revealed that the allegations were unsubstantiated, we concluded that the continual awarding of contracts to CD&L perpetuates permanent preferential treatment and creates an air of impropriety that generates a stream of seemingly endless allegations.

Lower profile cases involving smaller dollar values also exist in the Department. For example, a 2007 investigation revealed that a BLM Geologist took \$10,500 in cash as well as sand and gravel in exchange for unlawfully issuing BLM Mineral Material permits to an aggregate company. While such low dollar values do not receive much media attention and may not have the impact of the larger-scale or higher profile cases discussed above, such improprieties can add up to cost the Department significant dollars. The ethical tone starts from the top, and preventing these lower level improprieties must begin with appropriate behavior and communication at higher levels within the Department.

The example cited above involves common criminal schemes. In kickback and bribery schemes, for example, a government official accepts money or gratuities for him or herself or for another, in exchange for offering preference or favoritism. It can also occur when a prospective contractor gives a gift or monetary award to a government official. Often these “gifts” are unsolicited. Rather, they are offered by contractors to the government official in the hope of gaining favor on a contract.

Conflict of interest allegations are perhaps the most common contract fraud issues that we investigate. Conflict of interest covers a broad range of criminal and civil statutes and administrative regulations, but basically means that a government official has an interest in an outside entity or person which could compromise the official’s objectivity. A conflict of interest can occur even if there is only an appearance of impropriety and no improper conduct actually occurs.

The Recovery Act provides \$3 billion in funding, most of which will flow to the private sector in an expedited manner. Unfortunately, Recovery Act implementation can, in the worst circumstances, provide temptations for both contractors and government personnel. Department officials and staff should be aware of past ethical lapses and take appropriate action to guard against repeating such lapses in the future.

Acquisition and Financial Assistance Awards

The Department and the bureaus that received funding under the Recovery Act have engaged in significant efforts to identify the projects to support. The majority of these projects will be completed through contracts, grants, and cooperative agreements. This approach continues a trend that has been developing over the past several decades – federal agencies have

been relying increasingly on the private sector to support them in carrying out their missions. Because of this trend and based on our work in this area, we identified procurement, contracts, and grants as a major management challenge in our *Statement Summarizing the Major Management and Performance Challenges Facing the Department of the Interior*.

In our reviews of contracts and financial assistance awards, we have found that ensuring accountability of agencies and the entities to whom they make awards requires effective *upfront planning* as well as *on-going administration and monitoring*. The expediency and volume of dollars being spent under the Recovery Act heightens the need for effective planning and monitoring processes. Without diligence in these processes, the Department is vulnerable to violating laws and regulations established to protect the interests of the American public. It is also vulnerable to fraud, waste, abuse, and mismanagement of Recovery Act dollars. We identify below some of the problems identified in past work that demonstrate the potential outcomes of insufficient diligence in planning, administration, and monitoring of acquisitions and financial assistance awards.

Effective Planning and Teaming Are Keys to Success

The Federal Acquisition Regulation (FAR, 48 C.F.R. Chapter 1, Part 7) and OMB's April 3, 2009, guidance stress the importance of effective acquisition planning to ensure that projects are completed in an effective, economical, and timely manner. Acquisition plans should address all technical, business, management, and other significant considerations that will drive the acquisition process and identify milestones at which decisions should be made. For example, during acquisition planning, timeframes should be identified for solicitation, award, and contract execution; consideration should be given and sufficient information gathered on the specific customer need; and whether and how competition will be used to secure a good business deal for the government. The non-procurement Common Rule prescribes similar planning requirements for financial assistance awards. Our recent audits, evaluations, and investigations demonstrate problems that have arisen due to insufficient planning, as well as practices that helped to lead to success.

The lessons from our past work that we highlight below focus in particular on: 1) ensuring effective up-front teaming and communication among officials engaged in acquisition and financial assistance, program staff at the headquarters and field level, budget officials, and others with a stake in the outcome of the acquisition; 2) maintaining documentation throughout the acquisition and grant monitoring process to promote accountability and proper use of funds; 3) planning beyond the obligation of funding to implementation of projects; 4) maximizing the use of competition in the source selection process; and 5) ensuring appropriate use of awarding vehicles. We believe that the observations discussed below will assist the Department and bureaus to learn from and improve upon the outcomes of past efforts.

The spending environment under the Recovery Act is similar to that after the 2005 hurricane season, in which Hurricanes Katrina, Rita, and Wilma caused widespread devastation. Both situations involve(d) the award of large sums of money to achieve specific objectives in response to a crisis. We reviewed NPS and FWS efforts after the 2005 hurricane season and did not find any instances in which the Department inappropriately spent hurricane funds on assets not damaged by the hurricanes. However, over two years after the hurricanes, NPS had

obligated or spent only 24 percent of the \$74 million in supplemental funding it received. Of the funds that had been obligated, many projects were incomplete or had not been started. We determined that a lack of prioritization and lack of coordination between personnel that maintained the priority list for hurricane projects and personnel overseeing project completion put NPS at risk of running out of funds before all of the hurricane damage was fixed. We also noted that NPS continued to add projects to its approved inventory two years after the occurrence of the storms.

FWS made significantly more progress in its hurricane rebuilding efforts than NPS. FWS obligated 90 percent of its funds two years after the hurricanes. We attributed much of FWS' success to the creation of the Southeast Regions' Executive Oversight Team (EOT), which held decision-making authority for rebuilding projects. The team, which included high-level regional personnel from refuges, fisheries, ecological services and budget and administration, met weekly to review project and financial status, as well as to formalize and oversee the implementation of acquisition plans. The Emergency Recovery Team (ERT), which included a senior program manager as well as contract specialists, engineers, architects, and a safety and health expert, closely monitored and tracked actual construction progress and supported the EOT.

We did, however, note that FWS lacked adequate documentation to support decisions it made to rebuild and expand certain facilities. In each of the instances we identified, FWS did not adequately document its decision to rebuild facilities instead of repair them and to build a larger facility than the damaged one. Adequate documentation supporting management decisions is necessary to ensure funds are spent appropriately.

These lessons from hurricane recovery are directly relevant to current Recovery Act efforts. Lack of planning can lead to delays due to seasonal constraints, staff limitations, and other circumstances. We observed in an advisory on draft Recovery Act project lists, however, that those lists did not contain data on whether acquisition planning has been completed. Such planning will be a crucial first step in ensuring the timely award of contracts, obligation of funding, and effective performance in the completion of projects. We have also heard from discussions with staff in the field that in some bureaus, field staff who are responsible for implementing projects are not yet even aware of the projects identified for implementation. We identified such lack of communication as one of the contributing factors to NPS's shortcomings after the 2005 hurricane season. As described above, one of the differences between FWS and NPS in the audit of hurricane recovery efforts was the high-level attention from integrated FWS teams on both acquisition planning and execution. The FAR (1.102-3), in fact, emphasizes the importance of identifying acquisition team members "beginning with the customer and ending with the contractor of the product or service" to encourage "teamwork, unity of purpose, and open communication." Additionally, given the heightened focus on transparency and accountability, particular attention will need to be paid to adequate documentation of and justification for management decisions affecting Recovery Act funds. Such justification will allow the public and policy makers to understand Recovery Act decisions.

When planning acquisitions and financial assistance awards, it is important that teams consider not only timely obligation of funds, but also the specific requirements and plan of execution to ensure effective use of goods and services procured after obligation. We completed a review in BIA of an acquisition in which requirements generation and planning beyond

obligation of dollars was performed so poorly that equipment procured was not only unusable, but also led to increased storage and maintenance costs. BIA began purchasing equipment in FY 2000 as part of its conversion to narrowband radio technology. BIA purchased an estimated \$3.6 million in radio equipment it could not use because of unsafe and deteriorating conditions in BIA's radio communications infrastructure. The bureau did not have a plan to place the equipment in service prior to purchase. In the absence of a plan, the bureau continued to purchase radio equipment it could not place in service for at least two years. A BIA official stated that he pushed the purchase of equipment to ensure that funding did not expire.

As this example demonstrates, the expiration of funding can cause officials to make and encourage decisions that prioritize the expenditure of funds over the prudent use of those funds. We have already been told by at least one bureau official that the focus is on obligation. In the environment of expedient spending under the Recovery Act, the Department must place increased emphasis on sufficient planning that considers and emphasizes factors beyond the obligation of funds. Without such diligence, Department and bureau officials are at increased risk of making decisions that focus on obligation at the expense of performance.

Another key component of effective acquisition and financial assistance planning is source selection. The Recovery Act and OMB guidance emphasize a preference for using competition in selecting sources for contracts funded with Recovery Act dollars. The FAR (1.102) also identifies competition as a primary means to meet the guiding acquisition principle of "satisfy[ing] the customer in terms of cost, quality, and timeliness." However, in a recent evaluation we found a prevalence of sole source contracting in the Department. The 2005 Federal Procurement Report identified \$1.5 billion of un-competed procurements in the Department. This figure represents 33 percent of all procurements in the Department. While there are instances in which sole source contracting is appropriate, in many cases, it is used to circumvent competition and undermines effective use of acquisition dollars.

For example, we found in our review that material modifications to competed contracts were, in effect, de-facto sole source contracts. Modifying a contract so that it materially departs from the scope of the original procurement prevents potential bidders from participating or competing for what should be a new procurement. Such use of contract modifications is not only a poor business practice that can lead to waste. It also violates the Competition in Contracting Act (CICA) of 1984 (41U.S.C. § 253).

We also found instances in which written justifications for sole source contracts were inadequate or nonexistent. For example, we identified instances in which dubious "unusual and compelling circumstances" were used to justify sole source contracting. In one case, BOR awarded a sole source contract on the basis of unusual and compelling urgency for almost \$500,000 on September 29, 2006. It made the award one day before the end of the fiscal year, when FY 2006 funding would expire. The award was for materials and supplies for the second phase of a pumping plant upgrade at the Shasta Dam. We questioned the urgency of this requirement, given that the pumping plant upgrade was planned as a phased project.

In other cases we reviewed, the sole source justification lacked a signature by the contracting officer or competition advocate. One such instance involved a \$1.2 million contract at FWS. In other instances, documentation was altogether lacking. NPS awarded a \$203,109

contract to provide trained drivers for park-owned buses at Harper's Ferry Center on a sole source basis. This contract increased to over \$1 million through 10 modifications to extend the period of performance and amount of award. There was no sole source justification in the file. Almost half of the 296 sole source contracts we reviewed lacked adequate justifications.

We also found improper contracting practices that limited competition among small businesses. Agencies may award a sole source contract to an "8(a) firm" (small business) if it falls under a certain dollar threshold (currently \$5.5 million for manufacturing and \$3.5 million for all other acquisitions). Above this threshold, contracts must be competed, although they may be limited to eligible 8(a) firms. We expressed concern over bureaus splitting requirements into multiple projects to fall under this dollar threshold and circumvent the requirement for competition.

Our report on sole source contracting was our third report on the Department's acquisition processes. The previous two, *Framework Needed to Promote Accountability in Interior's Grants Management* (grants management report) and *Proper Use of Cooperative Agreements Could Improve Interior's Initiatives for Collaborative Partnerships* (cooperative agreement report), also highlight the need for improved attention to competitive procurements. The Department and bureaus will need to pay close attention to procurements made with Recovery Act funding to ensure the appropriate level of competition.

Findings from the multiple reports discussed above indicate that ensuring competition has not always been a top priority for the bureaus. With the Recovery Act's increased emphasis on competition, we therefore highlight appropriate source selection as a vulnerable area for the Department. For example, we have heard that bureaus may modify existing contracts to add Recovery Act funding and work to them. If bureaus intend to do so, they should ensure that such modifications are not de-facto sole source contracts, as has happened in the past.

We also note that the April 3, 2009, OMB guidance (M-09-15) emphasizes the importance of providing opportunities to small businesses. One of the three guiding principles in OMB's guidance is to target assistance consistent with other policy goals, including supporting small and disadvantaged businesses. OMB provides additional rationale for this guiding principle (Section 6.1(6)). The guidance states:

Because support of small businesses furthers the economic growth and job creation purposes of the Recovery Act, agencies should provide maximum practicable opportunities for small businesses to compete and participate as prime and subcontractors in contracts awarded by agencies, while ensuring that the government procures services at fair market prices.

We urge bureaus to provide such opportunities to small businesses in a manner that also promotes competition.

Given the emphasis on providing opportunities to small businesses, we note the importance of capturing data on small business awards correctly and ensuring that businesses purported to be small business meet the criteria for being classified as such. In our July 2008 report *Interior Misstated Achievement of Small Business Goals by Including Fortune 500*

Companies, we reported that unreliable data, including errors caused by the failure of contracting officers to consistently verify business size, resulted in the inclusion of large businesses and other ineligible groups in the Department's small business goal achievement data. Incorrect data brings into question the accuracy of the small business goal achievement reported by the Department in FY 2007. If such errors were to be made in capturing data on Recovery Act contracts, they would also call into question reporting that may be required on small business awards under the Act. Given the heightened transparency requirements under the Act, integrity of contracting data is more important than ever.

In addition to source selection, bureaus will need to ensure they select the appropriate vehicle for awarding funding. Our report on cooperative agreements contains lessons for this aspect of Recovery Act implementation. We concluded in our report on cooperative agreements that the Department lacked a fundamental understanding of how and for what purpose cooperative agreements should be awarded. In a review of 119 cooperative agreements, we found, among other problems, that nearly all (116) of them were awarded without clear legal authority and most (100) were issued without soliciting competition.

For example, we found problems in FWS such as improper use of cooperative agreements for construction. We also reviewed a \$25,000 cooperative agreement in FWS that ballooned to \$4.15 million through modifications. FWS conducted only minimal and sporadic reviews of costs charged against this agreement, and we found \$73,000 in questioned and disallowed costs for entertainment, alcohol, excessive travel, and unsupported charges as a result of ineffective monitoring.

We also recently issued a report on the inappropriate use of cooperative agreements in BLM's Helium Program. We found that BLM circumvented the procurement process by improperly issuing two 15-year cooperative agreements that should have been procurement contracts. Our conclusion was supported in a 2005 BLM Acquisition Management Review. Procurement contracts should have been used because BLM was obtaining mission-related services: to fulfill its requirement to operate the Helium Storage Program, as stipulated by the Helium Privatization Act. This impropriety was accompanied by overcharging, possible double billing, costly short-term financing, and unjustified allocating of equipment costs. Root causes included inadequate oversight, lack of communication by the field office, and an accompanying sense of autonomy by field office staff that led them to violate protocol. For example, the staff repeatedly established annual budgets in private meetings without consulting appropriate BLM procurement officials.

Given the significant problems identified in our reports, particular diligence should be paid to the use of cooperative agreements to award Recovery Act dollars. One important step is to ensure that cooperative agreements are used appropriately and only when authorized. Our report *Proper Use of Cooperative Agreements Could Improve Interior's Initiatives for Collaborative Partnerships*, the findings of which we discuss above, contains a flowchart process we developed to help determine the proper use of cooperative agreements. It contains such consideration as whether the bureau has broad legal authority to use financial assistance instruments (if not, a procurement contract should be used), whether the goods and services being acquired primarily benefit the bureau's mission (if so, a procurement contract should be used), and whether both the non-federal party and bureau are substantially involved in doing the

project (if not, a grant should be used). Diligence in the use of cooperative agreements should be applied not only to new awards, but also to any Recovery Act funding applied to existing awards.

Administration and Monitoring Need Adequate Attention and Resources

Effective contract administration, including monitoring of performance, and monitoring of financial assistance awards are equally as important as careful up-front planning. As with planning, effective administration and monitoring requires coordination between the contracting or awarding office and the program staff, particularly program staff appointed as contracting officer technical representatives (COTRs). It is during administration and monitoring that progress payments are made, monitoring of product and service delivery is completed, and all other aspects of performance occur. These efforts should be documented, as prescribed in the FAR (Part 4). Inadequate documentation - particularly of expenditures - can expose the Department to fraud. In our past work, we have identified problems with administration and monitoring. We hope these observations on weaknesses identified will assist the Department and bureaus in their efforts to monitor and improve the effectiveness of internal controls associated with their contracting programs.

Inadequate attention to contract performance during the contract administration phase can lead to poor performance or fraud. For example, progress payment fraud occurs when a contractor, to obtain payment, falsely certifies performance progress of a contract has been made, generally as part of a contract payment schedule. We recently concluded an investigation in which NPS issued a \$475,000 contract to a Massachusetts ship builder for construction of a touring boat. The builder was paid for work he never completed. He was ordered to repay \$273,000 plus other costs. The builder was able to commit this fraud due, in part, to a lack of oversight during the project. No NPS personnel visited the build site or took other actions to verify that the builder had actually begun work on the boat.

Product substitution is another scheme to which the government is vulnerable, particularly in construction. Product substitution occurs when a contractor substitutes a non-conforming material as compared to contract requirements (i.e. a certain grade of steel, type of concrete, or any other material). This non-conforming material is usually cheaper in cost than what is required, which allows the contractor to profit from lower overall material costs. We recently concluded an investigation of a subcontractor for a FWS marine repairs contract. While we found probable cause to believe that rather than using the specified polyurethane resin in the sheet piling for a seawall (the contractor used polyester resin), fraud could not be conclusively established. Consequently, FWS is left with a potentially inferior product. There were no government inspectors or engineers involved in verifying contractor performance during the course of the work.

As in the case of FWS, an acquisition may be at risk of fraud, but lack of documentation could prevent detection or confirmation of that fraud. In our audit of the BIA narrowband radio conversion discussed above, we determined that the bureau was not maintaining adequate records on its procurements. BIA was unable to locate and provide any documentation for two contracts and documentation for other procurements was incomplete. As a result, it was unable to account for \$20 million expended on narrowband radio conversion and was exposed to an

increased risk of fraud. We also concluded that BIA violated the FAR by inappropriately modifying an existing task order and extending the period of performance by over two years.

Poor planning and poor contract administration also often go hand-in-hand. For example, we reported that the company Chavarria, Dunne & Lamey (CD&L) benefited from “time and materials” contracts that were so poorly written and administered that contracting officials were unable to substantiate that deliverables were received. Time and material contracts are the least desirable contracting type because they provide no positive profit incentive to the contractor to control costs or promote labor efficiency. We reviewed 8 of the 14 contracts awarded to CD&L by various agencies. Our review of the pre-award process for one contract awarded to CD&L revealed that the Office of the Special Trustee did not plan its contract requirements adequately or timely. The National Business Center made errors on the contract. The contractor incorrectly billed improper labor categories and was fully paid under one contract without providing deliverables. We concluded, based on the review of the 8 contracts, that the Department could not consistently demonstrate that it received full value for money spent or substantiate the receipt of timely and quality deliverables from the company.

In another recent example of poor planning coupled with poor administration, we noted early in 2008 that the Grand Canyon National Park disregarded proper procurement procedures and that employees lacked adequate supervision in performing their duties. Specifically, they failed to obtain a solicitor review for non-competitively awarded contracts; they violated the requirement for full and open competition by awarding multiple construction contracts to a single vendor; they did not use the Interior Department Electronic Acquisition System when awarding the contract; they failed to appoint a COTR; the Contracting Officer (CO) awarded contracts over the limit of his warrant; the CO failed to ensure that the contractor adhered to the contract’s pricing schedule; and the CO was allowed to maintain a level IV contracting warrant even though his purchase card privileges had been suspended. Senior management at the Park did not have clear guidance as to who was ultimately responsible for the contract function (i.e., the Region or Park).

This last example highlights the critical need for effective staff and management not only in the awarding process, but also in the administration. The “program plans” prepared by the bureaus receiving Recovery Act funding (as prescribed in the April 3, 2009, OMB guidance(M-09-15)), state that “the investment required to handle the increase in funding [provided under the Recovery Act] will strain Interior’s on-board resources.” The plans go on to state that “the real management issue is ensuring that procurement resources, no matter how plentiful, are knowledge and responsible.” We urge the Department and bureaus to consider the need for adequate numbers of staff with appropriate knowledge and experience to ensure effective oversight of the acquisitions performed under the Recovery Act, not just effective awarding and obligation of Recovery Act dollars. Attention to putting the right staff in place will help to ensure active monitoring of contracts for compliance with performance, cost, and schedule goals; effective administration of incentive and award fees; implementation of quality assurance procedures; and documentation of timely inspection and acceptance of deliverables. It would also be prudent for the Department and bureaus to establish clear lines of responsibility for awarding and overseeing Recovery Act projects.

One additional area of particular vulnerability under the Recovery Act is administration of charge cards. An evaluation of the Department's charge card program revealed that Interior had issued an excessive number of charge cards with purchase authority, established undue monthly purchase limits, and maintained a large number of inactive fleet cards. Department employees who misused their charge cards have faced serious disciplinary actions. Both we and the bureaus investigate charge card misuse. In the past two years, 16 people in the Department have been found misusing their charge cards from our investigations alone. Some employees received counseling and reprimands; others were suspended and removed from their positions; still others resigned or retired rather than face disciplinary action. Some employees have even been prosecuted. The requirement to account for Recovery Act funding separately from regular appropriations will pose an additional challenge in administering charge cards. The Department might consider issuing guidance on establishing appropriate and effective policies on the use of charge cards to ensure adequate accountability and transparency.

Many of the examples above in the planning and administration section pertain to contracts. We noted in our report on grants management that Interior's grant programs experience similar problems. We noted that these programs do not ensure federal dollars are used as intended, promote fair treatment for both grant applicants and recipients, or reduce the risk of fraud, waste, and abuse. We proposed a framework for excellence, which includes the internal controls necessary to effectively manage grants and create a culture of accountability and stewardship. These control elements include producing reliable data, soliciting competition, monitoring effectively, writing effective grant agreements, providing adequate training to grant managers and administrators, streamlining policies and procedures, and establishing measurable goals. We encourage the Department and bureaus to ensure they develop and follow such controls when using grants to award Recovery Act dollars.

Funds Awarded to Tribes

We discussed above cases in which BIA failed to appropriately plan and administer contracts. It is our understanding that the majority of funding appropriated to BIA will be awarded to tribes, rather than awarded to contractors directly by the BIA. Tribes are slated to receive over \$2 billion of Recovery Act funds, including about \$500 million that will flow through Interior. Tribal contracting, including contracts awarded to tribes and awards that tribes make to subcontractors, represents a unique challenge to government oversight.

Many tribal contracts are awarded by BIA (and other U.S. government agencies) to tribes under the authority of the Indian Self-Determination and Education Assistance Act (Public Law 93-638). Although federal criminal statutes on bribery, false statements, and other crimes apply to tribal contracting personnel, FAR provisions traditionally do not. BIA and other agencies that issue Public Law 93-638 contracts have proposed inserting modified language into these contracts to ensure compliance with Recovery Act oversight requirements. These modifications should increase the ability of BIA and other federal agencies to provide oversight over funds disbursed under Public Law 93-638 contracts. While the language provides the authority for this increased oversight, past work indicates that ensuring adequate oversight will be an area of vulnerability and one that the Department should take action to mitigate. For example, tribal entities' financial compliance with funding agreements should be ensured through the audits conducted under OMB Circular A-133 (single audits). Single audits are mandatory reviews of

entities that received financial assistance funds and help to ensure accountability of federal funds awarded to non-federal entities. However, 36 (47 percent) of the 77 single audit reports we reviewed for tribal entities (including tribal governments, tribal schools, and tribal associations) were delinquent during FY 2008. We describe examples of problems in more specific instances below.

In March 2006, we issued a management advisory on Catawba Indian Nation (CIN) Trust's failure to have a single audit completed for 7 years. Non-compliance with the requirement to obtain a single audit was not the only or most significant problem identified in this advisory. The tribe's \$50 million dollar trust fund was depleted in less than 10 years. We also reported on the failure to adequately account for and report on projects completed through vehicles awarded under Public Law 93-638. Although CIN's records do not support the expenditure of nearly \$18 million, BIA continued to disburse millions of federal funds to the tribe.² We recommended, among other actions, that BIA enter into compliance agreements with the tribe that requires them to employ financial staff experienced with tribal government activities, develop employee training programs in contract and grant management, and develop an audit committee to oversee financial reporting. Finally, we recommended that BIA require the tribe to show due diligence in establishing account controls, record keeping, and reporting.

In November 2005, we issued a management advisory that reported that the Mandan-Hidatsa-Arikara (MHA) received funds from BIA without submitting a scope of work detailing project expenditures. BIA officials failed to maintain records or to obtain the required paperwork from MHA. In fact, the officials authorized federal year-end grant funds without ensuring the viability of the project or understanding how the funds benefited the tribe or the federal government. In another example, we completed an investigation which found that a senior departmental official provided a \$159,615 supplemental appropriation of grant funds to the Crow Tribe of Indians without proper justification.

Such improper use of funds awarded to tribes can directly impact tribal members. In one recent investigation of construction of a new dormitory at Crow Creek Tribal School, we found that school officials received bribes or kickbacks from contractors who worked on construction projects at the school. The investigation resulted in the indictment and conviction of several school officials. More importantly, the crime itself caused a delay of more than three years of the construction of a badly needed school facility.

Tribal members can help to ensure effective monitoring. As a result of an investigation we performed after receiving a complaint from a tribal member, the former Governor of the Passamaquoddy Tribe at Indian Township was convicted of 29 criminal counts, including conspiracy, making false statements, making false claims, "intentionally misapplying tribal government funds, [and] intentionally misapplying funds of a federal health care benefit program." The Governor defrauded programs to assist the Passamaquoddy Tribe retirement fund of approximately \$1.7 million. This incident showcases the importance of engaging tribal members – the ultimate recipients of the funds and the ones who stand to lose the most from

² After we informed BIA of our findings, BIA issued CIN a bill for \$14 million and reclaimed contracting and management authority over BIA-funded programs.

fraud, misuse, and waste – to ensure they are aware of the funding flowing to their communities and what to do if they suspect wrongdoing.

Diligence and adequate resources are needed to ensure that Recovery Act dollars awarded to tribes are spent appropriately and benefit the populations for whom they are intended. Cooperation from the tribes and tribal members, who will be closest to the projects receiving funding and in the best position to observe misuse of funds, will also help to ensure Recovery Act funding is spent appropriately.

Health and Safety

Health and safety has been a long-standing priority for the Department and bureaus but has not always received adequate funding. We identified health, safety, and emergency management as a major management challenge in the Department. Annually the Department has over 500 million visits to national parks and monuments, BLM recreational sites, FWS wildlife refuges, and BOR recreational sites. The Department must protect hundreds of millions of visitors, employees, and volunteers, thousands of facilities, and millions of acres of property from both internal and external threats. The physical isolation of some Department lands and facilities increases their vulnerability to threats and inhibits the Department's response time. The Secretary has recognized this deficiency and has set it as one of his primary goals in implementing Recovery Act activities. Health and safety of the American people is also one of the priorities of the Recovery Act.

Although the Department and its bureaus have made progress in addressing health and safety issues associated with infrastructure, work remains to be done. For example, condition assessments and safety inspections of facilities have not been completed, leaving the Department unable to identify the full universe of health and safety issues in the Department. We have also issued flash reports on conditions that jeopardize the health and safety of the public and Department employees. For example, we found that 7 years after buildings were condemned and closed to the public at the Jackson National Fish Hatchery, FWS and USGS employees continued to work in the buildings. We also found that the severe deterioration exists at the Bureau of Indian Education elementary and secondary schools. Deterioration ranged from minor problems such as leaking roofs to more alarming deficiencies, such as outdated electrical systems and inadequate fire detection and suppression systems. These conditions create unsafe learning environments for students. We have also identified safety issues arising from inadequate attention given to hazards associated with abandoned mines on NPS and BLM lands. We identified abandoned mines where members of the public had been killed, injured, or exposed to dangerous environmental contaminants.

In response to our reports, the Department did take immediate action to vacate and close unsafe buildings being used by NPS, BIA, FWS, and USGS employees. The Department also requested, received, and reviewed the inventory of health and safety issues in each bureau that met the category 1, 2, and 3 Risk Assessment Code (RAC) criteria. Bureaus were asked, based on this information, to address these issues immediately and to incorporate lower priority RAC projects within their five-year plans. Senior leaders in the Department – including representatives of the Office of Health and Safety, the Office of Acquisition and Property Management, and the Office of Budget – met one-one-one with each bureau to understand the

mechanisms and systems in place to evaluate, identify, and track the correction of health and safety problems.

The Department has an opportunity to address some of its health and safety problems with the Recovery Act funding. Based on draft project lists we reviewed, there are a total of 1,993 projects (valued at \$1.7 billion) identified as having a health and safety component. It will be important for the Department and bureaus to track how these projects help to address the health and safety issues identified.

Conclusion

The rapid infusion of billions of dollars into the Department and bureaus and the swiftness with which the funds are required to be spent pose an immense challenge to the Department. Much of the funding will be spent through vehicles and on programs we have identified as major management challenges: health and safety; maintenance of facilities; responsibility to Indians; and procurement, contracts, and grants.

As well as a challenge, the Department also has an opportunity to address some of its long-standing problems and to establish new ways of doing business. Placing additional emphasis on ensuring performance results and appropriate use of funding for the areas identified in this advisory can help the Department to meet its obligations under the Recovery Act and more broadly to the American people. For example, setting an appropriate ethical tone from the top will be an important control not only for Recovery Act funding, but also for funding received under regular appropriations. Likewise, while a larger majority of funding will be spent through contract, grants, and other procurement vehicles under the Recovery Act than regular appropriations, addressing some of the long-standing management challenges in the acquisition and financial assistance arenas will help the Department to execute its overall mission more effectively and with less waste.

In a Department that is largely de-centralized, meeting such challenges will require ongoing effort at the Department and bureau levels. We look forward to continuing to work with the Department as it addresses past management challenges and vulnerabilities in the current Recovery Act environment. We hope that the Department's and our efforts will lead to improved performance and reduced waste, fraud and misuse.

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Report Fraud, Waste, Abuse, and Mismanagement



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