



Smithsonian Institution

Office of the Inspector General

Date September 1, 2009

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From  A. Sprightley Ryan, Inspector General

Subject Management Advisory on Oversight Findings on Timeliness and Transparency of the Smithsonian's Use of Recovery Act Funds, Number A-09-09

The American Recovery and Reinvestment Act (Recovery Act) of 2009 provided the Smithsonian Institution \$25 million for Facilities Capital Improvements for the repair and revitalization of existing facilities. Overall, the Smithsonian has worked diligently to award the Recovery Act funds in a timely and efficient manner. By June 30, 2009, the Smithsonian had awarded 71% of its recovery funds, with an additional 29% scheduled to be awarded by early September. Smithsonian management awarded contracts in compliance with the Recovery Act requirements and took prompt action when we identified areas needing attention.

As part of our oversight of Recovery Act funds, we conducted a review of those facility projects chosen by the Smithsonian to receive recovery funds. Our objective was to determine whether management posted information in a timely manner to the appropriate databases, was transparent in spending Recovery Act funds, and embraced the best practices outlined in Office of Management and Budget (OMB) guidelines, Small Business Administration (SBA) regulations, and the Federal Acquisition Regulation (FAR).

Based on these reviews, we offer several observations concerning OCON&PPM's contract award process, specifically, the need to obtain a waiver of certain SBA requirements, and the lack of timely submission of information to databases, such as Federal Business Opportunities (FEDBIZOPPS) and the Federal Procurement Database System (FPDS).

We will continue to review the Smithsonian's use of recovery funds, with a focus on the adequacy of the management of contracts as well as the accuracy, timeliness, and completeness of recipient reporting on the use of those funds and their success in contributing to the goals of the Recovery Act. We are working in concert with the

Council of Inspectors General on Integrity and Efficiency to achieve a consistent approach to overseeing the implementation of the Recovery Act across the federal government. As such, we will post this report to the central web site, Recovery.gov, for interested parties and the American public to review.

We are reporting the results of our work to date to document the communications made to the Smithsonian and the actions taken by Smithsonian managers in response.

Competitive Award Process for 8(a) Set-Asides Under the Small Business Administration

The FAR 19.805-1 states that under the 8(a) Business Development (BD) Program, smaller contracts are typically awarded on a noncompetitive basis and larger contracts are awarded through competitive set-asides. The current 8(a) BD competition threshold for construction contracting is \$3.5 million.

The Smithsonian was poised to make several *competitive* awards to existing indefinite delivery indefinite quantity (IDIQ) 8(a) contractors for amounts under the threshold. In accordance with SBA and FAR regulations, when an agency chooses to compete among 8(a) firms, and the impending award amount will be below the threshold, the Institution is required to request a waiver from SBA.

We reviewed the list of anticipated 8(a) set-aside projects and held discussions with OCON&PPM management on the contracting procedures to be used for these projects. We determined that management intended to hold competitions among the Smithsonian's existing IDIQ 8(a) contractors; however, they did not expect any awards to exceed the threshold. Because management was competing these projects, we immediately advised OCON&PPM that it needed to request a blanket waiver from SBA for all 8(a) set-aside projects below the \$3.5 million threshold, for Recovery Act-funded contracts.

With the help of the Office of Equal Employment and Minority Affairs (OEEMA), OCON&PPM successfully obtained a blanket waiver from SBA and submitted the offer letters to the appropriate SBA offices for acceptance of these 8(a) set-aside awards.

Transparency

We selected for review a sample of ten facility projects that resulted in seven contracts. As part of our oversight responsibilities, we followed these projects through the contracting process from solicitation through contract award. We developed a checklist based on OMB memo M-09-15 and the Recovery Accountability and Transparency Board Contracting guidance. We used this checklist to ensure that, for contracts awarded with Recovery Act funds, the Smithsonian followed OMB guidance and documented solicitation and award information in a manner transparent to the public. We also confirmed that the Smithsonian posted information on its awards and approvals to the websites of most interest to vendors and stakeholders: FEDBIZOPPS and FPDS.

During our review of contract files, we found that OCON&PPM had no written procedures for assembling these files. Therefore, documents maintained in contract files vary considerably from file to file. We observed:

- Little consistency in the collection of pertinent documents. For example:
 - Solicitation Clauses. One file had an index of clauses; another added wording that incorporates the solicitation clauses; yet another made no mention of solicitation clauses in the award document.
 - Level of Documentation. Some files had a copy of the applicable wage determination decision while others did not. Other files included the Designation of Contracting Officer's Technical Representative Authority letter while others did not.
- Contract award documents do not always identify the type of contract, i.e. firm fixed price or cost reimbursable.

The FAR 4.8, *Government Contract Files*, stipulates a list of documents to be contained in the contract files, as appropriate. At a minimum, for purposes of documenting contracts using Recovery Act funds, FAR should be followed. At this time, based on the inconsistencies identified, we cannot determine whether pertinent documents may be missing from the contract files.

Additionally, we believe that as a best practice OCON&PPM needs to standardize procedures, in accordance with FAR 4.8, for its staff to reinforce consistency in file maintenance. Based on discussions with OCON&PPM management, we understand that the standardization of contract files is in process.

Additionally, we verified the accuracy and timeliness of the information posted to the various databases. Based on this review, we found issues with the timely submission of award information to the respective databases. For all Recovery Act awards, we verified whether OCON&PPM released award information timely to the public through FPDS, and we reviewed the adequacy of specific data in FPDS. The table below identifies deficiencies in OCON&PPM's release of award information to FPDS for public access:

TABLE 1: FPDS CONTRACT AWARD INFORMATION

Project Title	Contract Awarded Name	Contract Number	Award Date	Date Released to FPDS
ARTS & INDUSTRIES BUILDING				
Construction Services for Phase 1 Demolition and Hazmat Removal	SmithGroup	*OFEO 0915103	7/04/09	Not released
NATIONAL ZOOLOGICAL PARK				
Research Center's Roof Renewal	Severn	F09CC10287	6/22/09	8/04/09
Replace Waller Barn Roof and Complete Renovation of Greenhill Barn	Edifice	F09CC00290	6/12/09	8/04/09
A-E Construction Services for Installation of Backflow Preventers	Architrave Architects	F0436CW10087 (Mod 6)	6/09/09	Not released
Install Emergency Generator	Edifice	F09CC00249 (Mod 1)	6/04/09	8/04/09
SMITHSONIAN-WIDE				
Contract Support	Parker Tide	F09DO2700000173254	4/27/09	7/06/09

*OCON&PPM did not list this project in the Federal Business Opportunities database.

As noted in Table 1, we continue to find shortcomings in OCON&PPM's timely release of contract award information to the public. In the spirit of transparency, OMB requires that the public benefits of funds be reported clearly, accurately, and in a timely manner. In our opinion, release of award information after more than 30 days is not timely.

Concerning the adequacy of data posted to FPDS for those awards made with recovery funding, OMB checklists requires that the "Description of Requirement" field reference the word "RECOVERY" and that the appropriate Treasury Account Symbol (for the Smithsonian this symbol is "TAS::33 0101::TAS") be identified. Many of the descriptions listed in this field did not identify the award "RECOVERY" and others had either incomplete or no TAS identifier. After notification by our office, OCON&PPM staff have since rectified these shortcomings and all Recovery Act awards posted to FPDS now have the words "RECOVERY" and display the appropriate TAS identifier.

We meet with management monthly and have continually updated them on these issues. For the most part, management has been responsive to our concerns and has resolved issues we identified.