



Department of Homeland Security Office of Inspector General

Review of Immigration and Customs Enforcement's Expenditure Plan



American Recovery and Reinvestment Act of 2009



Homeland Security

SEP 22 2009

Preface

The Department of Homeland Security (DHS) Office of Inspector General (OIG) was established by the *Homeland Security Act of 2002* (Public Law 107-296) by amendment to the *Inspector General Act of 1978*. This is one of a series of audit, inspection, and special reports prepared as part of our oversight responsibilities for programs, grants, and projects awarded by the department under the *American Recovery and Reinvestment Act of 2009* to promote economy, efficiency, and effectiveness within the department.

This report includes observations on the department's efforts to manage funds appropriated by the *American Recovery and Reinvestment Act of 2009*, and includes issues that should be considered by the department and its components to improve the management of those funds. We trust this report will result in more effective, efficient, and economical operations. We express our appreciation to all those who contributed to the preparation of this report.

A handwritten signature in cursive script that reads "Richard L. Skinner".

Richard L. Skinner
Inspector General

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Abbreviations

CBP	Customs and Border Protection
DHS	Department of Homeland Security
ICE	Immigration and Customs Enforcement
OIG	Office of Inspector General

OIG

*Department of Homeland Security
Office of Inspector General*

Executive Summary

We reviewed the Immigration and Customs Enforcement's expenditure plan as part of our oversight responsibilities to monitor the use of funds provided to the Department of Homeland Security under the *American Recovery and Reinvestment Act of 2009* (Recovery Act). The Recovery Act provided \$20 million to Immigration and Customs Enforcement to procure and deploy tactical communications equipment and radios. The Recovery Act also requires that the recipients of Recovery Act funds develop an expenditure plan for the use of the funds. Our objective was to determine whether the plan is practical, thorough, and consistent with prudent management principles, such as risk mitigation and management control strategies.

Immigration and Customs Enforcement generally developed a practical and comprehensive plan to spend Recovery Act funds to procure and deploy tactical communications equipment and radios. However, it will not meet all the goals of the Recovery Act, in particular the quick-start activities Recovery Act goal. Additionally, we identified opportunities for Immigration and Customs Enforcement to better collaborate with Customs and Border Protection to procure and modernize tactical communications systems.

We are making one recommendation to Immigration and Customs Enforcement, which is designed to improve collaboration and coordination with Customs and Border Protection. Immigration and Customs Enforcement concurred with our recommendation and provided information on ongoing actions to collaborate and communicate with Customs and Border Protection as well as future plans and coordination meetings regarding tactical communications. A copy of Immigration and Customs Enforcement's response is provided at Appendix B.

Background

The *American Recovery and Reinvestment Act of 2009*, Public Law 111-5, (Recovery Act) was enacted on February 17, 2009, allocating almost \$787 billion to preserve and stimulate economic growth in the United States. The Recovery Act made supplemental appropriations to federal departments and agencies for infrastructure investment, energy efficiency and science, assistance to the unemployed and disabled veterans, and state and local stabilization for the fiscal year ending September 30, 2009.

Under provisions of the Act, the Department of Homeland Security received approximately \$2.8 billion for equipment, construction, infrastructure improvement, and emergency management grants. Immigration and Customs Enforcement (ICE) received \$20 million of this amount for tactical communications modernization. The Recovery Act required that, within 45 days of enactment of the Act, the department submit to Congress a plan for expending these funds. Accordingly, on April 3, 2009, ICE issued its Atlas Tactical Communications Recovery Act Expenditure Plan (expenditure plan).

We reviewed ICE's expenditure plan to determine whether it is practical, thorough, and comprehensive, using provisions of the Recovery Act as our guide. Specifically, we reviewed the plan for evidence that ICE met the goals of the "preference for quick-start activities" and "special contracting" provisions. The goal of the quick-start activities general provision (Section 1602 of the Recovery Act) was to use at least 50% of the funds for activities that could be initiated within 120 days of the date that the Act was signed, or by June 17, 2009. The special contracting provision (Section 1554) recommended that, to the maximum extent possible, recipients use competitive procedures to award fixed-price contracts. We measured the expenditure plan against prudent management principles to determine whether the plan will achieve program goals while providing safeguards against fraud, waste, error, abuse, risk of delays, and cost overruns. We did not evaluate the original process ICE used to establish its criteria or any underlying assumptions.

ICE plans to use its Recovery Act funds to carry out its original intent to modernize tactical communications in 2 of its 26 regions, Boston and Denver, in FY 2010. ICE's current wireless tactical communications systems consist primarily of legacy, analog handheld radios and vehicular radio equipment that are not compliant with current standards for interoperability (known as P-

25 standards), nor with federal mandates for the use of Advanced Encryption Standard and narrowband frequencies.¹ ICE plans to replace its noncompliant legacy tactical communications systems with interoperable, encrypted, narrowband equipment and radios. ICE and Customs and Border Protection (CBP) plan to purchase similar tactical communications radios made by the same manufacturer. In addition to hand-held radio equipment, both ICE and CBP require infrastructure upgrades, including radio frequency repeaters and telecommunications circuits.

Results of Review

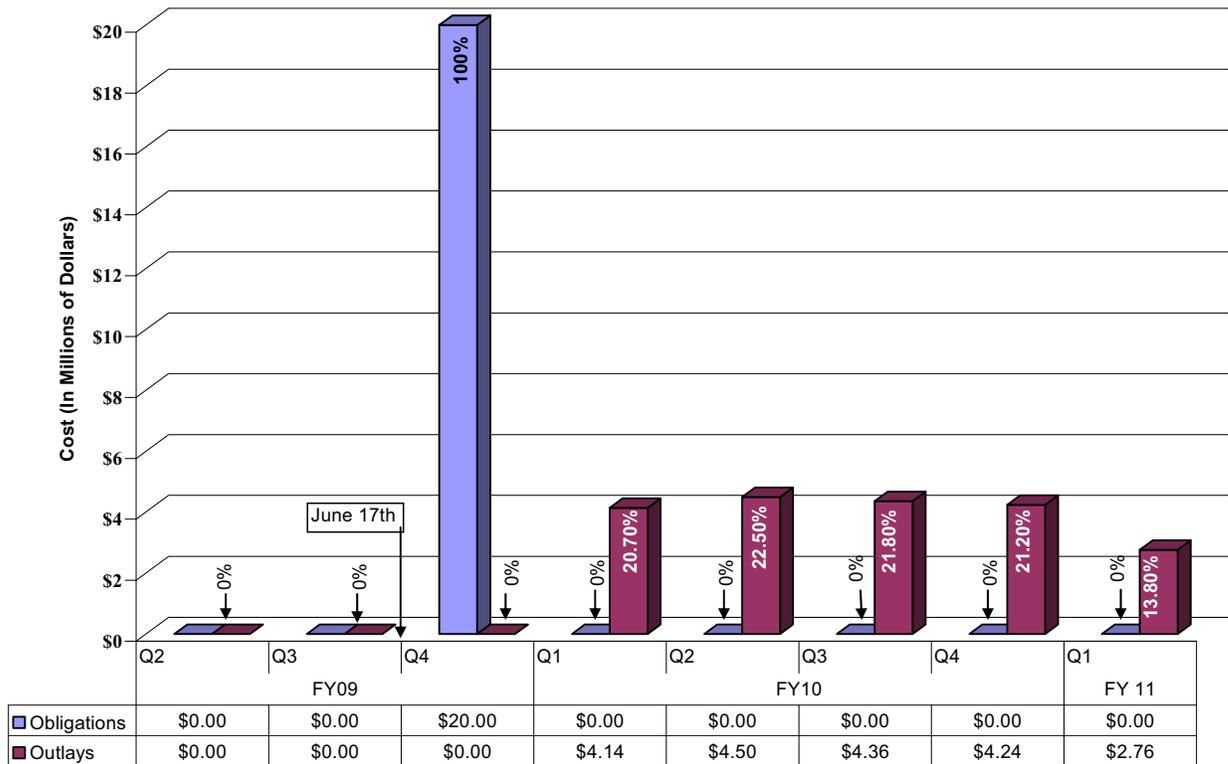
ICE generally developed a practical and comprehensive plan to spend Recovery Act funds to procure and deploy tactical communications equipment and radios. Although ICE did not meet the Recovery Act goal of using 50% of the Recovery Act funds for activities that could be initiated by June 17, 2009, it does plan to obligate 100% of the Recovery Act funds by September 30, 2009. ICE is planning to use competitive procedures to award fixed-price contracts. According to ICE's spending plan, tactical communications modernization in the Boston region is a joint project with CBP. ICE must coordinate with CBP to ensure that the project is completed effectively, efficiently, and economically to meet their respective mission needs and support interoperability.

Quick-Start Activities Provision

ICE did not meet the quick-start goal of using at least 50% of its Recovery Act funds for activities that could be initiated within 120 days of enactment of the date, or by June 17, 2009. However, ICE plans to obligate 100% of its Recovery Act funds in the fourth quarter of FY 2009 and outlay roughly 85% of the Recovery Act funds during FY 2010. According to ICE officials, it did not meet the June 17, 2009, date because it needs more time to develop and award procurement contracts that will satisfy the requirements of the Federal Acquisition Regulation.

¹ The Department of Commerce, National Institute of Standards and Technology requires federal agencies to use Advanced Encryption Standard to protect sensitive information, effective May 26, 2006 and the National Telecommunications and Information Administration requires all federal, land-mobile radio systems to use narrowband frequencies, effective January 1, 2008.

ICE Tactical Communication Obligations and Outlays



The graph above shows ICE’s planned schedule of obligations and outlays through FY 2010. An “obligation” is a commitment to pay for something and an “outlay” is an actual payment. Funds that have been obligated cannot be used for anything else and are considered spent. Obligated funds may stimulate the economy by increasing business operations, even though there may be a delay of months or years before obligated funds are paid.

Special Contracting Provisions

According to its expenditure plan, ICE is meeting the special contracting provision that it use Recovery Act funds to award fixed-price contracts through competition. ICE is planning to award approximately \$18.6 million in Recovery Act funds using the department’s First Source contract. The First Source contract is the department’s preferred source for acquiring information technology and is a small business set-aside contract. ICE plans to award the remaining Recovery Act funds using U.S. General Services Administration Government-wide Acquisition Contracts. Both the First Source and the Government-wide Acquisition

Contracts are to be awarded on a firm-fixed price basis using competitive procedures.

Coordination With Customs and Border Protection

ICE needs to take additional steps to ensure effective coordination with CBP on modernizing tactical communications equipment. According to the expenditure plan, ICE will work jointly with CBP to modernize tactical communications equipment in the Boston region. However, the expenditure plan does not describe a process for coordination between the components, nor does it describe any joint planning activities that have taken place to date.

ICE and CBP have a memorandum of understanding that provides general direction for cooperation on tactical communications needs. However, the memorandum of understanding, dated March 2008, was signed before the Recovery Act was passed and is not specific to Recovery Act-funded projects. Therefore, the memorandum of understanding may not be sufficient to ensure that cooperative planning takes place for the use of Recovery Act funds.

For example, according to the memorandum of understanding, “Each Focus Area will be supported by an independent requirements document which will include specific requirements identified by ICE within each Focus Area.” A focus area is a defined project within a given geographical location. CBP provided us with a copy of its requirements document for the Houlton Focus Area, which is in ICE’s Boston region. Although the document identified tactical communications interoperability with ICE as a critical operational requirement, it did not include any ICE-identified requirements. The need for more details in both the expenditure plan and the memorandum of understanding raises concerns that ICE may not effectively coordinate equipment procurements with CBP, thereby missing opportunities to maximize resources, such as volume discounts or infrastructure sharing. More important, where ICE does not properly coordinate with CBP in identifying requirements for the Houlton area, tactical communications systems may be modernized in a manner that may not meet ICE’s operational needs.

Recommendation

We recommend that the Assistant Secretary for ICE, in conjunction with CBP, develop detailed plans for ensuring that Recovery Act funds are used to modernize tactical

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communications equipment in a cost-effective manner that will meet their respective mission needs and ensure interoperability.

Management Comments and OIG Analysis

ICE concurred with our facts, conclusions and recommendations. ICE stated that it has already taken some action to collaborate and communicate with CBP, as well as identified future plans and coordination meetings regarding tactical communications. We consider the recommendation resolved but open, pending receipt and review of documentation on these collaborative effort meetings, including the Acquisition Decision Memorandum.

Appendix A

Purpose, Scope and Methodology

The objective of our review was to determine whether Immigration and Customs Enforcement has developed a practical and comprehensive plan to procure and deploy tactical communications equipment and radios. Our review included a determination of whether ICE followed its own criteria for prioritizing projects. We did not evaluate the original process ICE used to establish its criteria or any underlying assumptions. We:

- Reviewed laws, regulations, and guidance related to the *American Recovery and Reinvestment Act of 2009*.
- Obtained information on the processes and controls in place for budgetary resources management and financial and contract management.
- Examined prior Department of Homeland Security audit reports in the program-specific areas of acquisition management and acquisition workforce planning.
- Analyzed ICE's Atlas Tactical Communications Recovery Act Expenditure Plan, dated April 3, 2009, for the procurement and deployment of tactical communications equipment and radios.
- Analyzed documentation supporting the Recovery Act expenditure plan, such as acquisition plans, methodologies, and cost/benefit analysis of system upgrades.
- Interviewed senior officials from the offices of the Chief Information Officer and the Chief Financial Officer, as well as Financial Operations, Procurement, and Tactical Communications Program staff. We conducted these interviews in Washington, DC, at ICE's Headquarters and Potomac Center North.

We conducted our review between April 2009 and June 2009 under the authority of the *Inspector General Act of 1978*.

We would like to thank the Immigration and Customs Enforcement for their cooperation and courtesies extended to our staff during this review.

Appendix B
Management Comments to the Draft Report

Office of the Assistant Secretary

U.S. Department of Homeland Security
500 12th Street, SW
Washington, DC 20536



**U.S. Immigration
and Customs
Enforcement**

August 20, 2009

MEMORANDUM FOR: Ann Richards
Office of the Inspector General

FROM: Robert F. De Antonio *for*
Director *for*
Audit Liaison Office *for*

SUBJECT: ICE Response to OIG's Draft Letter Report: "Review of
Immigration and Customs Enforcement's Expenditure Plan"

2 SEPT 09
TO REPLACE MISDIRECTED MEMO
TO CARL MANAU DATED
AUG. 20, 2009

I appreciate the opportunity to comment and respond to the draft report about the use of Recovery Act funds appropriated to U.S. Immigration and Customs Enforcement (ICE). The report identified two areas for improvement. These were quick-start activities and enhanced collaboration with U.S. Customs and Border Protection (CBP).

OIG Recommendation: "We recommend that the Assistant Secretary for ICE, in conjunction with CBP, develop detailed plans for ensuring that Recovery Act funds are used to modernize tactical communications equipment in a cost-effective manner that will meet their respective mission needs and ensure interoperability."

ICE Response: Although ICE did not meet the quick-start goal of using at least 50 percent of its Recovery Act funds within 120 days of enactment, ICE plans to obligate 100 percent of its Recovery Act funds by the end of FY 2009.

I would also like to take this opportunity to update you on some specific procurement challenges we have encountered. While our original plan was to use the DHS FirstSource contracting vehicle in some cases, a few procurements have resulted in no response or only partial responses to our requirements. As a result, we had to modify our procurement strategy in some cases. However, we are always mindful of ensuring maximum competition and complying with the Federal Acquisition Regulations as we evolve our strategy.

I want to reiterate ICE's commitment to the efficient spending of these funds not only to meet our requirements and needs, but also taking into account the needs of other federal agencies

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Management Comments to the Draft Report

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and partnerships to enhance mission effectiveness, improve interoperability, and reduce redundancy and duplication.

The report also identified the need to ensure that better collaboration occurs between our agency and CBP as we both procure and modernize our tactical communications (TACCOM) infrastructures with Recovery Act funds. I can assure you that ICE, as well as CBP is taking every measure to provide proper collaboration and communication to ensure the most cost-effective spending. Specifically:

1. ICE and CBP have jointly presented their plans to the Departmental Acquisition Review Boards (ARB) that continues to show further teamwork in the overall strategy for designing and modernizing tactical communications between the two agencies, as well as throughout the Department.
 - a. On June 29, 2009, ICE, CBP and DHS held a joint mini-ARB review with the Under Secretary for Management and the USM staff.
 - b. ICE comments have been submitted on the Acquisition Decision Memorandum (ADM). The final document has been submitted to USM for signature. It is expected to be signed with little change in about one week.
2. The respective Chief Information Officers (CIO) of both ICE and CBP have sanctioned a Joint Program Office between the two agencies to ensure the proper communication channels are open and strengthen collaboration on this initiative.
 - a. This collaborative effort was highlighted in the mini-ARB presentation.
3. ICE, CBP and representatives from the Department of Homeland Security's CIO meet weekly to adjust as needed the procurement strategies of the Recovery Act funds.
 - a. On July 17 and 23, 2009, they discussed the ADM memorandum and coordinated a joint response.
 - b. On July 30 and August 6, 2009, meetings were held to discuss collaborative strategy for expending the Recovery Act funds as well as how the joint effort will proceed into the future. Procurement representatives also attended to assist with the coordinated strategy and planning.
 - c. On May 5, 2009, ICE and CBP representatives held a half-day summit to discuss overall collaboration strategies moving forward between the two organizations with regards to tactical communications.
4. ICE and CBP representatives actively participate in a Department-sponsored Wireless Working Group (WWG), which meets on a regular basis to ensure the effective communication and collaboration of the tactical communications programs across the

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Management Comments to the Draft Report

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Department. This group meets at least monthly, and has met more often recently due to the large number of emerging projects and requirements in tactical communications.

- a. The most recent WWG meetings were held on June 3, July 8, and August 5, 2009. The next meeting is scheduled for September 2, 2009.
- b. On August 7 and August 14, 2009, members met to discuss and establish standard channels across DHS for interoperable communications.
- c. Many other ad hoc meetings have been called to discuss such things as moving to broadband frequencies for enhanced capability and possible use of the 700MHz spectrum for increased interoperability with state and local law enforcement.

Should you have any questions or concerns, please contact Margurite Barnes, OIG audit portfolio manager at (202) 732-4161 or by e-mail at Margurite.Barnes@dhs.gov.

Appendix C
Major Contributors to This Report

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Appendix D
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