
July 2010

RECOVERY ACT

Contracting Approaches and Oversight Used by Selected Federal Agencies and States



GAO

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Highlights of [GAO-10-809](#), a report to the Republican Leader, U.S. Senate

Why GAO Did This Study

The American Recovery and Reinvestment Act of 2009 (Recovery Act), estimated to cost \$862 billion over 10 years, is intended to stimulate the economy and create jobs. The Recovery Act provides funds to federal agencies and states, which in turn may award contracts to private companies and other entities to carry out the purposes of the Recovery Act. Contracts using Recovery Act funds are required to be awarded competitively to the maximum extent practicable.

GAO was asked to examine the use and oversight of noncompetitive Recovery Act contracts at the federal and state levels. GAO determined (1) the extent that federal contracts were awarded noncompetitively; (2) the reasons five selected federal agencies (the Departments of Defense, Energy, and Health and Human Services; the National Aeronautics and Space Administration; and the Small Business Administration (SBA)) awarded noncompetitive contracts; (3) the oversight these agencies and their inspectors general (IG) provide for Recovery Act contracts; and (4) the level of insight five selected states (California, Colorado, Florida, New York, and Texas) have into the use of noncompetitive Recovery Act contracts.

What GAO Recommends

GAO recommends that the five IGs assess the need to allocate audit resources to noncompetitive 8(a) Recovery Act contracts. The IGs concurred or had no comment.

View [GAO-10-809](#) or [key components](#). For more information, contact John Needham, 202-512-4841, NeedhamJK1@GAO.GOV.

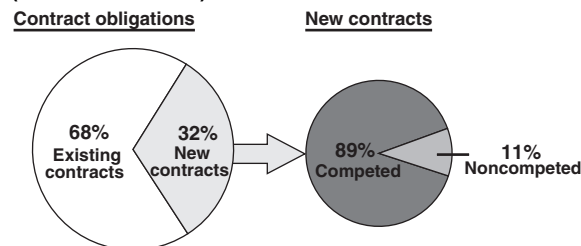
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What GAO Found

More than two-thirds of the \$26 billion obligated for Recovery Act federal contract actions through May 2010 were on contracts that were in place before the enactment of the Recovery Act. Most of these contracts had been awarded competitively. For new federal Recovery Act contract actions, 89 percent of the dollars were obligated on competed actions, as shown in the figure.

Recovery Act Obligations on Existing and New Federal Contract Actions as of May 12, 2010 (Dollars in Millions)



Source: GAO analysis of Federal Procurement Data System-Next Generation data as of May 12, 2010.

Most of the Recovery Act dollars obligated noncompetitively on new contract actions went to socially and economically disadvantaged small businesses under SBA's 8(a) program.

The goal of using Recovery Act funds quickly on high-priority projects drove the contracting approaches of the five federal agencies, particularly their use of existing contracts. Officials explained that whether an existing contract had been competed originally did not influence the decision to use a pre-existing contract because the level of competition had been established before Recovery Act funds were available.

The selected federal agencies implemented additional review processes, internal reporting, and coordination efforts for the Recovery Act. Some IGs for these agencies focused initial Recovery Act oversight on areas the IGs considered to be higher risk than contracts, such as grant programs. The IG reviews to date have not focused specifically on contracting, including the use of noncompetitive awards to 8(a) program businesses. GAO's recent reviews of the 8(a) program, however, have found that safeguards for ensuring that only eligible firms receive 8(a) contracts may not be working as intended.

The five states varied on the type and amount of data routinely collected on noncompetitive Recovery Act contracts. GAO could not determine the full extent to which such contracts are being used. The states generally rely on their pre-Recovery Act contracting policies and procedures, which generally require competition. The states do not routinely provide state-level oversight of contracts awarded at the local level, where a portion of Recovery Act contracting occurs. Officials from the selected states' audit organizations said that if they were to address Recovery Act contracting issues, it could be done through the annual Single Audit or other reviews of programs that involve Recovery Act funds.

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Abbreviations

DOD	Department of Defense
DOE	Department of Energy
FAR	Federal Acquisition Regulation
FPDS-NG	Federal Procurement Data System—Next Generation
HHS	Department of Health and Human Services
IDIQ	Indefinite Delivery/Indefinite Quantity
IG	Inspector General
JSC	Johnson Space Center
NASA	National Aeronautics and Space Administration
NIH	National Institutes of Health
OMB	Office of Management and Budget
ORAC	Office of Recovery Act Coordination
OSD	Office of the Secretary of Defense
SBA	Small Business Administration
USACE	U.S. Army Corps of Engineers

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United States Government Accountability Office
Washington, DC 20548

July 15, 2010

Honorable Mitch McConnell
Republican Leader
United States Senate

Dear Senator McConnell:

Congress enacted the American Recovery and Reinvestment Act of 2009 (Recovery Act)¹ to help stimulate the United States economy by providing an estimated \$862 billion over 10 years through a variety of programs. A portion of those funds is being provided directly to federal agencies, which may award contracts and grants for their respective programs. Another portion of Recovery Act funds is being provided directly to the states, which in turn may award contracts or grants to businesses or local governments. As of May 2010, \$26 billion of Recovery Act funds had been obligated on contracts awarded by federal agencies. The Recovery Act provides that to the maximum extent practicable, federal agencies' contracts should be awarded competitively with fixed prices. Federal agencies and their inspectors general (IG) were provided funding under the Recovery Act to audit the act's programs and projects, including grant and contract awards. States generally are expected to use competition to the extent practicable when awarding contracts using federal funds. The benefits of competition are well-established. It saves taxpayer money, helps improve contractor performance, and promotes accountability for results.

You asked us to examine the use and oversight of noncompetitive contracts² awarded under the Recovery Act at the federal and state levels. In response, we determined (1) the extent of Recovery Act funding obligated by federal agencies on contracts, and the extent to which these contracts were awarded noncompetitively, (2) the reasons selected federal

¹Pub. L. No. 111-5, 123 Stat. 115 (Feb. 17, 2009).

²For the purposes of this report, for federal agencies, we are defining non-competitive contracts to include contracts that were awarded using the exceptions to full and open competition in the Federal Acquisition Regulation (FAR), such as sole-source contracts awarded under the Small Business Administration's 8(a) program, as well as contracts awarded without competition under simplified acquisition procedures, as authorized by FAR § 13.106-1. For states, we are relying on the states' definitions of non-competitive contracts as discussed with state officials. As such, each state may have its own definition of a non-competitive contract.

agencies awarded noncompetitive Recovery Act contract actions, (3) the extent of oversight of Recovery Act contracting at selected federal agencies, and (4) state officials' level of insight into and oversight of the use of noncompetitive Recovery Act contracts within selected states. This report first addresses each of these objectives, and then provides additional data on federal Recovery Act contracting governmentwide in appendix I and more detailed information about the approaches taken by selected federal agencies in appendix II.

To determine the extent to which contracts using Recovery Act funds are being awarded noncompetitively by federal agencies, we analyzed governmentwide data from the Federal Procurement Data System—Next Generation (FPDS-NG).³ We determined that the FPDS-NG data were sufficiently reliable for the purposes of this review by comparing the information for selected agencies with information from other sources, including agency contract data and information in contract files at selected locations.⁴ To determine the reasons that Recovery Act contracts are at times not competed, we selected five agencies at which we discussed the use of noncompetitive contracts and reviewed about 150 noncompetitive Recovery Act contract actions—new contracts as well as orders on and modifications to previously awarded contracts. We selected these agencies based on the number, value, and percentage of noncompetitive Recovery Act actions and obligations. Four agencies—the Departments of Defense (DOD), Energy (DOE), and Health and Human Services (HHS), and the National Aeronautics and Space Administration (NASA)—are the four agencies that obligated the most Recovery Act funds using noncompetitive contracts. The fifth agency—the Small Business

³FPDS-NG is a comprehensive, Web-based tool and database that functions as a clearinghouse of information for all federal contract actions, including non-competitive and competitive actions, exceeding the micro-purchase threshold, which in most cases is \$3,000.

⁴Our previous work, as well as the work of the federal Acquisition Advisory Panel, has identified limitations in the accuracy and timeliness of data in FPDS-NG. Both GAO and the Acquisition Advisory Panel have reported that while FPDS-NG has been the primary governmentwide contracting database for capturing and reporting on various acquisition topics, such as agency contracting actions and procurement trends, it has had data quality issues over a number of years. While FPDS-NG data are useful for providing insight, the data are not always accurate at the detailed level. However, no other viable alternative currently exists for obtaining governmentwide data on federal procurements. See GAO, *Federal Contracting: Observations on the Government's Contracting Data Systems*, [GAO-09-1032T](#) (Washington, D.C.: Sept. 29, 2009) and *Federal Acquisition: Oversight Plan Needed to Help Implement Acquisition Advisory Panel Recommendations*, [GAO-08-160](#) (Washington, D.C.: Dec. 20, 2007).

Administration (SBA)—had a relatively low amount of noncompetitive Recovery Act actions and obligations but provided an example of how a smaller agency carried out Recovery Act contract awards. At each agency, we reviewed all Recovery Act contract actions awarded noncompetitively at a particular contracting office, generally the one with the largest volume of noncompetitive actions, to identify the reason each action was not competed and the extent to which the reason was explained in the contract file. To determine the extent of Recovery Act contracting oversight provided by the selected federal agencies and their respective IGs, we interviewed agency officials, including IG staff, and reviewed their oversight plans and resulting reports.

To determine the level of insight that state officials have into the use of noncompetitive Recovery Act contracts, we selected five states—California, Colorado, Florida, New York, and Texas—based on the amount of Recovery Act funds reported as being awarded via contracts on www.Recovery.gov and our goal of providing information on a variety of geographic locations.⁵ For each state, we discussed with the appropriate state officials—including representatives from the governors' offices, state procurement offices, and audit organizations—the extent to which the state has awarded noncompetitive Recovery Act contracts, the reasons why the state did not use competition, and the level of oversight the state provides for these contracts. Additionally, we discussed these issues with representatives of the state agencies that manage the education and weatherization programs, to obtain further understanding of how state agencies award and oversee contracts. Because a large portion of the Recovery Act funds received by the states is in the form of grants, which are further distributed by the states to local governmental entities, we discussed the extent of oversight the state provided over contracts awarded by local governmental entities.⁶ We also attempted to identify a statewide data source or database for sampling and evaluating state-

⁵The data reported on www.Recovery.gov represents the data reported by recipients of Recovery Act funds within the states. Our previous work has identified concerns with the quality of these data; however, this Web site is the only source of data available on states' Recovery Act contracting awards. See GAO, *Recovery Act: States' and Localities' Uses of Funds and Actions Needed to Address Implementation Challenges and Bolster Accountability*, [GAO-10-604](#) (Washington, D.C.: May 26, 2010).

⁶Recovery Act funds that were awarded directly to local governmental entities by federal agencies and bypassed state agencies were not included in the scope of our state-level work addressing oversight. These funds would include formula and discretionary grant programs.

awarded contracts with respect to competition, but were unable to identify such a data source or database for any of the states in our review. As a result, we relied primarily on testimonial evidence provided by state officials. Details on our scope and methodology are contained in appendix III.

We conducted this performance audit from February 2010 to July 2010, 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 objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

Background

The Recovery Act was enacted on February 17, 2009, to help stimulate the United States economy by creating new jobs, as well as saving existing ones, and investing in projects that will provide long-term economic benefits. The Recovery Act requires that the President and heads of the federal agencies manage and expend Recovery Act funds to achieve the act's purposes as quickly as possible and consistent with prudent management. In addition, the Recovery Act requires contracts funded under the act to be awarded as fixed-price contracts through the use of competitive procedures to the maximum extent possible. The Office of Management and Budget (OMB) issued guidance for implementing the Recovery Act and meeting "crucial accountability objectives" of the act, including, for example: timely awarding of Recovery Act funds; reporting on the use and public benefit of those funds; and ensuring that those funds are used for authorized purposes while mitigating the potential for fraud, waste, error, and abuse.⁷

In addition to these objectives, OMB supplemental guidance also provides other goals that agencies are to consider when using Recovery Act funds.⁸ Among those goals are investing in efforts that will provide jobs and have long-term public benefits, promoting local hiring, providing maximum practicable opportunities for small businesses, and supporting

⁷Office of Management and Budget, "Initial Implementing Guidance for the American Recovery and Reinvestment Act of 2009," M-09-10, February 18, 2009.

⁸Office of Management and Budget, "Updated Implementing Guidance for the American Recovery and Reinvestment Act of 2009," M-09-15, April 3, 2009.

disadvantaged businesses. The guidance also identifies activities agencies should consider to mitigate risks, including determining what contract award methods will allow recipients to commence expenditures and activities as quickly as possible; providing oversight for non-fixed-price contracts that may be riskier to the government; and reviewing internal procurement rules to promote competition to the maximum extent practicable.

Federal agencies using Recovery Act funds on contracts must take a number of new steps related to the solicitation of offers and award of contracts. For instance, to enhance the transparency to the public, the Federal Acquisition Regulation (FAR) was amended to require federal agencies to publicize on www.fedbizopps.gov contract actions that will be funded by the Recovery Act. The description on the Web site of the supplies and services should be clear and unambiguous to support public understanding of the procurement. After awarding a contract using other than fixed-price or competitive approaches, federal agencies are also required to publicize the rationale for doing so on the Web site. In addition, federal agencies should use specific codes when entering Recovery Act contract actions into FPDS-NG to indicate that Recovery Act funds are being used, in whole or in part. The FAR was also amended to implement the Recovery Act requirements that: only American-produced iron, steel, and manufactured goods be used in Recovery Act construction projects; access be provided for Comptroller General and IG audits and reviews of Recovery Act contracts and subcontracts; and whistleblower protections be provided. The act also requires the payment of at least locally prevailing wages to contractor employees working on Recovery Act projects, in accordance with the Davis-Bacon Act.

Federal agencies are generally required to obtain full and open competition through competitive procedures when awarding government contracts, unless an exception to competition applies. Some authorized exceptions include when

- the supplies or services needed by the agency are available from only one responsible source and no other supplies or services will satisfy the agency's needs;
- the agency's need for the supplies or services is of such an unusual and compelling urgency that there would be serious injury if the agency were not permitted to limit the number of sources; or

-
- a statute expressly authorizes that the acquisition be made through another agency or from a specified source, such as SBA’s 8(a) program.⁹

In most cases, the use of noncompetitive contracting procedures must be properly justified in writing and certified by the appropriate agency official. The competition requirements that apply to federal agencies do not apply to the states, each of which has its own contract competition requirements.

Additionally, purchases of supplies or services that are under certain dollar thresholds (usually from \$3,000 to \$100,000) may be acquired through the use of simplified acquisition procedures. These procedures provide a streamlined approach to procurements as a way to promote efficiency and economy in contracting. While full and open competition procedures do not apply to simplified acquisitions, federal agencies are still required to promote competition to the maximum extent practicable. When using simplified acquisition procedures, federal agencies can solicit from one source if they determine that only one source is reasonably available.

Section 8(a) of the Small Business Act authorizes SBA to create a business development program to help small, socially and economically disadvantaged businesses compete in the American economy, including gaining access to the federal procurement market. This program, known as the 8(a) program, authorizes contracting by using procedures other than full and open competition, such as awarding sole-source contracts. Under the 8(a) program, when the anticipated value of a contract is below the “competitive threshold”—\$5.5 million for acquisitions involving manufacturing and \$3.5 million for all other acquisitions—the contract should be awarded on a sole-source basis to an eligible 8(a) business.¹⁰ Contracts above the competitive thresholds can be awarded based on

⁹Other exceptions to awarding government contracts using competitive procedures include: when competition would compromise national security; when an agency head determines competition is not in the public interest; when competition is precluded by the terms of an international agreement or a treaty between the United States and a foreign government or international organization; and to maintain a supplier base in case of a national emergency or to achieve industrial mobilization, to establish or maintain an essential engineering, research, or development capability, or to acquire the services of an expert or neutral person for any litigation or dispute.

¹⁰Federal agencies may request that SBA allow them to make a competitive 8(a) award below the competitive threshold, but, per the FAR, such requests should be approved only on a limited basis.

competition limited only to 8(a) businesses when there is a reasonable expectation that at least two 8(a) businesses will submit offers. Sole-source contracts of any value may be awarded to businesses owned by an eligible Indian tribe or an Alaska Native Corporation. Federal agencies are not required to provide written justification for sole-source contracts awarded under the 8(a) program, but regulations specify percentages of the work that must be performed by the 8(a) business with its own resources. The OMB Recovery Act implementing guidance encourages federal agencies to take advantage of authorized small business contracting programs, which may include the use of noncompetitive contracts, to create opportunities for small businesses.¹¹

The Recovery Act provided an unprecedented level of funding for programs to be administered within the states at various levels. Recovery Act funds are being distributed to states, local entities, and individuals through a combination of formula and competitive grants and direct assistance. Nearly half of the approximately \$580 billion associated with Recovery Act spending programs will flow to states and localities through about 50 state formula and discretionary grant programs as well as about 15 entitlement and other programs. Some of the funds are passed from the federal agencies through state governments to local governments, while other funds are provided directly to local governments or individuals by the federal agencies.

As we previously reported, states are taking various approaches to ensure that internal controls are in place to manage risk up front, rather than after problems develop and deficiencies are identified.¹² States have different capacities to manage and oversee the use of Recovery Act funds. Many of these differences result from the underlying differences in approaches to governance, organizational structures, and related systems and processes that are unique to each jurisdiction. To provide state-level oversight of the use of Recovery Act funds, many states appointed an individual or team, often in the governor's office, to provide overarching guidance and monitoring for the state's Recovery Act efforts. Since many of the programs and the processes and procedures used to implement them existed before the Recovery Act funds were provided, much of the focus

¹¹Office of Management and Budget, M-09-10, February 18, 2009.

¹²GAO, *Recovery Act: As Initial Implementation Unfolds in States and Localities, Continued Attention to Accountability Issues Is Essential*, GAO-09-580 (Washington, D.C.: Apr. 23, 2009).

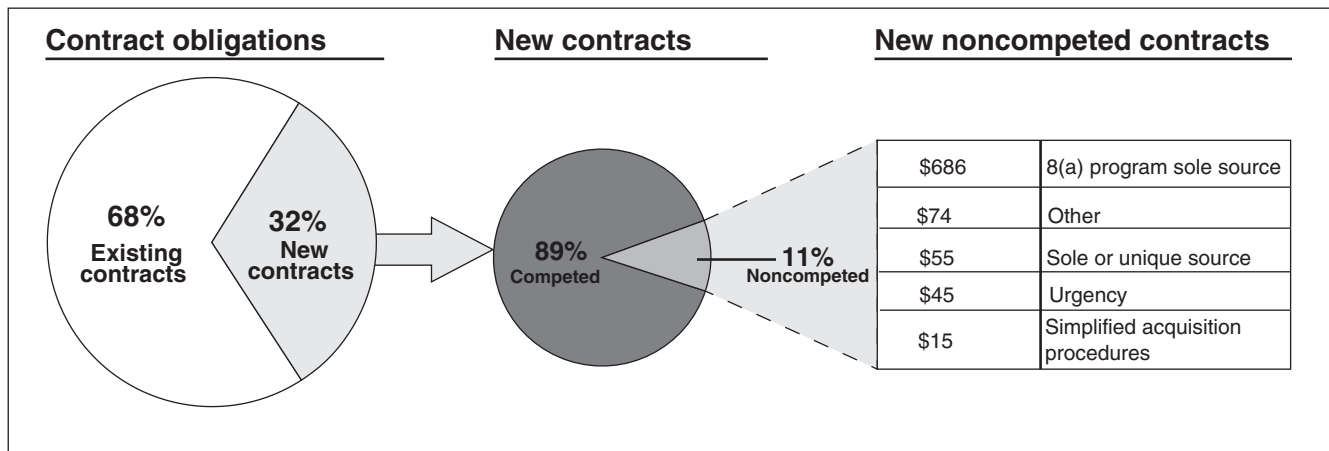
of the state-level oversight efforts has been on the new aspects of the Recovery Act, such as the new recipient reporting requirements and state fiscal stabilization funds.

Federal Agencies Largely Used Existing Contracts and Awarded Most New Recovery Act Contracts Competitively

More than two-thirds of the \$26 billion that had been obligated on federal contracts through May 2010 was obligated on contracts that were already in place before the Recovery Act. Agencies used mechanisms such as task orders for services, delivery orders for supplies, and contract modifications to add work or funds to existing contracts. For these orders and modifications on existing contracts, the decisions to compete or not compete the underlying contracts predated the Recovery Act. About 89 percent of the Recovery Act funds obligated on pre-existing contracts were coded in FPDS-NG as being competed.

Approximately one-third of Recovery Act federal contract obligations through May 2010 was obligated on new contracts. For these contracts, the decisions on whether to compete the contracts were made after the Recovery Act was enacted. As shown in figure 1, most Recovery Act dollars obligated on new federal contracts were on contracts that were competed. The new contracts that were not competed consisted of contracts awarded under the SBA's 8(a) program, contracts awarded using simplified acquisition procedures, and other contracts that were awarded under authorized exceptions to competition, such as only one source was available or the requirement was urgently needed. Almost 80 percent of the approximately \$875 million obligated to noncompetitive new contracts went to businesses under SBA's 8(a) program.

Figure 1: Recovery Act Obligations on Existing and New Federal Contract Actions as of May 12, 2010 (Dollars in Millions)



Source: GAO analysis of Federal Procurement Data System-Next Generation data as of May 12, 2010.

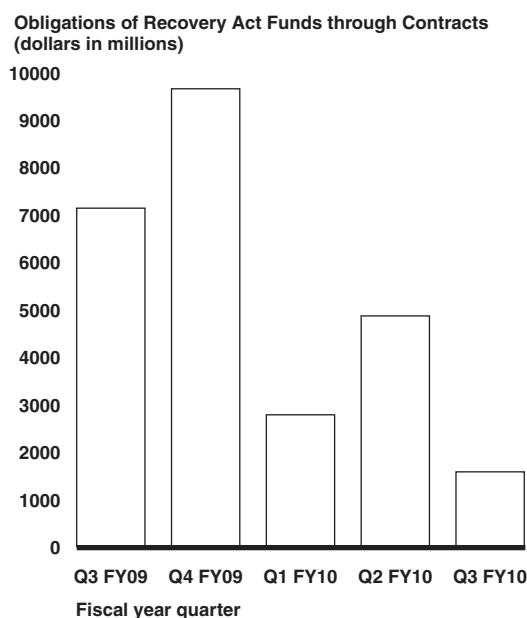
Between both existing and new contracts, almost 90 percent of the \$26 billion in Recovery Act contracting dollars through May 2010 were obligated on competitive contract actions. See appendix I for detailed data on the obligations placed on Recovery Act contract actions by all federal agencies.

Selected Federal Agencies Focused On Expediency When Choosing Contracting Approaches for Recovery Act Programs

Officials at the five federal agencies we reviewed told us that they chose their contracting approaches to meet their primary goals of obligating Recovery Act funds quickly and to high-priority projects, which sometimes led to using noncompetitive contract actions. The act and guidance from OMB and agency officials directed agencies to obligate Recovery Act funds quickly, creating a sense of urgency on the part of contracting staff. As a result, program and contracting staff identified programs, projects, and contract vehicles that would allow them to obligate funds within short time frames. Contracting officials at some of the agencies we visited told us that they considered both the relative risks of using noncompetitive contracting approaches and the benefits of obligating funds faster than had they awarded new contracts using full and open competition. For example, the U.S. Army Corps of Engineers (USACE) chose construction projects that could be executed quickly by issuing task orders under previously awarded contracts with businesses under SBA's 8(a) program. Further, contracting officials at USACE also noted that new sole-source

contracts to 8(a) businesses typically take about 4 months to award,¹³ while a new competitive contract could take 12 to 14 months using full and open competition procedures. As shown in figure 2, most of the Recovery Act funds were obligated within the first two full fiscal quarters in which the funds were available for obligation.

Figure 2: Recovery Act Obligations by Fiscal Year Quarter



Source: GAO analysis of Federal Procurement Data System-Next Generation data as of May 12, 2010.

Officials at several of the selected federal agencies explained that the use of existing contracts allowed them to obligate funds quickly. Whether an existing contract had been competed originally did not influence decisions about which of these contracts to use since the level of competition had already been established prior to the availability of Recovery Act funds. According to agency officials, programmatic priorities and the availability of contracts with the capacity to absorb and effectively use additional funding were the predominant factors in choosing which existing contracts received Recovery Act funds. Use of the 8(a) program to award new contracts allowed agencies to quickly obligate funds without

¹³According to USACE officials, these timeframes generally pertain to construction contracts awarded for less than \$3.5 million.

competition as sole-source awards. For certain 8(a) contracts, such as those below \$3.5 million, sole-source is the default contracting approach under federal regulations.¹⁴ Contracting officials at each of the federal agencies told us that the 8(a) program allowed them to quickly obligate funds on both new and existing contracts under \$3.5 million and that the noncompetitive nature of the contracts was viewed as a trade-off for expediency and the ability to provide opportunities to small businesses.

While speed was the primary driver agencies cited for using noncompetitive contracting approaches, noncompetitive awards were also used in a small number of new contracts that we reviewed when there was only one source available for specialized equipment or a specific service. For example, several National Institutes of Health (NIH) contract actions we reviewed were sole-source contracts for specialized medical equipment. In these cases, there was only one manufacturer that could meet the requirements of the contract according to the documentation in the contract files.

At the five selected agencies, we found that all of the new noncompetitive Recovery Act contracts that required documented justification and approval for using other than full and open competition had such documentation. For most new noncompetitive Recovery Act contracts, specific documentation to justify the noncompetitive award was not required. However, we found that 21 of the new contracts awarded as of February 2010 at the five agencies we visited required documented justifications.¹⁵ For these 21 contracts, the contract files included the required justification and approval documentation for not using full and open competition. Almost all of the justifications we reviewed authorized a sole-source contract because there was only one responsible source and no other type of supplies of services would satisfy the agency's requirements. Among these, about half were for purchases of proprietary

¹⁴GAO has identified a number of issues associated with contracts awarded under the 8(a) program. GAO, *Small Business Administration: Steps Have Been Taken to Improve Administration of the 8(a) Program, but Key Controls for Continued Eligibility Need Strengthening*, [GAO-10-353](#) (Washington, D.C.: Mar. 30, 2010); *8(a) Program: Fourteen Ineligible Firms Received \$325 Million in Sole-Source and Set-Aside Contracts*, [GAO-10-425](#) (Washington, D.C.: Mar. 30, 2010); and *Contract Management: Increased Use of Alaska Native Corporations' Special 8(a) Provisions Calls for Tailored Oversight*, [GAO-06-399](#) (Washington, D.C.: Apr. 27, 2006).

¹⁵The FAR does not require a documented justification for not competing contract actions under the 8(a) program or for certain contracts awarded using simplified acquisition procedures.

parts or technology, and most of the others were contracts for utility services.

Federal Agencies Provided Varying Degrees of Additional Contract Oversight, While IGs Focused On Higher-Risk Areas

The selected agencies added additional review processes, internal reporting, and coordination steps in response to the Recovery Act. While the measures implemented vary at each of the selected agencies, all have created additional processes to increase management oversight beyond their normal practices. IGs used a risk-based approach to target their initial oversight efforts, and did not specifically target noncompetitive contract actions because IGs did not view them as high risk. At most of the selected agencies, IGs chose to focus on areas and programs they judged to be higher risk, such as grant programs, which accounted for the majority of Recovery Act funding. Alongside IG's individual efforts, the Recovery Act also established the Recovery Accountability and Transparency Board to coordinate among the IGs and provide additional oversight.¹⁶

Selected Federal Agencies Implemented Varying Degrees of Additional Oversight for Contracts Awarded under the Recovery Act

The selected agencies used existing processes to award and administer Recovery Act contracts, but they also implemented a number of additional measures intended to provide enhanced oversight. This added oversight was in response to the specific requirements of the Recovery Act and implementing guidance from OMB for greater transparency, speedy execution of projects, maximizing competition in contracting, and other priorities.¹⁷ According to agency officials, additional oversight measures were put in place at the agencywide level, as well as within the agency components that we reviewed.

All five of the selected agencies created working groups, committees, or other internal entities with the mission of coordinating each of the agency's Recovery Act work. Most of these groups deal with a wide range of Recovery Act-related implementation issues and included oversight of

¹⁶For more information about the Recovery Accountability and Transparency Board's coordination efforts for the IG community, see [GAO-10-604](#) and GAO, *Recovery Act: One Year Later, States' and Localities' Uses of Funds and Opportunities to Strengthen Accountability*, [GAO-10-437](#) (Washington, D.C.: Mar. 3, 2010), and *Recovery Act: Contract Oversight Activities of the Recovery Accountability and Transparency Board and Observations on Contract Spending in Selected States*, [GAO-10-216R](#) (Washington, D.C.: Nov. 30, 2009).

¹⁷Office of Management and Budget, M-09-15.

contracting as one element of their work. Generally, officials said that they meet on a regular basis—such as monthly or weekly—and provide a venue for officials from across the agencies to provide management visibility into Recovery Act programs, discuss problems that may have arisen, and coordinate approaches by issuing formal or informal guidance. For example, DOD created the Recovery Act Working Group to coordinate implementation across the department. At weekly meetings, representatives from the Office of the Secretary of Defense and the military services provide updates on the status of Recovery Act obligations, projects in progress, relevant IG findings, and other issues. Further, similar Recovery Act coordinating groups are in place within each of the military services.

In addition to their primary Recovery Act coordination groups, some agencies also created additional subgroups to coordinate specific aspects of implementation and oversight, such as contracting. For example, HHS established an Office of Recovery Act Coordination to work across the entire agency. As part of that function, HHS established a Recovery Act Coordinators group to hold weekly meetings of key personnel from the various agency operating divisions, allowing centralized collection and distribution of management information.

Most agencies reported that they also identified a single individual to take managerial responsibility for implementation and oversight of Recovery Act programs. For example, NASA created the Recovery Act Implementation Executive position responsible for coordinating activities throughout the agency related to the administration of Recovery Act programs. Likewise, at DOD, the Principal Deputy Under Secretary of Defense in the Comptroller's office leads the Recovery Act Working Group and is responsible for ensuring that the military services are properly administering their Recovery Act-funded programs.

Although the selected agencies reported that they awarded Recovery Act contracts through their standard contracting processes, one agency implemented additional pre-award reviews of contract actions. According to NIH officials, NIH implemented an increased review of contracts awarded noncompetitively, which allowed greater visibility into Recovery Act contracts. Typically, NIH management reviews any noncompetitive contract award over \$550,000, but NIH procedures for the Recovery Act require management review of all proposed noncompetitive contracts prior to award. Across the five federal agencies, some provided additional review in other ways, such as reviews of selected projects prior to the

contract award process. See appendix II for additional details on each agency.

Agencies increased the amount of internal reporting of Recovery Act activities, including contracting. In combination with the coordination groups discussed above, this internal reporting was intended to create greater visibility for Recovery Act programs. Agencies increased the amount of data provided directly to agency leadership on contract awards, as well as the frequency at which these data are updated. For example, DOE expanded an existing data system to provide more frequent reporting and performance information to a larger number of users as part of its approach to Recovery Act oversight. The system includes regularly updated financial, earned value management,¹⁸ performance, risk, and job creation data on DOE projects, which are available to agency officials directly and through daily summary reports. Within DOD, USACE established a weekly report to agency leadership on Recovery Act contracting activity, showing obligations, project status, and other information.

The additional oversight processes and increased volume of funding under the Recovery Act have put added demands on agency contracting staff, which agency officials said was having some impact on their ability to carry out their missions. The Recovery Accountability and Transparency Board coordinated a survey administered by IGs of contracting and grant officials at 29 agencies regarding the adequacy of contracting and grant staffing levels.¹⁹ Some survey respondents said that staffing was inadequate, while about half of respondents said that staffing was adequate to meet Recovery Act needs but affected non-Recovery Act work. Contracting officials at several agencies whom we met with in our site reviews also reported that there had been an impact on their staff. Officials said that staff had put in extra hours to meet Recovery Act demands, and in one case said that attention to Recovery Act contracts had led to delays on non-Recovery Act contract awards.

¹⁸ Earned value management measures the value of work accomplished in a given period and compares it with the planned value of work scheduled for that period and with the actual cost of work accomplished.

¹⁹ Recovery Accountability and Transparency Board, *Review of Contracts and Grants Workforce Staffing and Qualifications in Agencies Overseeing Recovery Act Funds* (Washington, D.C., March 2010).

Most IGs for the Selected Agencies Did Not Focus on Contracts Because Other Areas Were Deemed Higher Risk

The Recovery Act provided supplemental funding to IGs to support their oversight of their agencies' spending under the act. Table 1 shows the funding provided to the IGs for the five selected agencies.

Table 1: Funds Provided to Selected Agencies' IGs under the Recovery Act

Dollars in millions		
IG Office	Recovery Act funding received	Recovery Act funding spent as of April 2010
Department of Defense	\$15.0	\$3.7
Department of Energy	\$15.0	\$1.3
National Aeronautics and Space Administration	\$2.0	\$0.45
Department of Health and Human Services	\$17.0	\$4.53
Small Business Administration	\$10.0	\$0.96

Source: GAO summary of data provided by the IGs of DOD, DOE, HHS, NASA, and SBA.

IGs for the selected agencies reported that they used assessments of the relative risks, specific to their agencies and programs, of different Recovery Act activities to target their oversight efforts. At three of the five IG offices, these assessments did not result in a focus on contracting. The IGs for all five agencies reported that they used a risk-based approach to structuring their Recovery Act oversight work, but each considered different factors in assessing risk. They all said that the amount of Recovery Act funding received by their agency was a main factor in their focusing on program areas or projects receiving the greatest funding. Most Recovery Act spending was through grants not contracts. Other risk factors used by some of the IGs included problems identified in previous audit work, the level of experience of grant recipients, and contract characteristics such as the level of competition and whether the contract was new or existing. At three of the IG offices, the assessment results showed that Recovery Act contracting was an area of lower risk relative to Recovery Act spending through grants and loans. These offices devoted only a small portion of their Recovery Act audit work toward it. For example, HHS IG officials said that they focused on the agency's grant programs, in large part because the amount of Recovery Act funding to be spent by HHS through grants was much greater than the amount to be

spent through contracts.²⁰ In addition, the HHS IG's prior findings showed grants to be a higher-risk area. The officials said that they also took into account the risks posed by increased funding under the Recovery Act. For example, an HHS IG official said that they anticipated that some grant recipients would have little prior experience with federal funds. As a result of this risk assessment, the HHS IG conducted only limited work on contracts. This work involved two reviews that looked at administrative approvals and funding for a selection of contracts at NIH, and concluded that no further reviews were needed. The IGs review their Recovery Act audit plans periodically, generally on a semiannual basis, and revise them as warranted.

Contracting under the 8(a) program was not a focus for four of the five IGs, who did not use the 8(a) status of a business as a factor in their selection of contracts for review, and did not review 8(a) compliance issues, such as 8(a) eligibility or limits on the amount of work that can be subcontracted. The DOE IG and HHS IG did not review issues related to 8(a) contracts as a result of their risk assessments, because they did not identify contracting as a high-risk area. DOD IG and NASA IG officials said that they did not focus on issues related to 8(a) contracts beyond the 8(a) contracts they encountered in performing their programmatic reviews, and did not review 8(a) business compliance and eligibility. The eligibility determination is an issue that is within the sole purview of SBA. The SBA IG did review some 8(a) contracts and looked into the reasons specific businesses were chosen. In one of the SBA IG reviews, the resulting report did address the eligibility of two 8(a) businesses and determined that one of the two businesses was not eligible for the contract award under the 8(a) program rules.²¹

We recently reviewed the process SBA uses to ensure that 8(a) businesses remain eligible to continue participating in the program, and found inconsistencies and weaknesses in the required annual review procedures.²² For example, we estimated that SBA staff at five district offices failed to complete the required review for 55 percent of 8(a)

²⁰As of June 2010, HHS had obligated about \$88 billion of Recovery Act funds, of which only \$1.9 billion was for contracts.

²¹See Small Business Administration, Office of Inspector General, *SBA's Planning and Award of the Customer Relationship Management Contracts*, ROM 10-16 (Washington, D.C., June 29, 2010).

²²[GAO-10-353](#).

businesses. In a separate review, we recently found that \$325 million in set-aside and sole-source contracts were awarded to businesses that were not eligible to participate in the program.²³ We also have identified issues with respect to the use of 8(a) businesses that qualify as Alaska Native Corporations.²⁴ Specifically, we have found that agencies have not always complied with requirements to notify SBA when 8(a) contracts with Alaska Native Corporations are modified, or to ensure that the businesses comply with limits on subcontracting.

In contrast to the other three IGs, the DOD IG and NASA IG included reviews of individual contracts as a central part of their oversight. According to DOD IG officials, they chose their approach as a result of their risk analysis. The majority of the department's Recovery Act spending is through contracts for building construction and renovation. DOD IG officials analyzed data on the services' planned projects and decided which ones to review based primarily on the size, location, and type of project. The DOD IG with the assistance of the military services' audit agencies—the Army Audit Agency, the Air Force Audit Agency, and the Naval Audit Service—conducted coordinated reviews of the projects identified through the initial risk analysis. As part of those reviews, auditors gathered additional information on contract actions for the selected projects, including whether they were issued as orders or modifications under existing contracts, whether the contracts were competitively awarded, and whether a surveillance plan was in place. In addition, the DOD IG and military services' audit agencies collected information on whether contracts for the projects they reviewed were awarded to 8(a) businesses, but the officials said that they did not assess business eligibility because this falls under the jurisdiction of the office within SBA that administers the 8(a) program. However, DOD IG officials told us that if they suspect that a business is not eligible for the 8(a) program, they refer the matter to SBA for review. The only audit work that directly focused on 8(a) businesses, other than the work of the SBA IG noted above, is a review currently being conducted by the Air Force Audit Agency, which is reviewing the eligibility of 8(a) contractors at 10 Air Force installations. As of June 2010, the Air Force Audit Agency had not yet issued its report.

²³ [GAO-10-425](#).

²⁴ [GAO-06-399](#).

As of June 2010, 141 reports had been posted on www.Recovery.gov by the IGs for the five agencies we reviewed. In 43 of the reports, the IGs touched on contracting issues. Of these, 27 were reviews of projects at individual DOD facilities issued by the DOD IG or by the military services' audit agencies. Most of the IG reports that dealt with contracting did not identify systematic shortcomings in agency processes or Recovery Act contracts. Rather, contracting-related findings ranged from clauses omitted from individual contracts to observations on the completeness of contracting data reported by the agencies. For instance, the Air Force Audit Agency reported in its audit of Elmendorf Air Force Base that while the base's Recovery Act contracts met several requirements, such as expediting the award process and fostering competition, they had not fully met transparency requirements because the contracting office did not provide sufficient information on the work to be completed for one project on www.fedbizopps.gov.²⁵ According to Office of the Secretary of Defense and Air Force officials, Elmendorf Air Force Base subsequently reposted the project on www.fedbizopps.gov to more accurately reflect the work accomplished.

One IG report, however, noted significant shortcomings in agency contracting workforce capacity. The SBA IG determined that staffing levels in the agency's contracting office were insufficient.²⁶ The SBA IG found that because of vacant positions, contracting office staff declined from 13 to 7 personnel from June 2009 to February 2010, at a time when the office's workload increased as a result of Recovery Act implementation. The report concluded that the current staffing of the contracting office was insufficient to award, administer, and oversee Recovery Act and other contracts, and that as a result, the risk of fraud, waste, and abuse had increased. In our discussions with SBA on the report's findings, a senior procurement official stated that the agency has experienced further attrition in its acquisition workforce since this report was released. To address this, the agency awarded a contract to provide acquisition services for four contracting positions and plans to contract for services for six more.

²⁵ Air Force Audit Agency, *American Recovery and Reinvestment Act of 2009 Program Requirements, 3rd Wing, Elmendorf Air Force Base, AK, F2010-0022-FBN000* (Spanaway, WA: Dec. 10, 2009).

²⁶ Small Business Administration, Office of Inspector General, *Memorandum on the Adequacy of Procurement Staffing and Oversight of Contractors Supporting the Procurement Function*, ROM-I0-13 (Washington, D.C.: Apr. 9, 2010).

For further information on how the IGs at each of the selected agencies are conducting Recovery Act oversight, see appendix II.

Selected States Vary In Their Level of Insight into Noncompetitive Recovery Act Contracts

At the state level, we were not able to determine the full extent of the use of noncompetitive contracting. The states we visited collect some aggregate data on contracts awarded by state agencies, but did not maintain data on contracting at the local level where a portion of the contracting activity occurs. These states rely on their pre-Recovery Act contracting policies and procedures, which generally require competition. With respect to oversight, each state has supplemented its state-level guidance with some additional Recovery Act-specific policies and procedures. However, the states do not routinely provide state-level oversight of contracts awarded at the local level, where a portion of the Recovery Act contracting occurs.²⁷ Representatives of the five state audit organizations said they could address Recovery Act contracting issues through the internal control work performed during the state's annual Single Audit or during other reviews of programs that involve Recovery Act funds, if contracting is identified as an area of risk.

Selected States Vary on Information Identifying Noncompetitive Recovery Act Contracts

State-level information on the type and amount of data routinely collected on noncompetitive Recovery Act contracts varied in the five states we visited—California, Colorado, Florida, New York, and Texas. Officials in some states said they are collecting or could collect data on noncompetitive contracts awarded by the state agencies. Some of the states we visited currently have some level of statewide information on noncompetitive contracts awarded by their state agencies, but with limitations. Specifically, officials in the states we visited told us the following:

- California's statewide contract database does not include contracts awarded by all of its state agencies.

²⁷For the purposes of this report, we consider state-level oversight as centralized state government offices with purview over more than one state agency or department. This includes each governor's office and state controller offices. State agency-level oversight refers to an individual state agency that provides oversight of state activities under the purview of the state agency and possibly oversight over local government activities and entities receiving funds from that agency. We define local levels as local governments of the counties, cities, towns, or municipalities and other local governing entities, such as local education agencies and community action agencies.

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- Colorado’s statewide contract database does not identify which contracts are funded under the Recovery Act, but noncompetitive Recovery Act contracts are manually reported to the state level.
 - New York’s statewide contract database includes contracts awarded by state agencies, but does not include data on contracts awarded by state authorities, such as the New York State Energy Research and Development Authority.
 - Florida has a statewide contract database, but it is voluntary and not routinely used by all state agencies.
 - Texas’ statewide contract database does not identify which contracts are funded under the Recovery Act.

Officials in California, Colorado, and Florida said that some of their state agencies have awarded noncompetitive Recovery Act contracts, while officials in New York said none have been awarded by their state agencies and officials in Texas said they were not aware of any having been awarded.

At the state agency level, we discussed the weatherization and education programs with the respective agencies responsible for managing these programs. In all five states, officials from these agencies said that they have some data on Recovery Act contracts awarded by their agencies. Moreover, state officials in all five states explained that they are not required to provide direct oversight of contracts awarded below the state agency level. As a result, they do not collect data on contracts awarded at the local levels by local governments or agencies where a portion of the Recovery Act contracting occurs. The limitations on available contract data, therefore, precluded us from performing an analysis on noncompetitive Recovery Act contracts awarded in the selected states.

Selected States Require Competitive Contracting but Their Oversight Practices Vary

According to procurement officials in the selected states, the use of competition is generally required when awarding contracts, although exemptions are permitted. Each of the selected states permits exemptions to competition when contracts are awarded to another government entity, and most also permit exemptions when responding to emergencies and when only one provider is available. In the selected states in which state-level officials were aware of the award of noncompetitive Recovery Act contracts, officials said those awards were made between government agencies or to sole-source providers. For example, an agency in one state contracted with a university to provide training, and an agency in another state contracted with businesses that were the sole providers of proprietary scientific equipment.

Each of the five states provides oversight of the award of Recovery Act contracts to varying degrees. According to officials, each state uses a combination of policies and procedures that existed prior to the Recovery Act and some additional measures to oversee these awards. Each state supplemented its existing contracting procedures with new guidance and had state agencies that realigned or hired staff to implement Recovery Act requirements. State officials explained that under existing state procedures, agencies are required to prepare justification documentation and obtain approval before they award noncompetitive contracts. In addition, state officials told us that generally state agencies are responsible for oversight of contracts their agencies award, while local entities have oversight responsibilities for contracts awarded at the local level. For example, Colorado officials approve local agencies' procurement processes, but the local agencies acquire weatherization materials on their own using a competitive bid process.

Most Recovery Act funds to local governments flow through existing federal grant programs, while some of the funds are provided directly to local governments by federal agencies and others are passed from the federal agencies through state governments to local governments. Therefore, state officials have limited insight into contracts awarded at the local level. In California, for example, state education officials said the size of the state and its more than 1,600 local education entities made it impractical to track local contracts. Nonetheless, officials in the selected states can perform postaward reviews related to contract competition on an as-needed basis.

Officials in some of the states we visited said that they did not receive additional resources to provide oversight of Recovery Act funds.²⁸ To provide additional oversight, they sometimes shifted resources to handle

²⁸The Recovery Act did not provide for or set aside funds that the states were to use to conduct oversight. However, subsequent to the passage of the Recovery Act, OMB issued OMB Memorandum M-09-18' "Payments to State Grantees for Administrative Costs of Recovery Act Activities," dated May 11, 2009, which provided flexibilities for states to use already existing procedures under an expedited process to recover administrative costs. The guidance was intended to help the states quickly and effectively build the necessary capacities to meet their responsibilities under the Recovery Act. Procedures for recovering costs were initially set out in OMB Circular A-87, *Cost Principles for State, Local and Indian Tribal Government*, dated August 29, 1997.

Recovery Act work, which at times entailed shifting resources from non-Recovery Act to Recovery Act work.²⁹

State Audit Organizations Might Address Recovery Act Contracting through Annual Single Audits or Program Reviews

Representatives of the five states' audit organizations³⁰ said that their organizations could provide additional oversight of the states' use of Recovery Act contracting funds through the internal control work performed as part of the states' Single Audits,³¹ and some explained that this could also be done through separate programmatic reviews if contracting is identified as an area of risk. Although contract competition is not the singular focus of the Single Audit, it nevertheless may be included as part of the internal control testing for a given program. For example, funding for weatherization programs, which increased from the pre-Recovery Act level in the selected states, falls under the Single Audit requirements. According to Florida state officials, their weatherization program funding increased from about \$1.3 million before the Recovery Act to an average of \$58.7 million per year over a period of 3 years. With respect to noncompetitive contracts, the audit organizations for some of the states we visited had not identified noncompetitive contracts as a risk area and did not plan any audits specifically targeted at this contracting method. Audit organization representatives in each of the five states we visited said that they were in the process of conducting reviews of some Recovery Act programs but the focus of these audits is not on noncompetitive contracts; however, they also noted that these audits could address procurement and contracting issues should they surface during the course of the audits.

²⁹We previously reported that the District of Columbia and the 16 states for which GAO is monitoring Recovery Act issues are facing reduced staffing levels caused by budget challenges. See [GAO-10-604](#).

³⁰For the purposes of this report, we define the state audit organizations to include each state's official audit entity, such as the auditor general or state auditor as well as state IG offices. Some states have both a state audit organization and agency IGs. For example, Florida has an Auditor General, who covers state and local government entities and agency IGs; whereas Texas has a State Auditor, who covers state agencies, and agency IGs.

³¹The Single Audit Act requires states, local governments and nonprofit organizations expending over \$500,000 in federal awards in a year to obtain an audit in accordance with requirements set forth in the act. The Single Audit is also known as the OMB A-133 audit. For the Single Audit, auditors identify the applicable federal programs, including "major programs," to be reviewed based on risk criteria, including minimum dollar thresholds. OMB has 14 requirements that generally are to be tested for each major federal program to opine on compliance and report on significant deficiencies in internal control over compliance with each applicable compliance requirement.

At the state level—unlike the federal level—Recovery Act funds were not specifically set aside for state audit organizations to provide oversight of the use of Recovery Act funds. To focus their resources, some state audit organizations have performed risk assessments of state agencies and are planning additional programmatic reviews. These state audit organizations used risk assessments to identify programs for potential review and, in some states, to maximize the use of limited auditing resources. State audit officials told us that the factors considered in their risk assessments included dollar values of programs, previous audit findings, internal control weaknesses identified as a result of the Single Audits, whether the program was new, or whether a program received large increases in funding. As we previously reported, recent budgeting challenges for state governments have reduced staffing levels and audit organizations have not been spared from budget reductions that could limit their capacity to perform audits involving Recovery Act funds.³²

Conclusions

At the federal level, available data were sufficient for us to determine the extent to which agencies used competition for Recovery Act contracting, the reasons selected agencies chose not to use competition, and their approaches to contract oversight. In general, congressional and administration direction to obligate Recovery Act funds quickly led agencies across the government to rely heavily on existing contract vehicles to get work under contract. Most of these existing contracts, as well as most new contract actions, were competitive. Federal agencies have added additional oversight procedures, internal reporting, and coordination in response to Recovery Act requirements.

Federal agency IGs focused their initial oversight efforts on areas they determined to be higher risk and did not target spending under contracts, including noncompetitive contracts. While this approach may have been justified initially given competing priorities and the relatively small percentage of obligations spent on noncompetitive contract actions, the result is relatively little audit coverage of Recovery Act contract actions under SBA's 8(a) program. This is significant for two reasons. First, the 8(a) program accounts for the overwhelming majority of noncompetitive contract obligations under the Recovery Act. Second, our prior work, some of which is quite recent and was not available to the IGs when they prepared their audit plans, has shown that safeguards designed to ensure

³² [GAO-10-604](#).

that the program operates as intended—requiring checks on participant eligibility and limits on subcontracting—are not always implemented effectively. While we recognize that the Recovery Act guidance encourages contracting with small businesses, there is an opportunity for the IGs to reassess whether they need to focus additional audit resources on contracting under the 8(a) program, which accounts for nearly 80 percent of the new noncompetitive contract actions under the Recovery Act.

At the state level, we were not able to determine the full extent of the use of noncompetitive contracting. The five states we visited collected some aggregate data on contracts awarded by state agencies, but did not maintain data on contracting at the local level where a portion of the contracting activity occurs. As a result, we could not analyze the extent of noncompetitive Recovery Act contracting within these states. With respect to oversight, each state has supplemented its state-level guidance with some additional Recovery Act-specific policies and procedures but does not routinely provide state-level oversight of contracts awarded at the local level. State audit organizations for the selected states are focusing their audit resources on programmatic reviews rather than focusing on the use of noncompetitive Recovery Act contracts, consistent with their assessments of relative risk.

Recommendation for Executive Action

As the IGs of the five agencies we reviewed periodically revisit and revise their Recovery Act audit plans, they should assess the need for allocating an appropriate level of audit resources, as determined using their risk-based analyses, to the noncompetitive contracts awarded under SBA's 8(a) program.

Agency and State Comments and Our Evaluation

We provided a draft of this report to DOD, DOE, HHS, NASA, SBA, and their respective IGs for comment. We received e-mail comments from DOD, HHS, and NASA, as well as the DOE IG and SBA IG, in which the agencies all generally agreed with the report's findings and recommendation or had no comments. In some cases, the agencies provided technical comments or clarifying information, which we incorporated into the report as appropriate. We received written comments from SBA as well as the DOD IG, DOE IG, and NASA IG. The DOD IG provided the department's official comments and agreed with the draft report and its recommendation. The DOE IG noted that DOE is one of the most contractor-dependent agencies in the government and that the DOE IG routinely considers 8(a) program contracts in its audit work. We consider the DOE IG's audit approach to be consistent with the intent of

our recommendation. The NASA IG agreed with the draft report and its recommendation and noted that it is planning work on a number of Recovery Act contracts involving 8(a) program businesses.

In its written comments, SBA noted its concern about our findings and recommendation regarding the 8(a) program. Specifically, SBA was concerned about what it viewed as our draft report's attempt to link the legitimate use of the 8(a) program with the results of a previous GAO report that found ineligible businesses receiving contracts under the program. SBA was also concerned that our report might be suggesting that use of the 8(a) program was either inappropriate or a risky procurement choice. We did not intend to suggest that there was anything improper with agencies deciding to use the 8(a) program in implementing the Recovery Act. In fact, our report points out that OMB's Recovery Act guidance specifically lists providing opportunities for small businesses to the maximum extent practicable and supporting disadvantaged businesses as goals for agencies using Recovery Act funds. We mentioned our prior findings regarding 8(a) eligibility only to illustrate that there may be issues that merit consideration by agency IGs as part of their overall approach to audits related to Recovery Act contracts that were not apparent when they developed their Recovery Act audit plans.

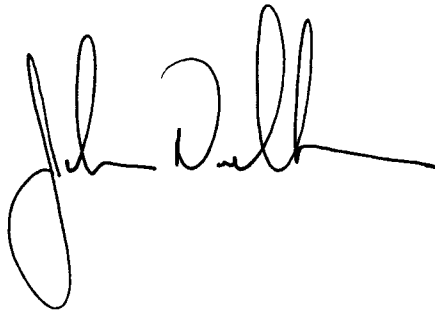
We also provided a draft of this report to representatives within the states of California, Colorado, Florida, New York, and Texas for comment. We received e-mail comments from various officials within the states of California, Colorado, Florida, and New York, including some of the state audit organizations, in which they generally agreed with the report's findings or had no comments. Some state officials provided technical comments or clarifying information in their e-mails, which we incorporated into the report as appropriate. We received written comments from the states of Florida and Texas. Florida generally agreed with the report's findings. Texas provided a proposed factual addition and a technical comment, which we incorporated as appropriate. Texas also made an observation that Congress had not provided funds for state oversight of Recovery Act funds. Although the Recovery Act did not provide such funds, as noted in footnote 28 there is guidance from OMB that could permit reimbursement of such state expenses under specified circumstances.

The written comments are reprinted in appendixes IV through IX.

We are sending copies of this report to interested congressional committees, as well as the Secretaries of the Departments of Defense, Energy, and Health and Human Services; the Administrators of the National Aeronautics and Space Administration and the Small Business Administration; and the Inspectors General of these five agencies. In addition, we are sending the report to officials in the five states covered in our review. The report also is available at no charge on the GAO Web site at <http://www.gao.gov>.

If you or your staff have any questions about this report, please contact me at (202) 512-4841. Contact points for our Offices of Congressional Relations and Public Affairs may be found on the last page of this report. GAO staff who made major contributions to this report are listed in appendix X.

Sincerely yours,

A handwritten signature in black ink, appearing to read "John K. Needham". The signature is fluid and cursive, with a large loop at the end of the last name.

John K. Needham
Director, Acquisition and Sourcing Management

Appendix I: Federal Agencies' Obligations on Competitive and Noncompetitive Recovery Act Contract Actions as of May 2010

Agency	Competitive contract actions ^a		Noncompetitive ^b contract actions	
	Number of actions	Obligations	Number of actions	Obligations
Agency for International Development	4	\$11,494,769	4	\$4,447,731
Corporation for National and Community Service	9	1,249,405	7	13,694,875
Department of Agriculture	2,468	421,954,996	700	105,021,223
Department of Commerce	242	337,216,693	55	65,958,421
Department of Defense	7,139	6,529,526,339	1,559	969,149,442
Department of Education	69	61,052,094	11	37,967
Department of Energy	734	6,990,566,222	100	133,670,179
Department of Health and Human Services	733	857,828,477	163	459,516,280
Department of Homeland Security	132	631,490,411	13	3,991,092
Department of Housing and Urban Development	29	5,406,066	11	4,537,987
Department of Justice	8	1,824,410	5	164,862
Department of Labor	594	206,515,164	50	33,566,097
Department of State	1,291	72,579,227	937	12,892,342
Department of the Interior	3,231	1,026,923,760	494	111,000,796
Department of the Treasury	7	14,939,935	4	716,305
Department of Transportation	147	323,955,926	32	20,915,472
Department of Veterans Affairs	1,408	564,805,231	81	16,923,677
Environmental Protection Agency	198	281,852,254	87	5,372,460
Federal Communications Commission	424	83,641,988	14	2,926,691
General Services Administration	17,521	4,198,806,529	425	232,267,774
National Aeronautics and Space Administration	272	591,895,269	82	298,932,194
National Science Foundation	4	50,500,000	0	0
Small Business Administration	13	731,216	29	10,418,888
Smithsonian Institution	32	18,579,372	5	587,105
Social Security Administration	14	3,582,185	2	2,441,646
Total^c	36,723	\$23,288,917,937	4,870	\$2,509,151,506

Source: Federal Procurement Data System—Next Generation data as of May 12, 2010.

^aContract actions include new contract awards and modifications to or orders from existing contracts.

^bFor the purposes of this report, noncompetitive contract actions include actions that were awarded using the exceptions to full and open competition in the Federal Acquisition Regulation (FAR), including, for example, sole-source contracts awarded under SBA's 8(a) program as well as contracts awarded without competition under simplified acquisition procedures.

^cTotals exclude 456 Recovery Act contract actions for which the extent of competition was not recorded in FPDS-NG. These actions represent a total of \$324,304,140 in Recovery Act obligations.

Appendix II: Key Recovery Act Programs, Spending, Contract File Review Observations, and Oversight for Selected Agencies

Department of Defense

DOD's mission is to provide the military forces needed to deter war and to protect the security of our country. The mission of USACE, one of DOD's construction agents, is to provide vital public engineering services in peace and war to strengthen our nation's security, energize the economy, and reduce risks from disasters.

Key Recovery Act Programs

DOD received approximately \$7.4 billion in defense-related appropriations under the Recovery Act, with an additional \$4.6 billion appropriated to USACE for its Civil Works Program. According to DOD's Recovery Act plan, about 88 percent of its non-USACE Recovery Act funding is for facilities infrastructure. This includes DOD's Facilities Sustainment, Restoration, and Modernization program, the Military Construction program, and the Energy Conservation Investment Program. The remaining funds are for the expansion of the Homeowners Assistance Program providing assistance to military and civilian families and the Near Term Energy-Efficient Technologies program. Recovery Act funds for USACE are allocated to various business programs under the Civil Works Program including emergency management, environment and environmental stewardship, flood risk management, hydropower, navigation, recreation, regulatory, and water storage for water supply. DOD program areas receiving Recovery Act funding are listed in table 2.

Table 2: DOD Recovery Act Funds Allocation

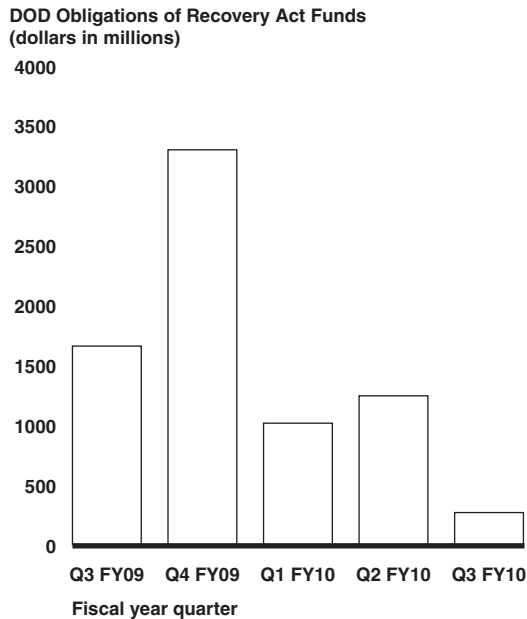
Program area	Recovery Act funding (dollars in billions)	Purpose
Civil Works Program (USACE)	\$4.60	Construction, operations and maintenance for various activities under the Civil Works Program.
Facilities Sustainment, Restoration and Modernization	\$4.26	Upgrades of existing DOD buildings, including energy-related improvements.
Military Construction	\$2.18	Construction of new buildings; more than half is for hospitals.
Energy Conservation Investment Program	\$0.12	Energy efficiency improvements to existing buildings.
Expanded Homeowners Assistance Program	\$0.56	Financial assistance to military and civilian personnel who experience a financial loss on the sale of their homes.
Near Term Energy-Efficient Technologies	\$0.30	Development of energy-efficient technologies.

Sources: DOD and USACE.

Recovery Act Spending

As of May 2010, DOD (including USACE) obligated more than \$7.5 billion of Recovery Act funds on contracts. DOD obligated about two-thirds of its Recovery Act funds in the last two quarters of fiscal year 2009, from April through September 2009. Figure 3 shows DOD obligations of Recovery Act funds through contracts by fiscal quarter.

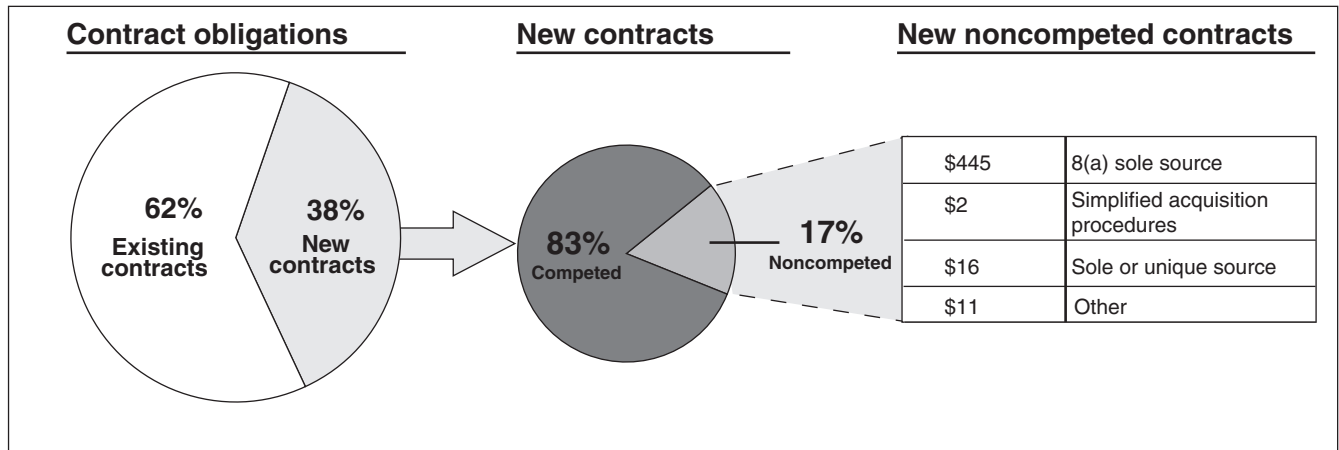
Figure 3: DOD Obligations of Recovery Act Funds through Contracts, by Fiscal Quarter



Source: GAO analysis of Federal Procurement Data System-Next Generation data as of May 12, 2010.

Most of the funds that DOD obligated under Recovery Act contract actions were on existing contracts, as shown in figure 4. Of those funds obligated on new contracts, most were obligated to competitively awarded contracts. Approximately 17 percent of obligations on new contracts were obligated to noncompetitively awarded contracts, most of which were awarded to 8(a) program small businesses.

Figure 4: DOD Recovery Act Obligations on New and Existing Federal Contracts by Extent of Competition as of May 12, 2010 (Dollars in Millions)



Source: GAO analysis of Federal Procurement Data System-Next Generation data as of May 12, 2010.

Observations from the Site Review at USACE Sacramento District

We selected 67 noncompetitive contracts, task orders, or modifications for review at the USACE Sacramento District. Most of these actions were placed under existing indefinite delivery/indefinite quantity¹ (IDIQ) contracts that had been awarded to 8(a) program businesses. Sacramento District contracting officials told us that they typically award IDIQ contracts to 8(a) program businesses for smaller-dollar projects as part of their regular business processes. These contract vehicles can then be used to quickly place orders for individual projects within the scope of the contract until the total value of the contract approaches the \$3.5 million threshold for noncompetitive 8(a) program awards.

About half the dollars obligated under the Recovery Act by the Sacramento District—over \$53 million—were used to accelerate funding of an existing project to relocate train tracks in Napa, California as part of a flood control project. This action is considered noncompetitive because the original contract was awarded sole-source to an Alaska Native Corporation in 2008, prior to the enactment of the Recovery Act; the

¹FAR § 16.504 permits contracts that provide for an indefinite quantity, within stated limits, of supplies or services during a fixed period. Contracting officers may use an indefinite-quantity contract when the government cannot predetermine, above a specified minimum, the precise quantities of supplies or services that the government will require during the contract period, and it is inadvisable for the government to commit itself for more than a minimum quantity.

**Appendix II: Key Recovery Act Programs,
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contract was modified in 2009 to add Recovery Act funds. According to USACE officials, the Recovery Act funding accelerated the completion of the flood control project, which also decreased the total cost of the project.

Some of the Recovery Act orders at Sacramento District were administered by USACE on behalf of other DOD components, such as the Army and Air Force. For instance, USACE placed an order on an existing IDIQ contract with an 8(a) program business for work on ventilation controls in buildings at Beale Air Force Base in Roseville, California.

Table 3 provides additional details on some noncompetitive contract actions we reviewed at USACE Sacramento District. These examples illustrate the variety of services and supplies being acquired, the amount of Recovery Act funding used, and the reason a contract action was not competed.

Table 3: Examples of Noncompetitive Recovery Act Contract Actions from the DOD USACE Sacramento Site Review

Purpose	Recovery Act funding	Reason contract action was not competed or is considered not competed^a	Notes
Repair of fire suppression building at Military Ocean Terminal	\$594,922	Modification to an existing noncompetitive contract	The incumbent is an 8(a) program business.
Placing and programming the ventilation controls in various buildings at Beale Air Force Base, California	\$241,639	8(a) program – under \$3.5 million	This contract was awarded to an 8(a) program business and the majority of the work is to be provided by subcontractors. The programming to make the controls function is proprietary and may only be performed by a particular subcontractor.
Upgrades to electrical equipment at Terminus Dam, Lake Kaweah, and Lemon Cove, California	\$97,891	Only one source available	The district had difficulty procuring services for remote locations such as Lake Kaweah and previous quotes from prospective businesses included travel costs that were cost prohibitive. Only one business in the local area with the capability to perform the work was identified.
Remediation/revegetation of area around Folsom Bridge	\$2,506,590	8(a) program – under \$3.5 million	Market research was performed to identify a HUBZone contractor with the capability to perform the work, but the contract was ultimately awarded to an 8(a) program business.

**Appendix II: Key Recovery Act Programs,
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Purpose	Recovery Act funding	Reason contract action was not competed or is considered not competed^a	Notes
Flood control project in downtown Napa, California, involving relocation of a railroad track, including: raising the railroad track; construction of four approaches and two bridges; and the modification of several grade crossings at multiple surface street intersections	\$53,373,325	Modification on a pre-Recovery Act noncompetitive contract	This modification was to terminate for convenience the full contract value and reinstate that amount using Recovery Act funds. According to USACE officials, using Recovery Act funds would allow the project to be completed sooner, which would ultimately reduce the region's exposure to flood risks and reduce overhead, inflation, and administration costs.
Remove/replace existing gutters and downspouts at various warehouses at Sierra Army Depot	\$421,210	Task order on a pre-Recovery Act noncompetitive contract	This task order is to an 8(a) program business using an existing IDIQ contract.
Application of a computer program to support updates to water control plans for Alabama-Coosa-Tallapoosa River Basin and Apalachicola-Chattahoochee-Flint River Basin	\$312,383	Task order on an existing noncompetitive contract	This task order was issued under a blanket purchase agreement. The business had institutional knowledge associated with hydrologic software that could not be duplicated by another business without many months or years of lost productivity.
Widening of levee crown and provide restoration work at sites in Carmichael, California	\$1,810,392	Task order on a pre-Recovery Act noncompetitive contract	This task order is to an 8(a) program business using an existing IDIQ contract.
Asbestos removal at various buildings at Presidio of Monterey, California	\$281,234	Task order on a pre-Recovery Act noncompetitive contract	This task order is to an 8(a) program business using an existing IDIQ contract.
Electric services for campsite and bathroom expansions at Cordoniz Campground	\$16,280	Only one source available	Provisions of utility services are controlled by the State of California Public Utilities Commission and the selected business was the only provider of electric service in the county.

Source: GAO analysis of USACE contract documents

^aModifications or task orders on noncompetitive contracts existing prior to enactment of the Recovery Act are considered noncompetitive.

Agency Contracts Requiring Justifications for Noncompetitive Awards

Using FPDS-NG data as of February 19, 2010, we identified 16 DOD contracts that required documented justification and approval for using other than full and open competition. Our review of these justification documents found that they included information to support the stated reason for a noncompetitive award. The most common reason, cited in 15 of the contract files, was that only one source was able to provide the product or service. Within this group, about half were contracts for utilities such as water service, while most of the others within this group were for proprietary equipment or technology that could only be provided by one business. For instance, one contract was for the purchase of

replacement parts for a hydraulic system at a USACE dam. The justification stated that the contract was awarded without competition because the original manufacturer of the equipment is the only available source of replacement parts.

Agency Contract Oversight

DOD efforts to provide oversight and transparency for Recovery Act activities include internal coordination, increased reporting to management, and recipient reporting.

Coordination: The Office of the Secretary of Defense (OSD) assigned the Principal Deputy Under Secretary of Defense within its Comptroller's office responsibility for Recovery Act oversight and coordination at the department level. OSD also established the Recovery Act Defense Department Working Group, which holds a weekly meeting that includes representatives from each of the services; the IG's office; the small business coordinator; the Acquisition, Technology and Logistics office; and other entities within DOD. According to officials, the working group's discussions cover a variety of Recovery Act issues at a high level, some of which are specifically contracting-related, such as contract obligations and updates on specific programs.

Reporting: At the OSD level, information on Recovery Act activities, including contracting, is gathered from the individual services and FPDS-NG and compiled in the Business Enterprise Information System, which enables management to oversee DOD's Recovery Act programs across all three services. For instance, the system includes data on contract obligations and estimated completion dates for DOD Recovery Act projects, and is updated continually. Individual DOD components have also implemented additional management reporting—for instance, USACE generates a weekly report for its leadership on the progress of Recovery Act projects.

Additional review: DOD did not create any additional levels of pre-award approval at the department level; contracting is administered by the individual services. USACE did not implement any additional levels of pre-award approval for Recovery Act contracts.

Issues: OSD officials said that no schedule or cost overrun issues have come to their attention. The only contract-related problem that they have had to address at the department level has been with recipient reporting and ensuring that recipient reports are filed by the contractors and are accurate.

IG Contract Oversight

Risk assessment: When designing its Recovery Act audit approach, DOD IG used data on individual DOD projects to assess risk and focus its efforts. The risk assessment ranked individual projects, incorporating the dollar value of the contracts, project type, location, and contract characteristics, such as the level of competition, as risk factors. DOD IG initially selected the 83 highest-risk projects based on these criteria. Once on-site reviews began, the information gathered was used to further refine the risk assessment criteria and select some additional projects.

Audit Approach: The DOD IG established a three-phase review of Recovery Act-related activities.

- Phase 1, review of DOD and program-specific Recovery Act implementation plans, has been completed. These reviews found that the DOD and program plans met Office of Management and Budget (OMB) standards, although the DOD IG called for additional detail regarding how the agency arrived at its projections of the proportion of contracts that would be awarded competitively.
- Phase 2 is a review of the implementation of the Recovery Act programs, focusing on the projects based on the results of the risk assessment. DOD IG identified sites to visit for the Facilities Sustainment, Restoration, and Modernization and Military Construction programs. The DOD IG's reviews within each military service are being conducted in cooperation with the respective military service audit agencies. As part of this work, DOD IG and audit agency staff review the extent of competition and the related documentation for selected contracts. The Air Force Audit Agency is also conducting some additional Recovery Act reviews beyond those it is conducting on behalf of the DOD IG. This work is ongoing.
- In Phase 3, which is not yet underway, the DOD IG will provide oversight of the construction of the projects, ensure that all required reporting is taking place, and review the results of the projects.

Findings: As of June 9, 2010, the DOD IG and military service audit agencies had posted reports on about 27 individual site reviews on www.Recovery.gov. These reports have found management of Recovery Act contracting to be generally good, although they suggest areas for improvement at some specific installations, such as ensuring that all Recovery Act-related clauses are included in every contract, or developing a plan to manage recipient reporting.

Department of Energy

DOE works to advance the national, economic, and energy security of the United States; to promote scientific and technological innovation in

support of that mission; and to ensure the environmental cleanup of the national nuclear weapons complex.

Key Recovery Act Programs

DOE received approximately \$36.7 billion in funding under the Recovery Act. Of this, \$32.7 billion was for the award of grants and contracts.² However, many programs involved comparatively little contracting by DOE—for instance, the Weatherization Assistance Program (\$5 billion) provided grants to states. By contrast, funding for cleanup of nuclear sites (\$6 billion) is spent primarily through contracts. DOE program areas receiving Recovery Act funding are listed in table 4.

Table 4: DOE Recovery Act Funds Allocation

Program area	Recovery Act funding (dollars in billions)	Purpose
Energy efficiency and renewable energy	\$13.64	Energy efficiency and renewable energy research and initiatives, including home weatherization.
Cleanup of nuclear sites	\$6.0	Remediation of contaminated former nuclear sites.
Smart grid and efficient electrical transmission	\$4.5	Grants, demonstration programs, and planning related to electrical transmission technology.
Carbon capture/storage	\$3.4	Initiatives and research and carbon capture and storage.
Transportation	\$2.9	Investments in new fuel and vehicle technologies.
Scientific research	\$2.0	Scientific research grants, including funding for the Advanced Research Projects Agency.

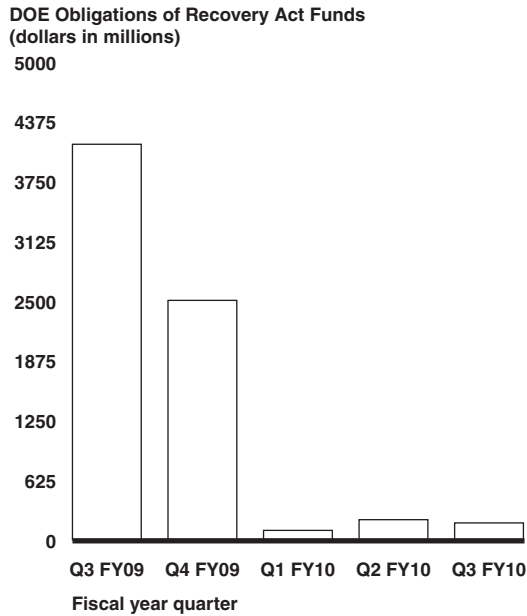
Source: DOE.

Recovery Act Spending

As of May 2010, DOE had obligated more than \$7.1 billion of Recovery Act funds through contracts. Most of the DOE Recovery Act contracting funds to date were obligated within the last two quarters of fiscal year 2009, from April through September 2009. Figure 5 shows DOE obligations of Recovery Act funds through contracts by fiscal quarter.

²The remaining \$4 billion of DOE Recovery Act funding was through credit subsidies.

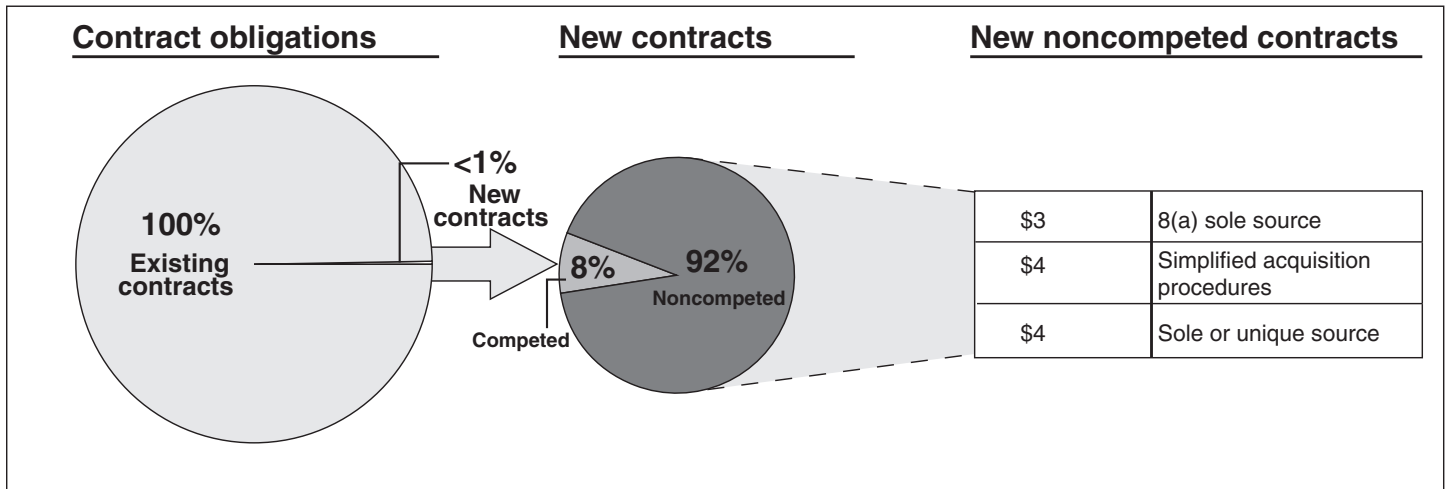
Figure 5: DOE Obligations of Recovery Act Funds through Contracts, by Fiscal Quarter



Source: GAO analysis of Federal Procurement Data System-Next Generation data as of May 12, 2010.

Nearly all—almost 100 percent—of the funds that DOE obligated under Recovery Act contract actions were on existing contracts, as shown in figure 6. About 97 percent of all Recovery Act funds at DOE were on contract actions coded in FPDS-NG as awarded competitively. However, among the small amount of funds obligated through new contracts, 92 percent were obligated on noncompetitively awarded contracts.

Figure 6: DOE Recovery Act Obligations on New and Existing Federal Contracts by Extent of Competition as of May 12, 2010 (Dollars in Millions)



Source: GAO analysis of Federal Procurement Data System-Next Generation data as of May 12, 2010.

Observations from the Site Review at the Environmental Management Consolidated Business Center

Of the 16 contract actions we reviewed at DOE's Environmental Management Consolidated Business Center, all were orders or modifications on existing noncompetitive contracts. Several added funding to existing remediation projects for sites with radioactive contamination. For example, \$1.9 million in Recovery Act funds were obligated on a contract for environmental remediation for the Uranium Mill Tailings Remediation Action in Moab, Utah. Other contracts were for administrative support and involved smaller amounts of Recovery Act funds. For instance, DOE issued an order on an existing contract for monitoring and reporting support.

Table 5 provides additional details on some noncompetitive contract actions we reviewed at the Environmental Management Consolidated Business Center. These examples illustrate the variety of services and supplies being acquired, the amount of Recovery Act funding used, and the reason a contract action was not competed.

**Appendix II: Key Recovery Act Programs,
Spending, Contract File Review Observations,
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Table 5: Examples of Noncompetitive Contract Actions from the DOE Environmental Management Consolidated Business Center Site Review

Purpose	Recovery Act funding	Reason contract action was not competed or is considered not competed^a	Notes
Waste management, environmental restoration, program support, and landlord activities during the period required to complete an environmental impact statement related to closure of the facility	\$15,875,000	Modification of a noncompetitive contract	The facility requires remediation prior to closure as it was involved in nuclear energy research and is within an area owned by the business.
Support for uranium mill tailing remediation at Moab, Utah	\$1,900,000	Modification of a noncompetitive contract	According to DOE contracting officials, the original contract was awarded sole-source to a tribal 8(a) program business because it resulted in a faster award, helped meet DOE socioeconomic contracting goals, and allowed the agency to address concerns of the local tribal population.
Deactivation and decommissioning of the graphite reactor and its associated facility at Brookhaven National Laboratory	\$29,524	Noncompetitive task order	A task order was issued to the incumbent business instead of selecting another contractor because it was determined that the business had corporate knowledge of the working conditions, disposal options, and Laboratory unique rules and regulations. Selection of another contractor to perform these requirements was determined to cost the government significantly more.
Support for monitoring and reporting on technical, programmatic, regulatory, environmental, safety and health, and execution issues of site work funded by the Recovery Act	\$265,047	Modification to a task order issued under an existing noncompetitive contract.	This contract is to provide support services for 1 year.

Source: GAO analysis of DOE contract documents.

^aModifications or task orders on noncompetitive contracts existing prior to enactment of the Recovery Act are considered noncompetitive.

**Agency Contracts
Requiring Justifications for
Noncompetitive Awards**

In a review of FPDS data as of February 19, 2010, we did not identify any new noncompetitive DOE contracts requiring a documented justification and approval for being awarded noncompetitively.

Agency Contract Oversight

DOE efforts to provide oversight and transparency for Recovery Act activities include internal coordination, increased reporting to management, and recipient reporting.

Coordination: DOE created the Senior Advisor position in the Office of the Secretary of Energy charged with overseeing Recovery Act implementation. This official leads the Office of the Recovery Act, which holds regular meetings with key officials from each of the agency's program and functional divisions. These meetings were held daily in the first months of Recovery Act implementation and are now held weekly. According to agency officials, a primary goal of these coordination meetings is to create strong links between the work of program offices and that of the functional offices, such as contracting, that support the programs. Topics of discussion at these meetings include the status of ongoing projects, areas of Recovery Act implementation identified as lagging, and other issues raised through review of agency data or by meeting participants. Officials said that Recovery Act coordination teams have also been established within individual DOE functional offices.

Reporting: DOE increased the amount of internal reporting as part of its Recovery Act oversight. An internal system, iPortal, reports detailed financial, earned value management,³ performance, risk, and job creation data on DOE projects. This system had already been in place, but was expanded for the Recovery Act to support more frequent reporting, performance dashboard displays, and an increased number of users from across the agency. The iPortal system generates automated daily and weekly reports to agency officials on key aspects of Recovery Act implementation; officials also use it to browse data on individual programs and projects. In addition, officials said that each program participates in a quarterly review of Recovery Act performance.

Additional review: According to DOE officials, all projects receiving Recovery Act funding had to be approved by the program office, the Office of the Recovery Act, the Under Secretary, and the Secretary. The projects were also reviewed and approved by OMB before contract performance could begin. After these projects completed this review process, DOE did

³Earned value management measures the value of work accomplished in a given period and compares it with the planned value of work scheduled for that period and with the actual cost of work accomplished.

not impose any additional levels of pre-award contract review beyond its normal processes, according to officials.

Issues: Agency officials said that they had not encountered any notable problems in implementing Recovery Act contracts.

IG Contract Oversight

Risk assessment: According to DOE IG officials, the DOE IG's Office of Audit Services conducts an annual risk assessment, and in response to the Recovery Act, the office incorporated its programs into the existing process. Officials said that this assessment includes collective judgment of risks and vulnerabilities from the DOE IG's previous audit work, and combines these risks with other factors such as the level of funding. DOE IG officials said that they were familiar with existing remediation contracts through their prior work, and determined that adding additional funding to them was not high risk.

Audit approach: DOE IG created a tiered approach to oversight of Recovery Act funds. Because the areas identified in the risk assessment do not emphasize contracting, only portions of the audit approach include contracting.

- Tier 1: Review the department's internal control structure and management of the most significant programs (those exceeding \$500 million) under the Recovery Act.
- Tier 2: Examine the efficiency and effectiveness of the department's distribution of funds to primary recipients such as state and local governments.
- Tier 3: Examine the use of funds by contract and grant recipients through transaction testing. Because grants represent a larger share of DOE Recovery Act funds, DOE IG officials said that grant programs have been the focus of the majority of their reviews.

Findings: DOE IG has released seven Recovery Act-related reports that address contracting issues. Most of these are not direct reviews of the agency's Recovery Act spending, but rather address previously identified management issues that the DOE IG determined could have an impact on the agency's Recovery Act programs. For example, the DOE IG issued a report on the agency's management of contract fines, penalties and legal costs, and noted the potential impact on Recovery Act implementation.

Department of Health and Human Services

HHS's mission is to enhance the health and well-being of Americans by providing for effective health and human services and by fostering strong, sustained advances in the sciences, underlying medicine, public health, and social services.

Key Recovery Act Programs

The Recovery Act provided over \$145 billion to HHS of which the agency has allocated over \$90 billion (63 percent) to improving and preserving health care. Over \$25 billion or 18 percent will be used for health information technology. Spending on children and family services and scientific research and facilities make up most of the remaining funds. As of June 30, 2010 HHS has obligated over \$87 billion of its Recovery Act funds, including nearly \$1.3 billion in contracts and orders. HHS program areas receiving Recovery Act funding are listed in table 6.

Table 6: HHS Recovery Act Funds Allocation

Program area	Recovery Act funding (dollars in billions)	Purpose
Improving and Preserving Health Care	\$91.6	Temporary increase in Medicaid, assistance to hospitals, tribal protections, and health professions training and support.
Health Information Technology	\$25.8	Accelerating the adoption of health information technology, such as electronic health records.
Children & Community Services	\$13.3	Funding for programs such adoption and foster care assistance, meals for the elderly and persons with disabilities, Head Start, and subsidized child care to support children and families.
Scientific Research and Facilities	\$10.0	Research performed at the National Institutes of Health (NIH) in areas of prevention, detection, diagnosis, and treatment of disease and disability; includes funding for construction and maintenance of research facilities.
Community Health Care Services	\$2.8	Expansion, improvement, and renovation at community and Indian Health Center facilities.
Comparative Effectiveness	\$1.1	Research to conduct comparisons of different interventions and strategies to prevent, diagnose, treat and monitor health conditions.
Prevention & Wellness	\$1.0	Disease prevention, immunization and infection reduction efforts.
Accountability and Information Technology Security	\$0.1	HHS IG oversight and increased security of computer systems.

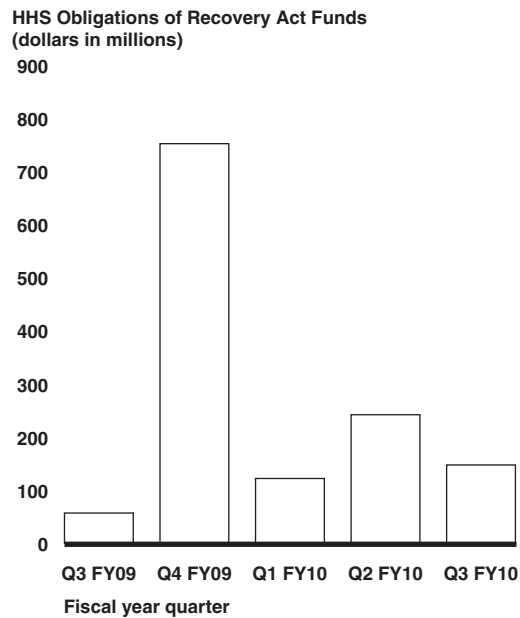
Source: HHS.

Recovery Act Spending

Recovery Act contract obligations peaked in the fourth quarter of fiscal year 2009 at \$752 million. These obligations have been below \$300 million

in each subsequent quarter. Figure 7 shows HHS obligations of Recovery Act funds through contracts by fiscal quarter.

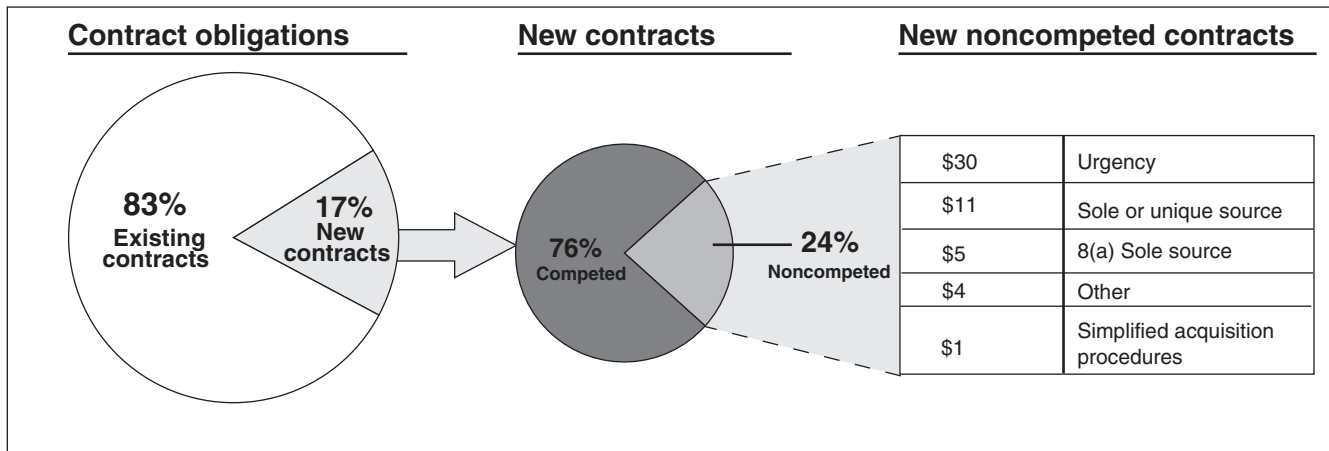
Figure 7: HHS Obligations of Recovery Act Funds through Contracts, by Fiscal Quarter



Source: GAO analysis of Federal Procurement Data System-Next Generation data as of May 12, 2010.

Most of the funds that HHS obligated under Recovery Act contract actions, about 83 percent, were obligated on existing contracts as shown in figure 8. Of the funds used for new contract actions, 76 percent were obligated on contracts that were competed. Of the obligations on noncompetitive new contract actions, 58 percent were on actions awarded noncompetitively because of the urgency of the agency's need, 22 percent were on actions for which only one source was available, 9 percent were on actions awarded noncompetitively under SBA's 8(a) program, and 2 percent were on actions noncompetitively awarded under simplified acquisition procedures.

Figure 8: Percentage of HHS Obligations Competed and Types of Noncompetitive Actions as of May 12, 2010 (Dollars in Millions)



Source: GAO analysis of Federal Procurement Data System-Next Generation data as of May 12, 2010.

Observations from the Site Review at NIH

We selected NIH for our contract file review as it had the largest amount of noncompetitive Recovery Act actions in numbers and dollars.

The most common reason for not competing the award of a contract was that there was only one source available. This occurred on contracts for new medical and laboratory equipment for which only one business could meet the requirements of the contract. Only one source available was listed on contracts for equipment and software upgrades. In these cases, the program and contracting offices decided that it was more practical to upgrade the existing equipment than it was to purchase new equipment. These upgrades were only available through the manufacturer of the equipment and were therefore not competed. The contract files included market research that did not identify alternative sources or comparable price quotes for similar items.

Table 7 provides additional details on some noncompetitive contract actions we reviewed at NIH. These examples illustrate the variety of services and supplies being acquired, the amount of Recovery Act funding used, and the reason a contract action was not competed.

**Appendix II: Key Recovery Act Programs,
Spending, Contract File Review Observations,
and Oversight for Selected Agencies**

Table 7: Examples of Noncompetitive Recovery Act Contract Details from the HHS NIH Site Review

Purpose	Recovery Act funding	Reason contract action was not competed or is considered not competed^a	Notes
Upgrades to existing medical diagnostic imaging systems needed by NIH for improved radiological clinical diagnosis	\$144,480	Only one source available	It was determined through a market survey and market research that only the original business could meet the requirements to upgrade the workstation previously acquired. Using another business would require purchase of a new workstation which would not be cost effective or beneficial to the government.
Purchase of equipment needed by NIH to prepare plate samples as part of genome sequencing research	\$7,216	Only one source available	It was determined through market research that the business has the only equipment and supplies with the minimum requirements that are essential to the government's research.
Software upgrades to an existing workstation needed by NIH for diagnostic oncology	\$67,780	Only one source available	The business is the only source capable of providing an upgrade to the proprietary software and hardware. Two other businesses provided demonstrations of their software, but confirmed that the existing workstation is proprietary and they cannot provide an upgrade.
Purchase of equipment for imaging at sub-micron resolution in large numbers of cells and to provide analysis at both single cell and population levels	\$419,000	Only one source available	After performing a market survey and obtaining price quotes for comparable equipment, it was determined that the comparable equipment could not meet requirements.
Upgrades to systems used for grants management and business operations software, including modifications to enable Recovery Act reporting	\$49,900	Only one source available	This business was awarded the contract in part because the business had personnel who were involved in the original development of the systems.
Support for reviewing Recovery Act-funded grants at the National Institute of Child Health and Human Development and the National Institute on Alcohol Abuse and Alcoholism	\$189,000	8(a) program – under \$3.5 million	The business was awarded the contract in part because it provides scientific review officers with extensive experience in the field of drug abuse and alcohol abuse research administration.
Hardware and software upgrade to equipment used for patient image archiving	\$802,532	Only one source available	The business was awarded the contract in part because it is the only source that can upgrade components to the existing system that it originally built for NIH several years ago for storing patient image data.

Source: GAO analysis of NIH contract documents.

^aModifications or task orders on noncompetitive contracts existing prior to enactment of the Recovery Act are considered noncompetitive.

Agency Contracts
Requiring Justifications for
Noncompetitive Awards

Using FPDS-NG data as of February 19, 2010, we identified four contracts at HHS—three awarded at the Centers for Disease Control and Prevention and one at NIH—that required a documented justification and approval for using other than full and open competition. In each case, the contractor was selected on a noncompetitive basis because there was only one source available that could fully meet project requirements. For example, on an NIH contract for the upgrade of a system that stores pictures generated by medical imaging devices, it was determined that the incumbent contractor was the only source capable of meeting the contract requirements as it had important institutional knowledge and access to a proprietary system, and no other sources could be found. While one other source offered a competing proposal, it was to replace the system rather than upgrading the existing system, a less-cost efficient and time-consuming alternative, according to agency officials.

Agency Contract Oversight

HHS efforts to provide oversight and transparency for Recovery Act activities include internal coordination, increased reporting to management, and recipient reporting.

Coordination: HHS has established an Office of Recovery Act Coordination (ORAC) which coordinates with relevant business management functions, such as public affairs, grants and contract management, financial management, budget, planning and evaluation, information technology, and the Office of the General Counsel. It also coordinates with the offices that manage appropriated funds and programs authorized under the Recovery Act. In addition to acting as the central repository for data, policies, and procedures related to the Recovery Act, ORAC prepares executive-level reports that portray the overall status of Recovery Act implementation based on individual project and activity plans. ORAC also identifies the key tasks, milestones, and activities for each project plan that require coordination with HHS program and business functions.

Additional review: NIH has established a process early in the acquisition planning stage for contracts using Recovery Act funds whereby a summary of the requirement, including any justifications for noncompetitive acquisitions, is reviewed and approved by various senior representatives to ensure that the requirement meets the intent of the Recovery Act and that the justification is supported. This document is called a Proposed Recovery Act Contract Action Approval Form. NIH contracting staff use a checklist in each contract to ensure that the files are complete and comply with Recovery Act requirements. NIH also developed detailed guidance

that complements and expands guidance issued by OMB. All contract actions at NIH funded in whole or in part by the Recovery Act are subject to this guidance. Included in this guidance are additional oversight mechanisms and measures related to use of noncompetitive acquisitions.

IG Contract Oversight

The Recovery Act provided the HHS IG with \$17 million in funding for oversight and review and an additional \$31,250,000 for ensuring the proper expenditure of funds under Medicaid. As of May 2010, the HHS IG has used \$4.8 million of these funds.

According to the HHS IG, internal risk assessments determined that the areas of greatest risk were the grant awards of the Administration for Children and Families (which is administering grant funds for expanded Head Start programs, among other programs) and the Health Resources and Services Administration, particularly those related to community health center grants. Accordingly, HHS IG officials are focusing their oversight efforts on these agencies.

By contrast, HHS IG officials determined that contracting activities, such as those we reviewed at NIH, are of comparatively lower risk. Efforts are presently focused on the identified high-risk departments and programs. While the HHS IG plans to review Recovery Act spending at colleges and universities in fiscal year 2011, these reviews will focus on compliance with grant terms.

National Aeronautics and Space Administration

NASA's mission is to pioneer the future in space exploration, scientific discovery and aeronautics research.

Key Recovery Act Programs

NASA received approximately \$1 billion in Recovery Act funds, 80 percent of which were used for Science and Exploration programs, 15 percent for Aeronautics programs, and 5 percent for cross-agency support programs which include restoration of NASA-owned facilities damaged by hurricanes and other natural disasters that occurred during calendar year 2008. NASA program areas receiving Recovery Act funding are listed in table 8.

**Appendix II: Key Recovery Act Programs,
Spending, Contract File Review Observations,
and Oversight for Selected Agencies**

Table 8: NASA Recovery Act Funds Allocation

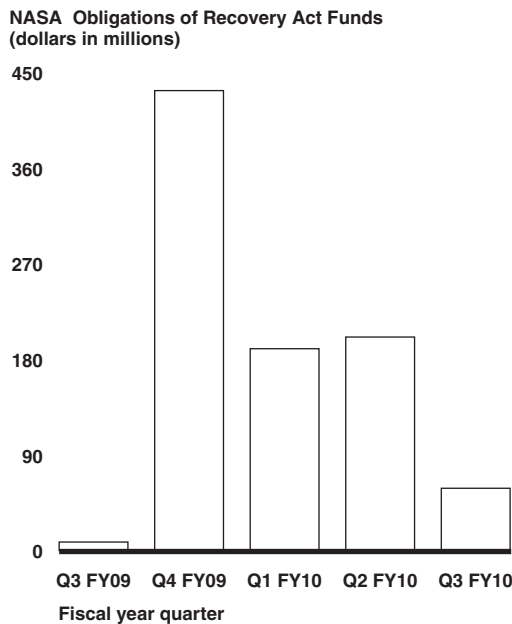
Program area	Recovery Act funding (dollars in millions)	Purpose
Science	\$400	Accelerate the development of the Tier 1 set of Earth Science climate research missions and increase the agency's supercomputing capabilities.
Exploration	\$400	Maintain initial operational capability date for the Ares-1 and Orion projects and to retain and/or increase the number of jobs, particularly in engineering, analysis, design, and research; stimulate efforts within the private sector to develop and demonstrate human spaceflight capabilities.
Aeronautics	\$150	Undertake systems-level research, development and demonstration activities related to aviation safety, environmental impact mitigation, and the Next Generation Air Transportation System.
Cross-agency support	\$50	Restore NASA-owned facilities damaged by hurricanes and other natural disasters that occurred during calendar year 2008.

Source: NASA.

Recovery Act Spending

Nearly half of NASA's Recovery Act contracting funds were obligated in the fourth quarter of fiscal year 2009. Figure 9 shows NASA obligations of Recovery Act funds through contracts by fiscal quarter.

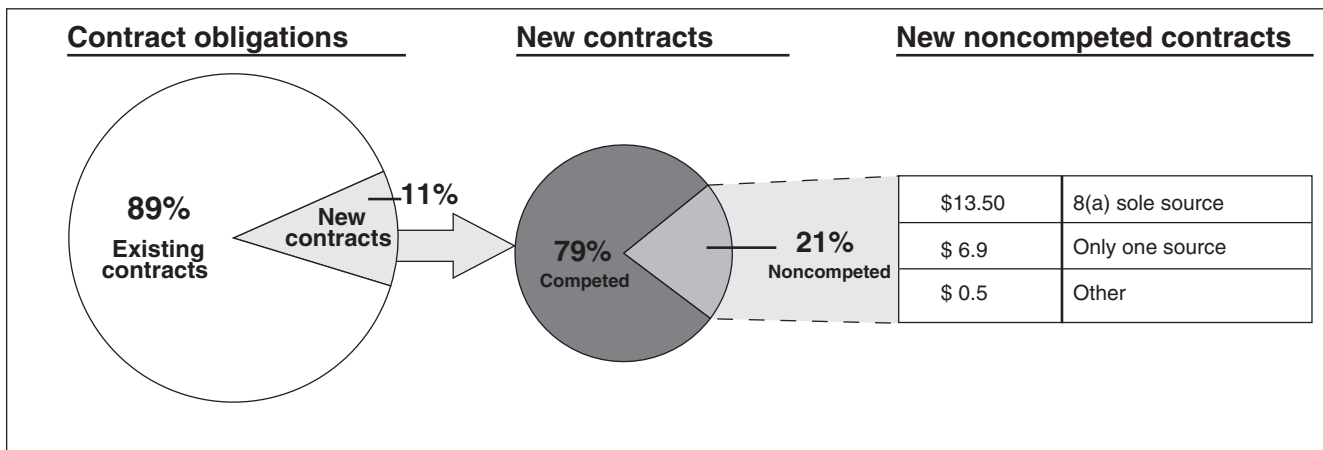
Figure 9: NASA Obligations of Recovery Act Funds through Contracts, by Fiscal Quarter



Source: GAO analysis of Federal Procurement Data System-Next Generation data as of May 12, 2010.

Most of the funds that NASA obligated under Recovery Act contract actions, about 89 percent, were obligated on existing contracts as shown in figure 10. Of the funds obligated for new actions, over 79 percent were obligated on contracts that were competed. For the noncompetitive new contract obligations, 64 percent were on actions awarded noncompetitively under SBA’s 8(a) program, 33 percent were on actions awarded noncompetitively because there was only one source available, and 3 percent were on actions noncompetitively awarded under simplified acquisition procedures.

Figure 10: NASA Recovery Act Obligations Competed and Types of Noncompetitive Actions as of May 12, 2010 (Dollars in Millions)



Source: GAO analysis of Federal Procurement Data System-Next Generation data as of May 12, 2010.

Observations from the Site Review at NASA Johnson Space Center

We reviewed 10 noncompetitive Recovery Act contract actions awarded by the NASA Johnson Space Center (JSC). The largest single obligation of Recovery Act funds that we reviewed at NASA was a \$15 million modification (change order) to an existing noncompetitive contract in support of Common Docking Adapter development for the International Space Station. Six contract actions in our sample were new contracts to 8(a) program businesses to provide a variety of construction services, repair services, or both at JSC. NASA cited the Recovery Act guidance directing agencies to take advantage of any authorized small business contracting program as its reason for selecting these businesses. Prior to selecting these businesses, the agency performed market research and coordinated with SBA to identify a potential pool of 8(a) program businesses. NASA then held capability briefings with those businesses from which award selections were made. Finally, there were three orders

**Appendix II: Key Recovery Act Programs,
Spending, Contract File Review Observations,
and Oversight for Selected Agencies**

using an existing, originally noncompetitive contract to an 8(a) program business for construction oversight administration services at JSC.

Table 9 provides additional details on some noncompetitive contract actions we reviewed at JSC. These examples illustrate the variety of services and supplies being acquired, the amount of Recovery Act funding used, and the reason a contract action was not competed.

Table 9: Examples of Noncompetitive Recovery Act Contract Details from the NASA JSC Site Review

Purpose	Recovery Act funding	Reason contract action was not competed or is considered not competed^a	Notes
Cross-agency placement and administration support services for construction contracts authorized under the Recovery Act	\$242,696	Task order on an existing noncompetitive contract	The task order was issued using an existing blanket purchase agreement with a small, women-owned business. The task order was modified to comply with Recovery Act coding requirements.
Replace carpets at a JSC facility	\$82,579	8(a) program – under \$3.5 million	The business is a woman-owned small business and had experience replacing carpets at the University of Texas.
Cleaning and sealing of panels along with caulking of all joints on the exterior of the buildings	\$3,391,619	8(a) program – under \$3.5 million	The business had experience caulking under prior contracts with Harris County, Texas.
Demolition and removal of existing roof and installation of new roofing system at a JSC facility	\$1,817,433	8(a) program – under \$3.5 million	The business had recent experience successfully completing two roofing projects at JSC.
Phase II development of the International Space Station Common Docking Adapter	\$15,000,000	Modification to an existing noncompetitive contract	The business was determined to be uniquely qualified to perform the project because it had solely developed and integrated the International Space Station. Modifying the existing contract was determined to be the most appropriate contract vehicle for the preservation of jobs using Recovery Act funds. The Recovery Act funded effort was a separate, cost-reimbursable, performance-based fee contract line item that was placed on the existing cost-plus-award-fee contract.
Design and construction of an open-sided metal hangar that shall provide a covered area for limited aircraft maintenance and overhead protection for aircraft and ground support equipment	\$3,388,000	8(a) program – under \$3.5 million	The business had recent experience renovating an aircraft hangar at a U.S. Naval base.

**Appendix II: Key Recovery Act Programs,
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Purpose	Recovery Act funding	Reason contract action was not competed or is considered not competed^a	Notes
Replacement of aging and deteriorating pedestrian light poles, foundations, and light fixtures at JSC that show physical damage from Hurricane Ike	\$774,099	8(a) program – under \$3.5 million	This business demonstrated recent experience on concrete and street repair projects and performed contracts at JSC and with other federal agencies.
Replacement of the windows and related gaskets at a JSC facility	\$2,830,879	8(a) program – under \$3.5 million	The business was a local business with experience on high-rise construction projects.

Source: GAO analysis of NASA contract documents.

^aModifications or task orders on noncompetitive contracts existing prior to the enactment of the Recovery Act are considered noncompetitive.

Agency Contracts Requiring Justifications for Noncompetitive Awards

In a review of FPDS data as of February 19, 2010, we identified one new NASA contract that required a documented justification and approval for use of a noncompetitive award. According to the justification for this contract, only one source was available for specific electronic systems because only one business had developed a spaceflight-appropriate version of the technology.

Agency Contract Oversight

NASA efforts to provide oversight and transparency of Recovery Act-funded efforts include internal coordination, issuing guidance to the procurement community on the implementation of the Recovery Act, a prohibition on commingling of funds, greater reporting to senior management, and recipient reporting. There are weekly meetings of NASA oversight and contracting officials to coordinate Recovery Act efforts. In addition, the agency developed an internal online file management system that stores Recovery Act-related contract files and can be accessed by agency officials.

NASA issued Procurement Information Circular 09-06E to provide guidance to the procurement community on the implementation of the Recovery Act. The guidance provides instruction on a range of Recovery Act contracting topics including requisition requirements for initiating procurement actions, pre-award considerations and contracting officer responsibilities, posting and reporting requirements for contract actions, inclusion of new FAR clauses, instructions specific to construction contracts, and contractor invoicing procedures, among others. The circular also includes NASA’s process for reviewing contractor reporting under the Recovery Act.

IG Contract Oversight

According to officials, the NASA IG is reviewing Recovery Act contract actions at selected NASA centers as appropriate; this will include two types of audits, one of the administration and implementation of the contract award and another of the performance of the contractor. Officials reported that the initial administrative audits of Recovery Act contract actions through November 2009 are complete at a number of the centers including Johnson, Goddard, Langley, and Ames. As of June 2010, one contractor performance audit had been conducted. On July 1, 2010, the NASA IG issued a draft report on the combined administrative audits for NASA management's review and comment. The NASA IG is releasing staggered performance reports and may issue a capping report, as necessary.

The NASA IG conducted an initial review of the final NASA Agency-Wide Recovery Act Plan and identified several compliance issues with respect to fulfilling requirements of the OMB guidance. According to the NASA IG memorandum, NASA's Agency-Wide Recovery Act Plan provided insufficient detail about the agency's broad Recovery Act goals in terms of outputs, outcomes, and expected efficiencies. In addition, the plan did not include a projection of the expected rate of competition nor a rationale for those numbers, as required by OMB guidance. Lastly, the plan did not address the use of fixed-price contracts as a percentage of all dollars spent or describe the steps planned to maximize the use of fixed-price contracts where practicable for Recovery Act-funded contracts. The memorandum was submitted to NASA on December 17, 2009. In NASA management's response, received January 5, 2010, the Recovery Act Implementation Executive stated the agency concurred with the observations noted in this memorandum. According to NASA management's response, at the time that the Agency-Wide Recovery Act Plan was due for submission to OMB, Congress had not concurred with NASA's proposed activities. NASA indicated in its plan that it would provide this additional information with plan updates.

Small Business Administration

SBA's mission is to maintain and strengthen the nation's economy by aiding, counseling, assisting, and protecting the interests of small businesses.

Key Recovery Act Programs

The Recovery Act provides \$730 million to SBA that the agency is using to expand its lending and investment programs so that they can reach more small businesses that need help. While most of

**Appendix II: Key Recovery Act Programs,
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SBA's Recovery Act funds are used for loan programs, contracts are being awarded for equipment and services to support these programs. Specifically, SBA has allocated \$20 million for improving technology. Most of the contract dollars are being spent in this area. SBA program areas receiving Recovery Act funding are listed in table 10.

Table 10: SBA Recovery Act Funds Allocation

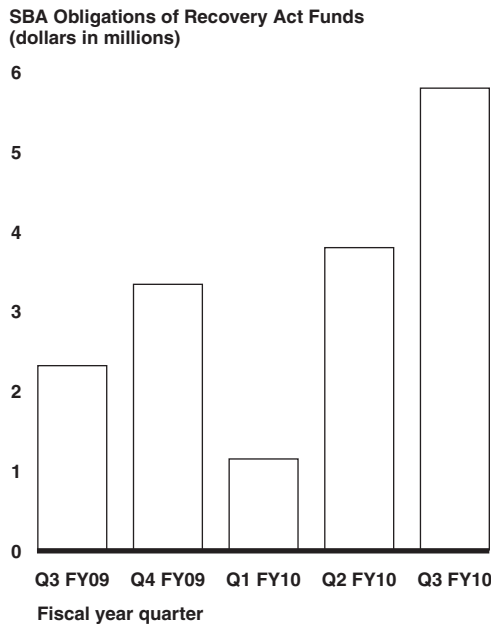
Program area	Recovery Act funding (dollars in millions)	Purpose
Loan programs	\$660	Temporary elimination of fees on SBA-backed loans, a new loan program to help small businesses meet existing debt payments, and expansion of SBA's Microloan program.
Technology	\$20	Technology systems to streamline SBA's lending and oversight processes.
Staffing and Recovery Act oversight	\$35	Additional staffing to meet demands for new programs and funds for the SBA IG.
Surety Bonds	\$15	SBA's Surety Bond Guarantee program.

Source: SBA.

Recovery Act Spending

Through May 2010, SBA has obligated approximately \$11 million of its Recovery Act funds on contracts. SBA's quarterly obligations have fluctuated. According to an SBA procurement official, this was generally because of the award of large, individual contracts. Figure 11 shows SBA obligations of Recovery Act funds through contracts by fiscal quarter.

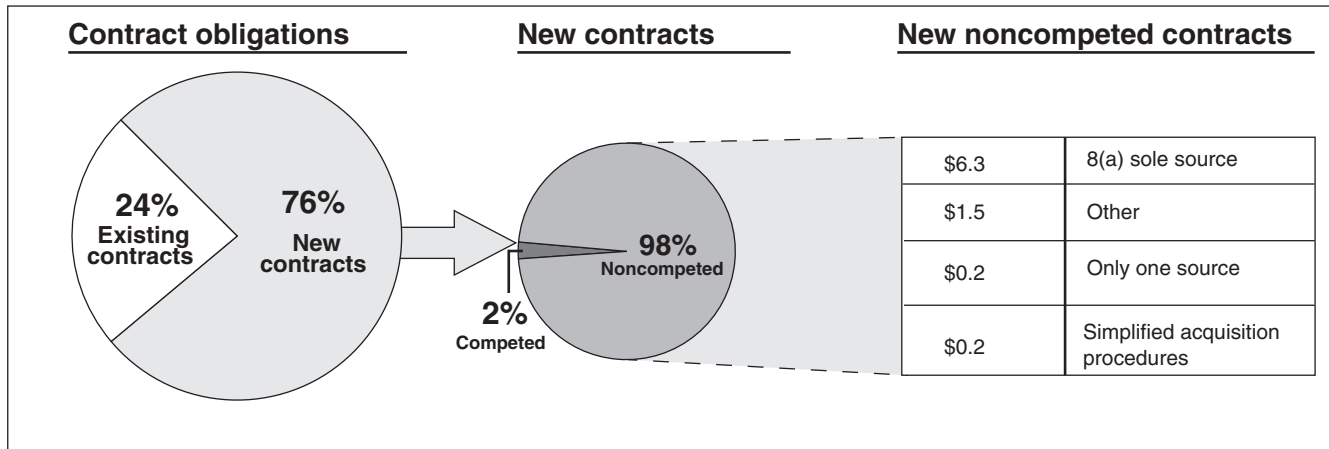
Figure 11: SBA Obligations of Recovery Act Funds through Contracts, by Fiscal Quarter



Source: GAO analysis of Federal Procurement Data System-Next Generation data as of May 12, 2010.

SBA's use of existing and competed contracts was very different from the other agencies we reviewed. Most of the funds that SBA obligated under Recovery Act contract actions, about 76 percent, were obligated on new contracts, as shown in figure 12 below. For the noncompetitive new contract obligations, 76 percent were on actions awarded noncompetitively under SBA's 8(a) program, 3 percent were on actions awarded noncompetitively under simplified acquisition procedures, and 3 percent were on actions awarded noncompetitively because there was only one source available. Two percent of new contracts were awarded competitively.

Figure 12: SBA Recovery Act Obligations Completed and Types of Noncompetitive Actions as of May 12, 2010 (Dollars in Millions)



Source: GAO analysis of Federal Procurement Data System-Next Generation data as of May 12, 2010.

Observations from the Site Review at SBA

SBA is primarily using Recovery Act contracts to train, supply, and equip staff to support other Recovery Act-related activities. Most of SBA's Recovery Act contract dollars were obligated on contracts to 8(a) program businesses.

Consistent with the fact that agencies are not required to justify in writing the use of noncompetitive contracting procedures for 8(a) program contracts, these contract files were not required to contain a justification document related to awarding a noncompetitive contract. However, the files contained documentation that described the use of the 8(a) program and included competitors' quotes to establish price reasonableness.

Table 11 provides additional details on some noncompetitive contract actions we reviewed at the SBA. These examples illustrate the variety of services and supplies being acquired, the amount of Recovery Act funding used, and the reason a contract action was not competed.

**Appendix II: Key Recovery Act Programs,
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Table 11: Examples of Noncompetitive Recovery Act Contract Details from the SBA Office of Business Operations Site Review

Purpose	Recovery Act funding	Reason contract action was not competed or is considered not competed^a	Notes
Advertising and marketing services for Recovery Act programs	\$491,457	8(a) program – under \$3.5 million	Awarded to an American Indian-owned small business.
Program management and information technology services to support pilot deployment of a system that maintains lender, small business, and partner data	\$1,287,701	Task order on a pre-Recovery Act noncompetitive contract	This task order was issued off of an existing IDIQ contract to 8(a) program business.
A centralized commercial loan credit sourcing program	\$245,391	Modification on a pre-Recovery Act noncompetitive contract	This modification was issued off of an existing contract to 8(a) program business.
An assessment of the Surety Bond Guarantee Program under the Recovery Act	\$35,976	Modification on a pre-Recovery Act noncompetitive contract	This modification was issued off of an existing contract to 8(a) program business.
Procuring software to perform Customer Relationship Management and data warehousing functions	\$1,827,567	8(a) program – under \$3.5 million	The business selected for the contract was the only eligible 8(a) program business to submit a price quote.
Wide Area Network optimization or acceleration technology solutions and associated implementation services	\$843,027	8(a) program – under \$3.5 million	In seeking a business to perform this work, SBA performed market research to identify businesses that could provide the most appropriate technology solution possible while promoting the use of an 8(a) program business.
Acquisition and procurement support at SBA headquarters, including assistance with Recovery Act reporting requirements	\$123,696	Modification on a pre-Recovery Act noncompetitive contract	It was determined that SBA had a continuing need for this support and therefore exercised an option year on a contract to an 8(a) program business.
Software and services for the Customer Relationship Management suite of applications	\$71,122	8(a) program – under \$3.5 million	SBA conducted market research and found that the items were not available under General Services Administration schedules.
Provide training for Microloan intermediaries	\$84,556	Only one source available	This contract was awarded under simplified acquisition procedures.

Source: GAO analysis of SBA contract documents

^aModifications or task orders on noncompetitive contracts existing prior to Recovery Act are considered noncompetitive

Agency Contracts Requiring Justifications for Noncompetitive Awards

In a review of FPDS data as of February 19, 2010, we did not identify any new, noncompetitive SBA contracts requiring a documented justification and approval for being awarded noncompetitively.

Agency Contract Oversight SBA efforts to provide oversight and transparency for Recovery Act activities include increased legal review of contract awards and recipient reporting.

- SBA has experienced a significant decrease in its acquisition workforce and has contracted out for contract specialists.
- SBA includes a legal review for all Recovery Act contract awards. This review is not required for every non-Recovery Act award.

**Inspector General
Contract Oversight**

The SBA IG has received \$10 million in Recovery Act funds for oversight. The SBA IG's Recovery Act Oversight Plan highlighted numerous efforts related to SBA's contract administration practices, and oversight of Recovery Act loans and grants. In the contracting area, the SBA IG's focus was on examining the award and administration of \$20 million in information technology contracts, and evaluating the adequacy of SBA's acquisition workforce, expenditure controls, and reporting of contract actions. In October 2009, the SBA IG added three staff members to its contract audit group to provide additional audit coverage of the procurement function.

The SBA IG has issued a memorandum to SBA's acquisition office regarding their dramatic shortages in acquisition staff noting that the staff decreased from 13 to 5 staff members in a short period of time, straining the acquisition office's ability to issue and provide oversight of Recovery Act contracts.

The SBA IG issued a report noting that there are numerous discrepancies in the way that actions are being recorded in the FPDS-NG. The SBA IG also issued another report that identified problems with acquisition planning and eligibility for 8(a) program businesses associated with two contracts for the Customer Relationship Management suite of applications (see table 11).

Appendix III: Objectives, Scope, and Methodology

Objectives

GAO was asked to examine noncompetitive contract awards under the American Recovery and Reinvestment Act of 2009 (Recovery Act). In response, we conducted a review to determine:

- the extent to which Recovery Act funding was spent using contracts, and to what extent these contract actions were awarded noncompetitively;
- the reasons selected federal agencies awarded noncompetitive Recovery Act contracts;
- the extent of oversight of Recovery Act contract actions at selected federal agencies; and
- state officials' level of insight into the use of noncompetitive Recovery Act contracts within selected states.

Scope and Methodology

We analyzed Federal Procurement Data System—Next Generation (FPDS-NG) data to determine the extent to which Recovery Act funding was obligated through contract actions across the federal government.¹ We determined that the FPDS-NG data were sufficiently reliable for the purposes of this review by comparing the information for selected agencies with information from other sources, including agency contract data and information in contract files at selected locations.² As part of this analysis, we determined the amount of Recovery Act obligations under new and existing contract vehicles, as reported in FPDS-NG. Actions on the same underlying contract were grouped together; orders and modifications to contracts awarded after enactment of the Recovery Act were counted as occurring under new contracts, while orders and modifications to contracts that predated the Recovery Act were counted as existing contracts.

For our second and third objectives, we used FPDS-NG data to select five agencies for more extensive review:

¹FPDS-NG is a comprehensive, Web-based tool and database that functions as a clearinghouse of information for all federal contract actions, including non-competitive and competitive actions, exceeding the micropurchase threshold, which in most cases is \$3,000.

²Our previous work, as well as the work of the federal Acquisition Advisory Panel, has identified limitations in the accuracy and timeliness of data in FPDS-NG. Both GAO and the Acquisition Advisory Panel have reported that while FPDS-NG has been the primary governmentwide contracting database for capturing and reporting on various acquisition topics, such as agency contracting actions and procurement trends, it has had data quality issues over a number of years. While FPDS-NG data are useful for providing insight, they are not always accurate at the detailed level. However, no other viable alternative currently exists for obtaining governmentwide data on federal procurements. See [GAO-09-1032T](#) and [GAO-08-160](#).

- Department of Defense (DOD)
- Department of Energy (DOE)
- Department of Health and Human Services (HHS)
- National Aeronautics and Space Administration (NASA)
- Small Business Administration (SBA)

These agencies were identified on the basis of the volume, dollar value, and percentage of noncompetitive contract actions on which they obligated Recovery Act funds, according to data drawn from FPDS-NG on February 19, 2010. The size of the agencies was also considered.

Within each of the five agencies, we selected one contracting office at which we reviewed contract files for noncompetitive Recovery Act contract actions. As with the agencies, we chose these locations based on the volume, dollar value, and percentage of noncompetitive Recovery Act contract actions. The types of contract awards made at each location were also considered. The five contracting offices selected were

- the U.S. Army Corps of Engineers (USACE) Sacramento District at DOD,
- the Office of Environmental Management Consolidated Business Center at DOE,
- the National Institutes of Health (NIH) at HHS,
- the Johnson Space Center at NASA, and
- the Office of Business Operations at SBA.

At each contracting office, we reviewed all noncompetitive contract actions awarded or issued using Recovery Act funds, about 150 actions in total. Because GAO and others have previously identified shortcomings in FPDS-NG, we also asked agency officials to verify the accuracy and completeness of our lists of noncompetitive contract actions before our site visits. For each contract file, we reviewed basic information on the contract award, such as the obligation amount, as well as information on the award process, such as the reason the contract was awarded noncompetitively. These reviews were conducted on-site, except for that of NASA's Johnson Space Center, for which we reviewed electronic versions of the contract files. We also interviewed agency contracting officials at each location regarding issues related to the contract files included in our review as well as contracting under the Recovery Act as a whole.

In addition, using FPDS-NG data, we identified all new Recovery Act contracts at the selected agencies that required documented justifications and approvals authorizing the use of a noncompetitive contracting

approach, as of February 19, 2010. We limited our search to new contracts with an award type of “Definitive Contract” in FPDS-NG, and selected for review all those where the amount obligated exceeded typical thresholds for requiring a documented justification—\$3.5 million for contracts with 8(a) program businesses, and \$100,000 in most other cases. For each of the contracts, we obtained and reviewed materials from the contract files related to the justification for the noncompetitive award.

For each of the five selected federal agencies, we gathered information on Recovery Act contracting oversight from interviews with relevant officials, and reviews of relevant policies, reports, and other documents. We obtained similar information from the agencies’ inspectors general (IG), including their audit plans related to Recovery Act contracting. We also reviewed and analyzed applicable findings the IGs have made regarding management and oversight of Recovery Act contracting.

To determine the level of insight that state officials have into the use of noncompetitive Recovery Act contracts, we selected five states—California, Colorado, Florida, New York, and Texas—based on the amount of Recovery Act funds reported as being awarded via contracts on www.Recovery.gov and our goal of providing information on a variety of geographic locations.³ These states account for more than half of the Recovery Act funds awarded by contract at the state level for the 16 states that we are monitoring as part of our mandatory reporting on Recovery Act issues. For each state, we discussed with the appropriate state officials—including representatives from the governors offices, state procurement offices, and audit organizations—the extent to which the states have awarded noncompetitive Recovery Act contracts, the reasons why they did not use competition, and the level of oversight the states provide for these contracts.⁴ Additionally, we discussed these issues with representatives of the state agencies that manage the education and weatherization programs to obtain further understanding of how state agencies award and oversee contracts. It is important to note that states

³The data reported on www.Recovery.gov represent the data reported by recipients of Recovery Act funds within the states. Our previous work has identified concerns with the quality of these data; however, this Web site is the only source of data available on states’ Recovery Act contracting awards. See [GAO-10-604](#).

⁴Recovery Act funds that were awarded directly to local governmental entities by federal agencies and bypassed state agencies were not included in the scope of our state-level work addressing oversight. These funds would include formula and discretionary grant programs.

are not required to follow federal acquisition regulations, including those covering the award of noncompetitive contracts.

We conducted this performance audit from February 2010 to July 2010, 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 objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

Appendix IV: Comments from the Department of Defense Inspector General



INSPECTOR GENERAL
DEPARTMENT OF DEFENSE
400 ARMY NAVY DRIVE
ARLINGTON, VIRGINIA 22202-4704

JUL 13 2010

Mr. John K. Needham
Director
Acquisitions and Sourcing Management
U.S. Government Accountability Office
Washington, DC 20548

Dear Mr. Needham;

This is the Department of Defense Inspector General (DoD IG) response to the Government Accountability Office draft report, "RECOVERY ACT: Contracting Approaches and Oversight at Selected Federal Agencies and States," dated July 9, 2010 (GAO Code 120886, GAO-10-809).

The DoD IG agrees with the draft report and its recommendation. As part of our Phase 3 audit plan, we have updated our risk based analysis based on results found during our Phase 1 and Phase 2 reviews including our continuing coverage of future expected Recovery Accountability and Transparency Board referrals relating to 8(a) firms.

We appreciate the opportunity to comment on the draft report.

Sincerely,

A handwritten signature in cursive script, appearing to read "Daniel R. Blair".

Daniel R. Blair
Principal Assistant Inspector General
for Auditing

Appendix V: Comments from the Department of Energy Inspector General



Department of Energy
Washington, DC 20585

July 13, 2010

Mr. James Fuquay
Assistant Director
Government Accountability Office
Via email: (fuquayj@gao.gov).

Subject: Comments on the Draft Government Accountability Office Report:
RECOVERY ACT: Contracting Approaches and Oversight at Selected
Federal Agencies and States (GAO-10-809)

Mr. Fuquay,

The Office of Inspector General appreciates the opportunity to comment on the subject report. As we explained during our meetings with GAO officials and as recognized in your draft report, the Office of Inspector General employs a risk-based approach in determining how to best use taxpayer furnished resources. For the Recovery Act, as with all funds appropriated to the U.S. Department of Energy, we consider a number of factors in determining where to apply our scarce audit resources, not the least of which is the form and substance of the contracting vehicle employed.

The U.S. Department of Energy is one of the most contractor dependent agencies in the government. As a result, we incorporate the examination of applicable contract instruments into each of our audits. Regarding our Recovery Act strategy, we considered the subject area during the completion of our risk assessment. However, as your report states, we did not identify contracting as a Recovery Act high risk area. One of the primary reasons was that the Department used a significant portion of its Recovery Act funds to award grants, with virtually all of the remainder dedicated to accelerating approved scopes of work on existing contracts. As GAO notes in the Appendix to its draft, *less than one percent of funding* was devoted to newly awarded contracts, including those awarded to 8(a) firms. By virtually every reasonable test, such amount is immaterial to the more than \$38 billion in Recovery Act funding received by the Department.

With respect to use of Recovery Act funding, the GAO is correct in stating that OIG spending has not reached anticipated levels. However, the draft report fails to recognize that this was directly tied to delays in the Department's program start/scale-up. As we have identified in recently issued and several in-progress reviews, significant spending by the Department on a number of major Recovery Act projects/activities had only recently begun. As of June 30, 2010, however, we had obligated about \$6.2 million and expended over \$1.7 million of the \$15 million we were provided in Recovery Act funds. We anticipate that our spending rate will significantly

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increase in the near term as the OIG is currently using contract independent public accountants and Federal Recovery Act specific employees to provide support for a significant number of audits at the state and local level.

Finally, the report recommends that as we revisit and revise our Recovery Act audit plans, that we should assess the need for allocating an appropriate level of audit resources, as determined using our risk-based analysis, to non-competitive contracts awarded under the 8(a) program. We do not disagree with the fundamental premise of the recommendation; however, we do not believe that the facts in this case provide a basis for it. As a matter of practice, we routinely consider contracts of this nature and have completed a number of audits in this area in the past. In fact, our Fiscal Year 2011 plan includes an audit start in this very area.

Should you have questions or desire to discuss the contents of our response, please contact me at 202-586-1949.



Rickey R. Hass
Deputy Inspector General for Audit Services
Office of Inspector General
U.S. Department of Energy

CC: Tom Griffin, CF
Diane Williams, CF
Jacqueline Kniskern, MA

Appendix VI: Comments from the National Aeronautics and Space Administration Inspector General

National Aeronautics and Space Administration
Office of Inspector General
Washington, DC 20546-0001



July 15, 2010

Mr. James Fuquay
Assistant Director
U.S. Government Accountability Office
Washington, D.C. 20548

Dear Mr. Fuquay:

Thank you for the opportunity to comment on the draft report, "Recovery Act: Contracting Approaches and Oversight at Selected Federal Agencies and States" (GAO-10-809), provided July 9, 2010. The report recommends that the inspectors general of the five Federal agencies reviewed assess the risks associated with the Small Business Administration's 8(a) program as they move forward with Recovery Act audit plans.

We concur with the recommendation and plan to assess the need for allocating an appropriate level of audit resources to the non-competitive contracts awarded under the 8(a) program. In fact, we expect to begin an audit on NASA's achievement of Recovery Act milestones under the cross-Agency support contracts at Johnson Space Center. At least seven NASA contracts that we will be reviewing in this audit were awarded under the 8(a) program.

Please express my appreciation to your staff for their time, dedication, and professionalism. If you or your staff would like to meet with us to discuss this matter further, please contact Jim Morrison, Assistant Inspector General for Audits, at 202-358-0378.

Sincerely,

A handwritten signature in black ink that reads "PKMA".

Paul K. Martin
Inspector General

Appendix VII: Comments from the Small Business Administration



U.S. SMALL BUSINESS ADMINISTRATION
WASHINGTON, D.C. 20416

July 14, 2010

John K. Needham, Director
Acquisition and Sourcing Management
U.S. Government Accountability Office
441 G Street, N.W.
Washington, DC 20548

Dear Mr. Needham,

The U.S. Small Business Administration appreciates the opportunity to provide comments on the Government Accountability Office's (GAO) report number GAO-10-809, entitled "Recovery Act: Contracting Approaches and Oversight at Selected Federal Agencies and States." The SBA is committed to working with agencies and small businesses to meet the statutory small business contracting goals and providing meaningful contracting assistance and business development opportunities to all small businesses. At the same time, the agency is committed to ensuring that its programs operate free of fraud, waste, and abuse.

Especially in this challenging economic environment for small businesses, the 8(a) program provides critical business development opportunities for socially and economically disadvantaged small business owners. One of the SBA's primary goals is to ensure that the benefits of the 8(a) program, including contracting assistance, flow to the program's intended recipients. It is for this reason that the SBA is concerned about some of the suggestions made about the 8(a) program in this GAO report.

The report attempts to link agencies' legitimate use of the 8(a) program through the Recovery Act to a previous forensic audit of the 8(a) program, GAO 10-425, "8(a) Program: Fourteen Ineligible Firms Received \$325 Million in Sole-Source and Set-Aside Contracts". This report implies that contracts awarded through the 8(a) Business Development program are more susceptible to fraud than other types of contracts, and that the Inspector General's offices at agencies should have more closely reviewed these contracts simply because they were awarded through the 8(a) program.

As part of the agency's comprehensive approach to reducing fraud, waste, and abuse in its programs, the SBA has taken significant steps in each of the 8(a) program's three stages of compliance – upfront certification, ongoing monitoring, and rigorous enforcement. Many of the agency's efforts have progressed significantly since the March 2010 release of the forensic audit, and as a result of the SBA's actions, the 8(a) program will better deliver benefits to its intended recipients.

In the area of upfront certification, the SBA has carefully examined its certification procedures through its first comprehensive review of 8(a) regulations in over ten years. The agency has collected comments from stakeholders and has held two tribal consultations and events in ten cities in order to solicit a broad array of feedback. The agency is currently reviewing all comments, and will issue its revised regulations later this year.



**Appendix VII: Comments from the Small
Business Administration**

Mr. John K. Needham

Page 2

In addition to revising 8(a) regulations, the SBA has also taken additional steps to ensure firms' ongoing compliance. Consistent with the GAO's recommendations in its previous forensic audit, content experts in the SBA's Offices of Field Operations and Government Contracting & Business Development have been developing a comprehensive curriculum for all Business Development Specialists. This training will focus on conducting more effective annual reviews, resolving key eligibility issues, utilizing site visits more effectively, and supporting staff in other key aspects so that SBA can provide meaningful business development and reduce fraud, waste, and abuse in the 8(a) program.

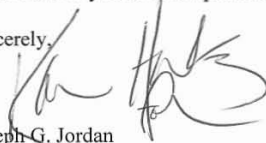
As part of its commitment to rigorous enforcement, the SBA has also worked closely with both its Office of Inspector General and the Department of Justice to review 8(a) firms suspected of fraud. The SBA is currently reviewing the eligibility of those firms that were suspected of fraud in the previous GAO report, while also ensuring that these firms receive their due process. Although the SBA is investigating the firms included in the prior GAO report's findings, it is possible that not every company identified was acting inappropriately. More broadly, based on the results of any investigation, the SBA and the appropriate authorities are committed to pursuing all appropriate courses of action – whether suspension, debarment, or prosecution – against firms that have fraudulently obtained government contracts through its programs.

Finally, while it is a priority for the SBA to rid all of its programs of waste, fraud, and abuse, it is important to keep the findings of the prior GAO report in context. The prior GAO report references \$17 million in Recovery Act contracts that were given to companies that potentially acted fraudulently. While this figure is concerning to the SBA, this amount represents less than 1 percent of the 8(a) program's annual contracting volume. Correlating the 8(a) program in its entirety with at-risk contracting through the Recovery Act is incomplete.

Suggestions of wrong-doing without supporting evidence are detrimental to the 8(a) program and its thousands of eligible program participants. The 8(a) program is a legitimate business development tool with a contract vehicle that was enacted by Congress and was a viable procurement option for Recovery Act contracting. The SBA has taken significant steps to reduce fraud, waste, and abuse in the 8(a) program, and disputes this report's suggestion that the 8(a) program was an inappropriate or relatively risky procurement choice.

If you have any additional questions or comments, please feel free to contact me directly.

Sincerely,



Joseph G. Jordan
Associate Administrator
Office of Government Contracting
and Business Development

Appendix VIII: Comments from the State of Florida



CHARLIE CRIST
GOVERNOR

STATE OF FLORIDA
Office of the Governor

THE CAPITOL
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July 13, 2010

Mr. James Fequay, Assistant Director
Acquisition and Sourcing Management
United States Government Accountability Office
Washington, DC 20548

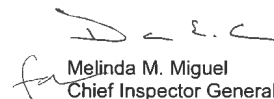
Dear Mr. Fequay:

The State of Florida Inspectors General have reviewed your proposed report entitled *Recovery Act: Contracting Approaches and Oversight at Selected Federal Agencies and States (GAO-10-809)*.

We agree with the information presented in the report about Florida and therefore do not have any comments or concerns.

We also would like to thank your staff for their efforts and cordial working relationship. If you need additional information, please contact Kim Mills, Director of Auditing, at (850) 922-4637.

Sincerely,


Melinda M. Miguel
Chief Inspector General

Appendix IX: Comments from the State of Texas



OFFICE OF THE GOVERNOR

RICK PERRY
GOVERNOR

July 13, 2010

Mr. John K. Needham
Acquisition and Sourcing Management
U.S. Government Accountability Office
441 G Street, NW
Washington, D.C. 20548

Dear Mr. Needham:

Thank you for the opportunity to review and comment on the draft report, *Recovery Act: Contracting Approaches and Oversight at Selected Federal Agencies and States* (GAO-10-809), which includes Texas as one of five states reviewed.

We suggest these changes:

- On page 23 modify the second bullet point as follows: "Texas's state-wide contract database does not identify which contracts are funded under the Recovery Act. However, the state does have a separate database to track Recovery Act awards made to state agencies and public institutions of higher education."
- On page 25, 2nd paragraph: "At the state level—unlike the federal level—Congress provided no Recovery Act funds were not specifically set aside to states or their for state audit organizations to provide oversight over the use of Recovery Act funds."
- On page 27 under "Recommendation" add this as the last sentence: "Congress should provide states the resources to accomplish the tasks that Congress has required of state and local governments."

Texas remains committed to complying with the requirements of the Act. We look forward to continued work with the GAO on this effort.

Sincerely,

A handwritten signature in black ink that reads "Mike Morrissey".

Mike Morrissey
Senior Advisor
Office of the Governor

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Appendix X: GAO Contact and Staff Acknowledgments

GAO Contact

John K. Needham, (202) 512-4841 or needhamjk1@gao.gov

Acknowledgments

In addition to the contact named above, William T. Woods, Director; James Fuquay, Assistant Director; Shea Bader; Noah Bleicher; M. Greg Campbell; MacKenzie Cooper; Alexandra Dew; R. Eli DeVan; Kevin Heinz; W. Keith Hudson; Julia Kennon; Jean K. Lee; Teague Lyons; Jean McSween; Norm Rabkin; Morgan Delaney Ramaker; and Russ Reiter all made contributions to this report.

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