



RECOVERY ACT

*Concerns About Contracting Officer's
Technical Representatives That Are
Relevant to the American Recovery and
Reinvestment Act of 2009 Procurements*

July 23, 2010

Reference Number: 2010-11-087

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.



HIGHLIGHTS



CONCERNS ABOUT CONTRACTING OFFICER'S TECHNICAL REPRESENTATIVES THAT ARE RELEVANT TO THE AMERICAN RECOVERY AND REINVESTMENT ACT OF 2009 PROCUREMENTS

Highlights

Final Report issued on July 23, 2010

Highlights of Reference Number: 2010-11-087 to the Internal Revenue Service Deputy Commissioner for Operations Support.

IMPACT ON TAXPAYERS

The Contracting Officer's Technical Representatives (COTR) workforce is a key internal control to ensure that contractors are meeting the Federal Government's interest in terms of providing deliverables that are of high quality, complete, timely, and cost effective. TIGTA identified weaknesses in COTR contract administration, reported in a prior TIGTA audit report, that may present a risk to American Recovery and Reinvestment Act of 2009 (Recovery Act) procurements. If the IRS' contract administration is not operating effectively, the IRS cannot ensure that payments are made only to contractors who perform in accordance with contract terms and conditions and that Recovery Act funds are not being misspent.

WHY TIGTA DID THE AUDIT

The Office of Management and Budget supplemental guidance for the Recovery Act requires that Federal agencies have sufficient qualified staff available for monitoring performance to mitigate risks when other than firm fixed-price contract types are proposed. Another guideline requires Federal agencies to evaluate acquisition workforce needs to appoint qualified personnel with certification levels appropriate to the complexity of Recovery Act projects. The overall objective of this audit was to report observations identified regarding the contract administration issues cited in a prior TIGTA report that present a risk for procurements funded under the Recovery Act.

WHAT TIGTA FOUND

IRS procurements funded by the Recovery Act may be at risk of not being performed in accordance with the terms and conditions of the contracts and within the cost and schedule requirements. Our prior audit concluded that COTRs were not performing the day-to-day contract oversight or the actual physical receipt and acceptance of contract deliverables for the procurements to which they were assigned. Instead, these COTRs limited their involvement to administrative functions and relied on program office employees to determine whether the goods or services provided by the contractor were acceptable. However, these program office employees were never formally delegated COTR authority by the responsible Contracting Officer and had not received training to perform their contract administration roles.

While IRS management has implemented some of the corrective actions they planned as a result of our findings, a number of those corrective actions are not scheduled to be implemented until December 2010. Until these corrective actions are implemented to strengthen contract administration, IRS Recovery Act procurements are at risk that goods and services received are not in compliance with the terms and conditions of the contracts or within the cost and schedule requirements.

WHAT TIGTA RECOMMENDED

TIGTA made no recommendations in this report. However, key IRS management officials reviewed it prior to issuance and agreed with the facts and conclusions presented.



TREASURY INSPECTOR GENERAL
FOR TAX ADMINISTRATION

DEPARTMENT OF THE TREASURY

WASHINGTON, D.C. 20220

July 23, 2010

MEMORANDUM FOR DEPUTY COMMISSIONER FOR OPERATIONS SUPPORT

Michael R. Phillips

FROM:

Michael R. Phillips
Deputy Inspector General for Audit

SUBJECT:

Final Audit Report – Concerns About Contracting Officer’s Technical Representatives That Are Relevant to the American Recovery and Reinvestment Act of 2009 Procurements (Audit # 201010115)

This report presents the observations identified regarding the contract administration issues cited in a prior report¹ that present a risk for procurements funded under the American Recovery and Reinvestment Act of 2009 (Recovery Act).² This report is consistent with the Office of Management and Budget guidance³ to identify high-risk programs and create quicker turnaround reporting. This review was conducted as part of the Treasury Inspector General for Tax Administration’s Fiscal Year 2010 Annual Audit Plan and addresses the major management challenge of Tax Law Changes for Recovery Act Legislation.

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 Internal Revenue Service (IRS) programs. This audit was conducted using Recovery Act funds.

We did not make any recommendations in this report. However, key IRS management officials reviewed it prior to issuance and agreed with the facts and conclusions presented.

¹ *Controls Over the Contracting Officer’s Technical Representatives Workforce Were Ineffective, Resulting in Significant Risks to the Government* (Reference Number 2009-10-139, dated September 30, 2009).

² Pub. L. No. 111-5, 123 Stat. 115 (2009).

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



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Copies of this report are also being sent to the IRS managers affected by the report. 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.



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Abbreviations

CO	Contracting Officer
COTR	Contracting Officer's Technical Representative
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. The Internal Revenue Service (IRS) is charged with administrating tax law changes² contained in the Recovery Act. In April 2009, the IRS received its appropriation of \$203 million in Recovery Act funds³ to implement necessary changes as a result of Recovery Act provisions. These Recovery Act procurements will be used for reprogramming of IRS computer systems and for updating related tax forms, publications, and customer services to assist taxpayers. As of April 2010, the IRS has initiated or is in the process of initiating 26 of the 40 planned procurement actions on Recovery Act program initiatives with a total contract value of \$81.9 million, of which approximately \$78.5 million has been obligated. As of April 29, 2010, total payments of \$39.2 million have been dispersed to contractors for 22 of the 26 procurement actions.

The Federal Acquisition Regulations is the IRS' primary guidance for processing and managing contract activities, including those related to the Recovery Act. The Regulations stipulate that only a Contracting Officer (CO) with the proper warrant authority can legally bind, amend, or terminate a contract on behalf of the Federal Government. The CO may delegate authority to a Contracting Officer's Technical Representative (COTR) or equivalent designated official⁴ to administer the technical aspects of contracts after award. The CO is responsible for nominating and selecting the appropriately trained and qualified COTR to be assigned to any contract that exceeds \$100,000 (the simplified acquisition threshold),⁵ and the CO should ensure that the COTR receives and signs a copy of the appointment letter that reflects the scope of his or her duties. The COTR's primary role is to provide technical direction, monitor contract performance, and maintain an arms-length relationship with the contractor, ensuring that the Government pays only for the services, materials, and travel authorized and delivered under the

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

² 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.

³ This appropriation amount included \$80 million for the Health Coverage Tax Credit program and \$123 million for supporting tax provision changes cited in the Recovery Act.

⁴ The Contracting Officer can appoint COTRs or equivalent personnel, including alternate, sub-COTRs, and Government Task Managers to serve the post-award contract administration role. These participants must also have official designation letters.

⁵ Purchases of supplies or services less than \$100,000 use simplified procedures described in Federal Acquisition Regulations Part 13. Simplified acquisitions include purchase card buys, purchase orders, electronic purchasing, task and delivery orders against established contracts, imprest fund buys, and blanket purchase agreements.



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contract. COTRs are not authorized to delegate any of their procurement responsibilities to other IRS personnel.

The Office of Management and Budget (OMB)⁶ issued several supplemental guidance documents⁷ that outlined steps for implementing the Recovery Act and also clarified the new requirements for processing procurements. The OMB's initial implementing guidance issued on February 18, 2009, included the following requirements:

- Agencies should have sufficient qualified staff available for monitoring performance to mitigate risks when other than fixed-price contract types are proposed and should evaluate workforce needs in order to appoint qualified COs, COTRs, and Program Managers with certification levels appropriate to the complexity of Recovery Act projects.
- Agencies should determine whether final action has been taken regarding weaknesses or deficiencies disclosed by prior audits and investigations in program areas under which Recovery Act funds are authorized. If final action has not been completed, agencies should: (1) expedite such action to preclude the continuance of such weaknesses or deficiencies in the administration of Recovery Act funded programs, or (2) provide an explanation of why such corrective actions cannot or should not be taken in the administration of Recovery Act funded programs.

Prior to the passage of the Recovery Act, we initiated an audit⁸ concerning whether the IRS COTRs were properly managed and functioning in a manner, as directed by the responsible CO and applicable guidance, which would ensure that goods and services were received in accordance with the terms and conditions of the contracts and within the cost and schedule requirements.

As that audit came to its conclusion, we noted that our findings may also relate to Recovery Act procurements. Consistent with OMB guidance⁹ to identify high-risk programs and create quicker turnaround reporting, this report provides observations concerning the ineffective

⁶ The OMB has the primary responsibility for developing Government-wide rules and procedures to ensure 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.

⁷ The OMB issued implementing guidance on February 18, 2009; April 3, 2009; June 22, 2009; and December 18, 2009.

⁸ *Controls Over the Contracting Officer's Technical Representatives Workforce Were Ineffective, Resulting in Significant Risks to the Government* (Reference Number 2009-10-139, dated September 30, 2009).

⁹ *Updated Implementing Guidance for the American Recovery and Reinvestment Act of 2009* (Memorandum Number M-09-15, dated April 3, 2009).



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performance of COTR contract administration¹⁰ responsibilities that were reported in our previous audit that may have implications for the IRS in ensuring Recovery Act procurements are delivered in compliance with the legislation and the Federal Acquisition Regulations. While we identified other concerns in our prior audit report, in this report we are highlighting only the observations that are directly tied to the new requirements for Recovery Act procurements.

This review was performed at the IRS Office of Procurement in Oxon Hill, Maryland, during the period April through May 2010. Because this report includes observations based on a prior report and limited additional audit work to determine what progress the IRS made on its proposed corrective actions to the prior report's recommendations, this audit was not conducted in accordance with generally accepted government auditing standards and was significantly reduced in scope. We also did not perform detailed testing of Recovery Act invoices, the COTR procurement monitoring duties, or compliance with OMB implementing guidance. We will cover these areas in other ongoing or planned audits.¹¹ Under the Recovery Act, Inspectors General are expected to be proactive and focus on prevention. We believe this report is responsive to this intent. Detailed information on our audit objective, scope, and methodology is presented in Appendix I. Major contributors to the report are listed in Appendix II.

¹⁰ Contract administration involves those activities performed by Government officials after a contract has been awarded to determine how well the Government and the contractor performed to meet the requirements of the contract. It encompasses all dealings between the Government and the contractor from the time the contract is awarded until the work has been completed and accepted or the contract terminated, payment has been made, and disputes have been resolved. As such, contract administration constitutes that primary part of the procurement process that assures the Government gets what it paid for.

¹¹ The audits include the *Post-Award Compliance of Procurement Actions With the American Recovery and Reinvestment Act of 2009* and the *Incurred Cost Review of Recovery Act Funded Procurements*.



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Results of Review

Recovery Act Procurements May Be at Risk Due to Unimplemented Corrective Actions Regarding Contract Administration

As a result of our prior audit, we reported that IRS contract administration was ineffective to ensure that the Federal Government was receiving the appropriate goods and services. While IRS management has implemented some of the corrective actions they planned as a result of our findings, a number of those corrective actions are not scheduled to be implemented until December 2010. Until the IRS addresses these unresolved issues, IRS Recovery Act procurements totaling \$78.5 million will continue to be at risk that goods and services received are not in accordance with the terms and conditions of the contracts or within the cost and schedule requirements.

We identified the following COTR contract administration concerns from our prior audit report that may still present a risk to IRS Recovery Act procurements.

- COTRs were not always performing all of their oversight duties, including inspections¹² and physical receipt¹³ and acceptance¹⁴ of deliverables. These oversight tasks are important to determining whether the deliverables are in compliance with contract requirements before the Government pays the contractor. Our prior audit showed that many COTRs relied upon program office employees to determine whether goods and services provided by the contractor were acceptable. However, these program office employees were not formally authorized¹⁵ or properly trained and certified in contract administration activities to perform these tasks and responsibilities. When unauthorized personnel inspect deliverables, make recommendations regarding contract payments, or instruct the vendor to perform work outside the scope of the contract, there is a risk that unauthorized commitments can occur or work may not be completed in accordance with

¹² An inspection is the process most often used to determine acceptability.

¹³ Receipt is defined as the documentation of acknowledgement that supplies were received or services were rendered; this documentation should be retained in the COTR contract file.

¹⁴ Acceptance is the act of an authorized representative of the Government by which the Government assumes ownership of supplies or approves services rendered. By accepting the supplies or services, the COTR, Alternate COTR, or Government Representative acknowledges that the supplies or services conform to contract requirements.

¹⁵ While Internal Revenue Service Acquisition Procedure 1001.670-2 Appointment states that COs shall consider alternatives to COTRs such as receiving officials or points of contact, depending on the type of contract or deliverables (for procurements with little complexity or post-award contract management requirements like receipt of office supplies), all contract actions in our audit sample had a formally delegated COTR associated with them due to the contracts' complexity and the experience and commitment of personnel needed to manage them effectively.



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contractual requirements. When work is performed as a result of an unauthorized commitment, the vendor cannot be paid for the work until a legitimate contract is established through “ratification.”¹⁶

- COTRs were not requesting and retaining sufficient receipts to verify contractors’ invoiced labor expenses submitted for payment. When contracts involve labor hour charges, the COTRs should perform some type of periodic invoice review to verify that the contractors’ personnel time cards, sign-in-sheets, and overtime records support the hours and labor rates charges to help assess the reasonableness of the direct labor costs. In addition, when the contracts require specific qualifications or experience levels for individual contract employees, the labor checks should include verification of those qualifications. When the COTRs do not retain the appropriate receipts to verify that contractor invoice charges were accurately and properly charged to the Government in line with contract requirements and/or payment schedules, the Government cannot determine if the contractors provided supplies or services that satisfy the Government needs at the price and other contract requirements agreed upon.

To address these concerns, we recommended that the IRS:

- Establish and implement cross-cutting guidance that effectively ensures that the IRS provides appropriate contract monitoring to reduce acquisition risks.
- Identify all IRS employees’ agency-wide performing COTR-related duties and ensure that they are formally delegated authority by the responsible CO, appropriately trained, and certified in accordance with Federal acquisition requirements.
- Reevaluate the current approach and expand the reviews of COTR contract files to ensure reviews are routinely performed to substantiate that relevant, accurate, and complete documentation is being received, verified, and retained to support the contractors’ billed expenses.

In response to the concerns and recommendations we raised in our prior report, IRS management has taken some of the corrective actions they planned. We determined that the IRS has:

- Issued a Service-wide memorandum dated February 25, 2010, on the importance of the COTR’s role, contract administration, and procurement monitoring.
- Revised a policy and procedures memorandum dated January 1, 2010, to include a section for COTR communication documentation in the File Content Checklists.

¹⁶ In a contract ratification action, the ratifying official reviews the facts pertaining to the unauthorized commitment and determines whether to make the action whole and legally binding after the fact.



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- Revised a second policy and procedures memorandum dated January 1, 2010, to include requirements for all COs to meet with COTRs upon appointment and on a periodic basis following appointment, and to review COTR administrative files annually.

Our review did not assess the effectiveness of these corrective actions, so we are not commenting on whether they adequately addressed the reported findings. In addition, these corrective actions did not address all of the concerns and recommendations we made in our prior report. The IRS plans to implement additional corrective actions by December 2010, including the following actions:

- Update internal guidance to include a requirement for a standard COTR contract administration file checklist.
- Provide receiving officials and COTRs with computer-based training on receipt and acceptance duties.
- Develop and provide training for CO review of COTR contract files.
- Develop and provide training for the managers of COTRs and receiving officials on a manager's oversight requirements and responsibilities.
- Modify the COTR's letter of appointment to include requirements for maintaining COTR contract files in accordance with the standard checklist, responsibilities of supervisors, and a signature line for supervisors to acknowledge their understanding of their responsibilities and oversight requirements.



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Appendix I

Detailed Objective, Scope, and Methodology

The overall objective of this review was to report observations identified regarding the contract administration¹ issues cited in a prior report² that present a risk for procurements funded under the American Recovery and Reinvestment Act of 2009 (Recovery Act).³ To accomplish this objective, we:

- I. Reviewed the Recovery Act and appropriate implementing guidance to identify all provisions related to contract administration and COTR responsibilities.
- II. Reviewed observations in our prior audit report to identify internal control weaknesses and poor business practices relative to contract administration, and specifically to COTR duties, that are applicable for procurements funded under the Recovery Act.
- III. Determined whether the IRS implemented any new procedures that could potentially strengthen internal controls and mitigate contract performance risks resulting from poor contract administration, specifically COTR duties, since March 2009 (the conclusion of audit testing for our prior audit mentioned in Step II). This includes corrective actions taken as a result of our recommendations in our prior audit report.

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 did not assess internal controls because doing so was not applicable within the context of our objective.

¹ Contract administration involves those activities performed by Government officials after a contract has been awarded to determine how well the Government and the contractor performed to meet the requirements of the contract. It encompasses all dealings between the Government and the contractor from the time the contract is awarded until the work has been completed and accepted or the contract terminated, payment has been made, and disputes have been resolved. As such, contract administration constitutes that primary part of the procurement process that assures the Government gets what it paid for.

² *Controls Over the Contracting Officer's Technical Representatives Workforce Were Ineffective, Resulting in Significant Risks to the Government* (Reference Number 2009-10-139, dated September 30, 2009).

³ Pub. L. No. 111-5, 123 Stat. 115 (2009).



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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
Director, Procurement OS:A:P
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National Taxpayer Advocate TA
Director, Office of Legislative Affairs CL:LA
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Office of Internal Control OS:CFO:CPIC:IC
Audit Liaisons: Chief, Agency-Wide Shared Services OS:A:F
Director, Procurement OS:A:P