

STATE OF OHIO  
**OFFICE OF THE INSPECTOR GENERAL**

RANDALL J. MEYER, INSPECTOR GENERAL

**REPORT OF  
INVESTIGATION**



**AGENCY: OHIO DEPARTMENT OF TRANSPORTATION  
FILE ID NO.: 2012-CA00067  
DATE OF REPORT: JUNE 10, 2013**

## The Office of the Ohio Inspector General ... The State Watchdog

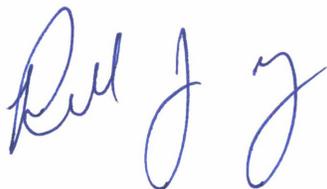
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Randall J. Meyer  
Ohio Inspector General



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RANDALL J. MEYER, INSPECTOR GENERAL

**REPORT OF INVESTIGATION**

**FILE ID NUMBER:** 2012-CA00067

**SUBJECT NAME:** Highway Infrastructure Investment Grant

**POSITION:** American Recovery and Reinvestment Act of 2009 (ARRA) Grant

**AGENCY:** Ohio Department of Transportation

**BASIS FOR INVESTIGATION:** Office of the Ohio Inspector General Initiative

**ALLEGATIONS:** Failure to comply with state law and/or regulations

**INITIATED:** May 20, 2012

**DATE OF REPORT:** June 10, 2013

## **INITIAL ALLEGATION AND COMPLAINT SUMMARY**

In May 2012, the Office of the Ohio Inspector General began a review of the bid and award process for 120 infrastructure projects completed by the Ohio Department of Transportation (ODOT), financed from funds received under the American Recovery and Reinvestment Act of 2009 (ARRA). The review was initiated based on comments made by President Obama during a June 2011 meeting held with the President’s Council on Jobs and Competitiveness, where the president made the statement: “‘shovel-ready’ was not as ‘shovel-ready’ as we expected.”<sup>1</sup> The purpose of the Office of the Ohio Inspector General’s review was to assess whether each of the 120 ODOT infrastructure projects met the benchmark set by ARRA of “using at least 50 percent of the funds for activities that can be initiated not later than 120 days after the date of the enactment of the Act.”

The Office of the Ohio Inspector General selected the 120 projects to be reviewed from a list of 424 projects for Ohio as shown on the U.S. Department of Transportation (USDOT) website. While the review did not include an in-depth analysis of the bid packages submitted by each contractor nor the selection process after bids were received, the Office of the Ohio Inspector General reviewed each project for compliance with deadlines to be met for various steps during the bid and award process as established in ODOT policies and procedures, and state statutes.

## **BACKGROUND**

### *The American Recovery and Reinvestment Act of 2009 (ARRA)*

The American Recovery and Reinvestment Act of 2009 was passed by Congress on February 17, 2009. The intent of ARRA was:

to create new jobs and save existing ones, spur economic activity and invest in long-term growth, and foster accountability and transparency in government spending. These goals were to be achieved by providing \$288 billion nationally in tax cuts and benefits for working families and businesses; increasing federal funds for entitlement programs, such as extending unemployment benefits, by \$224 billion; making \$275 billion available for federal contracts, grants, and loans; and requiring recipients of ARRA funds to report quarterly on

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<sup>1</sup> Source: USA Today article, “Obama jokes about shovel-ready projects” by David Jackson, dated June 13, 2011.

how they were using the money. Among other areas, ARRA funds were targeted at infrastructure development and enhancement.<sup>2</sup>

From February 17, 2009, through December 31, 2012, the state of Ohio was awarded a total of \$8,765,133,886 in ARRA funds via 1,219 contracts, 8,233 grants, and 49 loans.<sup>3</sup> The majority of these ARRA awards went to supplement current programs.

#### *Office of the Ohio Inspector General and ARRA*

The Ohio General Assembly enacted Ohio Revised Code §121.53, effective July 1, 2009, which required the Office of the Ohio Inspector General to monitor state agencies' distribution of ARRA funds from the federal government and to investigate all wrongful acts or omissions committed by officers, employees, or contractors engaged with state agencies that received ARRA funds. The Office of the Ohio Inspector General is required to conduct random reviews of the processing of contracts associated with projects to be paid for with money from ARRA. In addition, the statute established a deputy inspector general position designated to review funds received through ARRA.

#### *Ohio Department of Transportation*

The Ohio Department of Transportation (ODOT) is responsible for maintaining the state's system of highways, as well as overseeing the state's rail, aviation, and public transportation systems. The department consists of 12 district offices and a central office located in Columbus, Ohio. The director is appointed by the governor and is confirmed by the Ohio Senate. The majority of ODOT funding comes from federal and state taxes on motor fuels.

ODOT received the following amounts from the U.S. Department of Transportation through ARRA:<sup>4</sup>

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<sup>2</sup> Source: [www.recovery.gov](http://www.recovery.gov)

<sup>3</sup> Source: [www.recovery.gov](http://www.recovery.gov)

<sup>4</sup> USDOT website interactive map, last updated January 14, 2013.

<b>Category</b>	<b>Amount</b>
Highways	\$910,200,704
Transit	181,766,208
Aviation	23,063,216
Maritime	7,965,476
<b>TOTAL</b>	<b><u>\$1,122,995,604</u></b>

*Preference for Quick Start Activities (i.e., “Shovel-Ready”)*

As part of the federal act authorizing ARRA, language was included to give preference to projects which would expend larger amounts of money with greater speed. This language commonly referred to as “shovel-ready,” states:

SEC. 1602. In using funds made available in this Act for infrastructure investment, recipients shall give preference to activities that can be started and completed expeditiously, including a goal of using at least 50 percent of the funds for activities that can be initiated not later than 120 days after the date of the enactment of this Act. Recipients shall also use grant funds in a manner that maximizes job creation and economic benefit.

*ODOT ARRA Projects<sup>5</sup>*

Prior to ARRA being signed into law on February 17, 2009, ODOT developed a preliminary list of projects that might be considered for ARRA funding. This list included projects that were in the process of, or had completed, the estimating process. During the estimating process, ODOT estimates how much the project will cost and provides a benchmark against which to analyze bids.<sup>6</sup> The following projects were not eligible to be considered for ARRA funding: projects that had already been sent out for bid; projects that had received bids, but no contracts had been awarded; and projects that had signed contracts, but the work had not yet begun.

Once ARRA was signed into law, the governor’s office created a website to accept applications from public and private entities interested in various types of funding. The website included a

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<sup>5</sup> Source: ODOT Application and Project Selection Process Activity Narrative.

<sup>6</sup> Source: ODOT Office of Estimating’s “Guidelines, Procedures, & Frequently Asked Questions”.

preliminary list of ODOT projects the department had under consideration at the time ARRA was enacted. The launching of the website was developed to ensure all projects met the fair and equitable consideration test required by the federal government.

After all applications had been received, ODOT identified 4,605 proposals pertaining to transportation projects potentially eligible to receive ODOT/ARRA funding. ODOT determined additional information was needed to evaluate whether the project could be completed within the time limitations specified by ARRA. ODOT, taking into account the total amount of each request, conducted on-site visits to view conditions, consider environmental factors, and assess delivery capabilities. An ODOT website and application was created to assist in gathering the additional information, and ODOT established a call center to help project sponsors with the new application process.

Once applications were received, a team of ODOT employees evaluated each submission. If critical information was missing, an ODOT employee contacted the project sponsor to obtain the needed information. The list of projects was then evaluated based on certain factors, including project location, job creation/retention, economic development, economically distressed areas, and statewide equity. A final list of projects was selected that best covered these criteria.

### **INVESTIGATIVE SUMMARY**

On May 30, 2012, the Office of the Ohio Inspector General obtained the “Weekly List of FHWA<sup>7</sup> Recovery Act Projects” dated May 11, 2012. According to the FHWA, this list summarized all projects that had or would have received American Recovery and Reinvestment Act of 2009 funding. The Office of the Ohio Inspector General reviewed the list and made the determination to focus its review on only those Ohio projects which had received funds specifically through the Highway Infrastructure Investment Grant. The list showed 424 ARRA projects in Ohio either underway or completed as of May 11, 2012.

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<sup>7</sup> FHWA stands for the Federal Highway Administration.

Information for each ARRA project on the spreadsheet from FHWA included the following:

Status	Improvement Type
State	Proceed Date
County	Work Start Date
Congressional District #	Est. Completion Date
Project #	Work Complete Date
Project Description	Recovery Act Obligations

ARRA’s quick start language included the statement: “... goal of using at least 50 percent of the funds for activities that can be initiated not later than 120 days after the date of the enactment of this Act.” From this information, the Office of the Ohio Inspector General calculated the number of calendar days from the ARRA enactment date of February 17, 2009, to the “work start date” on the FHWA spreadsheet. Projects having a “work start date” of more than 365 days were selected for further review. The query yielded a sample size of 120 projects, or 28 percent<sup>8</sup> of the 424 Highway Infrastructure Investment Grant projects for Ohio as of May 11, 2012. A letter was sent to ODOT requesting all contract and bid documents for each of the 120 projects. ODOT provided information for 93 of the 120 projects. The remaining 27 project files were held by local government entities that had oversight for those particular projects. The Office of the Ohio Inspector General determined not to request the remaining files for review because the local government entities used different documentation to track the progress of their respective projects.

#### *Quick Start Language*

Federal agencies overseeing ARRA funding were able to define “using” funds as either the money being obligated or an expenditure being made. The definition for “obligated” could include a purchase order<sup>9</sup> being issued or a signed contract that was accepted. The Office of the Ohio Inspector General requested ODOT explain how the department defined “using” funds for

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<sup>8</sup> 120 sample size / 424 ODOT ARRA projects = 28.3 percent.

<sup>9</sup> A purchase order, or encumbrance, is a document showing funds have been set aside for a particular vendor for a particular good or service to be purchased.

all 424 projects. ODOT stated that the U.S. Department of Transportation considered funds “used” or “obligated” when a federal agreement is reached. In practice, this agreement is obtained after a project has progressed through an estimating process and the request has been sent to the federal agency for authorization. However, in the case of ARRA, funds were obligated differently. ARRA projects were not required to go through the estimating process first, and agreements were immediately obtained upon a request from ODOT to the U.S. Department of Transportation. Therefore, ODOT met the technical requirements under the quick start language.

To determine whether these projects were “shovel-ready,” specifically, how quickly ODOT project construction actually began after ARRA’s enactment date of February 17, 2009, the Office of the Ohio Inspector General analyzed the number of days between the “proceed date” and “work start date” on projects listed on the FHWA spreadsheet. The “proceed date” is the date authorization was given for a project to start and may be in the form of a letter sent from ODOT to the contractor selected through the competitive bid process for the project. The analysis showed ODOT averaged 48 days between the date a contractor could begin work on a project and the date the work actually began.

The following are stratified results of the analysis:

<b>Days Between “Proceed Date” and “Work Start Date”</b>	<b># of Projects</b>	<b>% of Total</b>
Less than or equal to 45	272	64.2%
Between 46 and 90	86	20.3%
Between 91 and 120	23	5.4%
Over 121	43	10.1%
<b>TOTAL</b>	<b><u>424</u></b>	<b><u>100.0%</u></b>

The analysis showed almost 85 percent of the 424 projects were started within 90 days of receiving a notice to proceed. Only 29 of 424 projects, or 7 percent of the total, were started over six months after receiving a notice to proceed. ([Exhibit 1](#))

### *Bid to Award Dates*

Of the 93 projects which had a work start date one year after the enactment of ARRA, the Office of the Ohio Inspector General found memos in the bid and award folders for 47 projects summarizing the various dates associated with the contracting process. These dates included the deadlines for when bids were to be received (i.e., the letting date), when a bid was opened, when the bid was awarded to a particular contractor, when the contract was signed, and the estimated start date for the project. For each of the 47 projects, an analysis was conducted to determine the number of days between the date when a bid was opened and the date when the bid award was made.

According to Section 103.02 of ODOT's *Construction and Materials Specifications*, "The Department will award a Contract or reject Bids within 10 days after Bid opening." This requirement is also found in Ohio Revised Code (ORC) §5525.01, Advertisement for bids – awarding contracts – ODOT letting fund, which states, "The award for all projects competitively let by the director under this section shall be made within ten days after the date on which the bids are opened."

Of the 47 projects reviewed where the information was available, 36 of the 47 projects exceeded the 10-day deadline as specified by ODOT policy and the Ohio Revised Code. ([Exhibit 2](#)) This represented 39 percent of the total sample size of 93 projects.<sup>10</sup> The analysis showed the average number of days between the date when the bids were opened and the date when the bids were awarded was 23.6 days.

### *"Estimate" to "Bid Received" Comparison*

A summary sheet was also included in the bid and award folders for each of the 47 projects. Each summary sheet showed the project's cost estimate as determined by the ODOT Office of Estimating, a list of bids received from contractors from lowest to highest bid amounts, and a calculation showing the difference between the amount of the ODOT's project cost estimate and the amount for each of the bids received. The Office of the Ohio Inspector General noted several of the bid amounts were significantly below the project cost estimate determined by ODOT. An

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<sup>10</sup> 36 projects / 93 projects in sample size = 38.7 percent.

analysis was conducted to compare the project cost estimated by ODOT with the actual bid amounts received.

The analysis showed the winning bid average for all 47 projects was 9.7 percent lower than the estimate created by ODOT. For projects where more than one bid was received, the analysis showed the second lowest bid was 6.1 percent lower than the ODOT estimate. ([Exhibit 3](#))

A further analysis of the change orders for the same projects showed the average amount of the total spent on the project was 2 percent lower than the contractors' winning bids. As the ODOT estimates are confidential until the contract is awarded, potential bidders are unaware of the estimate. Therefore, competing bidders would not be able to deflate the bid to ensure winning by submitting the lowest amount, and then later submitting a series of change-orders to increase the cost of the project.

ODOT's *Construction and Materials Specifications* section 103.02 states, "the Department will not award a Contract for an amount greater than 5 percent more than the Department's estimate." This requirement is also found in ORC §5525.10, "Contracts not to be awarded for more than cost plus 5 per cent." The Office of the Ohio Inspector General's review of the 93 projects which had a work start date one year after the enactment of ARRA found only one instance where ODOT required the project to be re-bid due to bid amounts from contractors being more than 5 percent above ODOT's estimate.

#### *Obligation Amounts as Reported on USDOT Website*

Finally, the Office of the Ohio Inspector General compared the amounts listed in the project contracts with the "recovery act obligations" on the FHWA spreadsheet. The ODOT project contracts contained a section listing the total dollar amount of the project and the sources of funding. Included in the sources of funding, was a "do-not-exceed" amount for ARRA funding.

A comparison of the ARRA amounts listed in the ODOT contract with the amounts listed on the FHWA spreadsheet showed 37 of 93 projects where the amounts differed. Of the 37 projects where differences existed, 9 of the 37 projects had amounts where the ODOT contract amount

was lower than what was listed on the FHWA spreadsheet. ([Exhibit 4](#)) In instances where the contract amount was higher, ODOT officials stated it was possible the final amount of ARRA funding spent on the project was recorded instead of the ODOT contract amount. However, the guidance book for USDOT's data entry system states the obligation column is to list "the total amount of Recovery Act funds on the awarded contract."

## **CONCLUSION**

The Office of the Ohio Inspector General found the Ohio Department of Transportation met their obligation under the quick start language in the American Recovery and Reinvestment Act of 2009. A further analysis showed the average days between when a project was given the notice to proceed and when work began was 48 days. This analysis also showed only 29 projects out of the 424 identified on May 11, 2012, were started over six months after the notice to proceed was issued. Explanations documented for the delays included weather or difficulties in procuring needed materials and resources for the project.

ODOT failed to meet the requirements of Ohio Revised Code §5525.01 in 39 percent of the projects reviewed by the Office of the Ohio Inspector General. This statute requires bids to be awarded within 10 calendar days of the bid opening date. In reviewing 47 projects where this information was available, ODOT averaged 23.6 days between the date when a bid was opened and the date when the contract was awarded. There is no statutory penalty for failing to award the bids within the required time.

**Accordingly, the Office of the Ohio Inspector General finds reasonable cause to believe a wrongful act or omission occurred.**

## **RECOMMENDATION(S)**

The Office of the Ohio Inspector General makes the following recommendation and asks the Ohio Department of Transportation to respond within 60 days with a plan detailing how the recommendation will be implemented.

- 1) Create steps to ensure future projects are in compliance with the 10-day timeframe as required under ORC §5525.01.
  
- 2) As part of the review of projects awarded ARRA funding, the Office of the Ohio Inspector General noted the estimates created by the ODOT Office of Engineering were significantly higher than the bids received. The variance ranged anywhere between 1 percent and 28 percent with the average bid received calculated at 10 percent lower than the official estimate. ODOT should take steps to ensure the estimates are as accurate as possible.

**[\(Click here for Exhibits 1 – 4 Combined\)](#)**



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RANDALL J. MEYER, INSPECTOR GENERAL

**NAME OF REPORT: Ohio Department of Transportation**

**FILE ID #: 2012-CA00067**

**KEEPER OF RECORDS CERTIFICATION**

**This is a true and correct copy of the report which is required to be prepared by the Office of the Ohio Inspector General pursuant to Section 121.42 of the Ohio Revised Code.**

**Jill Jones  
KEEPER OF RECORDS**

**CERTIFIED  
June 10, 2013**

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