



OFFICE OF INSPECTOR GENERAL



DEPARTMENT OF THE INTERIOR

RECOVERY OVERSIGHT ADVISORY

A Critical Point Evaluation Product





RECOVERY OVERSIGHT OFFICE

Washington, DC 20240

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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 – Ongoing Challenges with Clarity of Roles and Responsibilities and Analysis of Acquisition Workforce Capacity (ROO-ROA-MOA-1008-2009)

To safeguard taxpayer dollars, Congress provided us with funding to oversee and ensure accountability of the \$3 billion appropriated to the Department of the Interior (DOI) in the American Recovery and Reinvestment Act of 2009 (Recovery Act). We are focused on: preventing fraud, waste, and mismanagement; reducing misuse of dollars through early detection; and ensuring transparency in our oversight efforts. As part of our collaboration with the Department, this advisory informs you of OIG observations on: 1) the role of the Office of Acquisition and Property Management (PAM) in developing Recovery Act implementation policy and 2) the acquisition workforce.

We based our observations on three sources of information. First, we met with members of each bureau's Recovery Act governance task force, and discussed how policy is disseminated to the task forces and the adequacy of acquisition staff at the bureaus. Second, we completed a limited review of the implementation plans that the Department required bureaus to prepare, including any analysis of the acquisition workforce that the bureaus included in the plans.¹ Third, we reviewed data obtained from a contracts and grants workforce survey administered under the direction of the Recovery, Accountability, and Transparency Board (RATB).² Since this survey, in December, the Secretary instructed bureaus to accelerate their implementation of the Act by mobilizing all projects no later than June 30, 2010. We did not contact bureaus regarding the accelerated schedule as part of our work on this advisory but we do note that this acceleration likely exacerbates the observations we make in this advisory regarding the adequacy of acquisition and grants staff.

We do not require an official response to this advisory, but we will post it on our website (www.doi.oig.gov) and Recovery.gov. Information contained in this advisory may also be

¹ We received implementation or draft implementation plans for the Bureau of Indian Affairs (BIA), Bureau of Land Management (BLM), Bureau of Reclamation (BOR), the National Park Service (NPS), the U.S. Fish and Wildlife Service (FWS), and the U.S. Geological Survey (USGS). The Wildland Fire Management program and the program related to the Central Utah Project Completion Act (CUPCA) were not required to submit implementation plans.

² This survey was developed to fulfill the RATB's requirement to review the number, qualifications, and training of acquisition and grants officials (Title XV, Section 1523(a)(2)(D) of the Recovery Act).

included in our semi-annual reports to Congress. Please do not hesitate to contact me if you have any questions.

Background

The majority of funding provided for Interior programs under the Recovery Act will be awarded by the Department and its bureaus through contracts and financial assistance agreements (e.g., grants and cooperative agreements). The Recovery Act establishes unique requirements for acquisition and financial assistance, such as increased reporting for agencies and recipients, and emphasizes existing regulations, such as those pertaining to the use of competition and fixed-price contracts. The Recovery Act also requires the majority of appropriations be obligated by September 30, 2010, and emphasizes the importance of speedy awards and implementation. Acceleration of project schedules to meet a June 30, 2010 mobilization milestone underscores this importance.

Successful planning, administration, and monitoring of acquisitions and financial assistance awards are critical in order to comply with existing laws and regulations under the Recovery Act. The Department has been vulnerable in these areas in the past, as described in our previous advisory, *Addressing Past Areas of Vulnerability in Department of the Interior Programs*.³ An increased level of spending amplifies these areas of vulnerability. The Department spent approximately \$6.9 billion in fiscal year (FY) 2008 on contracts and financial assistance awards and will award up to an additional \$3 billion in contracts and financial assistance under the Recovery Act alone over FYs 2009 and 2010, an increase of almost 50 percent.

The Role of the Office of Acquisition and Property Management (PAM) in Recovery Act Implementation Policy

Clear guidance and policy on how to meet Recovery Act requirements, within the ambitious timeframes, will be a critical factor in helping to ensure consistent and successful implementation of the Recovery Act. We learned in our meetings with members of each bureau's Governance Task Force that confusion exists at the bureau level about who should develop and oversee the implementation of policy for Recovery Act activities.

We believe existing roles and responsibilities for policy development and implementation should be maintained. This approach will assist in clarifying roles and responsibilities for policy development and reduce the burden on your office.

The Department of the Interior Manual (112 DM 11.1) states that PAM is responsible for policy aspects of Department-wide functions related to acquisition and financial assistance. The PAM office is led by a director, who also serves as the Department's Senior Procurement Executive. The Federal Acquisition Regulation (FAR),⁴ as required by section 16(3) of the Office of Federal Procurement Policy Act,⁵ places responsibility with the Senior Procurement

³ *Addressing Past Areas of Vulnerability in Department of the Interior Programs*, June 2009 (ROO-ROA-MOA-1006-2009).

⁴ 48 C.F.R. § 2.101, Definitions.

⁵ 41 U.S.C. § 414(c).

Executive for “management direction of the acquisition system of the executive agency, including implementation of the unique acquisition policies, regulations, and standards of the executive agency.” The Director is also responsible for oversight of the Department of the Interior Acquisition Regulation System, as well as reviewing, and preparing for issuance, all Department-wide and bureau-wide acquisition regulations.

In our advisory, *Staffing of the Acquisition and Property Management Office and the Solicitor’s Office*,⁶ we indicated that, “...not all of PAM’s roles in Recovery Act Implementation and oversight have been clearly defined yet.” We suggested 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.” Furthermore, we noted there is no official policy regarding the relationship among the various governing boards, and thus it is unclear how the governing boards relate to one another, PAM, and the individual bureaus.

We believe it would be helpful to clarify that Recovery Act activity should continue within the existing policy framework. Bureaus should follow policy developed and issued by the PAM Director when the policy pertains to acquisition and financial assistance awards. The roles and responsibilities of the various governing boards should also be updated and documented.

Acquisition Workforce

Successful implementation of the Recovery Act depends on an acquisition workforce that is sufficient in number and has necessary skills, as well as strategies, to address shortfalls in these areas. We are encouraged that the bureaus have openly identified the challenges to meeting this goal in their responses to the workforce survey. Such challenges can be addressed more effectively when they are raised to the appropriate level of attention. We also commend the Department and bureaus for taking action to address potential shortfalls in the workforce. Workforce issues should continue to be monitored and addressed throughout Recovery Act implementation.

Members of the bureau governance task forces expressed concerns over the ability to administer contracts and monitor grants after September 30, 2010, the date by which the majority of Recovery Act funds must be obligated.⁷ The results of the contracting workforce survey also revealed that the bureaus anticipate problems in meeting their customer’s needs as a result of the additional responsibilities imposed by the Recovery Act. They anticipate delays in obligating both Recovery Act and non-Recovery Act funds. Specifically, BIA, FWS, USGS and NPS indicated they do not have sufficient contract staff to award and administer Recovery Act contracts.

- BIA anticipates it will not be able to meet the contracting needs of its programs. Given the accelerated schedule, this conclusion is even more troubling.

⁶ *Recovery Oversight Advisory – Staffing of the Acquisition and Property Management Office and the Solicitor’s Office*, June 2009 (ROO-ROA-MOA-1005-2009).

⁷ This statement does not apply to BOR or the Office of Inspector General.

- FWS identified the risk of not obligating all Recovery Act funds by the deadline of September 30, 2010. Mobilization of projects by June 30 would seem to be even more problematic
- USGS officials anticipate delayed award periods, greater reliance on technical staff to assist in the development of requirements documents, and reduced pre-award preparation and review. These challenges could result in greater risk that awards made will require modification and increased administration. Implementation of policy initiatives could also be delayed, and USGS officials expect an increase in funding carried over in FY 2009/2010.
- NPS officials stated that lack of sufficient contracting support personnel to obligate Recovery Act funding by September 30, 2010, may result in delays in the acquisition process. It seems NPS' concern would be amplified given the accelerated schedule for mobilizing Recovery Act projects. If Recovery Act contract awards take precedence to meet the accelerated schedule, some non-Recovery Act projects may require rescheduling.

BLM and BOR reported having sufficient staff to meet Recovery Act requirements but at the expense of customer service on awards made under annual appropriations and at increased risk and cost to each bureau.

- BLM officials expressed concern about the impact of the increased workload, cost, and risk resulting from the demand of completing Recovery Act projects. They stated that non-Recovery Act projects will not be processed as planned, which could delay start and completion of those projects. They anticipate a negative impact on contract management of previously issued contracts and a reduction in project oversight. They also expect increases in overtime and increased costs due to hiring contractors and retired annuitants to mitigate workload impact now through September 30, 2010. Finally, they anticipate that less experienced 1102s (contracting officers) will be working on projects that may be above their level.
- BOR officials believe the increased workload from Recovery Act projects may result in excess workload demands, increasing credit hours, compensation time, and overtime. They anticipate burnout, reduced productivity and morale, reduced quality, increased errors, and delays in processing. Given the current status of the acquisition workforce Government-wide, the ability of the regional offices to meet Recovery Act demands remains a concern and may change as a result of attrition or movement of critical personnel.

Implementation plans submitted by BLM, FWS, USGS, BOR, and NPS (in draft) to the Department indicate these bureaus completed a systematic approach to acquisition workforce planning to address the challenges articulated in the survey.⁸ USGS identified specific hiring timelines and budgets, and FWS and BOR identified the number of new positions they intend to

⁸ We did not independently verify the information provided in the plans.

fill. Bureaus also quantified the number of additional contracting personnel they intend to hire in their responses to the acquisition workforce survey. Table 1 details the numbers by bureau.

Bureau	Number
BIA	15
BLM	31
BOR	18
FWS	21
USGS	6
NPS	29

Table 1. Acquisition Workforce Hiring Plans

It is unclear from the data if these new hires will work exclusively on Recovery Act projects. Increasing the size of a trained, qualified acquisition workforce can assist bureaus in handling work completed with both Recovery Act appropriations and annual appropriations.

We are encouraged by the analysis and actions taken by some bureaus. We recognize the immense pressure the contracting workforce is under to meet heightened awarding and accountability expectations under the Recovery Act, while also maintaining current operations. If the actions bureaus are currently planning prove to be insufficient in addressing potential shortfalls and challenges in implementing Recovery Act projects, then delays could result in obligating funds, making awards and accelerating implementation of projects. Insufficient staffing levels could also result in ineffective oversight extending beyond September 30, 2010.

Other strategies should be established if existing plans fail to meet hiring needs and workload demands. These plans may require a Department-wide approach or coordination among bureaus to help prevent problems such as burnout and address anticipated problems such as decreased oversight.

- Bureaus with Recovery Act funds could establish agreements with offices, bureaus, and other Departments that do not have Recovery Act funds, such as the National Business Center, the Office of Surface Mining, and the Minerals Management Service. While concerns exist over potential fees charged by these entities, we encourage further discussion on potential flexibility in fee structures, recognizing the Recovery Act's focus on reducing administrative costs and creating jobs. Any funding provided to another agency, bureau, or office that did

not receive Recovery Act funds should be spent in compliance with the requirements of the Act and implementing policy and guidance.

- Bureaus could use properly structured Indefinite Delivery Indefinite Quantity (IDIQ) contracts to expedite the acquisition process. Bureaus could award task or delivery orders for specific goods or services and provide a means to streamline the contracting process. For example, bureaus must ensure they do not circumvent competition requirements under the Recovery Act or the Competition in Contracting Act of 1984, which requires agencies to use competitive procedures to ensure full and open competition when meeting requirements through procurements. In structuring the original procurement (i.e. the IDIQ contract), bureaus should specify requirements at a level of detail and specificity to allow potential vendors to determine if they want to perform the work under the IDIQ contract and to provide a basis for quoting prices. Bureaus should also ensure task or delivery orders under the award are within the scope of the underlying contract. We have discussed our concerns regarding the use of IDIQ contracts with the Department particularly for new construction projects and remain involved in the oversight of these contracts particularly since they offer a potential way to assist in the accelerated mobilization of projects. In response to our concerns, the Department has modified some of their approaches to using IDIQs to minimize risks during selection and subsequent performance of contractors.
- Bureaus could consider contracting appropriate acquisition workforce functions. They would have to be careful, however, not to construct the contracts as personal services contracts. FAR 37.104 states:

A personal services contract is characterized by the employer-employee relationship it creates between the Government and the contractor's personnel. The Government is normally required to obtain its employees by direct hire under competitive appointment or other procedures required by the civil service laws. Obtaining personal services by contract, rather than by direct hire, circumvents those laws unless Congress has specifically authorized acquisition of the services by contract.

The following elements assist in assessing whether a proposed contract is personal in nature: location of performance, control over the functions involved, if the services are applied directly to an integral part of the agency, and the length of time of the contract.

The bureaus would also have to address potential organizational conflicts of interests (e.g., the contractor cannot work on the scope of work and bid on the solicitation; FAR 9.5) and ensure that the functions are not inherently Governmental (in violation of FAR 7.5).

The Department, bureaus, contracting offices, and contracting officers will need to determine which strategies are appropriate for the needs of the office and the specific requirement, and how to ensure compliance while also meeting challenging workloads and expectations for the timing of awards. Efficiency in the acquisition process can also be enhanced through ongoing communications among requiring offices, contracting offices, and when necessary, the bureaus and Department.

The Department and bureaus will also need to plan for continued administration and monitoring of their regular appropriations. Adequate oversight will be critical in ensuring effective performance and reducing the potential for fraud, waste, or misuse of funds. The Department and bureaus should develop plans in a timely manner, so they have ample opportunity to address this challenge.

cc: Deputy Secretary, Department of the Interior
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Director, Office of Financial Management
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Audit Liaison, Office of the Secretary
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Audit Liaison, Bureau of Reclamation
Audit Liaison, Indian Affairs
Audit Liaison, National Park Service
Audit Liaison, U.S. Fish and Wildlife Service
Audit Liaison, U.S. Geological Survey
Recovery Coordinator, Bureau of Land Management
Recovery Coordinator, Bureau of Reclamation
Recovery Coordinator, Indian Affairs
Recovery Coordinator, National Park Service
Recovery Coordinator, U.S. Fish and Wildlife Service
Recovery Coordinator, U.S. Geological Survey

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