



RECOVERY ACT

*Additional Actions Are Needed to
Ensure Readiness to Comply With the
American Recovery and Reinvestment
Act of 2009 Procurement Requirements*

June 28, 2010

Reference Number: 2010-11-071

This report has cleared the Treasury Inspector General for Tax Administration disclosure review process and information determined to be restricted from public release has been redacted from this document.

Redaction Legend:

3(d) = Other Identifying Information of an Individual or Individuals



HIGHLIGHTS



ADDITIONAL ACTIONS ARE NEEDED TO ENSURE READINESS TO COMPLY WITH THE AMERICAN RECOVERY AND REINVESTMENT ACT OF 2009 PROCUREMENT REQUIREMENTS

Highlights

Final Report issued on June 28, 2010

Highlights of Reference Number: 2010-11-071 to the Internal Revenue Service Deputy Commissioner for Operations Support and Deputy Commissioner for Services and Enforcement.

IMPACT ON TAXPAYERS

The Internal Revenue Service (IRS) received an appropriation of \$203 million in American Recovery and Reinvestment Act of 2009 (Recovery Act) funds. TIGTA determined that the IRS did not always comply with Recovery Act procurement requirements and used annual appropriated funds instead of Recovery Act funds for some procurements. As a result, approximately \$385,000 was not available for other IRS mission-critical needs, such as improving taxpayer service or addressing the tax gap.

WHY TIGTA DID THE AUDIT

This audit was initiated to determine the IRS' readiness to implement the requirements of the Recovery Act in planning, awarding, and reporting Recovery Act-funded procurements. The Recovery Act provided separate funding to TIGTA to provide oversight of IRS programs. This audit was conducted using Recovery Act funds.

WHAT TIGTA FOUND

The IRS took some proactive steps before the Recovery Act was enacted in February 2009 and continued to refine its efforts to plan, award, and report Recovery Act procurements during the remainder of Calendar Year 2009. However, it still does not have the necessary controls in place to ensure future procurements will comply with Recovery Act

requirements. For example, the IRS has not developed written procedures regarding Recovery Act procurement requirements, provided formal training for those procuring goods and services, or dedicated sufficient resources to track and report Recovery Act procurements.

TIGTA reviewed 10 procurements from the IRS' Recovery Act Procurement Plans and determined that 2 did not comply with the new procurement requirements. In addition, the IRS used annual appropriated funds instead of Recovery Act funds for 6 of the 10 procurements. The IRS will continue to be at risk of noncompliance until IRS management provides the necessary oversight and guidance to IRS program office and procurement personnel.

One aspect of the Recovery Act's transparency and accountability requirements does not apply to IRS contractors. IRS contractors receiving Recovery Act funds are not required to report information on Recovery.gov, including how the funds were used, any jobs created or retained, and executive compensation package information. As a result, the public will not know how IRS contractors used the \$31.9 million in Recovery Act funds paid out as of February 19, 2010.

WHAT TIGTA RECOMMENDED

TIGTA recommended that the IRS strengthen controls for Recovery Act procurements, including developing written procedures, providing training to both program office and procurement personnel, and reevaluating the resources assigned to track and report IRS Recovery Act procurements.

The IRS agreed with the recommendation. Once the Department of the Treasury issues updated guidance, the IRS plans to issue a new policy memorandum and meet with IRS operating divisions and program personnel to discuss the policy. The IRS has increased procurement staffing to provide coverage and backup, and it plans to periodically assess staffing assignments to ensure continued coverage for Recovery Act procurements.



TREASURY INSPECTOR GENERAL
FOR TAX ADMINISTRATION

DEPARTMENT OF THE TREASURY
WASHINGTON, D.C. 20220

June 28, 2010

MEMORANDUM FOR DEPUTY COMMISSIONER FOR OPERATIONS SUPPORT
DEPUTY COMMISSIONER FOR SERVICES AND ENFORCEMENT

Margaret E. Bezz

FROM: (for) Michael R. Phillips
Deputy Inspector General for Audit

SUBJECT: Final Audit Report – Additional Actions Are Needed to Ensure
Readiness to Comply With the American Recovery and Reinvestment
Act of 2009 Procurement Requirements (Audit # 200910124)

This report presents the results of our review to determine the Internal Revenue Service's (IRS) readiness to implement the requirements of the American Recovery and Reinvestment Act of 2009 (Recovery Act)¹ in planning, awarding, and reporting Recovery Act-funded procurements. This report is consistent with Office of Management and Budget guidance² to identify high-risk programs and create quicker turnaround reporting. This review is included in our Fiscal Year 2010 Annual Audit Plan and addresses the major management challenge of Leveraging Data to Improve Program Effectiveness and Reduce Costs.

The Recovery Act provides separate funding to the Treasury Inspector General for Tax Administration through September 30, 2013, to be used in oversight activities of IRS programs. This audit was conducted using Recovery Act funds.

Management's complete response to the draft report is included as Appendix VII.

Copies of this report are also being sent to the IRS managers affected by the report recommendation. Please contact me at (202) 622-6510 if you have questions or Nancy A. Nakamura, Assistant Inspector General for Audit (Management Services and Exempt Organizations), at (202) 622-8500.

¹ Pub. L. No. 111-5, 123 Stat. 115 (2009).

² *Updated Implementing Guidance for the American Recovery and Reinvestment Act of 2009* (dated April 3, 2009).



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Abbreviations

FAR	Federal Acquisition Regulation
FedBizOpps	Federal Business Opportunities
FPDS	Federal Procurement Data System
IRS	Internal Revenue Service
OMB	Office of Management and Budget



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Background

Enacted on February 17, 2009, the American Recovery and Reinvestment Act of 2009 (Recovery Act)¹ contained both spending and tax provisions of \$787 billion over 10 years designed to stimulate the national economy by creating and retaining jobs. Because some of the tax provisions were effective for the 2009 Filing Season,² the Internal Revenue Service (IRS) began planning for the tax law changes³ before the Recovery Act was enacted. This involved identifying the potential new tax law and administrative changes; revising the various tax forms, instructions, and publications; and reprogramming its computer systems to ensure tax returns would be accurately processed. In April 2009, the IRS received its appropriation of \$203 million in Recovery Act funds, which were to be used to implement the necessary tax changes as a result of the Recovery Act provisions.

The Recovery Act also contained unprecedented reporting requirements to enable the public to track who has received Recovery Act funds and how the funds were used to stimulate the economy. The Office of Management and Budget (OMB)⁴ issued several supplemental guidance documents⁵ that outlined steps for implementing the Recovery Act and also clarified the new requirements for processing procurements. For example, presolicitation and contract award notices must be posted on the Federal Business Opportunities (FedBizOpps)⁶ system so the public will be aware of Recovery Act procurement opportunities. In addition, the Department of the Treasury issued an Acquisition Bulletin⁷ on February 19, 2009, as well as informal guidance to its bureaus and offices on the use and reporting of Recovery Act funds, including a requirement for Department of the Treasury approval before Recovery Act procurements are awarded.

¹ Pub. L. No. 111-5, 123 Stat. 115 (2009).

² The period from January 1 through April 15 when most individual tax returns are filed.

³ The Recovery Act included more than 50 tax law provisions that the IRS is charged with administering. These tax changes included refundable credits, such as the Making Work Pay and First-Time Homebuyer Credits.

⁴ The OMB has the primary responsibility for developing Government-wide rules and procedures to ensure that funds are awarded and distributed in a prompt and fair manner; uses of funds are transparent to the public; and steps are taken to mitigate fraud, waste, and abuse.

⁵ The OMB issued implementing guidance on February 18, 2009; April 3, 2009; June 22, 2009; and December 19, 2009.

⁶ The FedBizOpps system is a single Government-wide point of entry for Federal Government procurement opportunities exceeding \$25,000. Government buyers are able to publicize their business opportunities by posting information directly to the FedBizOpps system via the Internet. Through this system, commercial vendors seeking Federal markets for their products and services can search, monitor, and retrieve opportunities solicited by the entire Federal contracting community.

⁷ The official document the Department of the Treasury uses to issue procurement guidance to its bureaus and offices.



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In addition, each Federal agency was required to conduct risk assessments to identify any potential areas that could adversely affect its implementation of the Recovery Act provisions. Agencies were also required to develop specific plans for spending their allocated portion of the Recovery Act funds. The Department of the Treasury required the IRS to submit weekly Recovery Act procurement plans, program reports, and financial reports⁸ on how it is spending the funds. Federal agencies receiving Recovery Act funds were required to post these reports on Recovery.gov.⁹ The IRS' Recovery Act procurement plan initially listed 41 procurements with an estimated total value of \$96.7 million. As of August 20, 2009, because of the consolidation and removal of some of the procurements, there were 32 procurements with an estimated total value of \$83.9 million.

This review was performed at the IRS Office of Procurement in Oxon Hill, Maryland; the Modernization and Information Technology Services organization and Wage and Investment Division program offices¹⁰ in New Carrollton, Maryland; and the IRS National Headquarters in Washington, D.C., during the period September 2009 through February 2010. During our review, changes to procedures and processes were still being made in accounting for and reporting on the use of Recovery Act funds and for procuring goods and services under the Recovery Act. This report reflects the status of the IRS' readiness to comply with the Recovery Act requirements for procuring goods and services as of February 2010, when we completed our fieldwork. We conducted this performance audit in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objective. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objective. Detailed information on our audit objective, scope, and methodology is presented in Appendix I. Major contributors to the report are listed in Appendix II.

⁸ Agency weekly financial and activity reports outline the amount of Recovery Act funds they have available and have paid out, the types of awards they have made (contract, grant, or loan), and the specific agency activities for the week and in the future. Agencies are also required to issue Financial Notification reports that detail the amount of Recovery Act funds allocated to each State through individual agency programs.

⁹ The Recovery Act required the creation of a web site to report data related to Recovery Act spending. Recovery.gov was established as the United States Government's official Recovery Act web site.

¹⁰ A program office is the functional organization that needs the good or service provided by the procurement.



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Results of Review

While the IRS took some proactive steps before the Recovery Act was enacted in February 2009 and continued to refine its efforts to plan, award, and report Recovery Act procurements during the remainder of Calendar Year 2009, it still does not have the necessary controls in place to ensure future procurements will comply with Recovery Act requirements. For example, the IRS has not developed written procedures regarding Recovery Act procurement requirements, provided formal training for those procuring goods and services, or dedicated sufficient resources to track and report Recovery Act procurements. As a result, 2 of the 10 procurements we reviewed did not comply with the new requirements. The IRS will continue to be at risk of noncompliance with Recovery Act requirements until IRS management provides the necessary oversight and guidance to IRS program office and procurement personnel.

In addition, we noted there is one aspect of the Recovery Act's transparency and accountability requirements that does not apply to IRS contractors.¹¹ IRS contractors receiving Recovery Act funds are not required to report information on Recovery.gov, including how the funds were used, any jobs created, and executive compensation packages. As a result, the public will not know how IRS contractors used the \$31.9 million in Recovery Act funds paid out as of February 19, 2010.

Additional Actions Are Necessary to Ensure Readiness With Recovery Act Procurement Requirements

Because the Recovery Act was enacted after the start of the 2009 Filing Season, the Office of Procurement had to award several procurements before the new funds were available. The IRS awarded the procurements using annual appropriated funds¹² and intended to replace them once Recovery Act funds were available. OMB implementing guidance did not specifically comment on this practice. The guidance stated that agencies are required to maintain Recovery Act funds separately from other appropriated funds for tracking and reporting purposes.

¹¹ The Recovery Act requires agencies receiving funds under Division A of the Recovery Act to comply with the transparency requirements for recipient reporting on Recovery.gov. The IRS received funds under Division B of the Recovery Act (Tax, Unemployment, Health, State Fiscal Relief, and Other Provisions), which does not include this transparency requirement. Although the IRS received its funding for the Health Coverage Tax Credit under Division A, this tax provision is covered under Division B and therefore the recipient reporting requirement does not apply.

¹² Congress annually considers appropriations measures, which provide funding for general Government operations. Under 31 United States Code Section 1301(a), public funds may only be used for purpose(s) for which Congress appropriated the funds.



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The Office of Procurement took some initial steps to prepare for Recovery Act procurements, including coordinating with the Department of the Treasury on the Department's requirements and designating *****3(d)***** to oversee the IRS' implementation of the Recovery Act requirements. However, additional preparation was needed to ensure the IRS was ready to comply with the Recovery Act procurement requirements.

Initial actions to prepare for Recovery Act procurements were not sufficient

Although IRS senior management reacted quickly to implement the Recovery Act tax provisions, they did not provide sufficient oversight to ensure the IRS was adequately preparing for the new procurement requirements. The *****3(d)***** ensured the IRS business units conducted risk assessments required by OMB implementing guidance; however, the risk assessments did not adequately assess procurement risks, and the Office of Procurement did not conduct a separate risk assessment of its own. Further, IRS management did not ensure program office and procurement staff were sufficiently trained and prepared to properly plan, award, and report Recovery Act procurements.

One of the reasons for the insufficient oversight may have been the nature of the procurements needed for the Recovery Act. These procurements were related to the normal filing season updates, and the IRS had existing contracts in place for these updates, including those needed for the Recovery Act tax provisions. As a result, except for some additional tracking and reporting necessary to meet the accountability and transparency requirements of the Recovery Act, the Office of Procurement did not see any significant difference in processing procurements for the Recovery Act. However, the IRS did not sufficiently prepare for the following new requirements for Recovery Act procurements:

- Recovery Act funds must be kept separate from other funds.
- The Department of the Treasury requires that all Recovery Act procurements be preapproved by the Department.

In addition, IRS management did not perform an adequate review of the June 2009 OMB implementing guidance to gain a full understanding of the requirement for contract recipients to report on Recovery.gov.¹³ There was initial confusion on this requirement because the expectation was that all recipients of Recovery Act funds would be held to this requirement, yet the June 2009 guidance that listed the specific Government agencies and programs that were required to comply did not include IRS programs on the list. The IRS Office of Procurement initially thought that this requirement would apply to IRS contractors as it did to other Federal Government contractors receiving Recovery Act funding. When IRS contractors questioned this reporting requirement, IRS management sought clarification in September 2009 from the OMB, which agreed that IRS contractors would not be subject to this requirement.

¹³ See Appendix VI for the Recovery Act contract recipient reporting requirements.



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Another concern was that the IRS decided not to use Recovery Act funds for 6 of the 10 planned Recovery Act procurements we reviewed where the procurements were awarded before Recovery Act funds were available. The following procurements were not converted to Recovery Act funds:

- One procurement valued at \$210,000.
- Four procurements were consolidated into one procurement valued at \$165,000.
- One procurement valued at \$10,421.

The IRS advised us that the labor-intensive administrative burden outweighed the benefits of using Recovery Act funds and that it decided not to modify the procurements to bring them into compliance with the Recovery Act procurement requirements. However, this meant that the \$385,421 for these 6 procurements was not available for other IRS mission-critical needs, such as improving taxpayer service or addressing the tax gap. IRS management advised us that because this was a small portion of the overall IRS budget, they did not believe it was necessary to convert these six procurements to Recovery Act funds.

Aspects of initial procurements were noncompliant

To evaluate whether the IRS was taking the necessary actions to prepare for the new requirements of the Recovery Act, we selected a judgmental sample¹⁴ of 9 of the 32 Recovery Act procurements as of August 20, 2009. We also selected 1 procurement from the 34 Recovery Act procurements as of June 19, 2009, for a total sample of 10 procurements. We reviewed the procurement files and interviewed the procurement and program office staff involved in the procurements to determine whether they were aware of and understood the new procurement requirements. At the time of our interviews in September and October 2009, the program office and procurement staff indicated they were either aware of the Recovery Act requirements, or would ask the *****(d)***** if they had any questions. However, two of our sampled procurements that were awarded before these interviews were held had some noncompliance issues, indicating there was still some confusion during the months after the Recovery Act took effect. Specifically, we found that:

- Annual appropriated funds were commingled with Recovery Act funds.
- Department of the Treasury approval to use Recovery Act funds was not obtained.
- Required Recovery Act language was not included in contract award documents.

¹⁴ To ensure that procurements in various stages of the procurement process would be included, we selected a judgmental sample of nine procurements from the IRS' Recovery Act Procurement Plan for August 20, 2009. In addition, we selected one procurement that was listed as awarded on the IRS Procurement Plan dated June 19, 2009, and dropped from the August 20, 2009, plan. See Appendix I for additional information on our sampling methodology.



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In 2 instances, Recovery Act-related procurements valued at a combined \$2 million were initially awarded prior to the Recovery Act funds being available. Once the funds became available, the IRS attempted to use one modification for each procurement (one in May 2009 and the second in June 2009) to deobligate¹⁵ the annual appropriated funds and obligate the Recovery Act funds. However, this resulted in the IRS commingling¹⁶ Recovery Act funds for both procurements, which is prohibited by the Act. The Office of Procurement was not aware at the time that the deobligation of the annual appropriated funds and obligation of the Recovery Act funds in the same transaction was considered a commingling of funds.¹⁷ To comply with the Recovery Act, the IRS should have handled all Recovery Act funding transactions as separate transactions on separate modifications. The IRS issued separate modifications in June and July 2009 to include the required Recovery Act clauses.

In addition, the Office of Procurement did not obtain the Department of the Treasury approval prior to awarding one of the procurements. The Contracting Officer did not realize the procurement was related to the Recovery Act. The IRS worked with the Department of the Treasury on this procurement and has obtained “after-the-fact” approval for the procurement to use Recovery Act funds.

We believe the noncompliance occurred because IRS management did not prepare written procedures for this process. In addition, because the procurement process was not considered in the risk assessments conducted during the initial implementation of the Recovery Act, the Office of Procurement was not initially aware of the need for new procedures.

Written procedures have not been developed and formal training has not been provided

As of February 2010, except for some informal guidance on the proper use of accounting codes for Recovery Act funds, IRS management had not developed any written guidance to program office or procurement staff regarding Recovery Act procurement requirements. Instead, the IRS relied on formal and informal guidance provided by the OMB and the Department of the Treasury. However, these documents provided general guidance and were not specific enough to ensure IRS employees properly processed and awarded Recovery Act procurements.

The Office of Procurement assigned responsibility to ***3(d)*****to brief the procurement staff responsible for Recovery Act procurements on the processes that should be

¹⁵ Funds are considered “obligated” when there is a definite commitment by the Government to spend appropriated funds. Deobligation occurs when the commitment ends and the funds are available to be spent.

¹⁶ Recovery Act funds become commingled when they are mixed with annual appropriated funds. OMB guidance required separate accounts and coding to ensure the funds were maintained, recorded, and reported separately.

¹⁷ The IRS indicated that it can track and report the use of Recovery Act funds for these projects within its own financial and procurement systems and thought this was sufficient for meeting the Recovery Act requirement of keeping the funds separate.



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followed. ****3(d)***** also disseminated the guidance issued by the OMB and the Department of the Treasury. The IRS stated that it was using the Recovery Accountability and Transparency Board's¹⁸ checklist for awarding Recovery Act procurements. This checklist was issued in June 2009 and was designed to assist procurement personnel in ensuring the Recovery Act procurement requirements were followed. However, since it was designed for general use by Federal Government agencies, it did not contain specific instructions for ensuring Recovery Act funds would be recorded separately.

During our fieldwork, IRS management stated that they did not want to issue any written guidance until the Department of the Treasury issued an updated Acquisition Bulletin. After our fieldwork ended in February 2010, the IRS Office of Procurement provided us with the Department of the Treasury draft Acquisition Bulletin, which was intended to incorporate the informal guidance issued up to that date. The IRS Office of Procurement further stated that it would issue written guidance for awarding Recovery Act procurements once the draft Acquisition Bulletin is finalized. We did not review the draft Acquisition Bulletin because it was received after we completed our fieldwork and cannot comment on whether it will address the issues we identified.

Without written procedures and training for employees involved in Recovery Act procurements, IRS management cannot ensure that future procurements will be in compliance with the Recovery Act and other implementing guidance.

Insufficient resources were assigned to track and report procurements

In November 2009, we expressed concerns to the IRS Senior Accountable Official and the Director of Procurement related to insufficient resources allocated to the oversight of Recovery Act procurements. Specifically, ****3(d)***** assigned a new collateral duty¹⁹ of providing oversight to Recovery Act procurements. For this new responsibility, in addition to the primary task of ensuring procurement personnel understood the Recovery Act procurement requirements, ****3(d)*****:

- Briefed the IRS Senior Accountable Official and the Director of Procurement whenever issues arose that required their attention.
- Compiled information weekly to track the dollar amount and use of Recovery Act funds, which were subsequently reported to the Department of the Treasury.

¹⁸ The Recovery Accountability and Transparency Board was created by the Recovery Act to provide transparency in relation to the use of Recovery Act-related funds and to prevent and detect fraud, waste, and mismanagement. The Board is comprised of a Chairperson and 12 Inspectors General from various Federal agencies. The Board issues quarterly and annual reports to the President and Congress.

¹⁹ Collateral duties are official duties and responsibilities assigned to an employee in addition to the primary duties of the employee's position.



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- Obtained Department of the Treasury approvals for IRS Recovery Act planned procurements.
- Disseminated guidance from the OMB and the Department of the Treasury procurement staff.
- Addressed questions from staff and external stakeholders.²⁰
- Provided informal training sessions to procurement staff regarding OMB implementing guidance.

Although ****3(d)***** was working proactively to implement Recovery Act procurement requirements, the oversight needed to stay current with these additional duties required more time than what was feasible as a collateral duty assignment. In addition, because procurement personnel did not always notify ****3(d)***** of all planned Recovery Act procurements, one of the sampled procurements was not properly tracked. Another concern was the lack of a backup to ****3(d)*****. The IRS assigned an additional employee in late October 2009 to assist ****3(d)***** However, we do not know whether this will address the IRS' need for additional resources to provide effective oversight. The Office of Procurement may still be at risk of having insufficient resources for this critical responsibility, particularly considering the lack of written procedures.

Recommendation

Recommendation 1: The Deputy Commissioner for Operations Support and the Deputy Commissioner for Services and Enforcement should strengthen controls in the following areas:

- Once the Department of the Treasury issues the revised Acquisition Bulletin, the IRS should develop and implement written procedures for IRS employees involved in the Recovery Act procurement process, including procedures to prevent commingling of funds, to ensure future procurements are processed in compliance with Recovery Act requirements and implementing guidance.
- Provide training to both program office and procurement personnel on the new IRS Recovery Act procurement procedures.
- Reevaluate the resources assigned to tracking and reporting IRS Recovery Act procurements to ensure adequate coverage and backup.

Management's Response: The IRS agreed with this recommendation. The Office of Procurement has added additional staff to provide adequate coverage and backup, and

²⁰ External stakeholders may consist of anyone outside of the IRS.



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will periodically assess staffing assignments to ensure continued coverage for Recovery Act requirements. The Office of Procurement also plans to take the following actions:

- Issue a memorandum to outline IRS and Department of the Treasury processes once the revised Acquisition Bulletin has been issued by the Department of the Treasury.
- Once the memorandum is issued, the Office of Procurement Policy will meet with each of the operating divisions, as well as program office personnel, to discuss the policy and address questions regarding its implementation. One-on-one training will continue to be available for all acquisition personnel with Recovery Act requirements.

Use of Recovery Act Funds Are Reported to the Department of the Treasury

The IRS reports weekly to the Department of the Treasury the status of how the \$203 million in Recovery Act funds is being obligated and spent by State. This includes the individual procurements approved for Recovery Act funds and amounts spent on administrative costs. The Department of the Treasury includes the IRS information when it posts Treasury-wide use of its \$7.8 billion in Recovery Act funds on Recovery.gov. Figure 1 shows the Department of the Treasury’s reporting of Recovery Act funds paid out as of February 19, 2010. However, Figure 1’s information does not enable the public to see how Recovery Act funds are used by IRS contract recipients because they are not required to report this information on Recovery.gov.

Figure 1: Department of the Treasury Recovery Act Funds Paid Out

Agency: Department of the Treasury

Report Date: 02/19/2010

Available Amount	Paid Out Amount
\$7,810,803,589	\$2,983,249,383

Source: Recovery.gov for the Department of the Treasury. Data were obtained from Federal Agency Financial and Activity Reports.



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Appendix I

Detailed Objective, Scope, and Methodology

Our overall objective was to determine the IRS' readiness to implement the requirements of the Recovery Act¹ in planning, awarding, and reporting Recovery Act-funded procurements. To accomplish this objective, we:

- I. Reviewed the guidance that has been issued for planning, awarding, and reporting procurements using Recovery Act funds.
 - A. Obtained and reviewed all guidance issued by the OMB² pertaining to procuring goods and services using Recovery Act funds.
 - B. Obtained and reviewed all Department of the Treasury guidance pertaining to procuring goods and services using Recovery Act funds.
 - C. Obtained and reviewed all guidance issued by the OMB pertaining to the recipient reporting of Recovery Act funds by prime and subcontractors.
 - D. Obtained and reviewed the Recovery Act pertaining to procuring goods and services using Recovery Act funds.
 - E. Obtained and reviewed the Treasury Inspector General for Tax Administration report issued on the 2009 Filing Season.³
- II. Determined whether the IRS has policies, procedures, and controls in place to ensure it will be able to implement the Recovery Act requirements for planning, awarding, and reporting procurements made using Recovery Act funds.
 - A. Interviewed procurement personnel as to the internal policies, processes, and procedures they are developing and using to plan, award, and report Recovery Act procurements to ensure they will meet the Recovery Act requirements.
 - B. Interviewed procurement personnel to determine how they will ensure that Recovery Act requirements and updates are distributed to IRS program office personnel involved with the Recovery Act procurements.

¹ Pub. L. No. 111-5, 123 Stat. 115 (2009).

² The OMB has the primary responsibility for developing Government-wide rules and procedures to ensure that funds are awarded and distributed in a prompt and fair manner; uses of funds are transparent to the public; and steps are taken to mitigate fraud, waste, and abuse.

³ *The 2009 Filing Season Was Successful Despite Significant Challenges Presented by the Passage of New Tax Legislation* (Reference Number 2009-40-142, dated September 21, 2009).



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- C. Obtained the Recovery Act Funding Notification Report dated August 21, 2009, and the IRS Procurement Plan dated August 20, 2009, which contained 32 planned and awarded procurements. We obtained the IRS Procurement Plan dated June 19, 2009, that we used for our planning. This list contained 34 planned and awarded procurements.
- D. Selected a judgmental sample of 9 procurements from the August 20, 2009, list of 32 procurements and 1 procurement from the June 19, 2009, list of 34 procurements for a total of 10 procurements,⁴ and interviewed the procurement and business unit personnel involved with those procurements, including Contracting Officers and the requestors, to ascertain: their understanding of the Recovery Act requirements and internal procedures; how they ensured the requirements were met; and what, if any, corrective actions have been taken. We also interviewed IRS personnel regarding the interpretation from the Office of Federal Procurement Policy on recipient reporting.
- E. Interviewed the IRS Recovery Act Senior Accountable Official⁵ and the Director, Office of Procurement, on their roles in regards to Recovery Act procurements.
- F. Followed up with the Department of the Treasury in regards to written procedures issued to the bureaus.
- G. Obtained the IRS February 19, 2010, Recovery Act Financial Activity Report to determine the amount of Recovery Act funds paid out for IRS procurements. We also obtained the Department of the Treasury Recovery Act Funds Paid Out that was posted to Recovery.gov⁶ as of February 19, 2010.
- H. Summarized the IRS' readiness to implement the Recovery Act reporting requirements based on interviews with procurement and business unit personnel and reviews of documentation provided for the requirements that were not met.

Internal controls methodology

Internal controls relate to management's plans, methods, and procedures used to meet their mission, goals, and objectives. Internal controls include the processes and procedures for planning, organizing, directing, and controlling program operations. They include the systems for measuring, reporting, and monitoring program performance. We determined the following internal controls were relevant to our audit objective: policies, procedures, and practices for

⁴ We selected a judgmental sample of procurements because we did not intend to project the results across the population and we wanted to ensure that procurements in all stages of the award process were included in our review.

⁵ The Recovery Act Senior Accountable Official is the individual with responsibility and authority to coordinate across agency bureaus, program offices, and programs.

⁶ The Recovery Act required the creation of a web site to report data related to Recovery Act spending. Recovery.gov was established as the United States Government's official Recovery Act web site.



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planning, awarding, and reporting Recovery Act funded procurements issued by the program offices within the Modernization and Information Technology Services organization, the Wage and Investment Division, and the Office of Procurement. We evaluated these controls by interviewing program office and procurement personnel and reviewing contract files.



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Appendix II

Major Contributors to This Report

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Appendix III

Report Distribution List

Commissioner C
Office of the Commissioner – Attn: Chief of Staff C
Chief, Agency-Wide Shared Services OS:A
Chief Technology Officer OS:CTO
Commissioner, Small Business/Self-Employed Division SE:S
Commissioner, Wage and Investment Division SE:W
Director, Procurement OS:A:P
Chief Counsel CC
National Taxpayer Advocate TA
Director, Office of Legislative Affairs CL:LA
Director, Office of Program Evaluation and Risk Analysis RAS:O
Office of Internal Control OS:CFO:CPIC:IC
Audit Liaisons:
 Chief, Agency-Wide Shared Services OS:A
 Chief Technology Officer OS:CTO
 Commissioner, Small Business/Self-Employed Division SE:S
 Commissioner, Wage and Investment Division SE:W
 Director, Procurement OS:A:P



*Additional Actions Are Needed to Ensure Readiness to
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Appendix IV

Outcome Measure

This appendix presents detailed information on the measurable impact that our recommended corrective action will have on tax administration. This benefit will be incorporated into our Semiannual Report to Congress.

Type and Value of Outcome Measure:

- Inefficient Use of Resources – Actual; \$385,421 in annual appropriated funds (see page 3).

Methodology Used to Measure the Reported Benefit:

The IRS decided not to use Recovery Act¹ funds for 6 of the 10 procurements we reviewed where the procurements were awarded before Recovery Act funds were available. The following procurements were not converted to Recovery Act funds:

- One procurement valued at \$210,000.
- Four procurements were consolidated into one procurement valued at \$165,000.
- One procurement valued at \$10,421.

The IRS advised us that the labor-intensive administrative burden outweighed the benefits of using Recovery Act funds and that it decided not to modify the procurements to bring them into compliance with the Recovery Act procurement requirements. However, this meant that the \$385,421 for these 6 procurements was not available for other IRS mission-critical needs, such as improving taxpayer service or addressing the tax gap.

¹ Pub. L. No. 111-5, 123 Stat. 115 (2009).



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Appendix V

Recovery Act Contract Award Requirements

For Recovery Act¹ **contract** awards, agencies must:²

- To the maximum extent practicable, award contracts using Recovery Act funds as fixed-price contracts (see Federal Acquisition Regulation (FAR)³ Subpart 16.2) using competitive procedures.
- Provide maximum practicable opportunities for small businesses to compete for agency contracts and to participate as subcontractors in contracts awarded by agencies.
- Publish presolicitation and award notices of orders under task and delivery order contracts on the FedBizOpps system,⁴ in addition to the FAR Part 5 requirements for presolicitation and award notices.
- Include special formatting for presolicitation and award notices in the FedBizOpps system and award reporting in the Federal Procurement Data System (FPDS)⁵ to distinguish Recovery Act actions.
 - All presolicitation notices and award announcements must include the word “Recovery” as the first word in the Title field in the FedBizOpps system, preceding the actual title.
 - Presolicitation notices for delivery and task orders must also include the following statement in the Description field, preceding the actual description:

THIS NOTICE IS PROVIDED FOR INFORMATION PURPOSES ONLY. THIS OPPORTUNITY IS AVAILABLE ONLY TO CONTRACTORS UNDER (contracting officer insert program name).

¹ Pub. L. No. 111-5, 123 Stat. 115 (2009).

² The source of all requirements listed is the OMB Initial Implementing Guidance for the American Recovery and Reinvestment Act of 2009, dated February 18, 2009. The last requirement listed is defined in Section 4 of the Guidance. All other requirements listed are defined in Section 6.

³ 48 C.F.R. ch. 1 (2009). The FAR is established for the codification and publication of uniform policies and procedures for acquisitions by all Executive Branch agencies.

⁴ The FedBizOpps system is a single Government-wide point of entry for Federal Government procurement opportunities exceeding \$25,000. Government buyers are able to publicize their business opportunities by posting information directly to the FedBizOpps system via the Internet. Through this system, commercial vendors seeking Federal markets for their products and services can search, monitor, and retrieve opportunities solicited by the entire Federal contracting community.

⁵ The FPDS provides a comprehensive web-based tool for agencies to report contract actions.



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- When entering data in the FPDS on any action (including modifications) funded by the Recovery Act, agencies must enter the Treasury Account Symbol in the Description of Requirement field.
- Include terms and conditions in contract documents necessary for effective implementation of Recovery Act data collection and accountability requirements.
- Provide a summary of the contract or order (or modification to an existing contract or order), including a description of the required products and services, which will be made available publicly and linked to the Recovery.gov⁶ web site for each Government contract or order (or modification to an existing contract or order) exceeding \$500,000.
- Post a summary of any contract or order (or modification to an existing contract or order), including a description of the required products and services, in a special section of the Recovery.gov web site, unless the contract or order is both fixed-price and competitively awarded.
- Place special emphasis on responsibility determinations and preaward surveys. The award of a contract based solely on lowest evaluated price can produce a false economy, increasing performance, cost, and schedule risk. FAR Subpart 9.103 states that a prospective contractor must affirmatively demonstrate its responsibility, including, when necessary, the responsibility of its proposed subcontractors.
- Use authorized acquisition flexibilities as appropriate to avoid unnecessary delays in awarding contracts with Recovery Act funds.
- Provide for appropriate oversight of contracts to ensure outcomes that are consistent with and measurable against agency plans and goals under the Recovery Act. It is critical that agencies evaluate their workforce needs so that they are able to appoint qualified Contracting Officers, Contracting Officer Technical Representatives, and Program Managers with certification levels appropriate to the complexity of Recovery Act projects.
- Do not commingle Recovery Act funds with other funds in apportionment requests they prepare for the OMB. Agencies must separately track apportionments, allotments, obligations, and expenditures related to Recovery Act funding. In some cases, agencies may need to use Recovery Act funds in conjunction with other funds to complete projects. They may do so, but must separately track and report the use of Recovery Act funds for these projects.

⁶ The Recovery Act required the creation of a web site to report data related to Recovery Act spending. Recovery.gov was established as the United States Government's official Recovery Act web site.



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Appendix VI

Recovery Act Recipient Reporting Requirements

The Recovery Act¹ included requirements for some recipients of Recovery Act funds to report on the use of those funds on the Recovery.gov² web site to show the public how the funds are being spent. The IRS' recipients are not required to report on Recovery.gov because the June 2009 OMB guidance states that the recipient reporting requirement does not apply to recipients receiving funds through entitlements or tax programs to individuals, which would include the IRS. We are providing this information to inform readers of the type of information that will not be publicly posted on Recovery.gov for the \$31.9 million paid out as of February 19, 2010, in IRS Recovery Act procurements.

The recipient reports are required to include the following detailed information no later than the tenth day after the end of each calendar quarter:

- Total amount of funds received and, of that, the amount spent on projects and activities.
- A list of those projects and activities funded by name, to include:
 - Description of the project or activity.
 - Evaluation of the completion status of the project or activity.
 - Estimates on jobs created or retained.
- Details on subawards and other payments.
- Names and total compensation of each of the five most highly compensated officers of the contractor for the calendar year in which the contract is awarded.

¹ Pub. L. No. 111-5, 123 Stat. 115 (2009).

² The Recovery Act required the creation of a web site to report data related to Recovery Act spending. Recovery.gov was established as the United States Government's official Recovery Act web site.



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Appendix VII

Management's Response to the Draft Report



CHIEF
AGENCY-WIDE
SHARED SERVICES

DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, D.C. 20224

RECEIVED
JUN - 4 2010
BY: *DA*

June 4, 2010

MEMORANDUM FOR MICHAEL R. PHILLIPS
DEPUTY INSPECTOR GENERAL FOR AUDIT

FROM: David A. Grant *David A. Grant*
Chief, Agency-Wide Shared Services

SUBJECT: Draft Audit Report – Additional Actions Are Needed to Ensure
Readiness to Comply With the American Recovery and
Reinvestment Act of 2009 Procurement Requirements
(Audit #200910124)

Thank you for the opportunity to respond to the subject audit report. The audit was conducted to determine the Internal Revenue Service's (IRS) readiness to implement the requirements of the American Recovery and Reinvestment Act of 2009 (Recovery Act) in planning, awarding, and reporting Recovery Act funded procurements. Our response is attached.

The audit review states that, while the IRS has taken some proactive steps before the Recovery Act was enacted, and continues to refine efforts to plan, award and report Recovery Act procurements, we still do not have the necessary controls to ensure future procurements will comply with Recovery Act requirements and cites the following examples: The IRS has not developed written procedures regarding Recovery Act procurement requirements; provided formal training for those procuring goods and services; and has not dedicated sufficient resources to track and report Recovery Act procurements.

We agree written guidance is needed for IRS employees involved in the Recovery Act procurement process. Once the Department of the Treasury issues a revised acquisition bulletin, guidance will be issued and presented to operational divisions for discussion and questions. We also agree that adequate resources are essential to this effort. We have increased our staff to ensure we are providing full coverage of required activities and we will continue to assess staffing assignments throughout the life of the program.



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2

The review also discusses commingling of Recovery Act funds with annually appropriated funds on early contract transactions. We would like to offer the following comments: Procurement understood the requirement not to commingle funds and ensures that there is separation of funding between Recovery Act and other appropriated funds. The appearance of commingling occurred due to systematic reporting limitations imposed by GSA's Federal Procurement Data System-Next Generation (FPDS-NG). FPDS-NG does not allocate separate funding lines but reports aggregate obligations which appear to commingle funds. IRS had to begin work on the tax programming changes to meet filing season deadlines which required the use of annual appropriations prior to the apportionment of Recovery Act funding to Treasury and its bureaus. Due to the unique nature of this activity and strict deadlines, it was not anticipated by OMB or Treasury that such replacement of funds would require separate transactions on separate modifications for transparency purposes. Once the limitations were identified, Treasury imposed new requirements for separate transactions on separate modifications when using Recovery Act funds.

We appreciate your continued support and the valuable assistance and guidance your team provides. If you have any questions, please contact me or a member of your staff may contact Fred W. Martin, Director, Procurement, at (202) 283-1200. For matters concerning audit follow-up, please contact Larry Pugh, Office of Strategy and Finance, Agency-Wide Shared Services, at (202) 622-4541.

Attachment



*Additional Actions Are Needed to Ensure Readiness to
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3

RECOMMENDATION #1: The Deputy Commissioner for Operations Support and the Deputy Commissioner for Services and Enforcement should strengthen controls in the following areas:

- Once the Department of the Treasury issues the revised acquisition bulletin, the IRS should develop and implement written procedures for IRS employees involved in the Recovery Act procurement process, including procedures to prevent commingling of funds, to ensure future procurements are processed in compliance with the Recovery Act requirements and implementing guidance.
- Provide training to both program office and procurement personnel on the new IRS Recovery Act procurement procedures.
- Reevaluate the resources assigned to tracking and reporting IRS Recovery Act procurements to ensure adequate coverage and backup.

CORRECTIVE ACTION TO RECOMMENDATION: We concur with this recommendation and provide the following actions:

- Procurement will issue a Policy and Procedure Memorandum (P&P) to outline IRS and Treasury processes once the revised Acquisition Bulletin has been issued by the Treasury Department.
- Once the P&P is issued, the Office of Procurement Policy will meet with each of the operating divisions, as well as program personnel, to discuss the policy and address questions regarding its implementation. One-on-one training will continue to be available for all acquisition personnel with Recovery Act requirements.
- The Office of Procurement has added additional staff to provide adequate coverage and backup and will periodically assess staffing assignments to ensure continued coverage for Recovery Act requirements.

IMPLEMENTATION DATE: December 1, 2010

RESPONSIBLE OFFICIAL: Director of Procurement

CORRECTIVE ACTION MONITORING PLAN: Procurement will enter accepted corrective actions into the Joint Audit Management Enterprise System (JAMES). These corrective actions are monitored on a monthly basis until completion.