



OFFICE OF  
**INSPECTOR GENERAL**  
U.S. DEPARTMENT OF THE INTERIOR

**RECOMMENDATION I FOR THE REPORT  
*PROPER USE OF COOPERATIVE  
AGREEMENTS COULD IMPROVE  
INTERIOR'S INITIATIVES FOR  
COLLABORATIVE PARTNERSHIPS  
(W-IN-MOA-0086-2004)***

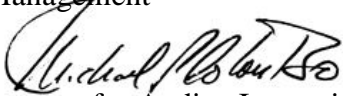


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**INSPECTOR GENERAL**  
U.S. DEPARTMENT OF THE INTERIOR

Memorandum

SEP 18 2018

To: Allen Lawrence  
Division Chief, Internal Control and Audit Follow-Up  
Office of Financial Management

From: Michael P. Colombo   
Western Regional Manager for Audits, Inspections, and Evaluations

Subject: Verification Review – Recommendation 1 for the Report *Proper Use of Cooperative Agreements Could Improve Interior's Initiatives for Collaborative Partnerships* (W-IN-MOA-0086-2004)  
Report No. 2018-WR-042

The Office of Inspector General (OIG) has completed a verification review of one recommendation presented in the subject report (Recommendation 1). Our objective was to determine whether the Office of Acquisition and Property Management (PAM) implemented the recommendation as reported to the Office of Financial Management (PFM), Office of Policy, Management and Budget. The PFM reported to us that it had closed the recommendation. Based on our review, we do not concur that the recommendation is resolved and implemented.

### **Background**

Our January 2007 audit report titled *Proper Use of Cooperative Agreements Could Improve Interior's Initiatives for Collaborative Partnerships* made a recommendation designed to ensure that bureaus have legal authority to award cooperative agreements and that cooperative agreements comply with laws and regulations by requiring that all cooperative agreements be reviewed by the Office of the Solicitor (SOL).

In a response to our final report, the Associate Deputy Secretary of the U.S. Department of the Interior partially concurred on April 11, 2007, with our recommendation and detailed the Department's plans to continue to review the issue. In an April 16, 2008 memorandum, we referred the recommendation to the Assistant Secretary for Policy, Management and Budget to track its implementation.

In a memorandum dated January 22, 2009, the PFM reported that it concurred with the positions of the Department, PAM, and SOL and closed the recommendation. We conducted a verification review and notified the PFM on July 30, 2012, that we considered the recommendation resolved but not implemented. On September 20, 2017, the PFM reported to the OIG that it determined that PAM had met the intent of the recommendation and considered it closed.

## Scope and Methodology

We limited the scope of this review to determining whether the Department implemented Recommendation 1. To accomplish this objective, we reviewed documentation supporting the recommendation closure. We did not test internal controls, visit sites, or conduct fieldwork to determine whether the underlying deficiencies that were initially identified have been corrected. As a result, this review was not conducted in accordance with the Generally Accepted Government Auditing Standards issued by the Comptroller General of the United States or the Quality Standards for Inspections and Evaluations as put forth by the Council of the Inspectors General on Integrity and Efficiency.

## Results of Review

The Department no longer requires the SOL to review cooperative agreements. Therefore, we now consider Recommendation 1 unresolved and not implemented for the subject report.

**Recommendation 1:** Establish an Interior-wide policy to require, in conjunction with bureau solicitors, reviews of all proposed cooperative agreements to ensure that: (a) the bureau has the legal authority; (b) there is substantial involvement by both parties to the agreement; (c) the correct legal instrument is used; and (d) all authorities and responsibilities, deliverables, cost budgets, and time frames for completing agreement objectives are clearly delineated.

**Actions Taken:** In its April 11, 2007 response to the report, the Department stated that it had developed policy (505 DM 2) in conjunction with the SOL that would require legal review for grants and cooperative agreements over \$750,000. The Department established this threshold based on financial assistance transaction data and believed that it would provide an adequate legal review mechanism that considers and balances resources and workload.

On January 9, 2008, the Department amended the *Departmental Manual* to remove the requirement for SOL review of cooperative agreements over \$750,000. The SOL was involved in and concurred with the policy change. While SOL review of cooperative agreements is no longer required and only conducted at the request of the bureau/office, Department policy does require SOL review of contracts. The DOI Acquisition, Assistance, and Asset Policy (DOI-AAAP-0075), Legal Review of Acquisition Actions, establishes a risk-based threshold for SOL legal reviews of contracts for acquisitions of services over \$500,000 and for acquisitions of products over \$1,000,000. PAM officials have stated, however, that the SOL has insufficient resources to conduct timely reviews of all significant contracts, and, since it does not have the resources to perform legal reviews of contracts, it could not extend the process to cooperative agreements.

**OIG Reply:** The intent of this recommendation is to address widespread confusion and misuse of cooperative agreements within the Department. Past and recent OIG audits and evaluations have found that cooperative agreements were issued with vague legal

authorities and in lieu of procurement contracts, circumventing procurement laws and regulations. Because cooperative agreements are not subject to the accountability and regulatory guidelines of the Federal Acquisition Regulation (FAR), the indiscriminate use of cooperative agreements in lieu of procurement contracts increases the Federal Government's exposure to the misuse of Federal moneys.

Cooperative agreements are often sole-sourced and therefore do not have the cost and price protections of competitively awarded contracts. In addition, specific legislative authority is required for a Federal agency to provide financial assistance through cooperative agreements. According to opinions of the Comptroller General and guidance published in the U.S. Government Accountability Office (GAO) Red Book, Federal agencies are prohibited from using cooperative agreements to acquire goods or services for the direct benefit or use of the Federal Government. In comparison, the Department has standing legal authority to procure the products and services it needs via contract awards, and its contracts are competitively awarded to ensure that prices are fair and reasonable. Accordingly, SOL reviews help safeguard that cooperative agreements have the proper legal authority, there is substantial involvement by both parties to the agreement, the correct legal instrument is used, and agreement objectives are clearly delineated.

We recognize that PAM has procedures in place for contracting officials to request legal reviews of cooperative agreements as needed, but we do not believe the existing policies and procedures are sufficient given the continued indiscriminate use of cooperative agreements. Similar to the Departmentwide legal review standards for contracts, a risk-based approach and dollar threshold requiring SOL legal review of cooperative agreements should be established in the *Departmental Manual*.

## **Conclusion**

We consider Recommendation 1 unresolved and not implemented, and we are requesting that the PFM reinstate the recommendation and take appropriate follow-up action for resolution.

We informed Department officials of the results of this review at an exit conference on September 11, 2018. They agreed with the results of our review and our request to reinstate the recommendation. Department officials stated that they would discuss the issue with SOL officials and modify Department policies and procedures to reflect a holistic approach to risk analysis and legal review for contracts, grants, and cooperative agreements.

If you have any questions about this report, please contact me at 916-978-5653.

cc: Olivia Ferriter, Deputy Assistant Secretary, Policy, Management and Budget  
Douglas Glenn, Deputy CFO and Director, Office of Financial Management  
Megan Olsen, Director, Office of Acquisition and Property Management  
Casey Meng, Program Analyst, Acquisition Internal Control, Office of Acquisition and Property Management

Kathryn Bender, Chief of Staff, Office of Acquisition and Property Management  
Teresa Hunter, Deputy Director, Office of Financial Management  
Alexandra Lampros, Audit Liaison Officer, Office of Financial Management  
Nancy Thomas, Audit Liaison, Office of Financial Management

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