



Department of Energy
Office of Inspector General
Washington, DC 20585

December 10, 2024

Honorable Frank Pallone, Jr.
Ranking Member
Committee on Energy and Commerce
House of Representatives
2125 Rayburn House Office Building
Washington, DC 20515

Honorable Diana DeGette
Ranking Member
Committee on Energy and Commerce
Subcommittee on Energy, Climate, and Grid
Security
House of Representatives
2125 Rayburn House Office Building
Washington, DC 20515

Honorable Kathy Castor
Ranking Member
Committee on Energy and Commerce
Subcommittee on Oversight and
Investigations
House of Representatives
2125 Rayburn House Office Building
Washington, DC 20515

Re: December 5, 2024, correspondence to the Honorable Teri L. Donaldson

Dear Ranking Member Pallone, Ranking Member DeGette, and Ranking Member Castor:

In response to your letter of December 5, please note that the Department of Energy's acquisition experts conducted the procurement of an outside team of lawyers to assist the OIG to perform oversight of the Department's Loan Programs Office (LPO). The Department's experts are independent of the OIG and the OIG is therefore coordinating with the Department to ascertain the answers to some of your more detailed questions.

In the meantime, your staff's social media post implying that this procurement was wasteful may result in your followers being misinformed. For this reason, we are providing this immediate response.

The Department's thorough procurement took about 6 months. The procurement began with a Request for Information (RFI) that was widely advertised to any and all interested legal experts. The RFI clearly sought responses from vendors willing to provide legal services. There were no coding errors, or any other errors, associated with this RFI. The RFI did not restrict competition in any way.

Of course, the OIG had already conducted preliminary market research pertaining to this specialized legal market prior to the Department's issuance of the RFI. Conducting such preliminary research is entirely appropriate. The OIG was becoming concerned that conflicts of

interest might eliminate any prospect of the OIG retaining expert legal counsel. By the time the OIG was able to seek expert help, the LPO had long ago retained several of the qualified lawyers and law firms. Prospective borrowers were also ahead of the curve and had likewise already retained other qualified lawyers and firms.

As it turned out, the OIG was correct. The universe of qualified legal experts without preexisting conflicts was fast dwindling. In fact, only one legal team and one AI team responded to the RFI. Of the two, only the legal response provided by Robert Rabalais met the RFI qualifications. Your suggestion that a “Google search” somehow refutes this fact does not take into account that the LPO and the prospective borrowers had already retained experts from this small group. Your suggestion also fails to take into account that several of these lawyers and law firms were already soliciting work from prospective borrowers, and therefore would not be likely to express interest in the OIG work because such work would create an immediate conflict from representing borrowers.

Fortunately, the OIG was able to retain the Rabalais team, which is highly qualified in this specialized area. Collectively, the team has over 185 years of relevant experience, with over 100 years of legal experience involving complex energy financing transactions, over 30 years of energy investment and finance expertise, and over 45 years of engineering and technical experience that includes over 30 years of support for energy finance transactions.

Notably, the LPO due diligence review is now underway. No protests were filed in connection with this procurement for the simple reason that no other lawyer or law firm has standing to file such a protest because no other lawyer or law firm sought the job.¹ Furthermore, any baseless interference with this existing contract would undermine the integrity of the procurement and risk needless litigation.

Despite the finality of the procurement, your letter raises two questions, neither of which impacts the validity of this existing contract. First, you seem to object to Robert Rabalais formalizing a business entity encompassing the experts on the team. This practice is common in both the private sector and the public sector. In fact, the Department’s Management and Operating contractors routinely create new business entities organized solely for the purpose of bidding on a Department procurement solicitation. These entities, usually limited liability corporations, are normal and appropriate and allow the Department to access different contractor skillsets to address the specific needs identified in a solicitation. That is exactly what happened here – Mr. Rabalais assembled an outstanding team of professionals.²

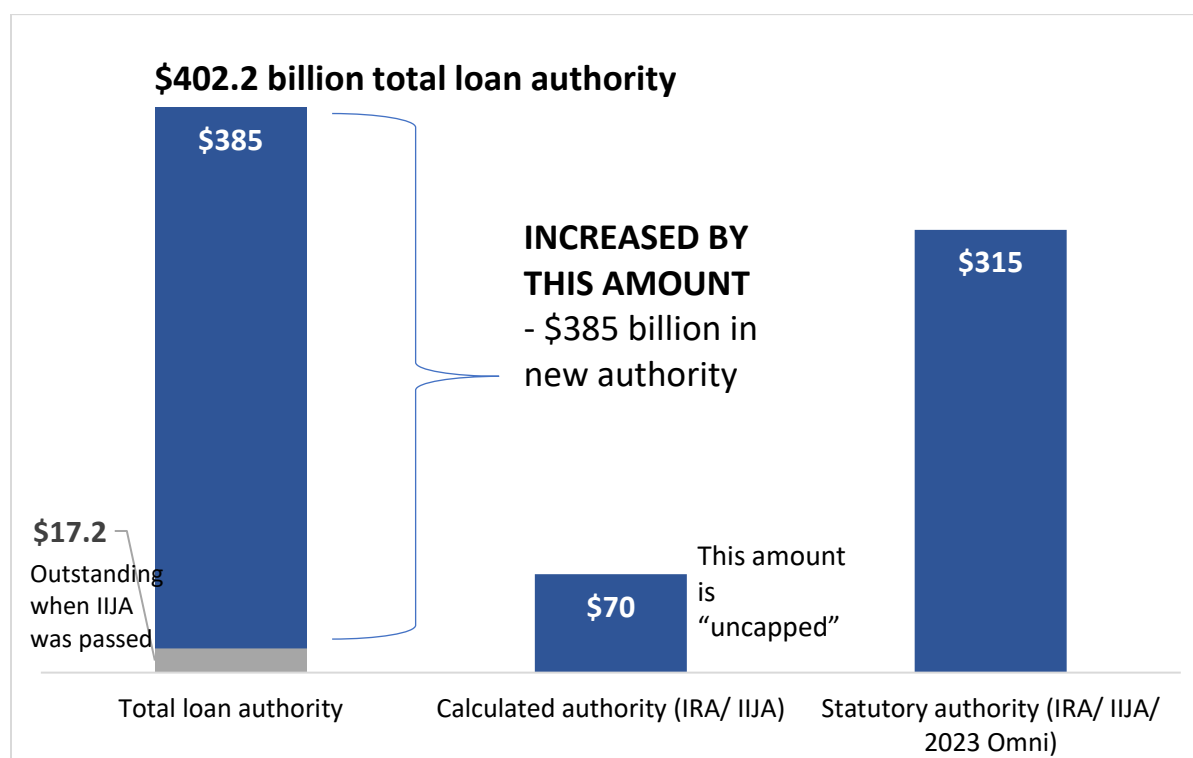
Your second question pertains to a coding error that you’ve identified within the Notice of Intent, which publicly stated the OIG’s intent to award this contract one month after the Contracting Officer learned that only one qualified vendor had expressed any interest in this procurement. In addition, the Notice of Intent clearly states that this procurement is for legal support for OIG’s

¹ FAR 33.103 articulates the conditions under which federal awards may be protested when alleged or apparent improprieties in the solicitation or award occurs, subject to a 10 day protest period. No protests were made.

² See, e.g. DynCorp. Int’l LLC v. United States, 152 Fed. Cl. 490 (2021) (granting motion to dismiss protest challenging contractor’s eligibility for award based on contractor’s corporate transition from corporation to limited liability company with same assets and obligations).

review of the Loan Programs Office. No reasonable person could have been confused about the nature of this procurement. A coding error would be immaterial given these facts.³

What is material here, which I have emphasized in Congressional testimony on several occasions,⁴ is that the LPO is engaged in a very high-risk endeavor. The LPO’s loan authority has increased from \$17 billion of outstanding loans prior to passage of the Infrastructure Investment and Jobs Act in November 2021, to a projected portfolio exceeding \$400 billion in a matter of just a few years.⁵ Remarkably, \$290 billion of these dollars are “use or lose” if not loaned before September 30, 2026. The magnitude of this level of lending authority is similar to the “commercial and industrial loan” portfolio⁶ of Wells Fargo, one of the largest banks in the nation.



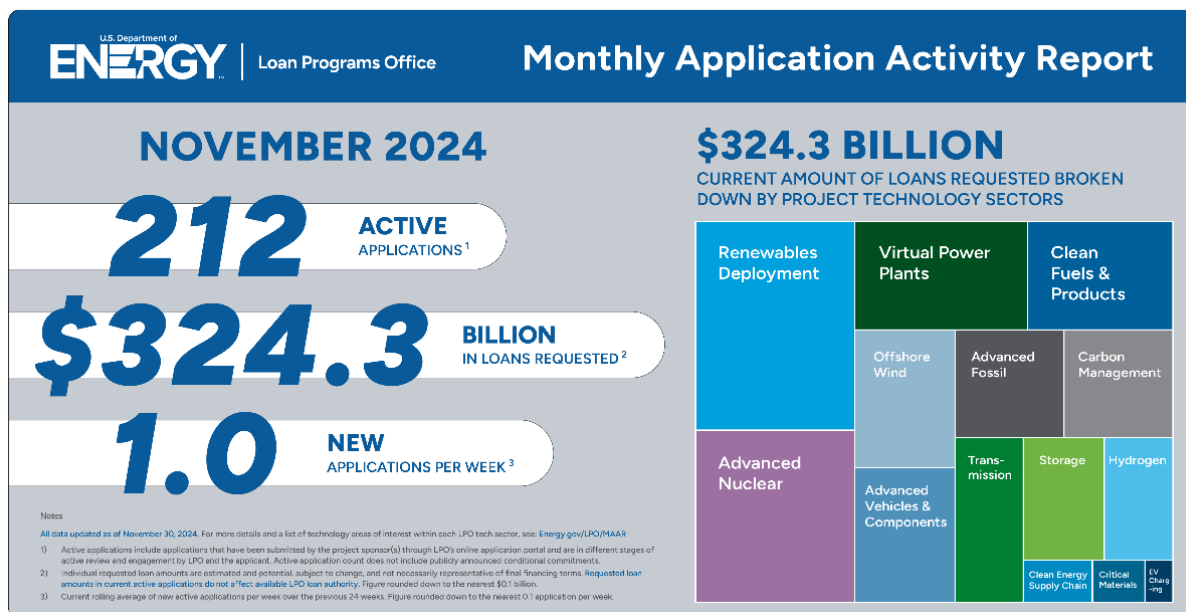
³ See, e.g., *Cosmodyne, Inc.* (Comp Gen 1997) B-271838.2, 13 CGEN ¶ 109,976 (error in identification of ship on which generator had been deployed not basis for reversal of protest denial); *Dalton Construction Co., Inc.*, Comp. Gen. B-224262.2 (Nov. 20, 1986) 1 CGEN ¶ 100,064 (incorrect regulation date in General Accounting Office decision did not affect propriety of decision).

⁴ Most recent testimony on these matter on Oct 2023 - <https://www.energy.senate.gov/hearings/2023/10/full-committee-hearing-to-examine-the-department-of-energy-s-due-diligence-process-for-awarding-competitive-grants-and-loans>. Additional testimonies occurred in March 2023 and April 2023.

⁵ The Infrastructure Investment and Jobs Act was step one in LPO expansion, with CIFIA; step two was with enactment of the Inflation Reduction Act, where the overwhelming majority of LPO program expansion occurred.

⁶ <https://www08.wellsfargomedia.com/assets/pdf/about/investor-relations/annual-reports/2023-annual-report.pdf>, see p. 8, table 3, about \$382 billion.

Below is a current snapshot of the loan applications under review:



The taxpayers are entitled to oversight of this funding, especially considering the dramatically increased risks.

This oversight is long over-due. No independent examination of LPO's practices, processes, and due diligence procedures has been performed since January 2012, nearly 13 years ago. That examination resulted in a report⁷ that found major problems in the LPO's practices and processes. Importantly, the report was subject to numerous "limitations of the report" including limitations due to "compressed time period for review," limitations on the "scope of the review," and a "lack of investigative authority." These same limitations will not impair the OIG's oversight.

When a major loan defaults, the taxpayer bears the cost. History demonstrates that failures in due diligence may result in major defaults, as we saw in the Solyndra⁸ loan guarantee default.

Despite the checkered history of the LPO, Congress initially appropriated only \$20 million for OIG oversight of \$35 billion of appropriations to the Department in the Inflation Reduction Act (IRA), a portion of which expanded the LPO's loan and loan guarantee authority by hundreds of billions of dollars. Only after I spent two years lobbying Congress for additional oversight resources was this appropriation increased in 2024 to \$60 million for oversight of the IRA funded portfolio of projects. Your letter noted that \$20 million for the Rabalais contract is a large value compared to the OIG's base budget of \$86 million. As you know, however, the \$20 million will not be taken from the OIG's base budget, but rather, from the \$60 million Congress specifically appropriated the OIG to oversee the Inflation Reduction Act, which includes a

⁷ *Report of the Independent Consultant's Review with Respect to the Department of Energy's Loan and Loan Guarantee Portfolio* (January 31, 2012), commonly called the "Allison Report"

⁸ <https://www.energy.gov/sites/default/files/2015/08/f26/11-0078-1.pdf>

portfolio of hundreds of billions of dollars in loan program expansion. Given these risks and the large sums of money involved, it is unquestionably appropriate to spend up to one third of our \$60 million IRA oversight budget on the risks posed by the loan portfolio.

Notably, the Rabalais team is billing well below market rates. The Rabalais team is also billing by the hour at rates comparable to or less than the hourly rates that the LPO is paying outside counsel to provide comparable legal services. It's certainly possible that the legal work for the OIG will cost less than \$20 million, since the team is billing on an hourly basis. This is not a fixed price, lump sum arrangement.

Thankfully, this long over-due oversight work is now underway. I look forward to reporting on this issue. In the meantime, my staff will follow up with you and provide additional information on the preliminary market research conducted prior to this procurement. While it is not clear how conducting preliminary market research prior to issuing an RFI that was open to the entire universe of qualified vendors has even the potential to impact competition, my staff will of course fully cooperate with your inquiries.



Sincerely,
Teri L. Donaldson
Inspector General