



UNITED STATES GOVERNMENT ACCOUNTABILITY OFFICE

Assessing State and Local Contracting Under the Recovery Act

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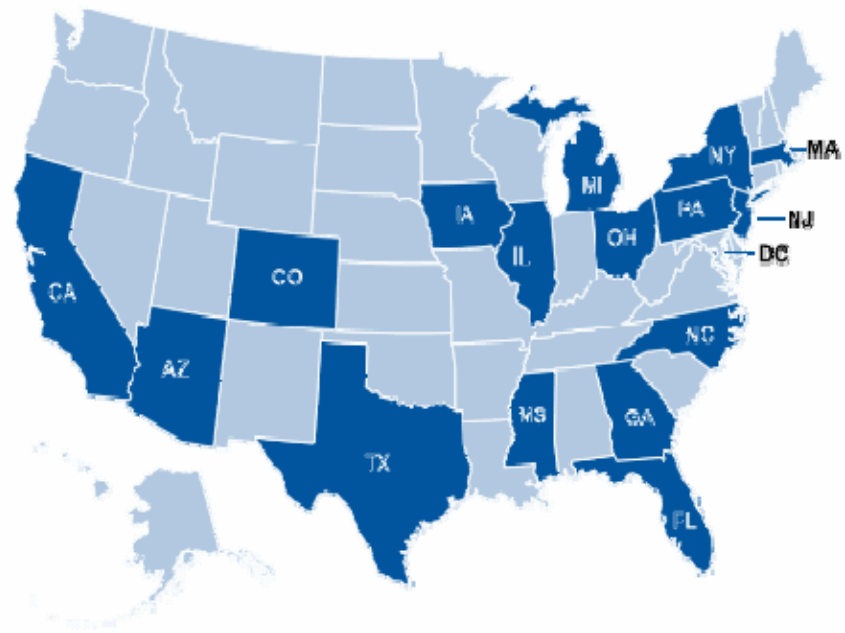


Discussion Topics

- GAO Mandate & Congressional Interests
- Rationale for Procurement Oversight
- Contracting Basics
- Effective Procurement Practices
- Key Concepts
- Risks Faced in States' Procurements
- Audit Approach for Assessing Procurement Issues
- Points of Contacts

GAO Mandate & Congressional Interests

- Conduct bimonthly reviews of selected state and localities use of funds.
- Congressional Interest in GAO assessing state and local management of Recovery Act funds down to the project level.
- State and Local procurement is a new area for GAO
- GAO Acquisition & Sourcing Management Team providing the leadership and support for procurement issues.



Rationale for Procurement Oversight

- The Recovery Act did not provide the states with funding to increase or strengthen their workforces to handle the additional work associated with administering Recovery Act funds.
- Many states are facing staffing issues—shortages/vacancies, hiring freezes, furloughs, etc.
- States now need to manage and oversee significant additional amounts of funding for the Recovery Act projects, including those that will ultimately be completed by contractors.
- Concern over capacity to manage and oversee the contracted projects, there is an increased risk of poor project outcomes and vulnerability to fraud, waste, and abuse in the award and execution of contracts.

Basic Contracting Events

CONTRACT FORMATION

- Requirements Defined
- Solicitation Prepared
- Contractors Notified
- Bids Received and Opened
- Bids Evaluated
- Terms Negotiated
- Contract Awarded

CONTRACT PERFORMANCE

- Goods Delivered and/or Work Performed
- Oversight Conducted
- Changes Negotiated and Modifications Awarded
- Invoices Reviewed and Paid
- Contract Closed-out

Effective Procurement Practices

- Contracting responsibility, authority, and oversight clearly defined and in place.
- ***Clear requirements*** defined prior to solicitation/award.
- Contracts ***awarded competitively***.
- ***Fixed-price*** contracts used to maximum extent possible.
- Adherence to high ethical standards, including the avoidance of conflicts of interest.
- Trained contract surveillance personnel assigned prior to or as soon as contracts are awarded.
- ***Contractors held accountable*** for poor performance.

Key Concepts: NASPO Definitions

- ***Competition*** - the process by which two or more vendors vie to secure the business of a purchase by offering the most favorable terms as to price, quality, deliver and/or service.
- ***Fixed price contract*** - A contract that provides for a firm price, subject to any contractual conditions allowing price adjustment, under which the contractor bears the full responsibility for profit or loss.

Risk Areas Faced By States

- **Lack of experienced personnel** in state agencies to handle the large increase in funding—both to award and monitor the work of contractors.
- Conflict between push to disburse funds and start projects quickly and the **time needed to properly award** contracts.
- Potential conflicts between federal and state laws—e.g. **competition requirements**.
- Concern that contractors are **low-bidding projects**, thus requiring significant changes that will increase costs during the project.

GAO Approach

- Objectives
- Planning Considerations
- Procurement Related Work Phases
- Audit Steps
- Contract Selection Criteria
- Data on Contract Transactions

Initial Audit Objectives

For selected contracts determine if:

- (1) Contract requirements are clearly stated and linked to Recovery Act objectives
- (2) Contracts were awarded competitively when possible
- (3) Contract awards used fixed-price to the maximum extent possible
- (4) Trained oversight personnel were in place at the time of award and prepared to monitor contractor performance.

Planning Considerations

- Multiple jurisdictions with differing procurement laws, regulations and practices
 - States, Localities, & Authorities
 - Limitations for Approach
- Coverage:
 - Program not agency focus
 - Split between FY 2009 and FY2010
- ASM staff supporting 17 State Teams on procurement issues.
- Electronic environment: Audit guidance and data collection tools on Wiki, e-mails used to alert teams to new information on the Wiki, provided tips, and answer questions that apply to all teams.

Procurement-Related Work Phases

- Cycles 3, 4 & 5 (September/December 2009 & *February 2010*) to focus on state/local award of selected contracts
 - Are contract requirements clear and linked to ARRA objectives?
 - Are contracts awarded competitively whenever feasible?
 - Are contracts awarded using fixed-prices to the extent possible?
 - Are trained oversight personnel in place at the time of award and prepared to monitor contractor performance?
- Cycles 5-6 to focus on state/local oversight of contract execution
- Cycles 5-6 (*if needed*) to focus on state/local oversight practices and workforce capacity

Cycles 3/4 Key Audit Steps

1. Select two programs per state
2. Select two projects within those programs
3. Obtain listing of contracts awarded with key characteristics for the selected projects
4. Select one state-level and one local-level contract per project
5. Interview project manager regarding awarding of the contract and obtain copies of key documents

Contract Selection Criteria

- **Dollar value**
large vs. small procurements
- **Competition**
competed vs. sole source
- **Contract Type**
fixed price vs. cost reimbursable
- **Oversight**
trained personnel vs. none assigned
- **Other Risk Factors**

Data on Contract Transactions

Data collected ahead of visit:

1. Identification Data (Contract #, Date of Award, Contractor Name)
2. Period of performance
3. Goods/Services Description
4. Contract Type
5. Competed or sole source
6. ARRA Reporting Requirements Included
7. Dollar Value of Award
8. Modifications to Price (s) Permitted
9. Contact for Oversight



Questions



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