Smithsonian Institution

Office of the Inspector General

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cc Alison McNally, Under Secretary for Finance and Administration

From A. Sprightley Ryan, Inspector General

Subject Management Advisory on Reporting Recovery Act Jobs Data, Number M-10-04-1

Summary

In January 2010, companies under contract with the Smithsonian to perform work funded by the American Recovery and Reinvestment Act (Recovery Act) submitted their quarterly reports as required by the law. The reports summarized the financial activity of each company and included data on jobs created and retained. We reviewed the clauses of the Federal Acquisition Regulation (FAR) regarding jobs reporting, confirmed our understanding with the Recovery Act and Transparency Board (RATB), and concluded that the prime contractors are over-reporting the number of jobs created and retained from Recovery Act funds. Specifically, in the reports submitted to the Smithsonian for the quarters ending September 30, 2009 and December 31, 2009, prime contractors included jobs data about their own companies as well as jobs data from companies with which they entered into subcontracts. FAR clause 52 204-11, which all the federal contracts with the Smithsonian are subject to, instructs prime contractors to limit their job reports to only those created and retained by prime contractors. While reporting on jobs created and retained by both prime contractors and subcontractors is understandable given the purpose and spirit of the Recovery Act, doing so is inconsistent with the FAR and therefore overstates the number of jobs created or retained.

Background

In response to the economic crisis facing the country, Congress passed the American Recovery and Reinvestment Act of 2009. The Recovery Act had three immediate goals:

- Create new jobs as well as save existing jobs
- Spur economic activity and invest in long-term economic growth
- Create greater accountability and transparency in government spending

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The Act sought to achieve those goals by providing $288 billion in tax cuts and benefits, increasing federal funds for education, health care, and entitlement programs by $224 billion, and making $275 billion available for federal contracts, grants, and loans. It also requires recipients of Recovery Act funds to report quarterly on monies spent, the status of their projects, the number of jobs created and/or saved, and other details.

To promote accountability and transparency in the use of funds, the Recovery Act created a public website that tracks how and where Recovery Act funds are spent. Recovery.gov is operated by the RATB. The Board comprises 12 Inspectors General from various federal agencies and is charged with providing transparency in relation to the use of Recovery Act-related funds and preventing and detecting fraud, waste, and mismanagement.

The Office of Management and Budget (OMB) publishes guidance to federal entities on how they should implement the programs and activities in the Recovery Act, including guidance on recipient reporting. In December 2009, OMB issued its *Updated Guidance on the American Recovery and Reinvestment Act – Data Quality, Non-Reporting Recipients, and Reporting Job Estimates.* In it, OMB specifically instructs federal contractors to continue to comply with FAR clause 52.204-11 as it relates to reporting data on jobs created and retained. The FAR defines "jobs created" and "jobs retained," and in spelling out the definitions clearly calls for recipients to limit their application only to prime contractors. The FAR states that both definitions "cover only prime contractor positions established in the United States and outlying areas."

Smithsonian Institution

The Recovery Act provided the Smithsonian Institution with $25 million for the repair and revitalization of existing facilities. Using its Recovery Act resources, the Smithsonian undertook several revitalization projects to improve the safety and security of its visitors, staff, and collections. The projects involve repairs and improvements at the Arts and Industries Building and the National Zoological Park as well as other projects at its museums and facilities in Washington, D.C., Maryland, and Virginia. To implement the projects, the Smithsonian entered into multiple contracts with various companies, which included numerous subcontracts. Based on these contracts, prime contractors submitted 23 reports through FederalReporting.gov. For 12 of the 23 reports, prime contractors included subcontract jobs created and retained in their numbers.

Smithsonian managers routinely monitor all aspects of the projects, including guiding the prime contractors on their reporting duties under the Recovery Act. In reviewing the reports posted to FederalReporting.gov for the quarters ending September, 2009, and December, 2009 we noted that in some cases prime contractors included data on jobs created and retained for both themselves and their subcontractors. Though we did not confirm the completeness or accuracy of the information contained in the reports, we noted the following jobs data for the two quarters.

Number of Reported Jobs Created or Retained		
	Third Quarter 2009	Fourth Quarter 2009
Prime Contractors[1]	89	83
Subcontractors	39	55
Total	128	138

Under FAR Clause 52.204.-11, the recipients should have limited their jobs data to just those created and retained by the prime contractors themselves. By including data from subcontractors, we believe that the prime contractors overstated the number of jobs created and retained for both quarters.

We recognize that reporting jobs data from *all* recipients of Recovery Act funds seems to be in keeping with the expressed goals of the Act. Excluding the actual effect on jobs creation and retention from the ultimate recipient appears to run contrary to the purpose of the Recovery Act. In all likelihood, such a practice will result in understating the full effect of the Recovery Act. We also note that the OMB reporting guidance issued in December 2009 instructs federal agencies that awarded Recovery Act funds in the form of grants or loans to include jobs data from sub-recipients. Thus, the reporting guidance appears to treat subcontractors differently from grant and loan sub-recipients. So it is understandable why the prime contractors are reporting subcontractor jobs data.

Other Considerations

The adverse effect on reporting jobs data from following the subject FAR clause is a matter under discussion within the Inspector General community. Many agencies with significant Recovery Act funds earmarked for capital projects anticipate extensive use of subcontractors in the course of the projects and have expressed

[1] Some prime contractor reports did not separately identify subcontract jobs; therefore, the number of jobs reported by prime contractors may include subcontractor jobs.

concern that the true impact on jobs could be masked if they limit their reporting only to prime contractors. One federal agency noted that an entire contract, in excess of $100 million, may pass through to subcontractors, thereby creating the possibility that it will report no job creation or retention associated with that project. We also learned that other federal agencies have expressed their concern about this matter directly to Recovery Act Officials in both the Office of Management and Budget and the White House.

Conclusion

The practice of reporting jobs data from both prime contractors and their subcontractors receiving Recovery Act funds from the Smithsonian appears to violate the FAR Clause which stipulates that data on jobs created and retained should be limited to prime contractors only. Though reporting jobs data from subcontractors is understandable given the purpose of the Recovery Act, we recommend that the Smithsonian instruct its prime contractors to limit the reporting of jobs created and retained from Recovery Act funds to only prime contractors and discontinue the practice of including subcontractor jobs data.

We will forward this report to the RATB for their consideration and would encourage the Smithsonian to present their concerns directly to the Office of Management and Budget on this matter.