



U.S. ENVIRONMENTAL PROTECTION AGENCY
OFFICE OF INSPECTOR GENERAL

Catalyst for Improving the Environment

Special Report

Open Audit Recommendations Affecting Recovery Act Activities

Report No. 09-X-0136

April 9, 2009



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Abbreviations

EPA	U.S. Environmental Protection Agency
IA	Interagency Agreement
JOFOC	Justification for Other than Full and Open Competition
OAM	Office of Acquisition Management
OIG	Office of Inspector General
USACE	U.S. Army Corps of Engineers



At a Glance

Catalyst for Improving the Environment

Why We Did This Review

We reviewed open recommendations from prior Office of Inspector General (OIG) audit reports that could impact the U.S. Environmental Protection Agency's (EPA's) American Recovery and Reinvestment Act activities. These recommendations involved grants, contracts, and interagency agreements.

Background

Open recommendations are those for which EPA has not completed corrective actions. Recent Office of Management and Budget guidance requires the expediting of actions on open recommendations to preclude the continuance of weaknesses or deficiencies that can impact Recovery Act funding.

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

To view the full report, click on the following link:
www.epa.gov/oig/reports/2009/20090409-09-X-0136.pdf

Open Audit Recommendations Affecting Recovery Act Activities

What We Found

We identified five open recommendations, from three EPA OIG reports, that could have an impact on Recovery Act funding.

- In response to a 2008 report, EPA agreed to implement our recommendation to distribute revised terms and conditions to regions in June 2009 for spending brownfields grant funds more timely. EPA told us these terms and conditions would be in place before EPA awarded any Recovery Act grants.
- A 2008 OIG report found that EPA had no assurance that use of Cost-Plus-Award-Fee contracts facilitates a higher level of performance than other types of contracts, and contractors were given award fees without sufficient support. To address these issues, the Office of Acquisition Management completed revisions to the Contracts Management Manual on April 7, 2009, and will have the information published by late April. We also noted EPA Region 5 paid award fees in excess of limits, and corrective action is still pending.
- A 2007 OIG report found that EPA often entered into interagency contracts without conducting cost reasonableness assessments or identifying alternatives, such as whether EPA's in-house staff should acquire the services or products. EPA is not planning to conduct its comprehensive review of interagency contracts to verify implementation of the corrective action until September 2010. EPA needs to ensure other corrective actions related to cost reasonableness assessments and considerations of alternatives to interagency contracts are implemented for Recovery Act interagency contracts.

We also have concerns that EPA is considering granting a waiver related to several closed recommendations involving obtaining independent cost estimates for interagency agreements with the U.S. Army Corps of Engineers.

We recommend that the Agency expedite corrective actions for the open recommendations as they pertain to Recovery Act funds. EPA should let us know within 30 days how it has acted, or plans to act, on these recommendations.



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

OFFICE OF
INSPECTOR GENERAL

April 9, 2009

MEMORANDUM

SUBJECT: Open Audit Recommendations Affecting Recovery Act Activities
Report No. 09-X-0136

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

TO: Craig Hooks, Acting Assistant Administrator
Office of Administration and Resources Management

Barry Breen, Acting Assistant Administrator
Office of Solid Waste and Emergency Response

Bharat Mathur, Acting Regional Administrator
Region 5

The Office of Inspector General (OIG) of the U.S. Environmental Protection Agency (EPA) has completed a review of open recommendations from prior audit reports that could impact EPA's American Recovery and Reinvestment Act (Recovery Act) activities. This review was not an audit conducted in accordance with the *Government Auditing Standards*. Open recommendations are those for which EPA has not completed corrective action. In accordance with the Office of Management and Budget's Recovery Act Implementation Guidance, dated April 3, 2009, if final action on report recommendations has not been taken, EPA should (1) expedite such action to preclude the continuance of weaknesses or deficiencies in the administration of Recovery Act funded programs, or (2) provide an explanation of why such corrective actions cannot or should not be taken in the administration of Recovery Act funded programs.

We identified five open recommendations, from three EPA OIG audit reports, that pertain to grants, contracts, and interagency agreements. Details on those five recommendations and the status of each follow. We also provide details on one closed recommendations where we have concerns about a current EPA decision to waive an Office of Management and Budget requirement. We will issue a separate document identifying contractors and grant recipients that have open audit recommendations.

Grants

Report: *EPA Should Continue Efforts to Reduce Unliquidated Obligations in Brownfields Pilot Grants* (08-P-0265), September 16, 2008

Recommendation 2: Assistant Administrator for Solid Waste and Emergency Response revise model terms and conditions for assessment grants to include a definition for the term “insufficient progress.”

EPA had not consistently implemented a national policy or process that provided reasonable assurance that brownfields grant funds would be spent in a timely manner. EPA Headquarters had not provided specific guidelines on when grants should be terminated, nor had it defined inadequate progress for grant performance. As a result, grant funds that could have been used by other communities sat idle. This could impact grants awarded with Recovery Act funds because grantees need to commence expenditures and activities quickly to accomplish objectives of the Recovery Act (job creation, programmatic results, and economic recovery). EPA agreed to implement our recommendation to distribute the revised terms and conditions to the regions in June 2009. In March 2009, the OIG discussed this issue with the Director of the Office of Brownfields and Land Revitalization, who said the revised terms and conditions would be in place before EPA awarded any Recovery Act grants. EPA needs to ensure the revised terms and conditions are completed in sufficient time to include in the Recovery Act grants.

Contracts

Report: *EPA Should Further Limit Use of Cost-Plus-Award-Fee Contracts* (08-P-0093), February 26, 2008

Recommendation 2-1: Assistant Administrator for Administration and Resources Management revise the Contracts Management Manual to require that a cost-benefit analysis be conducted prior to awarding a Cost-Plus-Award-Fee contract, and all Cost-Plus-Award-Fee contracts be approved by the contracting officer’s Service Center Manager.

Recommendation 2-2: Assistant Administrator for Administration and Resources Management revise the Contracts Management Manual to require work assignment managers, project officers, contracting officers, and performance evaluation board members to explicitly document the basis for award-fee decisions made.

EPA had no assurance that use of Cost-Plus-Award-Fee contracts facilitated a higher level of performance than other types of contracts. These contractors were consistently given high ratings and award fees, but EPA did not have sufficient documentation to justify those ratings and award fees. To address our recommended corrective actions, the Director, Office of Acquisition Management, approved Contracts Management Manual revisions on April 7, 2009, and expects to publish the changes by late April. In awarding

and monitoring the Recovery Act contracts, EPA should be taking steps to ensure that the actions that are described in the Contracts Management Manual update are performed.

Although the President's Memorandum of March 4, 2009, on "Government Contracting" establishes a preference for firm-fixed price contracts, it does not preclude EPA from awarding new contracts or adding funds to existing contracts that are not firm-fixed price. If EPA carries through with its plans to use existing cost plus award fee contracts to award Recovery Act funds, it needs to ensure that our recommendations are implemented to ensure the costs incurred for awards fees are reasonable and justified.

Recommendation 3-1: Region 5 Regional Administrator negotiate with contractors to modify contracts currently providing base fees in excess of the 3-percent limit cited by EPA Acquisition Regulations 1526.404-273(b) so that the fees no longer exceed the 3-percent limit.

For some Region 5 Cost-Plus-Award-Fee contracts, base award fees were in excess of the 3-percent limit allowed by the EPA Acquisition Regulations. This resulted in an overpayment of \$100,000 in base award fees through July 2007, with a potential overpayment of \$760,000 over the remaining life of the contracts. In response to the report, Region 5 had agreed to modify contracts by January 2009. However, according to correspondence from the Region 5 audit coordinator, Region 5 plans to revise this date to April 15, 2009. Before awarding contracts with Recovery Act funds, Region 5 needs to ensure contracts have been modified to comply with EPA Acquisition Regulations.

Interagency Agreements

Report: *Interagency Agreements to Use Other Agencies' Contracts Need Additional Oversight* (2007-P-00011), March 27, 2007

Recommendation 2: Grants Administration Division require that the Interagency Agreement (IA) decision memorandum better explain why an IA is more cost effective, and include an evaluation of cost reasonableness assessments in the Grant Administration Division's oversight reviews of IA management.

EPA often entered into interagency contracts without conducting cost reasonableness assessments or identifying alternatives, such as whether EPA's in-house acquisition staff should acquire the services or products. As a result, we found interagency contracts where EPA could have saved money if it had awarded the contracts directly through its in-house contracting staff. The Office of Grants and Debarment received an extension for conducting its comprehensive program review of IAs to September 2010. This extension was granted because of the Office of Federal Procurement Policy's delay in issuing government-wide guidance on IAs. As a result, the comprehensive program review that the Office of Grants and Debarment committed to perform in Fiscal Year 2008 is scheduled for completion in Fiscal Year 2010, a year after implementation of the Office of Federal Procurement Policy guidance. While the comprehensive evaluation may not be completed before Recovery Act IAs are awarded, EPA should ensure that

other recommendations in the report, including cost reasonableness assessments and consideration of alternatives to IAs, are performed.

Additional Issue on Closed Recommendations

We have identified an issue that we brought to the attention of the Directors for Acquisition Management and Grants and Debarment regarding recommendations where the corrective actions were completed but a waiver was being considered. In OIG Report No. 2007-P-00021, *EPA Can Improve Its Managing of Superfund Interagency Agreements with the U.S. Army Corps of Engineers*, issued April 30, 2007, we made the following two recommendations:

Recommendation 2-1: Require that regional offices develop an EPA independent cost estimate for the Corps' oversight of IAs.

Recommendation 2-2: Require that regional offices conduct a cost analysis of alternatives when determining whether to award an IA and evaluate the analysis against an EPA-developed cost estimate.

The draft IA guidance mentioned that the Office of Solid Waste and Emergency Response was requesting a class determination that the USACE IAs are in the best interest of the government. While we have not seen the details on the basis for this request, we are concerned that EPA will not be considering alternatives and the cost effectiveness of using the USACE when awarding the IA. This issue has also received congressional interest. In the House Report that accompanied the Fiscal Year 2008 appropriation (H.Rept 110-87), the committee stated it agreed with the OIG report and EPA needs to develop its own independent cost estimates for USACE work and conduct cost analyses of alternatives prior to determining whether to engage the USACE. The House Report noted that cost considerations should always be an important consideration when determining how best to perform work at a Superfund site. Further, in the Fiscal Year 2009 appropriation, Congress requested that EPA provide an update on its oversight of regional decisions to use the USACE.

In making the decision as to whether to approve a waiver of the best interest determination for the USACE, we believe the Agency should consider the past OIG recommendations and congressional statements on this issue. We have discussed this issue with the Office of Grants and Debarment and Superfund contracting office and they have stated that they will consider the issue we have raised in making a decision on the waiver request.

Action Required

We recommend that the Agency expedite corrective action for these open recommendations as they pertain to Recovery Act funds. Please provide a response within 30 days describing the actions EPA is taking, or has taken, to address the recommendations.

If you or your staff has any questions regarding this review, please contact me at (202) 566-0899 or heist.melissa@epa.gov; or Janet Kasper, Director for Contracts and Assistance Agreement Audits, at (312) 886-3059 or kasper.janet@epa.gov.

Distribution

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Acting Regional Administrator, Region 5
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