

**Oversight of the
American Recovery and Reinvestment Act of 2009**

GSA's Implementation Challenges

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Introduction

The purpose of this document is to highlight challenges to the General Services Administration's (GSA) implementation of the American Recovery and Reinvestment Act of 2009.

GSA and the Recovery Act

The American Recovery and Reinvestment Act of 2009 (P.L. 111-5) was enacted to create jobs and stimulate the economy through a variety of measures that modernize the Nation's infrastructure and improve energy independence. To this end, the Recovery Act provides the U.S. General Services Administration with almost \$6 billion for the renovation and repair of Federal buildings to improve energy efficiency, construction of Federal buildings, courthouses, and land ports of entry (border stations), as well as the acquisition of fuel efficient vehicles.

The Recovery Act provides \$5.55 billion to the Federal Buildings Fund: \$750 million for Federal buildings and courthouses, \$300 million for land ports of entry, and \$4.5 billion for measures necessary to convert Federal buildings to High-Performance Green Buildings. Of those amounts, \$108 million may be expended for rental of space, \$127 million may be expended for building operations, \$3 million shall be for on-the-job training programs for construction, repair, and alteration of Federal buildings, and \$4 million shall be for the Office of Federal High-Performance Green Buildings. The list of the projects was submitted to Congress on March 31, 2009.

The Recovery Act provides \$300 million to improve the fuel efficiency of Government vehicles. A spending plan, an inventory of the Federal fleet, and a strategy to substantially increase energy efficiency were released on April 9, 2009 as required by the Act.

The Act requires that \$5 billion of the funds be obligated by September 30, 2010, and the remaining funds shall be available for obligation until September 30, 2011. The Act also requires quarterly reports on obligations, beginning June 30, 2009.

In addition to this direct funding, GSA will be tasked by customer agencies in meeting their responsibilities under the Recovery Act. GSA is likely to receive approximately \$1 billion of additional funding from agencies such as the U.S. Department of State and the U.S. Department of Homeland Security that received funding for construction projects under the Recovery Act. Likewise, customer agencies may take advantage of GSA

contract vehicles such as multiple award schedule contracts to meet their Recovery Act responsibilities or task GSA to provide other services using Recovery Act funding through programs such as the Assisted Acquisition Program.

Although the Recovery Act provides funding to meet Federal space requirements and improve energy efficiency, GSA faces heightened risk due to the increased workload and the short timeframes in meeting the Recovery Act's requirements. Often when organizations face large workload increases combined with short deadlines, the fast pace and pressure can undermine the organization's management controls and thus create an environment that provides more opportunities for fraud, waste, and abuse to occur.

In its implementation guidance for the American Recovery and Reinvestment Act of 2009, the Office of Management and Budget stated the accountability objectives that all agencies need to meet as part of their risk mitigation process. These objectives are:

- Funds are awarded and distributed in a prompt, fair, and reasonable manner;
- The recipients and uses of all funds are transparent to the public, and the public benefits of these funds are reported clearly, accurately, and in a timely manner;
- Funds are used for authorized purposes and instances of fraud, waste, error, and abuse are mitigated;
- Projects funded under this Act avoid unnecessary delays and cost overruns; and
- Program goals are achieved, including specific program outcomes and improved results on broader economic indicators.

To meet these objectives, GSA will need to address multiple challenges that are inherent in GSA's implementation of the Recovery Act as well as some historical issues that may impact that implementation.

Recovery Act Program Challenges

The Recovery Act vests GSA with responsibility for two primary activities – (1) construction and renovation of Federal Buildings, courthouses, and land ports of entry as well as (2) the acquisition of energy efficient vehicles for the Federal fleet. In addition, GSA is responsible for meeting the reporting requirements that are required for each program and for the Recovery Act's goals of accountability and transparency. These responsibilities present specific challenges to GSA as discussed below.

Construction Program

The Act provides GSA with \$5.55 billion in construction funding. This is in addition to GSA's current construction projects that are underway as well as GSA's fiscal year 2009 construction budget of approximately \$1.4 billion. This is roughly four times GSA's typical construction budget for a single year, and the Act requires GSA to obligate the

majority of these funds within a 20-month period. GSA's challenges in taking on this increased workload and meeting this short timeframe for obligating the funds include the following.

Need for Sufficient and Qualified Personnel

One of the most immediate challenges in undertaking these projects is the need for qualified personnel, especially with regard to contracting officers and project managers. GSA's staffing is geared more toward its normal workload of about \$1.3 billion per year. With the additional funding from the Recovery Act, GSA's need for contracting personnel and project managers to handle this workload is critical. To meet its staffing needs, GSA has been contemplating several options, including hiring new employees and using contractors to supplement GSA's in-house staff. Although this may provide some relief to GSA's contracting and project management staff, agency personnel will still be burdened with the need to train the new employees as well as administer and oversee the contractors in addition to their other work. In addition, GSA will have to work to minimize any potential conflict of interest that the contractors may have at either the organization or individual level.

Plan Thoroughly for the Projects and Acquisitions

GSA will also be challenged to ensure that it thoroughly plans for the projects and the related acquisitions as it awards the construction contracts and expends the funds in a timely fashion. Managing the design and construction of projects is a very complicated process regardless of project size. The projects that GSA will undertake using the Recovery Act funding vary in their state of readiness - some projects are currently on going and GSA will be able to expend the funds with little extra planning, while some projects are still in the early planning or design phases and will require a high degree of planning to get ready just to make an award. Thorough planning for these projects is necessary to limit problems from arising in the future.

Maintain Complete Documentation

In addition, GSA will need to not only ensure that it performs its contract and project responsibilities effectively, but it will also need to document all major project actions and maintain complete records of the construction contract to ensure accountability on the projects. The documentation should include the contract between GSA and the contractor as well as the documentation that shows how the contract was awarded, and how the contract was administered after the award. Likewise, the project documentation should include information on all significant project actions, any issues that arise, and how the contractor's performance was monitored. If the documentation is vague or incomplete and a dispute arises, the government's position could be weakened when the dispute is being resolved.

Implement Effective Alternative Project Delivery Methodologies

To help speed the process and meet the spending timeframes, GSA is contemplating using alternative project delivery methodologies, such as Construction Manager as Constructor and Design-Build, rather than the more traditional and lengthy Design-Bid-Build process of having the project designed, bidding out the construction, and then having the project built.

- Under Design-Build, the construction contractor is brought into the project at an early stage and is given responsibility for both the final design of the building as well as with the construction of the building. Using this methodology, GSA's challenge will be to identify and finalize early in the process the requirements and specifications for the construction to be provided to the contractor; otherwise, the projects are at risk of being subject to costly change orders.
- Under Construction Manager as Constructor, the construction contractor is brought into the project during the design phase, which should reduce the project timeframe and help keep the budget under control. When using this process, GSA will be challenged to ensure that it works with the contractor to keep the design within the project budget or the risk of higher costs will increase.

Establish Training and Guidance for New Contract Vehicles

Also to speed the projects, GSA is considering establishing new contract vehicles and standardizing scopes of work. By utilizing additional contract vehicles and standardizing scopes of work, GSA is hoping to improve the efficiency of its contracting staff and award contracts in a reduced timeframe. As with any new initiative, GSA's challenge will be to ensure that its contracting staff has the training and guidance necessary to utilize these tools effectively. Otherwise, the implementation of these new initiatives may not achieve the anticipated efficiencies and projects may be hampered by unintended outcomes.

Develop Alternative Funding Stream

With regard to the timely award and expenditure of the Recovery Act funds, GSA will also be challenged by the normal funding stream of a construction project. According to the Recovery Act, \$5 billion of GSA's construction funds need to be obligated by September 30, 2010 and the remainder by September 30, 2011. In addition, the funds expire five years after obligation and cannot be used afterward. However, on a typical large construction project funds are normally obligated throughout the life of the project, which could be three or more years past the initial award date. On these typical projects, the funds are obligated when the base contract is awarded and during the construction project as contract modifications occur due to changes and unforeseen conditions. The Recovery Act's deadlines for the obligation and expiration of the funds differ from the typical funding of GSA's construction projects. GSA has been

researching its alternatives and believes it may be able to hold some contingency funds. However, if this is unresolved, GSA may need to use future funds to supplement its Recovery Act projects as the funds cannot be obligated beyond the dates in the Recovery Act.

Effectively Implement New Office and Information Systems

GSA also faces challenges in its efforts to complete projects on time and minimize cost overruns. In recent history, GSA's construction program has been subject to cost escalations in excess of the approved funding as well as to schedule delays on its major new construction and major repair and alteration projects. To address this as well as the other risks mentioned above, GSA has established a Program Management Office to monitor and oversee all aspects of the construction being performed under the Recovery Act including the adherence to the project budget and schedule. This office is being created from scratch and as such will require a high level of management to ensure it operates efficiently and effectively.

GSA is also implementing a new information system for electronic project management that will be used to assist in tracking and monitoring the construction projects. However, this system is still being developed and readied for wide-scale deployment. In addition, the system will be used by not only GSA personnel, but also contractors working on the projects. Due to the contractor access to an internal GSA system, GSA will need to ensure the contractors receive proper background and security clearances.

Handle Additional Leasing Operations

In addition to performing the major modernizations, GSA will need to acquire temporary space for tenants in "swing space." If no space is available in another Federal building, GSA will need to lease the space. As its leasing operations are already strained with its current workload, GSA will be challenged to absorb this additional workload without causing delays.

Determine Funding for Customer Costs

Customer funding will also be a challenge for GSA. On a typical construction project, customers fund a variety of costs including the costs for above standard tenant improvements and the costs to move into and out of temporary "swing space" for building modernization projects. The need for funding these costs is usually discussed with customer agencies in the early planning stages of a project so that the funding can be incorporated into the budget process. However, as many of these Recovery Act projects were not anticipated to occur yet, the funding for these costs likely have not been incorporated into the customer agency budgets. As a result, GSA will need to work with customer agencies to determine the source of the funding to move these projects forward.

Demonstrate that Projects Meet Green Buildings Criteria

Finally, GSA will need to ensure that it meets its major program goals. GSA received \$4.5 billion specifically to convert current Federal buildings to High Performance Green Buildings¹. As such, the projects funded with these funds should be able to (1) identify what measures were taken to convert the buildings to High Performance Green Buildings and (2) demonstrate energy savings and other performance improvements that were achieved using these funds. GSA recently issued Minimum Performance Criteria for Recovery Projects, which provides guidance for achieving High Performance Green Buildings.

High Efficiency Vehicles

The Recovery Act provides \$300 million to improve the fuel efficiency of Federal vehicles, to remain available until September 30, 2011. As of June 1, 2009, GSA has placed orders of about \$287 million for approximately 17,205 commercially available, fuel efficient vehicles. GSA will also place orders for \$13 million for commercially available natural and hybrid buses and low speed electric vehicles by September 30, 2009. These vehicles will be used to replace, on a one for one basis, operational vehicles in the federal inventory that meet current replacement standards. Each vehicle purchased is to have a higher miles-per-gallon rating than the vehicle it is replacing and the overall procurement is to provide a minimum of a 10 percent increase in fuel efficiency over the replaced vehicles. GSA will dispose of the replaced vehicles and any proceeds, after the costs of disposal, will be used to purchase additional fuel efficient vehicles.

The immediate challenge to GSA is to identify the vehicles to be replaced and to work with customer agencies to identify which vehicles and optional features will meet the customer requirements and to ensure the replacement vehicles will collectively lead to a 10 percent increase in fuel efficiency. The Recovery Act provides a large block of funds for the replacement of vehicles in Federal fleets. However, the replacement of the vehicles is being done on an individual basis for the 17,000 plus vehicles. Identifying the vehicles for replacement, compiling the customer requirements, and ensuring energy efficiency goals are met within the spending plan time frames will test GSA's capabilities.

GSA has set stringent guidelines for vehicle exchanges. If the guidelines are not met, an exchange is not to take place. Disseminating the exchange information to the appropriate individuals and coordinating their activities with vehicle deliveries will be one of GSA's immediate challenges.

¹ A High Performance Green Building is defined by the Energy Independence and Security Act of 2007.

Reporting Issues

Under the Recovery Act, GSA is responsible for a number of reporting requirements for the funding. The major challenges in meeting these requirements are highlighted below.

Reporting on Multiple Funding Sources

One challenge to GSA will be tracking, reporting, and reconciling the use of Recovery Act funding on projects with multiple funding sources. On some projects, GSA may have not only Recovery Act funding, but also funding from its regular budgetary accounts and customer agency funding as well. According to OMB Guidance (M-09-15), the Recovery Act funding cannot be commingled with the other funding and must be tracked and reported on separately. This necessitates maintaining effective funds management at the project level with careful attention to determine whether the funds can be allocated with project specific tasks or charged against the project using an alternative method.

Reconcile Contract Dollars and Obligations

Another challenge for GSA will be to reconcile its reporting of contract dollars and obligations. GSA will be reporting hundreds of contract awards through USAspending.gov, as well as the obligations and outlays related to these contracts. However, the contract dollars being reported will likely always exceed the obligations reported due to multiple funding sources as discussed above and the obligation will likely always exceed the outlays due to timing differences, especially for large, multi-year construction projects. However, other issues can impede the reconciliation of funds. For example, the FY 2007 financial statements failed to report \$276 million of building related contractual obligations, including one construction contract for \$188 million, as well as \$220 million of contractual obligations for vehicle purchases. In both cases, the contract awards were processed in systems that are not integrated with the financial system and some of the contracts were not obligated timely. As a result, a contract could be reported in USAspending.gov although it may not be obligated in the financial system.

Agency Actions

To meet its responsibilities under the Recovery Act, GSA has been moving forward with both its planning and implementation. GSA has been planning its implementation for construction, vehicle acquisition, and reporting. GSA has been preparing the Program-Level Recovery Plans for the "Federal Buildings Fund, Recovery Act" and "Energy-Efficient Federal Motor Vehicle Fleet Procurement" appropriations in accordance with section 2.8 of the Updated OMB Guidance, OMB Memorandum M-09-15. In addition,

GSA has also been moving forward at the project level to carry out its implementation under the Recovery Act. As of July 31, 2009, GSA has awarded over \$1.08 billion for its construction related acquisitions and has already placed orders for approximately \$287 million for more fuel efficient vehicles.