

VA Office of Inspector General

OFFICE OF AUDITS & EVALUATIONS



Veterans Health Administration

*American Recovery and Reinvestment Act
Oversight Advisory Report*



*Review of Efforts to Meet
Competition Requirements and
Monitor Recovery Act Awards*

September 17, 2010
10-00969-248

ACRONYMS AND ABBREVIATIONS

D&B	Dun and Bradstreet
eCMS	Electronic Contract Management System
EPLS	Excluded Parties List System
FSS	Federal Supply Schedule
FAR	Federal Acquisition Regulation
GAO	Government Accountability Office
IDIQ	Indefinite Delivery/Indefinite Quantity
IG	Inspector General
IL	Information Letter
NRM	Non-Recurring Maintenance
OALC	Office of Acquisition, Logistics, and Construction
OMB	Office of Management and Budget
Recovery Act	American Recovery and Reinvestment Act of 2009
SER	Supplier Evaluation Risk
SQR	Supplier Qualifier Report
VHA	Veterans Health Administration
VISN	Veterans Integrated Service Network

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REPORT HIGHLIGHTS: Review of VHA's Efforts to Meet Competition Requirements and Monitor Recovery Act Awards

Why We Did This Review

The American Recovery and Reinvestment Act of 2009 (Recovery Act) provided VA with about \$1 billion for non-recurring maintenance (NRM) and energy projects to correct, replace, upgrade, and modernize existing infrastructure and utility systems at VA medical centers.

This OIG review evaluated Veterans Health Administration (VHA) efforts to meet Recovery Act competition requirements and pre-award monitoring processes for NRM Recovery Act awards. This review also assessed whether NRM Recovery Act awards complied with Federal Acquisition Regulation (FAR), Office of Acquisition, Logistics, and Construction (OALC) policies, and Office of Management and Budget (OMB) and VA Recovery Act implementation guidance.

What We Found

VHA Recovery Act awards consistently met competition requirements, and Recovery Act and Veterans Integrated Service Network (VISN) contract review processes generally ensured contracting officers competed awards, evaluated prices, and assessed bids in accordance with Recovery Act guidance and FAR. However, these review processes needed strengthening to ensure contracting officers properly evaluated the prospective contractors' ability to perform required work before they awarded contracts and orders. Of the 65 reviewed awards that totaled \$87.5 million, 60 awards (92 percent) valued at \$83.1 million lacked adequate contractor

responsibility determinations to mitigate possible risks to Recovery Act funds and taxpayers' interests.

We also found that 13 Recovery Act awards lacked required Recovery Act clauses. As a result, VHA lacked assurance that NRM Recovery Act awards fully complied with FAR and OALC policy and met Recovery Act requirements intended to ensure the efficient and effective use of funds.

What We Recommended

We recommended the Under Secretary for Health improve Recovery Act contract oversight for responsibility determinations and Recovery Act clauses, and the Executive Director of the OALC develop policies and procedures on the performance of contractor responsibility determinations.

Agency Comments

The Under Secretary for Health and Executive Director of the OALC agreed with our findings and recommendations. They plan completion of the corrective actions by March 31, 2011. We consider the actions acceptable and plan to follow up on their implementation.

(original signed by:)
BELINDA J. FINN
Assistant Inspector General
for Audits and Evaluations

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INTRODUCTION

Objective

We evaluated VHA NRM Recovery Act contracts and orders to ensure the effectiveness of VHA's oversight processes and compliance with applicable requirements and accountability, efficiency, and transparency objectives.

VHA NRM Recovery Act Funding

The President and Congress provided VHA about \$1 billion in Recovery Act funding to be obligated by September 30, 2010, for NRM to correct, replace, upgrade, and modernize existing VA medical center infrastructure and utility systems. In December 2009, VHA reported that it had awarded \$264.4 million of the \$1 billion and that \$258.9 million (98.3 percent) of the awards used open competition. As of July 5, 2010, VHA reported that its Recovery Act NRM awards had increased to \$714.7 million and that its percentage of competitive awards had remained constant at 98.3 percent. On August 5, 2010, VA reported that it had obligated all \$1.8 billion of its Recovery Act funding.

NRM Recovery Act Guidance and Oversight

On February 18, 2009, OMB issued Memorandum M-09-10, the initial government-wide implementation guidance for Recovery Act programs and activities. Subsequently on March 17, 2009, OALC issued Information Letter (IL) 001AL-09-07, "Implementing Guidance for Contracting Awards under the American Recovery and Reinvestment Act of 2009," for VA Recovery Act awards.

To facilitate VA's Recovery Act contract monitoring activities, OALC adapted and upgraded the Electronic Contract Management System (eCMS). In addition, VHA officials initiated weekly and bi-weekly teleconferences with contracting officers, eCMS coordinators, and VHA managers to discuss Recovery Act procurements and other contracting issues identified while monitoring Recovery Act contract data in eCMS. The Director of the VHA Recovery Act Program reviews all solicitations for Recovery Act contracts in eCMS to identify and correct contracting issues prior to the contract's award.

General Contracting Oversight

On June 19, 2009, OALC also required the VISNs to establish an integrated contract oversight process to ensure all contracts, including Recovery Act contracts, contain appropriate documentation and comply with FAR and VA contracting policies. This process required procurements above the simplified acquisition threshold of \$100,000 to be reviewed by peers, procurements above \$100,000 but below \$5 million to be reviewed by a contract team of acquisition and legal professionals, and procurements above \$5 million to be reviewed by a contract review board.

RESULTS AND RECOMMENDATIONS

Finding 1 **NRM Recovery Act Awards Generally Met Competition Objectives and Requirements**

Our review of 65 (14 percent) of the 464 NRM Recovery Act awards shown on VHA's December 7, 2009, eCMS Recovery Act award report found that the majority of the reviewed awards used competitive award processes in accordance with Recovery Act and FAR contracting requirements. We found that contracting officers generally sought competition, evaluated numerous bids to achieve fair and reasonable prices, and used various evaluation methods to select vendors and ensure VA obtained the best value for NRM Recovery Act awards. Of the 65 reviewed awards, only 3 (5 percent) of the awards did not comply with FAR, Recovery Act, and OALC competition, evaluation, and documentation requirements. The deficiencies in these three awards issued by different VISN Consolidated Contracting Authorities appeared to be the result of local, instead of systemic, contracting problems.

Majority of NRM Awards Were Properly Competed

As of December 7, 2009, eCMS reported that VHA had 8 (1.7 percent) non-competitive and 456 (98.3 percent) competitive NRM Recovery Act awards. Our review of a judgmental sample of 65 of these awards (57 competitive awards and all 8 non-competitive awards from the eCMS report) did not identify any discrepancies in the competition information reported in eCMS for these contracts. We did not find any non-competitive awards misclassified as competitive awards on the eCMS report.

Furthermore, 6 (75 percent) of the 8 non-competitive awards had been properly justified, approved, and established and 56 (98.2 percent) of the 57 selected competitive awards had been properly competed in accordance with Recovery Act and FAR requirements. Contracting officers used OALC's Recovery Act checklist, technical evaluations, legal and technical reviews, contract board reviews, and peer reviews to help them meet these requirements. For example, one contracting officer publicized a solicitation on the Federal Business Opportunities website to promote competition, accepted and evaluated six bids, compared bids to an Independent Government Estimate, and reviewed technical factors such as the vendors' past performance, technical experience and qualifications, and staffing before awarding a Recovery Act contract.

Inadequate Justification of a Non-Competitive Contract

One sole source contract totaling \$252,347 to renovate a Quality Management office did not promote Recovery Act competition objectives because the contracting officer did not adequately justify the non-competitive contract. OALC IL001AL-09-07 issued on March 17, 2009, allows contracting officers to make non-competitive

awards in cases where only one responsible source exists, and no other supply or service can satisfy the agency's requirements. The IL also requires non-competitive awards to have fully supported and properly approved justifications.

The justification for this non-competitive contract approved by the former VISN Contract Manager stated the selected contractor was the only source available to perform this work. However, at least two other contractors had performed similar renovation work at the facility. The contracting officer stated that he selected this contractor because the contractor was already working at the facility and had a great "track record." However, we did not consider this an adequate reason to limit competition for Recovery Act funds when other contractors could perform the same work. This project did not address an emergency, such as a burst water or sewer line, where a contractor's presence on the facility's grounds and satisfactory past performance might justify the use of a sole source contract to immediately repair the rupture.

***Inadequate
Documentation of
Competition and
Evaluation
Requirements.***

Two NRM Recovery Act renovation contracts totaling about \$2.1 million lacked required FAR contract documentation, and thus lacked sufficient evidence of compliance with applicable FAR and Recovery Act competition and evaluation requirements.

First, an active sole source nursing home renovation contract valued at \$1.6 million lacked justification for the non-competitive award and documentation that the contracting officer had evaluated the contractor's proposal to ensure the Government received fair and reasonable prices and the best value. The contract also lacked a contractor responsibility determination. Our review disclosed that Dun & Bradstreet (D&B) had rated this contractor a high financial risk. We could not determine the cause for these documentation problems because the contracting officer, who has since retired, worked as a virtual employee with no direct supervision.

Second, a \$541,400 competitively awarded site preparation contract lacked documentation of the competitive bid process, a price reasonableness determination, and a contractor responsibility determination. Although the contract file contained some documentation, such as the award, Statement of Work, Certificate of Insurance, and a list of three contractor names, it lacked bid information such as the bid amounts and the contractors' supporting bid documents. The VISN Contract Manager attributed these documentation problems to the former contracting officer's inexperience and lack of familiarity with Recovery Act, FAR, and VA acquisition policies.

VHA officials did not identify the deficiencies in these three Recovery Act contracts because the awards occurred prior to the full implementation of the VHA Recovery Act Program Director's pre-award review. Moreover, two of the three contracts were awarded prior to the establishment of the VISN

integrated contract review process in June 2009, and the third contract was awarded about two months after the establishment of the requirement while the VISNs were still implementing the review process.

Conclusion

Our review results indicate that VHA is meeting Recovery Act and FAR competition objectives and requirements. Contract documentation we reviewed in eCMS indicated that contracting officers consistently sought competition for Recovery Act awards. Although the contracting deficiencies identified in 3 (5 percent) of the 65 reviewed awards did not appear to be systemic problems, VHA should note that the inadequate justification of a non-competitive award and the omission of key contracting documentation raises questions about the integrity of these specific procurements.

Recommendations

1. We recommended the Under Secretary for Health ensure, for the three contracts with identified problems, that the VISN Consolidated Contracting Authorities perform regular contractor performance monitoring and close out reviews to identify any billing or performance inconsistencies associated with the actual contract performance.

**Management
Comments and
OIG Response**

The Under Secretary for Health agreed with the finding and recommendation. The Director of the VHA Recovery Act Acquisition Program will issue guidance to VISN contracting staff to ensure the completion of regular performance checks and the immediate documentation of any identified problems for these three contracts. We will follow up on the implementation of the planned actions.

Finding 2

**Contractor Evaluations for NRM Recovery Act Awards
Needed Strengthening**

VHA Recovery Act oversight processes needed strengthening to ensure the consistent completion of required contractor responsibility determinations in accordance with FAR Subpart 9.1—Responsible Prospective Contractors. VHA oversight processes generally ensured contracting officers used competition and properly assessed bids for NRM Recovery Act awards. However, our review of 65 contracts and orders totaling \$87.5 million found that 60 awards (92 percent) totaling \$83.1 million lacked adequate contractor responsibility determinations to mitigate possible risks to Recovery Act funds and taxpayers' interests. These problems occurred because OALC guidance does not address all elements of the required responsibility determinations, and some contracting officers relied heavily on their prior experiences with prospective contractors to make responsibility determinations. In addition, VHA and the VISN oversight reviews do not adequately address contractor responsibility determinations.

***Inadequate
Contractor
Responsibility
Determinations***

Our review of 65 sampled VHA NRM Recovery Act contracts and orders disclosed that 60 (46 contracts and 14 orders) awards lacked adequate contractor responsibility determinations. (We could not evaluate two contracts previously discussed in Finding 1 due to the absence of contract documentation.) The contracting officer's signing of a contract constitutes a determination that the prospective contractor is responsible with respect to that contract. Consequently, FAR requires contracting officers to obtain sufficient information about prospective contractors before making determinations of responsibility and to include supporting documentation for all determinations in the contract file.

Specifically, FAR requires contracting officers to assess the financial resources of prospective contractors when making a contractor responsibility determination. To satisfy this requirement for contracts and orders over \$25,000, OALC policy requires contracting officers to obtain a D&B Supplier Qualifier Report (SQR) to assess the contractors' financial resources. Additionally, FAR requires contracting officers to check the General Services Administration's Excluded Parties List System (EPLS) for debarred and suspended contractors to assess whether contractors are otherwise qualified and eligible.

Contracting officers must meet all of following requirements to perform contractor responsibility determinations in accordance with FAR, OMB and OALC Recovery Act guidance, and OALC policy. They must: 1) evaluate the prospective contractors' ability to comply with delivery and performance schedules; 2) review the prospective contractors' SQRs to assess financial risk; 3) verify past performance; and 4) review the EPLS to ensure the contractor is otherwise qualified and eligible. Table 1 below shows the distribution by VISN of the deficiencies in the completion of contractor responsibility determinations for the 46 reviewed contracts.

Table 1. Contractor Responsibility Determination Deficiencies in Contracts

*VISN	Types of Deficiency				Total # of Deficiencies
	Performance and Delivery Schedule	Financial Risk	Past Performance	Contractor Qualifications & Eligibility	
1	1	0	0	0	1
2	4	3	0	1	8
3	4	2	0	0	6
4	4	3	2	0	9
5	3	2	2	1	8
6	1	1	0	0	2
7	4	4	1	0	9
9	2	2	0	0	4
10	1	0	0	0	1
11	1	0	0	0	1
12	4	1	1	1	7
15	3	1	1	2	7
16	2	2	0	0	4
17	1	1	0	0	2
18	2	1	0	0	3
19	1	1	0	0	2
21	3	2	0	0	5
22	2	2	0	0	4
23	3	2	1	0	6
Total	46	30	8	5	89

*VISNs 8 and 20 had no contracts in our sample.

Contractor responsibility determinations for orders have different requirements. For orders, FAR requires contracting officers to review the EPLS after the receipt of proposals. In addition, OALC policy requires an SQR review only when the order exceeds \$25,000. Table 2 shows by VISN the 17 deficiencies identified in the responsibility determinations of 14 NRM Recovery Act orders. Thirteen of the orders were valued over \$25,000 and one was under \$25,000.

Table 2. Contractor Responsibility Determinations Deficiencies in Orders

*VISN	Types of Deficiency		Total # of Deficiencies
	Financial Risk	Contractor Qualifications & Eligibility	
1	2	0	2
2	1	0	1
3	1	0	1
5	1	1	2
8	1	0	1
16	2	0	2
18	1	1	2
21	2	0	2
22	1	1	2
23	1	1	2
Total	13	4	17

*Several VISNs had no orders in our sample.

Evaluating Delivery and Performance Schedules

Contracting officers did not adequately assess contractors' performance and delivery schedules for 46 NRM Recovery Act contracts totaling \$76 million. FAR and OMB Recovery Act guidance require prospective contractors to demonstrate that they can meet the proposed contracts' delivery and performance schedules given the contractors' existing business and government commitments. However, OALC and VHA oversight officials lack specific guidance on this requirement. Consequently, some contracting officers assessed prospective contractors' timeliness on prior contracts, but none of them reviewed information about the contractors' existing workload and other commitments that could have affected the completion of work on VHA NRM Recovery Act projects.

Assessing Financial Risk

For 43 (30 contracts and 13 orders) NRM Recovery Act awards totaling \$56.2 million, contracting officers had not adequately assessed the contractors' financial resources. In addition to the general requirements contained in FAR and OMB Recovery Act guidance, OALC IL 049-08-03, dated April 11, 2008, specifically requires contracting officers to obtain and review an SQR if the value of a contract or order exceeds \$25,000 and to use the SQR's Supplier Evaluation Risk (SER) score to assess financial risk. The SER score predicts over the next 12 months the likelihood that a company will need to seek legal relief from creditors and/or will cease operations without paying its creditors. If the SER score indicates the prospective contractor is a high risk, contracting officers must provide a documented justification in the contract file to support the selection of the contractor. However, the IL does not provide any specific guidance as to what the justification should include or what constitutes an acceptable justification. It only requires contracting officers to request an Investigation Report, if no SQR is available, so that D&B can contact the company's principal to either update the information or build a record on the company.

Contracting Officers Did Not Perform Required Financial Risk Assessments. For 19 (44 percent) of the 43 awards totaling \$22.7 million, contracting officers did not obtain SQRs to assess prospective contractors' financial risks before they awarded the contracts and orders. Since the contracting officers did not obtain SQRs when they made the awards, we obtained them during our review. Table 3 shows the projects, type of award, and current financial risk scores for the 19 awards where the contracting officers did not complete financial risk assessments.

Table 3. Contracts and Orders Lacking Financial Risk Assessments

Project Description	Contract or Order	Current SQR SER Financial Risk Score	Contract or Order Value
Construction of Private Inpatient Wards	Contract	High	\$3,186,388
Replace Heating, Ventilation and Air Conditioning	Contract	High	1,875,000
Relocate Prosthetics, Neurology, & Rehabilitation Medical Clinic	Contract	High	1,849,000
Chiller Loop Construction	Contract	High	1,089,857
Renovate for Handicap Access	Contract	High	975,000
Design Services: Repair/Replace Fire Pump System	Order	High	39,405
Upgrade Ventilation & Air Conditioning Controls	Order	Moderate	3,094,672
Modernize Community Living Center	Contract	Moderate	2,053,971
Upgrade to Energy Efficient Light Fixtures	Contract	Moderate	799,286
Replace & Upgrade Heating, Ventilation, & Air Conditioning	Contract	Moderate	509,592
Replace Light Fixtures & Upgrade Ventilation	Contract	Moderate	429,000
Design Services: Renovate Radiology Project	Order	Moderate	257,000
Design Services: Electrical Infrastructure	Order	Moderate	277,899
Design Services: Repair/ Upgrade Bldg. Façade	Order	Low	389,182
Design Services: Renovate Patient Dining	Order	Low	375,372
Design Services: Replace Fire Alarm System	Order	Low	202,894
Design Services: Lab Site Prep	Order	Low	135,247
Abate Asbestos in Sub Basement	Contract	No rating	2,942,556
Instillation of Electrical Safety Branches	Contract	No rating	2,235,500
Total Obligated Amount			\$22,716,821

We determined that the six contractors rated as high financial risks are still actively working on \$9 million in awarded VHA NRM Recovery Act awards and that two contractors with insufficient financial information received \$5.2 million in awards. Contracting officers did not obtain the SQR reports to assess the contractors' financial risks because they were either unaware of the requirement or they mistakenly believed a satisfactory record of past performance and/or the existence of a construction surety performance bond satisfied this requirement. A construction surety performance bond does not relieve contracting officers of the responsibility to assess a contractor's financial risks prior to the award because performance bonds only protect VA's interests, after the fact, if a contractor cannot complete the agreed upon work.

Contracting Officers Did Not Consistently Use D&B Financial Reports to Complete Financial Risk Assessments. For the remaining 24 (56 percent) of the 43 awards, totaling \$33.5 million, contracting officers did not consistently use D&B financial reports to complete contractors' financial risk assessments. OALC IL 049-08-03 requires contracting officers to use the D&B SQR and SER score to assess contractors' financial resources and

risks. However, contracting officers used the D&B Comprehensive Report for 21 awards and the D&B Federal Information report for 3 awards, instead, to perform financial risk assessments.

Differences in the methodologies used to develop D&B's SQR, Comprehensive Report, and Federal Information Report may result in contractors receiving different financial risk ratings based on which report is used. Thus, contracting officers across the VISNs are not using a consistent methodology to evaluate the financial resources of contractors competing for Recovery Act awards. Furthermore, inconsistencies in the methodology used to perform contractor financial risk assessments could make it difficult for VA to defend its award decisions if contractors file protest actions.

A SQR evaluates the specific company's entire history for risk, financial stability, and credit information and includes a SER score that predicts the likelihood a company may cease operations or require debt relief within the next 12 months. In contrast, the Comprehensive Report provides a detailed view of a company's financial status, including credit scores and credit capacity; but lacks a SER score and, instead, assesses the company's financial condition by comparing it with like companies in the market across the nation. Moreover, the D&B Federal Information Report provides information on a company's relationship and activities with the federal government but contains limited financial information and no SER score.

Because of these differences in the D&B reports, the reports may yield different financial risk ratings for the same contractor. For example, one contracting officer ran a SQR that showed a prospective contractor was a high financial risk and then ran a Comprehensive Report on the same day that showed the same contractor was only a moderate risk. The contracting officer relied on the Comprehensive Report to award the contract to the contractor and did not prepare a justification for the award even though the SQR indicated the contractor was a high financial risk.

Table 4 shows the Comprehensive or Federal Information D&B report scores that the contracting officers used to make the 24 awards with the current SQR SER financial risk scores obtained during our review.

Table 4. Contracts and Orders Where Contracting Officers Used D&B Reports Other Than the SQR

Project Description	Contract or Order	Other D&B Report Scores	Current SQR SER Financial Risk Score	Contract or Order Value
Replace Boiler Plant	Contract	Low (C)	High	\$3,468,278
Mold Abate and Water Intrusion	Contract	Low (C)	High	2,619,000
Replace Windows	Contract	Moderate (C)	High	810,024
Design Services: Road Loop Replacement	Order	High (C)	High	380,908
Renovate Surgery Room, Phase I	Contract	Moderate (F)	Moderate	1,928,381
Renovate Emergency Room Area	Contract	High(C)	Moderate	1,437,428
Replace Windows	Order	Low(C)	Moderate	1,234,073
Renovation of Auto and Engineering Shops	Contract	Low(C)	Moderate	694,169
Building Demolition	Contract	Moderate (C)	Moderate	631,521
Renovate Nuclear Medicine	Contract	Low (C)	Moderate	525,000
Replace Kitchen Exhaust	Order	Low (C)	Moderate	395,670
Replace Boiler Plate	Contract	Low (C)	Moderate	365,710
Replace Heating, Ventilation, & Air Conditioning	Contract	Low (C)	Moderate	199,855
Upgrade and Repair Parking and Sidewalks	Order	Low (C)	Moderate	130,961
Upgrade ICU Family Waiting Area	Contract	Moderate (F)	Moderate	97,823
Renovate Emergency Room	Contract	Moderate (C)	Low	6,071,360
Replace Heating, Ventilation, & Air Conditioning	Contract	Low (C)	Low	1,633,681
Upgrade Eyewash System	Contract	Low (C)	Low	500,000
Renovate Quality Management Area	Contract	Moderate (F)	Low	252,347
Design Services: Upgrade Parking Lot & Roads	Order	Low (C)	Low	98,015
Upgrade and Renovate Operating Room	Contract	Low (C)	No Rating	4,774,000
Upgrade Electrical Distribution System	Contract	Low (C)	No Rating	3,465,613
Replace Heating, Ventilation, & Air Conditioning	Contract	Moderate (C)	No Rating	990,931
Replace Fuel Storage for Emergency Generators	Contract	Low (C)	No Rating	794,265
Total Obligated Amount				\$33,499,013

Other D&B Report Scores:

- (C)—Comprehensive Report
- (F)—Federal Information Report

We found that the four contractors currently rated as high financial risks are still actively working on \$7.3 million in awarded VHA NRM Recovery Act contracts. The contracting officers' use of the incorrect D&B reports to complete the financial risk assessments occurred for several reasons. In many cases, contracting officers did not realize the SQR and the Comprehensive Report were different reports. Other contracting officers either did not know about the requirement or applied their own interpretations of the requirements. Finally, some contracting officers stated that if the SER score on the SQR was high, they used the Comprehensive

Report, in lieu of the SQR, because they assumed it was a better indicator of the company's financial history.

Verifying Past Performance

Of the 46 NRM Recovery Act contracts reviewed, 8 (17 percent) lacked documented assessments of the contractors' past performance. As part of the contractor responsibility determination, FAR and OMB Recovery Act guidance require contracting officers to assess contractors' past performance to ensure they possess the requisite satisfactory record, accounting and operational controls, technical skills, experience, equipment, and business integrity and ethics necessary to complete the contract.

Because OALC has not issued specific guidance regarding this element of the responsibility determination, contracting officers often considered the contractors' past performance on contracts at their facility or inquired about the contractors' past performance from contracting officers at other facilities. Similar to other elements of the responsibility determination, contracting officers must document the assessment of past performance in the contract file. However, some contracting officers did not document their assessments of the contractors' satisfactory past performance in the contract file because they felt it was not necessary if they had a good working relationship with the contractors.

Checking Contractor Qualifications and Eligibility

Of the 65 reviewed NRM Recovery Act awards, 9 awards lacked documentation of required EPLS checks. FAR and OMB Recovery Act guidance requires contracting officers to review the EPLS and to document that the contractors have not been suspended or disbarred and are otherwise qualified and eligible to receive the contract award. However, some contracting officers did not check the EPLS because they did not think it was required for orders if a determination of responsibility had been completed for the original contract. Other contracting officers claimed they had checked the EPLS but that they did not include documentation of their EPLS checks in the contract file. Our review of the EPLS disclosed that none of the contractors who received the 9 awards were currently listed on the EPLS. Nevertheless, the failure to meet specific contract requirements and to include related documentation in the contract file compromises the integrity of the award process, and can impair VA's ability to effectively manage and administer contracts after their award. For example, VA faces significant challenges when a contract lacks supporting documentation for the award decision, and it must defend against a bid or award protest.

Causes for Responsibility Determination Problems

Many of the deficiencies we identified in the completion of contractor responsibility determinations occurred due to a lack of comprehensive VA guidance and monitoring for this specific FAR and Recovery Act evaluation requirement. As discussed above, OALC has not issued specific guidance on the completion of certain elements of the responsibility determination,

such as the assessment of the contractors' performance and delivery schedules and preparation of justifications to select contractors rated as high financial risks. Moreover, even when OALC has issued guidance on the performance of contractor responsibility determinations, contracting officers have disregarded the guidance or have indicated that they were unaware of it. Moreover, VHA's Recovery Act review process does not include reviews of contractor responsibility determinations; and the VISN integrated contract oversight process does not consistently review all required elements of the responsibility determination.

Conclusion

VHA Recovery Act and contract oversight controls generally ensured that contracting officers properly competed Recovery Act contracts and orders and assessed Recovery Act bids and proposals. However, OALC needs to develop clear policy that delineates the requirements and expectations for the completion of adequate contractor responsibility determinations prior to award. In addition, VHA needs to ensure the completion of adequate contractor responsibility determinations to safeguard Recovery Act funds and to reduce the risks of possible performance problems on NRM Recovery Act projects.

Recommendations

2. We recommended the Executive Director of the OALC develop and issue a comprehensive policy that clearly defines the appropriate procedures for the proper completion of adequate contractor responsibility determinations and related justifications.
3. We recommended the Under Secretary for Health implement appropriate measures to improve Recovery Act and contract monitoring to ensure the completion of adequate contractor responsibility determinations.

**Management
Comments and
OIG Response**

The Executive Director of the OALC and the Under Secretary for Health agreed with the finding and recommendations. OALC plans to issue a comprehensive policy to ensure the completion of adequate contractor responsibility determinations and related justifications after OMB issues its "Do Not Pay" list and implementation guidance. Additionally, VHA is forming National Acquisition Assurance and Compliance Offices to enforce compliance with FAR, Veterans Affairs Acquisition Regulations, and OALC policies. Contracting offices will be required to document their review of the appropriate databases for verifying past performance, financial risk, and excluded parties, as well as their final determination of responsibility. We will follow up on the implementation of the planned actions.

Finding 3 NRM Recovery Act Awards Sometimes Lacked Required Contract Clauses

Of the 65 reviewed NRM Recovery Act awards, 13 (20 percent) did not have the required Recovery Act clauses that promote transparency and accountability objectives and ensure job creation. For the 13 awards that omitted required clauses, 8 lacked the Buy American Act clause, 11 lacked the Whistleblower Protection clause, 12 lacked the Reporting Requirements clause, and 10 lacked the Government Accountability Office/Inspector General Access (GAO/IG) clause. Moreover, 7 of the 13 awards lacked clauses in both the solicitation and award because the contracting officers either did not know how to or did not realize they needed to include the clauses. For the remaining 6 awards, the solicitations contained clauses but the awards lacked them because contracting officers did not mark the appropriate box on the award to indicate the clauses in the Solicitation, Offer, and Award (SF1442) were binding on the final award. Some contracting officers mistakenly believed that if the clauses were in the solicitation, they did not need to be specifically included in the award document.

The failure to include required Recovery Act clauses in NRM contracts and orders can impede the achievement of Recovery Act objectives. For example, the omission of Recovery Act clauses related to Whistleblower Protection, contractor reporting, and GAO/IG Access leaves Recovery Act contracts without specific safeguards intended to ensure transparency, accountability, and the efficient and effective use of Recovery Act funds. The Director of VHA's Recovery Act Program stated that the required clauses needed to be included in both the solicitation and award, but contracting officers did not always understand the importance of this requirement

Conclusion

VHA has worked to strengthen its Recovery Act contract oversight since the OIG published its *American Recovery and Reinvestment Oversight Advisory report—VHA Non-Recurring Maintenance Contract Award Oversight Needs Strengthening* (Report No. 09-01814-97, March 15, 2010.) However, the omission of required Recovery Act clauses continues to be a problem. Contracts lacking required clauses cannot adequately protect VA's contractual interests. This review concluded that contracting officers still require additional guidance and direction regarding the inclusion of required Recovery Act clauses.

Recommendations

4. We recommended the Under Secretary for Health provide contracting officers clarifying guidance on the significance of ensuring all required Recovery Act clauses are included in the award document.

5. We recommended the Under Secretary for Health monitor the award of Recovery Act contracts and orders to ensure solicitation and award documents include required clauses.

***Management
Comments and
OIG Response***

The Under Secretary for Health agreed with the finding and recommendations. VHA's Office of Procurement and Logistics will issue clarifying guidance and provide training to all staff on the need to include all applicable clauses in contracting documents. VHA is forming National Acquisition Quality Assurance and National Acquisition Compliance offices and procedures and has developed Standard Operating Procedure 160-170-01 to ensure compliance with VA's Integrated Oversight Process. The National Acquisition Quality Assurance and National Acquisition Compliance offices will ensure the completion of required Integrated Oversight process reviews and compliance with FAR, Veteran Affairs Acquisition Regulation, and OALC policies, including the use of required clauses. We will follow up on the implementation of the planned actions.

Appendix A Background

Recovery Act Oversight

On February 17, 2009, the President signed the Recovery Act providing VA with about \$1 billion in NRM and energy project funding to correct, replace, upgrade, and modernize existing infrastructure and utility systems at VA medical centers. Planned VHA NRM Recovery Act projects included patient privacy corrections, life safety corrections, facility condition deficiency corrections, utility system upgrades, and improvements related to the provision of mental health care. As of July 5, 2010, VHA reported that it had awarded \$714.7 million of its \$1 billion in NRM Recovery Act funding and that 98.3 percent of the contracts and orders had been awarded through open competition.

Both the President and Congress have emphasized the need for accountability, efficiency, and transparency in the allocation and expenditure of Recovery Act funds. Although the Recovery Act encouraged Federal agencies to award and distribute funds in a prompt manner, it also discouraged the use of non-competitive strategies to quickly stimulate the economy and required the use of competitive procedures to the maximum extent possible. Additionally, Recovery Act awards must comply with existing FAR and VA contract requirements.

Accordingly, OMB guidance issued in February 2009 mandated that agencies provide Recovery Act contracts with appropriate oversight to ensure that the contracts' outcomes are consistent with Recovery Act goals. Subsequently, in March of 2009, the President signed the Government Contracting Memorandum, which reinforced the use of competitive contracts, in order to secure the best value. The Memorandum emphasized that non-competitive awards could only be considered if they were adequately justified and appropriate safeguards could be implemented to mitigate risks.

OIG Oversight

The Recovery Act also mandated that the OIG provide oversight for programs, grants, and activities funded by the Recovery Act. To accomplish this mandate and assist VA in achieving Recovery Act and OMB accountability, efficiency, and transparency objectives, we initiated a series of reviews to assess the effectiveness of oversight processes for VHA's \$1 billion in Recovery Act-funded NRM projects.

Appendix B Scope and Methodology

Scope

As of December 7, 2009, VHA's eCMS Recovery Act awards report showed that VHA had awarded 464 NRM contracts and orders totaling \$263.4 million. The awards listed on the eCMS report provided our universe and the identified procurement type—the different method or program used to award the contracts and orders—provided the strata from which we sampled. We selected all non-competitive awards and a representative number of competitive contracts and orders from the remaining procurement types for review. Table 5 shows the distribution of the 65 (14 percent) reviewed NRM Recovery Act awards totaling about \$87.5 million (33 percent) by procurement type.

Table 5. Sample of NRM Recovery Act Contracts & Orders by Procurement Type

Procurement Types	Number of Contracts & Orders	Contract or Order Value
Competitive:		
Small Business	42	\$67,603,167
Open Market	6	9,515,445
FSS	1	3,094,672
IDIQ	8	2,776,300
Non-competitive:		
Small Business	7	4,469,093
Multi-VISN BPA Order	1	18,305
Total	65	\$87,476,982

Procurement Types:

- Small Business—Includes various small business set-aside contracts, such as veteran-owned small business and Section 8(a) small businesses.
- FSS Competitive—Competitively awarded orders among Federal Supply Schedule contractors.
- IDIQ—Indefinite delivery/indefinite quantity contracts for repetitive service orders.
- Multi-VISN BPA—Blanket purchase agreement covering multiple VISNs for repetitive orders.

Methodology

For these 65 awards, we reviewed contract award data, pre-award procurement actions, and documents in eCMS. We conducted follow-up work with selected OALC and VHA contracting staff to determine if the awards met applicable FAR, Recovery Act, and OALC competition and evaluation requirements such as advertisement of the solicitations on the Federal Business Opportunities website, the receipt and evaluation of multiple proposals, and the justification and price analysis of non-competitive awards. We reviewed solicitation and award documentation for each award to determine if the awards included clauses required by FAR and OMB and OALC Recovery Act implementation guidance. Our review focused on VHA's NRM Recovery Act pre-award contract monitoring processes instead of performance outcomes because work on many of these contracts and orders is still in the early stages.

**Reliability of
Computer-
Processed Data**

We performed limited eCMS data reliability testing for those NRM Recovery Act awards included in our assessment of the effectiveness of VHA Recovery Act oversight processes. We determined whether the award dates were within our review timeframe and tested the data for accuracy of reported NRM Recovery Act contract information, missing data from key fields, and duplication of contract records. Finally, where applicable, we also compared hard copy contract documentation to eCMS data. Based on these reviews and assessments, we concluded that the NRM Recovery Act award information obtained from eCMS was sufficiently reliable to support our review findings, conclusions, and recommendations.

**Compliance with
Quality Standards
for Inspections**

We conducted this review from January 2010 through July 2010 in accordance with the President's Council on Integrity and Efficiency *Quality Standards for Inspections* (January 2005). These standards require that we plan and perform the review to obtain sufficient, competent, and relevant evidence to provide a reasonable basis for our findings and conclusions based on our review objective. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our review objectives.

Appendix C Agency Comments

Department of Veterans Affairs

Memorandum

Date: Sep 01, 2010

From: Under Secretary for Health (10)

Subj.: **OIG Draft Report, Veterans Health Administration's Efforts to Meet Competition Requirements and Monitor Recovery Act Awards (WebCIMS 448463)**

To: Assistant Inspector General for Audits and Evaluations (52)

1. I have reviewed the draft report and concur with the recommendations. Attached is the Veterans Health Administration's (VHA) corrective action plan for the report's recommendations.
2. VHA concurs with the report's recommendations that the Under Secretary for Health:
 - **Ensure, for the three contracts with identified problems, that the Veterans Integrated Service Network (VISN) Consolidated Contracting Authorities perform regular contractor performance monitoring and close out reviews to identify any billing or performance inconsistencies associated with the actual contract performance.** The Director of the VHA Recovery Act Acquisition Program will issue guidance to the VISN Consolidated Contracting Authorities to ensure that regular performance checks are conducted for the identified contracts by September 1, 2010.
 - **Implement appropriate measures to improve Recovery Act and contract monitoring to ensure the completion of adequate contractor responsibility determinations.** VHA is currently forming its National Acquisition Assurance and Compliance Offices, which will enforce compliance of the Federal Acquisition Regulation (FAR) and Veterans Affairs (V A) Acquisition Regulations (VAAR). Also, contracting officers will be required to document their reviews by October 1, 2010.

- **Provide contracting officers clarifying guidance on the significance of ensuring all required Recovery Act clauses are included in the award document.** VHA's Office of Procurement and Logistics (P&LO) will issue clarifying guidance and training to all contracting staff regarding the necessity to properly include all applicable clauses in contracts and order documents by October 1, 2010.
 - **Monitor the award of Recovery Act contracts and orders to ensure solicitation and award documents include required clauses.** The VHA National Acquisition Assurance and Compliance Offices will begin reviews to enforce compliance of FAR and VAAR regulations as well as Office of Acquisition, Logistics, and Construction (OALC) policies. The reviews will include checks to ensure that solicitation and award documents include required clauses by October 1, 2010.
3. Thank you for the opportunity to review the draft report. A complete action plan to address the report's recommendation is attached. If you have any questions, please contact Linda H. Lutes, Director, Management Review Service (10B5) at (202) 461-7014.

(original signed by:)

Robert A. Petzel, M.D.

Attachment

**VETERANS HEALTH ADMINISTRATION (VHA)
Action Plan**

OIG Draft Report, Veterans Health Administration's Efforts to Meet Competition Requirements and Monitor Recovery Act Awards (WebCIMS 448463)

Date of Draft Report: July 26, 2010

Recommendations/ Actions	Status	Completion Date
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Recommendation 1. We recommend the Under Secretary for Health ensure, for the three contracts with identified problems, that the VISN Consolidated Contracting Authorities perform regular contractor performance monitoring and close out reviews to identify any billing or performance inconsistencies associated with the actual contract performance.

VHA Comments

Concur

The Director of the VHA Recovery Act Acquisition Program will issue guidance to the Veterans Integrated Service Network (VISN) Consolidated Contracting Authorities to ensure that regular performance checks are conducted for these contracts and that any identified problems will be documented immediately.

In process September 1, 2010

Recommendation 2. We recommend the Under Secretary for Health implement appropriate measures to improve Recovery Act and contract monitoring to ensure the completion of adequate contractor responsibility determinations.

VHA Comments

Concur

VHA is currently forming its National Acquisition Assurance and Compliance Offices, which will enforce compliance with the Federal Acquisition Regulation (FAR), Veterans Affairs (VA) Acquisition Regulations (VAAR), and Office of Acquisition, Logistics, and Construction (OALC) policies. Contracting officers will be required to document their review of the appropriate databases regarding past performance, financial risk, and excluded parties, as well as their final determination of responsibility.

In process October 1, 2010

Recommendation 3. We recommend the Under Secretary for Health provide contracting officers clarifying guidance on the significance of ensuring all required Recovery Act clauses are included in the award document.

VHA Comments

Concur

VHA's Office of Procurement and Logistics (PL&O) will issue clarifying guidance and training to all contracting staff regarding the necessity to properly include all applicable clauses in contracts and order documents.

In Process October 1, 2010

Recommendation 4. We recommend the Under Secretary for Health monitor the award of Recovery Act contracts and orders to ensure solicitation and award documents include required clauses.

VHA Comments

Concur

VHA has been forming and implementing its local, regional, and National Acquisition Quality Assurance and National Acquisition Compliance offices and procedures. Quality Assurance staff have been hired to participate and ensure the reviews required by Veterans Affairs (VA) Information Letter (IL) 001AL-09-02, Integrated Oversight Process are completed. VHA has also developed Standard Operating Procedure 160-170-01 to ensure compliance with the IL. Contracting officers will be required to document the required reviews in the Electronic Contract Management System (eCMS). The National Acquisition Assurance and Compliance Offices will begin reviews to enforce compliance of FAR, VAAR regulations, and OALC policies. The reviews will verify that solicitation and award documents include all required clauses.

In process October 1, 2010

Veterans Health Administration

August 2010

Department of Veterans Affairs

Memorandum

Date: September 9, 2010

From: Executive Director, Office of Acquisition, Logistics, and Construction (001ALC)

Subj: Advisory Draft Report, Veterans Health Administration's Efforts to Meet Competition Requirements and Monitor Recovery Act Awards (Project #2010-0969-R7-0236) (VAIQ 7028239)

To: Assistant Inspector General for Audits and Evaluations (52)

The Office of Acquisition, Logistics, and Construction has reviewed the subject Office of the Inspector General draft report and provides the attached status update:

Recommendation 2: For the Executive Director of the Office of Acquisition, Logistics, and Construction (OALC) to develop and issue a comprehensive policy which clearly defines the appropriate procedures for the proper completion of adequate contractor responsibility determinations and related justifications.

Status Update: Concur. The Office of Management and Budget (OMB) is expected to issue a comprehensive "Do Not Pay List" along with implementation guidance on/about October 1, 2010. Once the OMB list is developed, OALC will issue comprehensive policy to ensure proper completion of adequate contractor responsibility determinations and related justifications. OALC has also reviewed its existing supplemental policies and stands prepared to revise these in support of the guidance. OALC Target Completion Date: March 31, 2011.

(original signed by:)

Glenn D. Haggstrom

Appendix D **OIG Contact and Staff Acknowledgments**

OIG Contact	Janet Mah (310) 268-4335
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Acknowledgments	John Carnahan Andrea Chinchilla Kelly Perry John Powers Corina Riba
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Appendix E Report Distribution

VA Distribution

Office of the Secretary
Veterans Health Administration
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National Veterans Service Organizations
Government Accountability Office
Office of Management and Budget

This report will be available in the near future on the OIG's website at <http://www.va.gov/oig/publications/reports-list.asp> and on the American Recovery and Reinvestment Act of 2009 website at <http://www.recovery.gov/>. This report will remain on the OIG website for at least 2 fiscal years after it is issued.