

OIG Recovery Act Flash Report



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Program/Operation: American Recovery and Reinvestment Act

Risk Areas:

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Schedule

Performance/Quality

Accountability/Transparency

American Recovery and Reinvestment Act of 2009

Commerce Experience with Past Relief and Recovery Initiatives Provides Best Practices and Lessons Learned on How to Balance Expediency with Accountability (ARR-19692)

As we begin our oversight efforts for the American Recovery and Reinvestment Act of 2009 (Recovery Act), we undertook a review of Department of Commerce OIG reports on past relief and recovery initiatives. We also reviewed recent reports by other oversight entities. Because new agency leadership may not be familiar with these reports and several were issued some years ago, we consolidated the best practices and recommendations relevant to Commerce's Recovery Act investments into this flash report. The purpose of this report is to provide a convenient summary of approaches for achieving accountability while spending stimulus funds expeditiously.

After Hurricanes Katrina, Rita, and Andrew, Commerce Took Steps to Provide Reasonable Assurances that Funds Were Awarded Appropriately for Both Contracts and Grants, but Areas to Improve Remained

Commerce agencies' roles in relief and recovery have assisted in rebuilding damaged ports and transportation infrastructure, and hastening the return of economic vitality to the Gulf region and south Florida. However, these significant infusions of dollars, coupled with pressure to quickly get the funds out to communities and businesses create an environment ripe for possible waste, fraud, and abuse.

This office has previously overseen activities that attempted to balance expediency with accountability, related to these relief and recovery investments following major hurricanes. Following Hurricane Andrew, we issued a report on our evaluation of one Commerce agency's handling of its Hurricane Andrew assistance program.¹ In particular, we examined the agency's process for selecting projects and its management and monitoring of the projects funded. The examination results provided valuable insight and guidance to direct the Department's relief and recovery actions in response to Hurricanes Katrina and Rita.² Following these two hurricanes, we reviewed certain Department of Commerce contracts and grants³ to determine whether reasonable precautions were taken to prevent waste fraud, and abuse and whether the contracts and grants were handled properly.⁴

Dedicated Staff in the Field Enhance On-Site Support and Oversight

After two major hurricanes, Commerce agencies proactively took steps to focus agency support and attention to the areas directly impacted by the storms—to the communities where the taxpayer dollars were to be spent. After Hurricane Katrina, the National Oceanic and Atmospheric Administration (NOAA) designated one regional acquisition division (Kansas City,

Missouri) as the lead office responsible for taking the necessary actions to restore a destroyed NOAA facility in Mississippi to operational mode. NOAA also deployed this office's director to Mississippi immediately after the hurricane to provide on-site procurement support and contractor oversight. After funds were expended, we examined NOAA's 60 largest post-Katrina contracts and found that most were awarded competitively, with adequate written justifications for the largest sole-source procurements. Our on-site assessments showed that contractors were performing the work, receiving records were in order, and we observed the purchased or leased items. The agency's field support and contractor oversight contributed to our finding that NOAA took reasonable precautions to protect the interests of the government.

After Hurricane Andrew, the Economic Development Agency's (EDA) Atlanta Regional Office sent a team on-site to the Miami area. The team included planning, economic development, engineering, environmental, and grant processing specialists who worked with local governments and other organizations to prepare short- and long-term economic development plans, and then assisted them in identifying and developing disaster assistance projects that were compatible with the plans. EDA's team remained for the duration of time needed to see projects through the development and selection phase. We found that the EDA did a good job of working quickly to select sound projects, and recommended that EDA should continue these planning and selection practices in future disaster efforts.

For the Recovery Act, EDA, NOAA, and the National Institute of Standards and Technology (NIST) will all be involved, for example, in the planning and management of construction projects. Each agency would be well-served to develop a strategy to support construction investments in the field, including prioritizing site visits to construction projects that meet (or fail to meet) certain criteria. The National Telecommunications and Information Administration (NTIA) will award grants on an unprecedented scale to acquire and deploy equipment, technology, and infrastructure that promotes access to broadband communications services to unserved and underserved areas and will similarly benefit from putting staff in the field to oversee grant performance. In past efforts balancing expediency with accountability, Commerce agencies have demonstrated the value of increased attention and presence in the communities where the expenditures are made. Agencies should ensure that sufficient staff is available in the field to provide enhanced support and oversight for this recovery effort.

Document Any Deviations from Regular Procedures to Provide Assurance that the Agency Exercised Due Diligence

A particular tension in recovery activities is between expediency and the need to ensure that sufficient controls and procedures are in place to prevent funds from being wasted. Flexibility exists which allows agencies to make decisions to waive standard procedures or take the most expedient course. Our reviews often assess these exceptions or deviations.

Following Hurricanes Katrina and Rita, OIG surveyed financial and procurement controls and procedures in four Commerce agencies, including three agencies that are now receiving Recovery Act appropriations (NOAA, EDA, and NIST). We paid particular attention to instances where agencies chose to deviate from established procedures or processes, or decided to forgo

merit-based competition. EDA, for example, chose to waive a standard award clause after Hurricane Katrina that required adherence to regional development strategies for post-hurricane grants. We examined the decision memorandum justifying its decision, and noted the decision process used was reasonable. NIST decided to use existing procedures to award its post-hurricane contracts, but awarded one large contract non-competitively. We examined NIST's written justification for this non-competitive procurement and the contract terms, and found sufficient basis for both. NOAA's largest post-hurricane procurement involved the emergency cleanup and repair of the Pascagoula, Mississippi, facility. We examined the written justification to award the contract noncompetitively and the terms of the contract, and found them sufficient. In each of these instances, agencies made decisions to expedite a regular procedure and adequately documented their decisions.

With the pressure to spend Recovery Act funds quickly, agencies may determine a need to waive standard procedures or take the most expedient course. At the same time, heightened emphasis on accountability for Recovery Act expenditures means deviations from established policies and procedures must be well justified and clearly documented. Our oversight of Recovery Act spending will include assessments of existing financial and procurement controls and procedures and be attentive to documentation that supports agencies' decisions to make exceptions or deviate from the norm.

Actively Monitor the Start and Completion of Recovery Projects and Identify Struggling Projects So They Can Be Terminated if Necessary and Funds Can Be Transferred to Other Projects

Between 1992 and 1995, EDA received Hurricane Andrew relief proposals requesting a total of more than \$130 million. We performed an audit that focused on issues related to the completion of projects and on lessons learned from those issues. We found that the agency quickly funded 28 projects totaling \$50.9 million. OIG also found that the bureau did a good job of expeditiously selecting the projects, and generally chose projects that were sound in concept and responsive to the economic recovery needs of the area.

We found problems, however, with nine projects that were late in starting and slow in being completed. Related to this, we found that the agency needed to pay closer attention to the monitoring of grantees' performance. For this recovery effort, the agency did not routinely obtain required quarterly status reports from all grantees. We think that these reports are the early warning system for advising the agency of a project in trouble.

At the time of our review, six of the nine problem projects were not complete, and only two had been terminated. Because the remaining four projects had not been terminated, their funds could not be reprogrammed to other projects. If agency officials recognize the symptoms of problem projects early on, they can promptly act to support and fix them, where possible, or terminate the award and reprogram the remaining funds.⁵ A review of these reports would have detected problems. To protect the government's financial interests, we recommended that required reports should be completed as a condition of a grantee receiving additional grant disbursements. In addition, we found that the monitoring of projects on-site is critical so that bureau officials gain

first-hand knowledge and provide direct oversight of how funds are being expended. Commerce agencies receiving Recovery Act funds should ensure that sufficient attention is given to monitoring the progress of stimulus projects and take appropriate actions when projects are not on track.

Many different levels of reporting are necessary to meet accountability and transparency objectives of the Recovery Act and OMB guidance (M-09-15). Agencies must ensure that required financial and program progress reports are submitted by recipients of Recovery Act funds. Equally important, however, agency officials should review these reports and use the data to improve project management. Also, with the Recovery Act's emphasis on demonstrated programmatic results, such as optimized economic activity and the number of jobs created or saved, active and accurate project monitoring is fundamental. We will continue to work with the Department to ensure that in the rush to expend Recovery Act funds, reporting, monitoring, and assessment of a program's status and results are not overlooked by the agencies.

Heed Lessons Learned from Other Federal Relief and Recovery Initiatives that Attempted to Balance Expediency with Accountability

Although Recovery Act planning, spending, and monitoring at Commerce clearly does not face the extreme security and logistical challenges encountered with the Iraq Reconstruction efforts or the financial complexities associated with the Troubled Asset Relief Program, several lessons learned from these initiatives that attempted to balance expediency with accountability are germane to Recovery Act management and oversight.⁶

The Office of the Special Inspector General for Iraq Reconstruction (SIGIR) found that project management systems in Iraq were problematic, projects could not be matched with the contracts that funded them, and in several instances, estimates of how much projects would cost to complete were unknown.

SIGIR identified the general lesson that adequately staffed quality-control and quality-assurance programs within the agencies are essential to ensure the efficient and effective use of taxpayer dollars. SIGIR also described several lessons regarding federal contracting pertinent to Recovery Act oversight. First, SIGIR recommended that outsourcing project management to contractors should be limited, and pointed out that a proliferation of contractors serving as managers raises questions regarding what constitutes inherently governmental activity, and the extent to which oversight authority can be delegated to a contractor. SIGIR also recommended that contracting officers and staff should be more widely deployed in the field to improve quality assurance. Also relevant to Recovery Act oversight, SIGIR reported that award-fee processes should be tightened to reduce waste and provide real performance incentives to contractors.

Lessons Learned from SIGIR's Iraq Reconstruction Oversight

- Adequately staffed quality-control and quality-assurance programs are essential.
- Outsourcing management responsibilities to contractors should be limited.
- Field presence of contracting officers and officials should be enhanced for oversight.
- Award-fee processes should be tightened.

Recent reports and testimony by the Government Accountability Office (GAO) related to the Troubled Asset Relief Program and the Reconstruction in Iraq also identify relevant lessons for Recovery Act oversight.⁷ These lessons include:

- the value of comprehensive systems of internal controls that are robust enough to protect taxpayers' interests and ensure that program objectives are being met;
- the need to ensure that sufficient staff is assigned and properly trained to oversee the performance of contractors;
- the importance of establishing systemic means of reporting in a timely manner; and
- the criticality of quality performance data and measures for determining the overall progress and impact of efforts.

BACKGROUND

The *American Recovery and Reinvestment Act of 2009* provided \$16 million for Office of Inspector General audits and oversight of Commerce recovery activities. This is a flash report, not an audit conducted in accordance with Government Auditing Standards, and is significantly reduced in scope. Under the Recovery Act, inspectors general are expected to be proactive and focus on prevention. We believe this flash report is responsive to this intent.

Our work was performed in accordance with the *Quality Standards for Inspections* (rev. January 2005) issued by the President's Council on Integrity and Efficiency, and under authority of the IG Act of 1978, as amended, and Department Organization Order 10-13 (dated August 31, 2006).

¹U.S. Department of Commerce Office of Inspector General, September 1998. *Hurricane Andrew Disaster Assistance: EDA Made Fast, Sound Project Selections, but Could Have Better Managed Problem Projects* Audit: ATL-8989-8-001.

²U.S. Department of Commerce Office of Inspector General, July 2006. *A Survey of Hurricane Katrina and Hurricane Rita Contracts and Grants - Audit*: DEN-17829-6-0001.

³ In this flash report, "grants" is used to encompass all financial assistance awards, including cooperative agreements.

⁴ This office also audited the Economic Development Agency's efforts to award disaster assistance grants for economic recovery of communities, industries, and firms adversely affected by the floods and other disasters following intense rainstorms that caused flooding in the upper Mississippi and lower Missouri river basins. See U.S. Department of Commerce Office of Inspector General, September 1998. *EDA Midwest Flood Program: Opportunities Exist to Improve Management of Future Disaster Programs* Audit: DEN-8772-8-0001.

⁵ In *EDA Midwest Flood Program: Opportunities Exist to Improve Management of Future Disaster Programs* Audit: DEN-8772-8-0001, we also found that slow progress on some construction projects placed the funding in jeopardy.

⁶ The Office of the Special Inspector General for Iraq Reconstruction (SIGIR), February 2, 2009. *Hard Lessons: The Iraq Reconstruction Experience*, Washington, D.C.

⁷ *Troubled Asset Relief Program: March 2009 Status of Efforts to Address Transparency and Accountability Issues*, GAO-09-504, March 2009; *Troubled Asset Relief Program: Additional Actions Needed to Better Ensure Integrity, Accountability, and Transparency*, GAO-09-161, December 2008; *Iraq: Key Issues for Congressional Oversight*, GAO-09-294SP, March 2009; *DOD Needs to Address Contract Oversight and Quality Assurance Issues for Contracts Used to Support Contingency Operations*, GAO-08-1067, September 2008; *Rebuilding Iraq: Stabilization, Reconstruction, and Financing Challenges*, GAO-06-428T, March 2006.