

# U.S. Department of Labor

Office of Inspector General—Office of Audit



## **RECOVERY ACT: OASAM NEEDS TO ENSURE THAT JOB CORPS CONTRACT MODIFICATIONS MEET RECOVERY ACT REQUIREMENTS**

Date Issued: March 30, 2010  
Report Number: 18-10-005-07-001

## BRIEFLY...

Highlights of Report Number: 18-10-005-07-001, *Recovery Act: OASAM Needs to Ensure that Job Corps Contract Modifications Meet Recovery Act Requirements* to the Assistant Secretary for Administration and Management.

### WHY READ THE REPORT

The American Recovery and Reinvestment Act (Recovery Act) signed into law February 17, 2009, provided Job Corps \$250 million for construction, operations and administrative costs. Job Corps plans to award \$211.6 million (85 percent) of the funds for the construction, rehabilitation, and acquisition of Job Corps Centers; award \$35.9 million (14 percent) to enhance and develop green-collar job training for careers in the automotive, construction, and manufacturing industries, and to further the incorporation of energy-efficient practices in Job Corps Centers; and spend the remaining \$2.5 million (1 percent) for administration of Recovery Act funds. As of September 30, 2009, Job Corps awarded 10 contracts totaling \$54.2 million, awarded a lease for \$82 million, and made modifications to 72 existing contracts totaling \$14.4 million.

### WHY OIG CONDUCTED THE AUDIT

Our audit objectives were to answer the following questions:

1. Did OASAM award Job Corps Recovery Act contracts, leases, and modifications based on merit?
2. Did OASAM meet Recovery Act-specific contracting requirements?
3. Does Job Corps have plans in place to ensure Recovery Act funds are awarded and distributed by the June 30, 2010 deadline?

### READ THE FULL REPORT

To view the report, including the scope, methodology, and full agency response, go to: <http://www.oig.dol.gov/public/reports/oa/2010/18-10-005-07-001.pdf>.

March 2010

## RECOVERY ACT: OASAM NEEDS TO ENSURE THAT JOB CORPS CONTRACT MODIFICATIONS MEET RECOVERY ACT REQUIREMENTS

### WHAT OIG FOUND

The OIG found that OASAM awarded the Job Corps lease and 10 Job Corps contracts in our sample based on merit; however, OASAM could not demonstrate that one of the 33 sampled modifications totaling \$122,103 was merit based.

While OASAM met Recovery Act-specific contracting requirements when awarding the sampled lease, we noted that two modifications obligated \$122,523 for projects not eligible for Recovery Act funding. In addition, 11 modifications and 4 contracts did not include one or more of the following required clauses: Buy American Act, Recovery Act Reporting, GAO/IG Access or Whistleblower Protection.

Job Corps has plans in place to ensure Recovery Act funds are awarded and distributed by June 30, 2010.

### WHAT OIG RECOMMENDED

We made four recommendations to the Senior Accountable Official to issue a modification or re-compete the work for the modification totaling \$122,103 that OASAM could not demonstrate was issued based on merit; provide documentation that \$122,523 of Recovery Act funds were de-obligated for the two ineligible projects; modify the contracting actions that did not properly include Recovery Act required clauses; and re-communicate and monitor the Department's policy for using the pre-award checklist.

The Senior Accountable Official for the American Recovery and Reinvestment Act of 2009 agreed with the findings and recommendations, and has either planned or taken actions to address the recommendations to ensure compliance with contracting requirements under the Recovery Act.

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**U.S. Department of Labor**

Office of Inspector General  
Washington, D.C. 20210



March 30, 2010

## **Assistant Inspector General's Report**

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Senior Accountable Official  
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The American Recovery and Reinvestment Act (Recovery Act), signed into law February 17, 2009, provided Job Corps \$250 million for construction, operations and administrative costs. Job Corps plans to award \$211.6 million (85 percent) of the funds for the construction, rehabilitation, and acquisition of Job Corps Centers; award \$35.9 million (14 percent) to enhance and develop green-collar job training for careers in the automotive, construction, and manufacturing industries, and to further the incorporation of energy-efficient practices in Job Corps Centers; and spend the remaining \$2.5 million (1 percent) for administration of Recovery Act funds. As of September 30, 2009, Job Corps awarded 10 contracts totaling \$54.2 million, awarded a lease for \$82 million, and made modifications to 72 existing contracts totaling \$14.4 million.

To ensure Federal contracts are awarded based on merit, the Federal Acquisition Regulation (FAR) requires Federal agencies to publicize and solicit contract requirements, evaluate the proposals based on established award factors, and award contracts that provide a fair and reasonable price or best value to the Federal government. In addition, modifications are required to be within the scope of the original contract. The Recovery Act imposed unique reporting and transparency requirements in that specific contracting requirements are to be followed. Consequently, FAR now requires alternate Buy-American for Construction Materials and GAO/OIG Access clauses and new Recipient Reporting and Whistleblower Protection clauses for recipients of Recovery Act funds. The Recovery Act prohibits use of Recovery Act funds for certain projects, such as swimming pools and golf courses.

The Office of the Assistant Secretary for Administration and Management (OASAM) is generally responsible for the overall implementation of the Department's procurement program and ensures that the program complies with the appropriate laws and regulations. OASAM has overall responsibility for Job Corps procurement. Job Corps is responsible for developing Recovery Act spending plans.

Our audit objectives were to answer the following questions:

1. Did OASAM award Job Corps Recovery Act contracts, leases, and modifications based on merit?
2. Did OASAM meet Recovery Act-specific contracting requirements?
3. Does Job Corps have plans in place to ensure Recovery Act funds are awarded and distributed by the June 30, 2010 deadline?

The audit covered contracting actions taken from the date the Recovery Act was signed into law on February 17, 2009, until September 30, 2009. We reviewed a statistical sample of 44 (53 percent) of the 83 contracting actions, totaling \$142.5 million (95 percent) of the \$150.6 million awarded. Our sample included one lease totaling \$82 million, 10 contracts totaling \$54.2 million, and 33 modifications totaling \$6.3 million. The lease was the single largest Recovery Act dollar obligation by Job Corps.

We reviewed Job Corps and OASAM policies and procedures through February 5, 2010. We conducted on-site work at the Job Corps National Office, OASAM National Office, and the Philadelphia and Boston regional contracting offices. To accomplish our audit objectives, we interviewed OASAM and Job Corps officials and staff to gain an understanding of the Job Corps and OASAM procurement process; we applied applicable sections of the Recovery Act, FAR, OMB, and DOL guidance when reviewing contracting actions; and we reviewed Job Corps' spending plans.

We conducted this performance audit in accordance with generally accepted government auditing standards (GAGAS). 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. Our objectives, scope, methodology, and criteria are detailed in Appendix B.

## **RESULTS IN BRIEF**

Our audit revealed OASAM awarded the Job Corps lease and 10 Job Corps contracts in our sample based on merit; however, OASAM could not demonstrate that one of the 33 sampled modifications totaling \$122,103 was merit based. The modification did not contain a Statement of Work (SOW). While OASAM had instituted a policy to use a pre-award checklist and the contracting office's policy was for one-level higher supervisory review, there was no evidence that these policies were followed. As such, OASAM could not demonstrate that this modification was aligned with the original contract and did not need to be re-competed.

While OASAM met Recovery Act specific contracting requirements when awarding the sampled lease, 4 of 10 sampled contracts did not include the proper GAO/OIG access

clause and Whistleblower clauses, and 12 of 33 sampled modifications did not meet one or more Recovery Act contracting requirements. (See Exhibits 1 and 2.)

Two modifications totaling \$122,523 obligated funds for projects we determined were not eligible for Recovery Act funding: \$118,229 to make repairs to a building that encloses a swimming pool and \$4,294 to make repairs to a miniature golf course. Management was responsive to our concerns and noted that these funds though obligated had not yet been spent, and would be de-obligated and funded by other Job Corps funding sources.

We also noted that 11 modifications and 4 contracts did not include required contract clauses due to a lack of management oversight. These clauses are intended to mitigate the risks of not buying American products, not reporting the results of the use of Recovery Act funds, not allowing GAO/OIG monitoring, and not ensuring whistleblower protections. Without inclusion of required contract clauses, OASAM cannot ensure that Recovery Act funds are not used for projects that use iron, steel, and manufactured goods that are produced outside the United States and do not report results of Recovery Act funds. In addition, OASAM can not be assured that recipients of Recovery Act funds are aware of the Comptroller General and agency Inspector Generals' authorization to audit Recovery Act funded contracts and subcontracts and State and local government and contractor whistleblower protections.

Job Corps has plans in place to ensure Recovery Act funds are awarded and distributed by June 30, 2010. Job Corps' has an OMB-approved spending plan and has developed a tracking mechanism to monitor Recovery Act funds. Job Corps has already obligated 67 percent of the \$250 million appropriated by the Recovery Act.

While Job Corps has plans in place to award and distribute Recovery Act funds by June 30, 2010, OASAM did not always ensure that Job Corps contract modifications were awarded in compliance with the Recovery Act. Leases and contracts were generally awarded in compliance with the Recovery Act; however, modifications did not comply with numerous Recovery Act contracting requirements. Our audit identified one modification totaling \$122,103 that was not awarded based on merit and two modifications totaling \$122,523 that were awarded for projects not eligible for Recovery Act funding. By de-obligating these funds, they can be put to better use for eligible Recovery Act activities. Finally, we found that all required contracting clauses were not included in the modifications

We made four recommendations to the Senior Accountable Official to issue a modification or re-compete the work for the modification totaling \$122,103 that OASAM could not demonstrate was issued based on merit; provide documentation that \$122,523 of Recovery Act funds were de-obligated; modify the contracting actions that did not properly include Recovery Act required clauses; and re-communicate and monitor the Department's policy for using the pre-award checklist.

## DEPARTMENT RESPONSE

In response to the draft report, the Senior Accountable Official for the American Recovery and Reinvestment Act of 2009 agreed with the findings and recommendations and has either planned or taken actions to address the recommendations to ensure compliance with requirements under the Recovery Act. The Department's response is included in its entirety as Appendix D.

## RESULTS AND FINDINGS

### **Objective 1 — Did OASAM award Job Corps Recovery Act contracts, leases, and modifications based on merit?**

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*OASAM awarded Job Corps Recovery Act contracts and leases based on merit. However, OASAM could not demonstrate that 1 of the 33 modifications totaling \$122,103 was merit-based.*

### **Finding 1 – OASAM did not document that a Recovery Act modification was awarded based on merit.**

In 1 of the 33 sampled modifications, OASAM could not demonstrate that the modification was within the scope of the original contract. Consequently, OASAM could not show that it was a merit-based award. The modification, totaling \$122,103, did not contain a SOW. The original contract had established two cost categories — Labor/Administrative Cost and Travel — to obtain services related to administration of Job Corps construction projects. However, the modification established a new cost category simply labeled “American Recovery and Reinvestment Act Funds” without a SOW or any further description of additional costs to be included in the new cost category. While OASAM had instituted a policy to use a pre-award checklist and the contracting office had a policy for one-level higher supervisory review, there was no evidence that these policies were followed.

For another modification totaling \$116,925, OASAM did not provide the complete original contract file for our review during fieldwork. Therefore, our initial results reported that, without the requisite contract documentation, OASAM could not demonstrate the modification was within the scope of the original contract and did not need to be re-competed. When we met with OASAM officials subsequent to completing fieldwork, they provided the complete original contract file, which we reviewed and determined the modification in question was within the scope of the original contract and, therefore, was awarded based on merit.

The FAR requires all acquisitions to be competed unless they are within the scope of the original contract. FAR states:



6.001 Applicability.

This part applies to all acquisition except—

...(c) Contract modifications, including the exercise of priced options that were evaluated as part of the initial competition (see 17.207(f)), that are within the scope and under the terms of the existing contract;

6.101 Policy.

(a) Title 10, United States Code (U.S.C.) Section 2304 and Title 41, U.S.C., Section 253 require, with certain limited exceptions (see Subparts 6.2 and 6.3), that contracting officers shall promote and provide for full and open competition in soliciting offers and awarding Government contracts.

Furthermore, OMB's Updated Implementing Guidance for American Recovery and Reinvestment Act of 2009, Subsection 6.1, paragraph (2), emphasizes competition for the Recovery Act:

Although the law calls on agencies to commence expenditures and activities as quickly as possible consistent with prudent management, this statement, by itself, does not constitute a sufficient justification to support award of a federal contract on a non-competitive basis.... Competition is the cornerstone of our acquisition system. The benefits of competition are well established. Competition saves money for the taxpayer, improves contractor performance, curbs fraud, and promotes accountability for results. The President's Memorandum of March 4, 2009, on "Government Contracting" stated that it is the policy of the Federal Government that executive agencies shall not engage in noncompetitive contracts except in those circumstances where their use can be fully justified and where appropriate safeguards are in place to protect the taxpayer.

As a result, \$122,103 in Recovery Act funds was not properly obligated. OASAM could not demonstrate that the public funds were expended in accordance with the President's commitment for responsible spending of Recovery Act funds.

**Objective 2 — Did OASAM meet Recovery Act-specific contracting requirements?**

*While OASAM met Recovery Act specific contracting requirements when awarding a sampled lease, 4 of 10 sampled contracts did not include the proper GAO/OIG access clause and Whistleblower clauses, and 12 of 33 sampled modifications did not meet one or more Recovery Act contracting requirements.*

**Finding 2 – Two Job Corps Center Repair Projects Were not Eligible for Recovery Act Funding.**

Of the 33 modifications reviewed, we identified two modifications that funded projects at two Job Centers that included repairs not eligible for Recovery Act funding. One modification was for \$118,229 to make repairs to a building that houses a swimming pool at a Job Corps Center. Specifically, the funds were for repairing heating, air conditioning, and interior lighting in a “Swimming Pool Building.” The second modification was for \$4,294 to renovate a miniature golf course at a Job Corps Center as a part of a supplemental Career Technical Skills Training (CTST) Green Project.

The Job Corps program operates facilities that provide enrollees with a supervised program of education, vocational training, work experience, physical rehabilitation and development, and counseling. Many of the Centers include residential facilities that have recreational activities for the students.

The Recovery Act specifically prohibits funds to be used for any golf course, or swimming pool. In Section 1604, Recovery Act states:

None of the funds appropriated or otherwise made available in this Act may be used by any State or local government, or any private entity, for any casino or other gambling establishment, aquarium, zoo, golf course, or swimming pool.

A Presidential Memorandum, dated March 20, 2009, extended the coverage of Section 1604 of the Recovery Act and specifically prohibited Federal agencies to obligate funds for the purposes listed in Section 1604 of the Recovery Act. The Presidential Memorandum states:

Sec. 2. Avoiding Funding of Imprudent Projects:

Funds under the Recovery Act shall not be committed, obligated, or expended by any executive department or agency, and shall not be used by any State or local governmental or private grantee or awardees, to support projects of the similar type described in section 1604 of Division A of the Recovery Act, which states that “[n]one of the funds appropriated or otherwise made available in this Act may be used by any State or local government, or any private entity, for any casino or other gambling establishment, aquarium, zoo, golf course, or swimming pool.”

Management did not believe that the Recovery Act prohibited the obligations in question because the funding did not involve renovation to the pool itself, and because the miniature golf course project involved the removal of environmental hazards and safety-related infrastructure deficiencies. However, heating, air conditioning, and lighting are integral parts of an indoor swimming pool and cannot be separated from the pool itself.

Additionally, the Recovery Act prohibition does not make an exception for the nature of repairs being made to the miniature golf course

Although these repairs appear to be legitimate costs to the Job Corps program, we concluded that Recovery Act funds should not be used for these specific repairs. Management was responsive to our concerns and noted that these funds, though obligated, had not yet been spent, and would be de-obligated and funded by other Job Corps funding sources.

**Finding 3 – OASAM did not always incorporate required FAR clauses.**

In 11 modifications and 4 contracts, OASAM did not include one or more of the appropriate FAR clauses required by the Recovery Act. (See Exhibits 1 and 2.) Specifically, we noted:

- 7 modifications did not have the proper special Buy-American Act – Construction Materials clause
- 3 modifications did not have the Recipient Reporting clause
- 4 modifications and 4 contracts did not have the expanded GAO/IG access to contractor records clause
- 3 modifications and 1 contract did not have the proper Whistleblower Protection clause

FAR requires the following clauses for Recovery Act contracting actions:

Buy-American Act – Construction Materials

Section 1605 of the Recovery Act, entitled “Buy American,” prohibits the use of Recovery Act funds for any construction, alteration, maintenance, or repair of a public building or public works unless all of the iron, steel, and manufactured goods used in the projects are produced in United States. To implement this provision, FAR now requires alternate clauses in FAR 52.225-21, 52.225-22, 52.225-23 or 52.225.24 to be included in all construction contracts using Recovery Act funds.

Reporting Requirements

Section 1512 of the Recovery Act, also known as “Job Accountability Act,” requires contractors who receive awards (or modifications to existing awards) funded by Recovery Act to report quarterly on the use of funds. To implement this provision, FAR added a new clause in FAR 52.204-11 and requires it to be included in solicitations and contracts funded by Recovery Act, except for classified solicitations and contracts.

### GAO/IG Access

Sections 902, 1514 and 1515 of the Recovery Act serves to “prevent the fraud, waste, and abuse” of Recovery Act funds through the review and audit of contracts using such funds. In implementing this provision, FAR extended Comptroller General authority to audit not only prime contracts but also subcontracts and also to interview contractor and subcontractor personnel. FAR also extended the same authority to agency inspector generals, with the exception of interviewing subcontractor employees. Consequently, FAR requires the following clauses to be incorporated in solicitations and contracts using Recovery Act funds: FAR 52.212-5, Alternate II clause for commercial items; FAR 52.215-2, Alternate I clause for Simplified Acquisition Procedures and contracting by negotiation; and FAR 52.214-26, Alternate I clause for sealed bidding.

### Whistleblower Protection

Section 1553 of the Recovery Act, Protecting State and Local Government and Contractor Whistleblowers, prohibits non-Federal employers from discharging, demoting, or discriminating against an employee as a reprisal for disclosing information. To implement this provision, a clause was added in FAR 52.203-15 that requires Federal agencies to include the clause in all solicitations and contracts funded by Recovery Act funds.

The contract pre-award checklist was intended to ensure required FAR clauses were included in the contracts. Lack of adequate management oversight resulted in the checklists being used inconsistently, as well as a FAR requirement being misinterpreted. We found that not all of the OASAM contracting offices were using the pre-award checklist. Furthermore, one contracting office stated that the Buy-American for construction clause was not applicable to modifications for construction and rehabilitation projects at Job Corps centers because the original contracts were not construction contracts, but rather, were service contracts. Without inclusion of required contract clauses, OASAM cannot ensure that Recovery Act funds are not used for projects that use iron, steel, and manufactured goods that are produced outside the United States and do not report results of Recovery Act funds. In addition, OASAM can not be assured that recipients of Recovery Act funds are aware of the Comptroller General and agency Inspector Generals’ authorization to audit Recovery Act funded contracts and subcontracts and State and local government and contractor whistleblower protections.

### **Objective 3 — Does Job Corps have plans in place to ensure Recovery Act funds are awarded and distributed by the June 30, 2010 deadline?**

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Job Corps has an OMB-approved spending plan in place to ensure Job Corps Recovery Act funds are awarded and distributed by June 30, 2010. Job Corps also developed a tracking mechanism that accounts for planned, pending, and future Recovery Act funds

for construction, operations and administrative activities. The Job Corps Recovery Act tracking mechanism also provides oversight to Job Corps officials to ensure obligations stay within the boundaries set within the Recovery Act legislation. Our analysis of Job Corps' spending activities occurring through November 30, 2009, showed Job Corps has already obligated 67 percent of the \$250 million appropriated by the Recovery Act.

## **RECOMMENDATIONS**

We recommend that the Senior Accountable Official for the American Recovery and Reinvestment Act of 2009:

1. For the modification totaling \$122,103 that OASAM could not demonstrate was issued based on merit, either issue a modification incorporating a SOW that is within the scope of the original contract or re-compete the work.
2. Provide documentation that \$122,523 of Recovery Act funds was de-obligated.
3. Modify the contracting actions that did not properly include Recovery Act required clauses.
4. Re-communicate and monitor the Department's policy for using the pre-award checklist.

We appreciate the cooperation and courtesies that OASAM and Job Corps personnel extended to the Office of Inspector General during this audit. OIG personnel who made major contributions to this report are listed in Appendix E.



Elliot P. Lewis  
Assistant Inspector General  
for Audit

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## Exhibits

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**Exhibit 1**

**Job Corps Recovery Act Contracts and Leases with Incidences of Non-Compliance**

	Contracts	Amount	Not Merit Based	Award for Prohibited Items	Proper Buy American Clause Not Included	Expanded GAO/OIG Monitoring Clause Not Included	Recipient Reporting Clause Not Included	Proper Whistleblower Clause Not Included
1.	DOLJ099628885 <sup>1</sup>	\$81,998,806						
2.	DOLJ099628902	\$990,069						
3.	DOLJ099629008	\$23,077,000						
4.	DOLJ099628993	\$3,270,771				X		
5.	DOLJ099629099	\$3,432,100						
6.	DOLJ099629143	\$3,293,903						
7.	DOLF099629309	\$468,720				X		X
8.	DOLJ099628917	\$7,783,648						
9.	DOLJ099629381	\$10,425,000				X		
10.	DOLJU099A29434	\$495,000				X		
11.	DOLJ0996296038	\$917,000						
	<b>Total</b>	<b>136,152,017</b>				<b>4</b>		<b>1</b>

<sup>1</sup> Lease Agreement

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**Exhibit 2**

**Job Corps Recovery Act Contract Modifications with Incidences of Non-Compliance**

	Contract/ /Modification	Amount	Not Merit Based	Award for Prohibited Items	Proper Buy American Clause Not Included	Expanded GAO/OIG Monitoring Clause Not Included	Recipien Reporting Clause Not Included	Proper Whistleblowe Clause Not Included
1.	DOLJ07PA00002 (20)	\$492,000			X			
2.	DOLJ04PA00004 (53)	\$48,653			X			
3	DOLJ05PA00001 (39)	\$100,000			X			
4.	DOLJ06PA00001 (37)	\$250,202			X			
5.	DOLJ08PA00005 (11)	\$798,829		X <sup>1</sup>	X			
6.	DOLJ08PA00001 (10)	\$419,275			X			
7.	DOLJ09PA00002 (5)	\$470,939			X			
8.	DOLJ06PA00001 (40)	\$50,388						
9.	DOLJ06PA00007 (30)	\$43,765						
10.	DOLJ06PA00005 (22)	\$4,390						
11.	DOLJ09PA00003 (2)	\$30,990						
12.	DOLJ06PA00004 (28)	\$11,600						
13.	DOLJ06PA00002 (29)	\$24,799		X <sup>2</sup>				
14.	DOLJ06PA00003 (32)	\$15,017						
15.	DOLJ07PA00002 (22)	\$53,780						
16.	DOLJ04QA00003 (29)	\$5,954						
17.	DOLJ05QA00007 (28)	\$257,396						
18.	DOLJ06QA00001 (22)	\$943,890						
19.	DOLJ05QA00010 (28)	\$182,464						
20.	DOLJ05QA00002 (35)	\$17,977						
21.	DOLJ07QA00001 (16)	\$11,360						
22.	DOLJ09QA00003 (2)	\$89,891						
23.	DOLJ05QA00013 (24)	\$23,109						
24.	DOLJ05QA00002 (37)	\$6,500						
25.	DOLJ06QA00004 (20)	\$16,850						
26.	DOLJ05QA00011 (28)	\$29,950						
27.	DOLJ08QA00002 (12)	\$3,580						
28	DOLJ05QA00006 (28)	\$21,625						
29.	DOLJ09QA00002 (3)	\$23,598						
30.	DOLJ06QA00001 (25)	\$115,862				X	X	X
31.	DOLJ089627842 (4)	\$122,103	X			X	X	X
32.	DOLJ089626797 (8)	\$116,925				X		
33.	DOLJ099628680 (3)	\$1,480,000				X	X	X
	<b>Total</b>	<b>\$6,283,661</b>	<b>1</b>	<b>2</b>	<b>7</b>	<b>4</b>	<b>3</b>	<b>3</b>

1. \$118,229 of total \$798,829 awarded ARRA funds were improperly used for repairs on a building that houses a swimming pool. The spending activity is prohibited by section 1604 of Recovery Act. Refer to pages 5 and 6 in the Results and Findings section of the report. Finding 2 identifies the funding of project as prohibited by Recovery act legislation.
2. \$4,294 of total \$24,799 awarded ARRA funds were improperly used for renovation of miniature golf course. The spending activity is prohibited by section 1604 of Recovery Act. Refer to pages 5 and 6 in the Results and Findings section of the report. Finding 2 identifies the specific funding of this project as prohibited by Recovery act legislation.

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## Appendices

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## Appendix A

**Background**

The Recovery Act, signed into law February 17, 2009, provided DOL with \$70.6 billion, including \$250 million for Job Corps. (See Table 1.)

**Table 1: Department of Labor Recovery Act Funding, as of March 12, 2010**

<b>Program</b>	<b>Amount<sup>2</sup> (Millions)</b>	<b>Percent</b>
Unemployment Insurance	\$65,687	93.00
Training and Employment Services	3,950	5.59
State Unemployment Insurance and Employment Service Operations	400	0.57
Community Service Employment for Older Americans	120	0.17
National Emergency Grants for Health Insurance Coverage	150	0.21
Job Corps	250	0.35
Departmental Management	80	0.11
<b>Total</b>	<b>\$70,637<sup>3</sup></b>	<b>100%</b>

Job Corps plans to award \$211.6 million (85 percent) of the funds for the construction, rehabilitation, and acquisition of Job Corps Centers; \$35.9 million (14 percent) to enhance and develop green-collar job training for careers in the automotive, construction, and manufacturing industries and to further the incorporation of energy-efficient practices in Job Corps Centers; and \$2.5 million (1 percent) for administration of Recovery Act funds. As of September 30, 2009, Job Corps awarded 10 contracts totaling \$54.2 million and a lease for \$82 million, and made modifications to 72 existing contracts totaling \$14.4 million.

<sup>2</sup> The amounts other than “Unemployment Insurance” were obtained from the Recovery Act dated February 17, 2009. The “Unemployment Insurance” amount was provided by the Office of the Assistant Secretary for Administration and Management, DOL, and includes amounts made available for Federal and State Extended Benefits, Extension of Emergency Unemployment Compensation, 2008, and Federal Additional Unemployment Compensation programs.

<sup>3</sup> The total amount does not include \$6 million provided to the OIG to provide oversight over the Department’s Recovery Act activities.

To ensure Federal contracts are awarded based on merit, the FAR requires Federal agencies to publicize and solicit contract requirements, evaluate the proposals based on established award factors, and award contracts that are most advantageous to the Federal government. In addition, modifications are required to be within the scope of the original contract. The Recovery Act imposed unique reporting and transparency requirements in that specific contracting requirements are to be followed. Consequently, FAR now requires alternate Buy-American for Construction Materials and GAO/OIG Access clauses and new Recipient Reporting and Whistleblower Protection clauses for recipients of Recovery Act funds. The Recovery Act prohibits use of Recovery Act funds for certain projects, such as swimming pools and golf courses.

To create jobs and stimulate economic activity across the nation through construction and rehabilitation of Job Corps centers, Job Corps will utilize Recovery Act funds for more than 40 shovel-ready projects. The largest single expenditure is a 20-year lease totaling \$82 million with the YWCA of Greater Los Angeles for the construction of a new Job Corps center in Los Angeles, CA. The lease agreement calls for an advance payment of \$20 million, and subsequent payments — in varying amounts — every year through 2031. The estimated completion date of the new Job Corps center is September 1, 2011. The Government has the option to purchase the new building beginning in the 20<sup>th</sup> year of the lease term for 60 percent of its fair market value.

In DOL, OASAM is generally responsible for the overall implementation of the Department's procurement program and ensures that the program complies with the appropriate laws and regulations. OASAM has overall responsibility for Job Corps procurement. Job Corps is responsible for developing Recovery Act spending plans.



**Objectives, Scope, Methodology, and Criteria**

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**Objectives**

Our audit objectives were to answer the following questions:

1. Did OASAM award Job Corps Recovery Act contracts, leases, and modifications based on merit?
2. Did OASAM meet Recovery Act-specific contracting requirements?
3. Does Job Corps have plans in place to ensure Recovery Act funds are awarded and distributed by the June 30, 2010 deadline?

**Scope**

The audit covered Job Corps contracting actions from February 17, 2009, until September 30, 2009. We reviewed a statistical sample of 44 (53 percent) of the universe of 83 contracting actions, which totaled \$142.5 million (95 percent) of the \$150.6 million awarded. Our sample included 1 lease totaling \$82 million; 10 contracts totaling \$54.2 million; and 33 modifications totaling \$6.3 million. The lease was the single largest Recovery Act dollar obligation by Job Corps. The Recovery Act allows Job Corps to lease real property as long as construction begins within 120 days of the enactment of the Recovery Act. Construction on the new Job Corps Center began on June 10, 2009.

We reviewed Job Corps and OASAM practices, policies, and procedures through February 5, 2010. We conducted on-site work at the Job Corps and OASAM National Offices and the OASAM Philadelphia and Boston regional contracting offices.

In planning and performing our audit, we considered OASAM and Job Corps internal controls by obtaining an understanding of the internal controls over Job Corps Recovery Act procurements by determining whether internal controls were in place, and assessing control risk in order to design our procedures for achieving our objectives. Consequently, we reviewed internal controls as they relate to ensuring that Job Corps Recovery Act contracts, leases, and modifications were awarded based on merit and met specific Recovery Act contracting requirements.

We conducted this performance audit in accordance with GAGAS. 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.

## **Methodology**

We reviewed applicable laws, regulations and guidance and departmental policy and procedures to determine the requirements for issuing contracting actions. We also reviewed specific Recovery Act legislation and guidance to determine specific contracting requirements related to awarding Recovery Act funds. To gain further understanding of Job Corps and OASAM contracting policies and procedures, we interviewed officials who provided us with knowledge of management controls for providing reasonable assurance that Job Corps contracting actions complied with applicable laws and departmental procedures. Through interviews with Job Corps officials, we gained knowledge of Job Corps process to track and spend Recovery Act funds.

To answer our audit objectives we analyzed a sample of Job Corps Recovery Act contracting actions issued between February 17, 2009, and September 30, 2009, and reviewed selected attributes to determine if the contracting actions were awarded based on merit and included specific Recovery Act contracting requirements. We reviewed 1 lease, 10 contracts, and 3 contract modifications in the OASAM National Office; 15 contract modifications in the OASAM Philadelphia regional office; and 15 contract modifications in the OASAM Boston Regional Office. We also reviewed the Job Corps Recovery Act spending plan and a breakdown of its implementation.

### Sampling Plan

To assess if OASAM awarded Job Corps Recovery Act contracting actions based on merit and included specific Recovery Act contracting requirements, we statistically selected a sample of 44 Job Corps Recovery Act contracting actions, from a total population of 83 Job Corps Recovery Act contracting actions issued from the inception of the Recovery Act on February 17, 2009, until September 30, 2009. We used a two-stage stratified cluster sampling methodology to select a random sample with a 95 percent confidence level, 7 percent tolerable error rate, and a 15 percent expected error rate.

### Data Reliability

OASAM provided a listing of Job Corps Recovery Act contract awards as of September 30, 2009. We determined whether the universe was complete by comparing it to the total Job Corps Recovery Act obligations reported on the September 30, 2009, Weekly Financial and Activity Report on Recovery.gov, and the September 30, 2009, DOL Accounting and Related System monthly report for Job Corps Recovery Act. We reviewed the universe data and discussed the source database with OASAM officials to gain understanding of the reliability of the data.

**Criteria**

- America Recovery and Reinvestment Act of 2009
- White House, Office of the Press Secretary, Memorandum for the Heads of Executive Departments and Agencies, dated March 20, 2009
- Federal Acquisition Regulation
- OMB Memorandum, M-09-15, Updated Implementing Guidance for the American Recovery and Reinvestment Act of 2009, dated April 3, 2009

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**Appendix C**

**Acronyms and Abbreviations**

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CTST	Career Technical Skills Training
DOL	Department of Labor
FAR	Federal Acquisition Regulation
GAGAS	Generally Accepted Government Auditing Standards
GAO	Government Accounting Office
OASAM	Office of the Assistant Secretary for Administration and Management
OIG	Office of Inspector General
OMB	Office of Management and Budget
OPS	Office of Procurement Services
Recovery Act	American Recovery and Reinvestment Act of 2009
SOW	Statement of Work
U.S.C.	United States Code

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Appendix D

Department Response to Draft Report

U.S. Department of Labor

Office of the Assistant Secretary  
for Administration and Management  
Washington, D.C. 20210



MAR 29 2010

MEMORANDUM FOR ELLIOT P. LEWIS  
Assistant Inspector General

A handwritten signature in black ink, appearing to read "E. Hugler", is written over the typed name "EDWARD C. HUGLER".

FROM: EDWARD C. HUGLER  
Senior Accountable Official  
Deputy Assistant Secretary for Operations,

SUBJECT: Recovery Act: Job Corps Contracting

As the Senior Accountable Official for the Department's implementation of the American Recovery and Reinvestment Act (Recovery Act) of 2009, this responds to the Office of Inspector General (OIG) draft audit report, Recovery Act: *OASAM Needs to Ensure that Job Corps Contract Modifications Meet Recovery Act Requirements*—Draft Audit report No. 18-10-005-07-001.

Management's responses to the draft report's recommendations follow:

**Recommendation 1: For the modification totaling \$122,103 that OASAM could not demonstrate was issued based on merit, either issue a modification incorporating a SOW that is within the scope of the original contract or re-compete the work.**

Management accepts this recommendation and OASAM is working with the Job Corps to promptly issue the necessary corrective modification.

**Recommendation 2: Provide documentation that \$122,523 of Recovery Act funds was de-obligated.**

Management will promptly provide documentation of the de-obligated Recovery Act funds.

The related finding that the two Job Corps Center projects were ineligible for Recovery Act funding was the subject of ample discussion between management and OIG staff. We appreciate the consideration of our input and the draft report's balance in portraying Job Corps management's good faith intentions and program-related reasons for the projects. As noted in the draft report, no Recovery Act funds were expended for the two projects in question.

**Recommendation 3: Modify the contracting actions that did not properly include the Recovery Act required clauses.**

Management accepts this recommendation. The contracts identified in the draft audit report are currently being reviewed. Any modifications that are required as a result of the review will be promptly completed.

**Recommendation 4: Re-communicate and monitor the Department’s policy for using the pre-award checklist.**

Following the completion of OIG’s audit review, a reminder was sent from the OASAM Office of Acquisition Management Services reminding contracting staff of the Department’s policy for using the pre-award checklist. OASAM will send additional guidance in Q3 of FY 2010.

We appreciate the cooperation of the OIG staff who contributed to this draft audit and the consideration of management’s input.

cc: Jane Oates, ETA  
Barbara DesMarteau, ETA  
Edna Primrose, Job Corps  
Maria Temiquel, Job Corps  
Al Stewart, OASAM/BOC  
Valerie Veatch, OASAM/BOC  
Sandra Foster, OASAM/BOC



**Appendix E**

**Acknowledgements**

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Key contributors to this report were Tracy Katz, S. Jerome Cooper, Y C Lee, Deborah Jarmon, Adams Kondeh, Andrew Loomis, and Christine Allen.

**TO REPORT FRAUD, WASTE, OR ABUSE, PLEASE CONTACT:**

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