



OFFICE OF  
**INSPECTOR GENERAL**  
U.S. DEPARTMENT OF THE INTERIOR

RECOVERY

## **RECOVERY OVERSIGHT ADVISORY**

Monitoring of Limitations on Subcontracting Clause on 8(a)  
Contracts



OFFICE OF  
**INSPECTOR GENERAL**  
U.S. DEPARTMENT OF THE INTERIOR

OCT 13 2010

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

From: *Robert A. Knox*  
Robert A. Knox  
Assistant Inspector General for Recovery Oversight

Subject: Recovery Oversight Advisory – Monitoring of Limitations on Subcontracting Clause on 8(a) Contracts (ROO-ROA-MOA-1021-2010)

This advisory, regarding compliance with the Federal Acquisition Regulation Limitations on Subcontracting clause by disadvantaged business (DB) 8(a) contractors, is part of our ongoing efforts to oversee and ensure the accountability of funding appropriated to the U.S. Department of the Interior (DOI) in the American Recovery and Reinvestment Act of 2009 (Recovery Act). We determined that 1) an 8(a) prime contractor did not provide the 15 percent labor required for general construction contracts under the Federal Acquisition Regulation (FAR),<sup>1</sup> 2) DOI, in general, does not have a robust system to monitor compliance with the clause, and 3) DOI bureaus do not consistently conduct training on this issue.

Please provide a written response to this advisory within 30 days of receipt detailing the corrective actions DOI will implement to meet our recommendations, as well as targeted completion dates and title(s) of the official(s) responsible for implementation.

We will post this advisory on our Web site ([www.doioig.gov/recovery/](http://www.doioig.gov/recovery/)) and [Recovery.gov](http://Recovery.gov). Information in this advisory may also be included in our semiannual reports to Congress. Please contact me if you have any questions.

## Background

When contracting with disadvantaged businesses under the 8(a) program for general construction, the Federal Acquisition Regulation (FAR) requires “The concern will perform at least 15 percent of the cost of the contract, not including the cost of materials, with its own employees (FAR 52.219-14, Limitations on Subcontracting clause).”

The Small Business Administration (SBA) Office of Inspector General issued a report on March 16, 2006, concerning compliance with 8(a) regulations.<sup>2</sup> The report noted that neither SBA nor procuring agencies ensured that 8(a) companies complied with applicable regulations when completing 8(a) contracts.<sup>3</sup> Further, while participation agreements state that SBA

<sup>1</sup> FAR 52.219-14(b)(3).

<sup>2</sup> Audit of Monitoring Compliance with 8(a) Business Development Regulations during 8(a) Business Development Contract Performance, March 16, 2006, Audit Report No. 6-15 (Audit).

<sup>3</sup> Audit, page 3.

delegates contract execution to the procuring agencies, it does not specifically state that the procuring agencies are responsible for enforcing the 8(a) disadvantaged business regulations, allowing for possible misinterpretation of SBA's meaning. The report recommended revising the partnership agreements<sup>4</sup> so that procuring agencies are specifically required to monitor the 8(a) disadvantaged business companies' compliance with specified contract and Federal Acquisition Regulation requirements and any 8(a) disadvantaged business regulations.<sup>5</sup> SBA officials indicated that they had not yet developed formal guidance concerning the evaluation of subcontract performance under 8(a) contracts.

In 2007 and 2009, SBA executed partnership agreements with DOI covering fiscal years 2008 through 2010. The 2009 agreement requires DOI to conduct and document an assessment of the participant's ability to comply with the subcontracting limitations at the time of contract award. It states that DOI shall also "retain responsibility for compliance with the limitations on subcontracting requirement and all applicable provisions of FAR § 52.219-14 and any [sic] the DOI regulations." It continues by stating that DOI "shall ensure that contracting officers and other warranted officials and their equivalents obtain training on their obligations under this [partnership agreement] and the subcontracting limitations."

## **Findings**

On August 17, 2009, the National Park Service (NPS) entered a \$15,720 contract to replace the roof of the administration building at Antietam National Battlefield (Antietam). The contract was a fixed-price, simplified acquisition to an 8(a) concern. The contract included the Limitations on Subcontracting clause, and the contractor also submitted certified payrolls, as required. The project was completed in mid-October 2009 and no problems were reported. An analysis of the certified payrolls and subsequent conversations revealed that the prime contractor did not provide 15 percent of the labor cost as required by the Federal Acquisition Regulation.

We reviewed the contractor's detailed cost breakdown and proposal which indicated a supervisor and project manager would be assigned to the work. When asked, the contractor stated that he "was personally overseeing this project and was visiting the site daily between this project in question and a nearby project, as it was small and of limited duration project (3 [to] 4 days)." A review of the contractor's cost ledger did not reflect supervisory time spent on the job. Further, the contractor provided no other record of hours spent on the project. The contracting officer had no mechanism for evaluating whether or not the contractor provided the required 15 percent of labor costs.

The same contractor is also performing work for NPS Harpers Ferry Center under two contracts, totaling \$2,228,089. We contacted the contracting official overseeing these contracts to determine how she planned to monitor the Limitations on Subcontracting clause. She was unsure how to monitor the requirement, had no knowledge of any Departmental guidance in this regard, and had received no cost data because the contracts were firm fixed-price. She was unclear who was responsible for monitoring and enforcing the Limitations on Subcontracting

---

<sup>4</sup> Partnership Agreements are memorandums of understanding between SBA and the procuring agencies that indicate the responsibility of each party in regard to the procurement.

<sup>5</sup> Audit, page 6.

clause. She informally monitored the clause by performing visual inspections because her office was close to the job site.

As a result of this initial review, we conducted a survey of contracting officials to determine compliance with the SBA partnership agreements. We interviewed 15 contracting officials responsible for 18 contracts representing \$101,606,040 or 62 percent of 8(a) contracts ongoing as of August 31, 2010. We focused on how these officials monitor the Limitations on Subcontracting clause. We interviewed at least one contracting official from the five bureaus that obligated Recovery Act funds on 8(a) contracts, focusing on the high-dollar contracts.<sup>6</sup>

Based on our survey, we found that a U.S. Geological Survey (USGS) contract did not include the Limitations on Subcontracting clause. When informed, USGS corrected this oversight with a modification to the contract dated August 31, 2010.

Nine of the 15, or 60 percent of the contracting officials, indicated that they never received training concerning their responsibilities under SBA partnership agreements. Many of the respondents, however, indicated familiarity with these requirements. An NPS official stated that training was conducted in September 2009, and that the Small and Disadvantaged Business Utilization Specialist conducted informal briefings with all contracting officers.

Two of the 15, or 13 percent of the contracting officials, indicated they were not monitoring compliance with the Limitations on Subcontracting clause. Of those who did monitor compliance, methodologies included a review of proposed costs on delivery orders, visual observation and reviews of certified payrolls, or a review of a formal report based on total costs and submitted by contractors as part of invoices.<sup>7</sup>

There are problems with each of these methods. First, proposed costs do not always reflect actual costs and would, therefore, yield an inaccurate result as demonstrated by Antietam. Second, certified payrolls do not reflect supervisory time and, as a result, may skew the results of prime contractor participation. Third, the Federal Acquisition Regulation states that compliance with the Limitations on Subcontracting clause is based on the cost of the contract, not including materials. Thus, a total cost approach could lead to misrepresentations and errors, particularly for contracts with large material costs. Finally, bureaus using different processes for evaluating contractor performance create confusion, which could lead to inconsistent evaluation of contracts.

## **Recommendations**

We recommend that DOI:

1. Draft policy changes to ensure that contracting officials conduct and document an assessment of the contractor's ability to comply with the Limitations on Subcontracting clause in all 8(a) contracts;

---

<sup>6</sup> BIA did not award any 8(a) contracts.

<sup>7</sup> The formal report was developed by the Denver Service Center and did not contain a DOI form number. The DOI Web site lists no form for evaluating contractor performance.

2. Develop and require use of a formal tool for monitoring 8(a) performance requirements consistently across all bureaus; and
3. Deliver annual training to all contracting officials and contracting officer representatives concerning their responsibilities under partnership agreements with SBA.

cc: Deputy Secretary, Department of the Interior  
Assistant Secretary – Policy, Management, and Budget  
Acting Director, Office of Financial Management  
Director, Office of Acquisition and Property Management  
Departmental GAO/ OIG Audit Liaison  
Audit Liaison, Office of the Secretary  
Director, Office of Small and Disadvantaged Business Utilization

# **Report Fraud, Waste, and Mismanagement**



Fraud, waste, and mismanagement in government concern everyone: Office of Inspector General staff, Departmental employees, and the general public. We actively solicit allegations of any inefficient and wasteful practices, fraud, and mismanagement related to Departmental or Insular Area programs and operations. You can report allegations to us in several ways.



---

## **By Mail:**

U.S. Department of the Interior  
Office of Inspector General  
Mail Stop 4428 MIB  
1849 C Street, NW  
Washington, D.C. 20240

## **By Phone:**

24-Hour Toll Free  
Washington Metro Area

800-424-5081  
703-487-5435

## **By Fax:**

703-487-5402

## **By Internet:**

[www.doioig.gov](http://www.doioig.gov)