U.S. ENVIRONMENTAL PROTECTION AGENCY
OFFICE OF INSPECTOR GENERAL

Catalyst for Improving the Environment

Special Report

EPA Office of Inspector General Recommendations on Office of Management and Budget Guidance for Recovery Act Implementation

Report No. 09-P-0132

March 31, 2009

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

OFFICE OF
INSPECTOR GENERAL

March 31, 2009

Daniel I. Werfel, Acting Controller
Executive Office of the President
Office of Management and Budget
725 17th Street, NW
Washington, DC 20503

Dear Mr. Werfel:

The U.S. Environmental Protection Agency (EPA) Office of Inspector General (OIG) has reviewed the Office of Management and Budget (OMB) Updated Implementing Guidance for the American Recovery and Reinvestment Act of 2009 (ARRA). While our review was not comprehensive, we are providing the following comments for your consideration concerning ways to improve risk assessment in the application and management of Recovery Act funds, and accuracy in reporting results.

General Comments

Overall, the guidance is prescriptive for agencies to make funding available in a transparent, need-driven way on an agency-by-agency basis. However, there does not appear to be a process described for cross-agency coordination of grantee and other fund recipient review to ensure that recipients are not obtaining funds from multiple sources for the same project, or that information on recipients' (including contractors') risk factors identified by one agency is shared among all. Similarly, we are concerned that multiple contributing agencies could individually claim the same results statistics, especially if all of the contributing agencies obtain the same reports from a common grantee. This guidance should address how a funds recipient or a Federal agency making a payment will differentiate reportable results proportionately when funds are paid by and received from multiple sources.

We believe that there are appropriate cross agency checks that should be required, beyond the current process, to ensure that a grantee, contractor, or recipient (even at the local level) has not been debarred, suspended, or otherwise disqualified to receive funds; or that the recipient does not have an outstanding obligation in the form of a sustained questioned cost offset or any other court-ordered criminal action, civil settlement, or recovery action from a previous Federal payment. While there are general requirements to check the Federal Excluded Parties List before grants and contracts are awarded, these lists may not always be up to date, nor include actions at a local level, especially for sub-grantees of contractors who have not

previously received Federal funds and therefore might not otherwise be listed. We believe that in the interest of risk assessment, the importance of Federal, State, and local checks should be mentioned and results made available across Federal agencies.

Since States will be primary recipients of Recovery Act funds, we have a question about what obligation State auditors have to review and report on the propriety of the accounting for, and use of, the funds and accuracy in the reporting of results. For example, in the EPA State Revolving Fund, grantees receiving more than $500,000 in Federal funds are subject to Single Audit requirements. While Section 5.7 discusses how updates will be provided to the compliance supplement to ensure it covers ARRA funds, sub-grantees below the $500,000 threshold still may represent an auditable risk. While Federal OIGs have been funded to provide oversight, much of the risk of fraud, waste, and abuse will be at the sub-grantee level. Therefore, we believe that this guidance should recognize or express the intent that oversight for the application of funds should also remain transparent and be subject to risk assessment at the State and local level, including State level auditing, in addition to the requirements of OMB A-133 and the Federal OIG role. The Guidance expresses the expectation that OIGs will train others in the audit community, but does not express the expectation for the role of auditors in the audit community beyond that of the OIGs. The footnotes express the intent that Single Audits will be performed on more of a real-time basis, which means that a significantly greater investment in audit resources will be required beyond the Federal OIG level.

Specific Comments

***Sections 2.10 and 2.14*:** We suggest that these sections also include a discussion about seeking information regarding Prime Contract Subprime Contractors who receive funding greater than $250,000 (or some other figure deemed to be appropriate), the Engineering Firm responsible for project if there is one, and the responsible entity distributing funds to contractor. Also, for government-wide use, this information should be sent to recovery.gov, where it would be available for everyone's use and the special attention of the Recovery Accountability and Transparency Board.

Sections 2.6 and 2.7: These sections mention the requirements to identify expected savings. While in concept it is a good idea to consider tangible results, it appears that such projections, absent factual basis, are aspirational or speculative. We are concerned that such projections, absent factual basis, may represent a vulnerability of basing decisions on faulty or exaggerated expectations. We suggest that the Guidance require any projection of savings upon which decisions rely be based on a benchmarked model or similar foundation of fact or proven method of forecasting such savings, similar to the explanation in Section 2.12 describing the guidance on the estimation of jobs created or retained.

Section 3: This section discusses assessment of risk. We believe that this section should explicitly require the assessment of risk associated with any decision for providing funds to each grantee, based on specific previous knowledge and experience with a particular grantee, including results of audits. We are specifically concerned about the capacity of grantees to account for and manage the grant funds, regardless of the need. The risk of grantee capacity, and ability of Federal agencies to closely monitor those grants, has been identified as a government-

wide “High Risk” area by the Government Accountability Office, as well as the subject of OIG audits, and has been identified as an area of risk by EPA regional managers. We suggest that the guidance specify that existing OIG reports and status of actions on audit recommendations should be used as part of the risk assessment and decision making process in disbursing Recovery Act funds.

Sections 6.3 and 6.4: Currently under the Federal Acquisition Regulation (FAR), the agency Contract Officer is the final decision authority in disputes between the eligibility and allowability of costs claimed, and costs questioned through an audit that are not satisfactorily addressed by the contractor. We suggest that this Guidance, provide for a neutral third party appeal process to arbitrate such disputes when there is a difference of opinion between the Contract Officer and auditor. If this Guidance cannot supersede the FAR alone, this may require that the FAR be changed, including the identification of the neutral third party arbitrator. Such a process helps protect the integrity of the audit process.

***Appendix 5 Risk Considerations*:** Similar to our comment on Section 3, we recommend that a review of previous relevant audit findings for any particular potential recipient of Recovery Act funds should be standard practice to be listed among the Program Risk Considerations.

Should you have any questions, please contact Michael J. Binder, Deputy Assistant Inspector General for Congressional, Public Affairs and Management, at (202) 566-2617.

Sincerely,

Bill A. Roderick
Acting Inspector General

cc: Earl E. Devaney, Chairman, Recovery Accountability and Transparency Board
Craig Hooks, Acting Assistant Administrator, Office of Administration and Resources Management, EPA
Howard Corcoran, Director, Office of Grants and Debarment, EPA