



OFFICE OF INSPECTOR GENERAL

*Catalyst for Improving the Environment*

## **Quick Reaction Report**

# **Cost and Lobbying Disclosure Issues Under EPA Grant Numbers X98981901 and XP97914901 Awarded to the City of Fallon, Nevada**

**Report No. 2007-2-00040**

**September 26, 2007**

**Report Contributors:**

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**Abbreviations**

CFR	Code of Federal Regulations
EPA	U.S. Environmental Protection Agency
Grantee	City of Fallon, Nevada
OIG	Office of Inspector General
OMB	Office of Management and Budget



# At a Glance

*Catalyst for Improving the Environment*

## Why We Did This Review

The U.S. Environmental Protection Agency (EPA) Office of Inspector General (OIG) conducted a review of earmarked grants known as Special Appropriation Act Projects issued to local and tribal Governments. The City of Fallon, Nevada, was selected for review.

## Background

The City of Fallon received two EPA Special Appropriation Act grants. Grant X98981901 provided Federal assistance of \$1,073,900 for the study of arsenic in drinking water and for design of a treatment plant. There was no match requirement. Grant XP97914901 provided Federal assistance of \$5,785,740 for design and construction of a drinking water treatment plant. The City of Fallon was required to provide local matching funds equal to 45 percent of the EPA-awarded funds under Grant XP97914901.

**For further information, contact our Office of Congressional and Public Liaison at (202) 566-2391.**

**To view the full report, click on the following link:**  
[www.epa.gov/oig/reports/2007/20070926-2007-2-00040.pdf](http://www.epa.gov/oig/reports/2007/20070926-2007-2-00040.pdf)

## ***Cost and Lobbying Disclosure Issues Under EPA Grant Numbers X98981901 and XP97914901 Awarded to the City of Fallon, Nevada***

### **What We Found**

The City of Fallon (grantee) did not meet the Title 40 Code of Federal Regulations Part 31 requirements for financial management systems. In particular, the grantee: (1) claimed pre-award costs in excess of the eligible amount, and (2) did not support matching costs claimed under EPA grants. As a result, EPA will need to recover \$350,916 under grant number XP97914901. The grantee also did not disclose any lobbying activity to EPA even though the grantee contracted with three lobbyists.

### **What We Recommend**

We recommend that the Regional Administrator, EPA Region 9:

1. Recover \$350,916 under grant number XP97914901 consisting of:
  - a. \$311,607 in unallowable pre-award costs, and
  - b. \$39,309 in unsupported matching costs.
2. Determine whether the grantee complied with Title 31, U.S. Code, Section 1352 in the lobbying disclosures made under grant numbers X98981901 and XP97914901. For those instances where it is determined the grantee did not disclose lobbying activity, the Region should refer the matter to the Department of Justice for further action.



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

OFFICE OF  
INSPECTOR GENERAL

September 26, 2007

**MEMORANDUM**

**SUBJECT:** Cost and Lobbying Disclosure Issues Under EPA Grant Numbers  
X98981901 and XP97914901 Awarded to the City of Fallon, Nevada  
Report No. 2007-2-00040

**FROM:** Melissa M. Heist *Melissa M. Heist*  
Assistant Inspector General for Audit

**TO:** Wayne Nastri  
Regional Administrator  
EPA Region 9

This report contains time-critical issues the Office of Inspector General (OIG) identified and recommends recovery of the Federal funds drawn down by the recipient and also a determination of compliance with disclosure of lobbying activity. This report represents the opinion of the OIG and does not necessarily represent the final position of the U.S. Environmental Protection Agency (EPA). EPA managers will make final determination on matters in this report.

**Action Required**

In accordance with EPA Manual 2750, Chapter 3, Section 6(f), you are required to provide us your proposed management decision for resolution of the findings contained in this report before any formal resolution can be completed with the recipient. Your proposed decision is due in 120 days, or on January 24, 2008. To expedite the resolution process, please email an electronic version of your proposed management decision to [kasper.janet@epa.gov](mailto:kasper.janet@epa.gov).

We have no objections to the further release of this report to the public. The report will be available at <http://www.epa.gov/oig>. If you have any questions, please contact Janet Kasper, Director, Assistance Agreement Audits, at (312) 886-3059 or at the email above.

## **Purpose**

During our audit of Special Appropriation Act Projects the following conditions came to our attention which we believe require your immediate attention. The City of Fallon, Nevada (grantee) did not meet the Title 40 Code of Federal Regulations (CFR) Part 31 requirements for financial management. The grantee also did not disclose any lobbying activity to EPA even though the grantee contracted with three lobbyists.

## **Background**

Grant number X98981901 was awarded on June 27, 2001. The grant provided Federal assistance of \$973,900 for studying arsenic in drinking water and designing a treatment plant. The grant was subsequently amended to provide total EPA funds of \$1,073,900. The \$1,073,900 represents EPA's contribution of 100 percent of eligible project costs. There was no matching requirement.

Grant number XP97914901 was awarded on July 24, 2002. The grant provided Federal assistance of \$5,785,740 for the design and construction of a drinking water treatment plant to reduce levels of naturally occurring arsenic in the groundwater supplies which service the City. The EPA participation of \$5,785,740 represents 55 percent of all eligible project costs. The grantee was responsible for the remaining 45 percent of all eligible project costs.

## **Scope and Methodology**

We performed our audit in accordance with generally accepted government auditing standards, issued by the Comptroller General of the United States, with the exception of gaining a complete understanding of internal controls as required under Section 7.16 and gaining an understanding of information control systems as required under Section 7.23. We did not obtain a complete understanding of the internal control system since the limited nature of our review focused on the source documents that support costs claimed under the grants. We also did not test the recipient's grant drawdown process or test the recipient's process for entering information into its accounting system. Instead, we relied upon the grantee's schedule of revenues and project costs. The schedule was reconciled to the grantee's source documents but was not part of the official accounting system. We did not obtain an understanding of information control systems since the review of general and application controls was not relevant to the assignment objectives. Instead, we relied on relevant output data, including general ledger reports, cash disbursements and detailed cost ledgers and verified information in the reports to source documentation. We conducted our field work between February 26, 2007, and May 31, 2007.

We made site visits to the grantee and State of Nevada and performed the following steps:

- Conducted interviews of grantee and State of Nevada personnel;
- Obtained and analyzed the grantee's electronic accounting files, source documents, bank statements, cancelled checks, and invoices;
- Obtained and analyzed EPA grant drawdowns, Drinking Water State Revolving Fund loan draws, State Assembly Bill 198 grant draws, and other related financial data; and
- Obtained and reviewed State of Nevada project files.

## Findings

The grantee did not meet the Title 40 CFR Part 31 requirements for financial management. In particular, the grantee:

- claimed pre-award costs in excess of the eligible amount; and
- did not support amounts matching costs claimed under EPA grants.

As a result, EPA will need to recover \$350,916 under grant number XP97914901. The grantee also did not disclose any lobbying activity to EPA, even though the grantee contracted with three lobbyists.

### ***Unallowable Pre-Award Costs***

The grantee claimed \$556,558 in excess of the approved pre-award amount under grant number XP97914901. The grant award approved \$372,890 in pre-award costs; however, the grantee claimed \$939,448 in pre-award costs. Title 40 CFR 31.20 (b)(5) requires the grantee to meet applicable Office of Management and Budget cost principles and the grant terms when claiming costs under EPA grants. Office of Management and Budget Circular A-87 Attachment B, Section 31 defines pre-award costs as those costs incurred prior to the effective date of the award, which are necessary and allowable only to the extent that they would have been allowable if incurred after the date of the award and only with the written approval of the awarding agency. The Federal share of the excess pre-award costs totaling \$311,607 is questioned, as calculated below:

Total Amount of Pre-Award Costs Claimed	\$ 939,448
Amount of EPA Approved Pre-Award Costs	<u>372,890</u>
Excess Pre-Award Costs Claimed	\$ 566,558
Federal Share (\$566,558 x 55 percent)	\$ 311,607

### ***Unsupported Matching Costs***

At the time of our field work, the grantee could not locate supporting documentation for \$32,162 in matching costs for grant number XP97914901. Title 40 CFR 31.24 (a)(1) and (b)(6) require matching costs to be verifiable from the grantee's records. Any reduction in the grantee's matching costs will mean that the proportionate EPA grant must be reduced because the grant will be undermatched. Without adequate supporting documentation to demonstrate that claimed costs are allowable, \$32,162 in matching costs is questioned as well as the allocable Federal share of \$39,309, computed as follows.

Unsupported Matching Costs	\$ 32,162
Total Amount Costs (100 percent = \$32,162/45 percent matching share)	\$ 71,471
Federal Share of Claimed Costs (\$71,471 - \$32,162)	\$ 39,309

## ***Undisclosed Lobbying Activity***

The grantee did not disclose any lobbying activity to EPA, even though the grantee contracted with three lobbyists. The grantee is required to disclose all instances of lobbying activity, regardless of the source of funds used to pay for those activities. The lack of full disclosure of lobbying activity is a material misrepresentation to the Federal Government and is subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

Title 31, U.S. Code, Section 1352 prohibits use of Federal funds for lobbying activities and requires recipients to file a written declaration containing the name of any registrant under the Lobbying Disclosure Act of 1995 who has made lobbying contacts on behalf of the recipient. It requires a certification that the person making the declaration has not made, and will not make, any prohibited payment for lobbying activities.

The items certified to in the Certification Regarding Lobbying form are:

- 1. No Federal funds were paid to any person to influence Government officials in connection with the awarding or modification to any Federal contract, grant, loan or cooperative agreement.*
- 2. If any funds other than Federal appropriated funds were used to influence or attempt to influence Government officials in connection with the Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.*

*This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, USC. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.*

The grantee did not disclose any lobbying activity, even though the grantee had contracts with three lobbyists: the Furman Group, R&R Partners, and Energy Source. The Furman Group provided government relations and other consulting services related to the City's infrastructure development needs. R&R Partners provided government and public affairs services that included monitoring legislative issues. Energy Source provided services to the grantee in connection with regulatory proceedings relating to electric operations, electric energy, and electric departments. A grantee official stated that the Furman Group was involved with the drinking water treatment plant development and was most likely involved with helping the grantee obtain the EPA grants. The contracts to Energy Source and the Furman Group were entered into before either grant was awarded. The dates of contract awards and the funds from which the lobbyists were paid are detailed below:

**Table 1: Schedule of Lobbyist Contracts and Funds Used**

<b>Lobbyist</b>	<b>Date of Contract Award</b>	<b>City Fund Account Used to Pay Lobbyist</b>
Energy Source	September 8, 1998	Electric Enterprise Fund
Furman Group	March 11, 1998	Electric Enterprise Fund
R&R Partners	February 17, 2003	Water Funds

Source: City of Fallon, Nevada

## **Recommendations**

We recommend that the Regional Administrator, EPA Region 9:

1. Recover \$350,916 under grant number XP97914901 consisting of:
  - a. \$311,607 in unallowable pre-award costs, and
  - b. \$39,309 allocable to unsupported matching costs.
2. Determine whether the grantee complied with Title 31, U.S. Code, Section 1352 in the lobbying disclosures made under grant numbers X98981901 and XP97914901. For those instances where it is determined the grantee did not disclose lobbying activity, the Region should refer the matter to the Department of Justice for further action.

## **Grantee's and Region 9 Comments**

On September 13, 2007, the OIG held an exit conference with the grantee to obtain the grantee's comments on the factual accuracy of the draft report. During the exit conference, the grantee provided additional information in connection with the unsupported drawdowns questioned in the discussion draft. Based upon the additional information, the drawdowns have been accepted and the recommendation eliminated. On September 17, 2007, the OIG held an exit conference with Region 9 representatives to obtain the Region's comments on factual accuracy of the draft report. The following reflects the grantee's and Region's comments:

### ***Unallowable Pre-Award Costs***

The grantee said that it had pre-award costs far in excess of the pre-award costs allowed by the grant. However, the grantee did not use the proper timeframes for determining allowable preaward costs. The grantee is prepared to amend its request to appropriately allocate expenditures and will work with the Region during audit resolution to clear up this issue.

The Region is willing to work with the grantee during audit resolution to resolve this issue. The Region stated that it would consult with the OIG to ensure any costs requested during audit resolution have not been claimed under any other funding source, such as other Federal or State grants and loans.



### ***Unsupported Matching Costs***

The grantee said that it researched this issue of unsupported matching costs and it discovered that it had never requested or received the draw for \$32,161 from the State Assembly Bill 198 grant. The grantee requested that the OIG consider additional unreimbursed costs under EPA grant number X98981901 (specifically drawdowns 8 and 9) as support for the \$32,161 in matching costs for grant number XP97914901.

The Region is willing to work with the grantee during audit resolution to resolve this issue. The Region stated that it would consult with the OIG to ensure any costs requested during audit resolution have not been claimed under any other funding source, such as other Federal or State grants and loans.

### ***Undisclosed Lobbying Activity***

The grantee recognized that the lobbyists should have been disclosed. The grantee stated the nondisclosure was an oversight. The contract with the Furman Group was intended to help the grantee obtain Federal funds and the grantee held public meetings where anyone could attend. The grantee is willing to work with EPA to do whatever is necessary to resolve this problem.

The Region said it would like its Office of Regional Counsel to confer with the OIG Office of Counsel regarding the lobbying disclosure issue, to address such matters as who should make the referral to the Department of Justice and how much discretion EPA has in making the referral.

## **OIG Response**

### ***Unallowable Pre-Award Costs***

The OIG concurs with the grantee that this issue should be addressed during audit resolution. We will assist the Region to ensure any costs requested during audit resolution have not been claimed under any other funding source, such as other Federal or State grants and loans.

### ***Unsupported Matching Costs***

Our position remains unchanged. Since the grantee had never requested nor received the \$32,162 in funds from its State grant, the grant was undermatched. The grantee also needs to ensure that the additional costs being claimed have not reimbursed from other funding sources, such as other Federal or State grants and loans.

The grantee's request that costs claimed under one grant be applied to another grant cannot be accepted until the Region reviews the costs to ensure the amounts claimed are within the scope of the project funded under grant number XP97914901. We will assist the Region to ensure any costs requested during audit resolution have not been claimed under any other funding source, such as other Federal or State grants and loans.

***Undisclosed Lobbying Activity***

Our position remains unchanged. The Region needs to refer any lobbying disclosure violations to the Department of Justice.

## **Status of Recommendations and Potential Monetary Benefits**

RECOMMENDATIONS						POTENTIAL MONETARY BENEFITS (in \$000s)	
Rec. No.	Page No.	Subject	Status <sup>1</sup>	Action Official	Planned Completion Date	Claimed Amount	Agreed To Amount
1	4	Recover \$350,916 under grant number XP97914901 consisting of: a. \$311,607 in unallowable pre-award costs, and b. \$39,309 allocable to unsupported matching costs.	O	Regional Administrator, EPA Region 9	01/24/08	\$351	
2	4	Determine whether the grantee complied with Title 31, U.S. Code, Section 1352 in the lobbying disclosures made under grant numbers X98981901 and XP97914901. For those instances where it is determined the grantee did not disclose lobbying activity, the Region should refer the matter to the Department of Justice for further action.	O	Regional Administrator, EPA Region 9	01/24/08		

<sup>1</sup> O = recommendation is open with agreed-to corrective actions pending.  
 C = recommendation is closed with all agreed-to actions completed.  
 U = recommendation is undecided with resolution efforts in progress.

## ***Distribution***

Regional Administrator, Region 9  
Director, Office of Wastewater Management, Office of Water  
Director, Office of Wastewater Management - Municipal Services Division, Office of Water  
Director, Office of Grants and Debarment  
Director, Grants and Interagency Agreements Management Division  
Agency Followup Official (the CFO)  
Agency Followup Coordinator  
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