



United States Department of Agriculture  
Office of Inspector General  
Washington, D.C. 20250



DATE: July 1, 2011

AUDIT  
NUMBER: 10703-4-KC (1)

TO: Dave White  
Chief  
Natural Resources Conservation Service

ATTN: Lesia Reed  
Deputy Chief  
Strategic Planning and Accountability

FROM: Gil H. Harden /s/  
Assistant Inspector General  
for Audit

SUBJECT: American Recovery and Reinvestment Act-Watershed Protection and Flood  
Prevention Program - Grants and Locally Led Contracts Do Not Include All  
Required Recovery Act Award Terms

Of the \$28 billion provided to the Department of Agriculture (USDA) by the American Recovery and Reinvestment Act of 2009 (Recovery Act), Congress allotted \$145 million to the Natural Resources Conservation Service (NRCS) to assist State and local governments with implementing authorized watershed project plans for watershed protection, flood mitigation, and water quality improvements.<sup>1</sup> To respond to the increased need for accountability and transparency in the expenditure of these funds, USDA's Office of Inspector General (OIG) was charged with overseeing NRCS' activities and ensuring that Recovery Act funds are spent in a manner that minimizes the risk of improper use. We initiated a review that included determining if NRCS staff included all required Recovery Act award terms when the agency and the project sponsor entered into agreements for watershed related work.

Based on our review of 27 watershed operation agreements in 6 States, we found that none of the agreements included all of the required provisions.<sup>2</sup> According to the Recovery Act, Office of

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<sup>1</sup> Public Law 111-5, dated February 17, 2009.

<sup>2</sup> NRCS entered into 19 grant agreements (agreements between NRCS and the local project sponsor used to obligate the funds and outline the work to be accomplished). We also reviewed eight sub-recipient agreements (locally-led contracts) between project sponsors and local contractors, which according to the Recovery Act should include these required provisions.

Management and Budget (OMB) directives,<sup>3</sup> and the Code of Federal Regulation (CFR),<sup>4</sup> recipients of Recovery Act funding for watershed work have certain responsibilities, based on whether their agreement was a grant agreement or a locally led contract.

The grant or contract needs to include the provisions listed below:

Recovery Act Provision	Applies To:	
	Grant Agreements	Locally Led Contracts
Recipient Reporting <sup>5</sup>	X	
Buy American Construction Materials <sup>6</sup>	X	X
Davis Bacon Wage Rates <sup>7</sup>	X	X
Government Accountability Office(GAO)/Inspector General (IG) Access <sup>8</sup>	X	X
Whistleblower Protection <sup>9</sup>	X	X

However, we found that all 27 grant agreements and locally led contracts we reviewed lacked one or more of the required provisions. This occurred because NRCS’ national office issued untimely and incomplete guidance regarding required Recovery Act provisions. The national office delegated authority to enter into agreements to the applicable State offices and did not take a proactive role in providing guidance to ensure all Recovery Act provisions were included in contracts and grants. Without effective guidance, the States were unsure as to what required provisions needed to be included in grant agreements and locally led contracts. Due to this lack of clear guidance, these agreements—totaling over \$33.6 million—may not be properly implemented.

Within the first 10 weeks after the Recovery Act was signed, OMB issued two directives and updated the Code of Federal Regulations pertaining to grants and contracts.<sup>10</sup> However, NRCS was not timely in forwarding this guidance to States:<sup>11</sup>

<sup>3</sup> OMB M-09-15, dated April 3, 2009.

<sup>4</sup> 2 CFR Part 176, dated April 23, 2009.

<sup>5</sup> Section 1512 of the Recovery Act requires recipients of such funds to report on the use of the funds quarterly. This requirement applies to the initial recipient of funds and does not apply to sub-recipients.

<sup>6</sup> Section 1605 of the Recovery Act outlines requirements for contractors to use American iron, steel, and manufactured goods in the construction of Recovery Act-funded projects.

<sup>7</sup> Section 1606 of the Recovery Act requires all laborers and mechanics be paid at prevailing wage rates for Recovery Act projects.

<sup>8</sup> Sections 902 and 1515 of the Recovery Act provide GAO and OIG rights to review records of the grantee or contractor and the rights to interview any officers of the grantee or contractor.

<sup>9</sup> Section 1553 of the Recovery Act provides protection against retaliation to whistleblowers.

<sup>10</sup> OMB issued directive M-09-10 on February 18, 2009, and M-09-15 on April 3, 2009. 2 CFR Part 176 was finalized on April 23, 2009.

<sup>11</sup> American Recovery and Reinvestment Act of 2009, HQ NRCS - Contracting Officers Operations Field Guide, point 12, dated March 19, 2009, posted on NRCS’ intranet SharePoint site.

- NRCS did not issue guidance to States regarding recipient reporting and the “buy American” provisions<sup>12</sup> until approximately 9 months after OMB issuance. NRCS’ guidance did not specifically provide agencies with award terms for GAO/IG access or whistleblower protection.
- NRCS did not provide any guidance regarding required provisions for these locally led contracts.

The following table exhibits how NRCS either provided guidance to the States late, or has not provided that guidance at all:

Award Term	Authority	Guidance Regarding Grant Agreements			Guidance Regarding Locally Led Contracts	
		Timely	Untimely	Not Provided	Untimely	Not Provided
Recipient Reporting	2 CFR Part 176.50		X		N/A	N/A
Buy American	2 CFR Part 176.140 through Part 176.170		X			X
Wage Rate Requirements	2 CFR Part 176.190	X				X
GAO/IG Access	OMB M-09-15; Section 5.9			X		X
Whistleblower Protection	OMB M-09-15; Section 5.9			X		X

See the Exhibit A for a detailed listing of which award terms were missing for each grant agreement or contract.

Given the lack of guidance from the NRCS national office regarding grant agreements and contracts, State officials stated that they had interpreted the Recovery Act requirements themselves. This led to an inconsistent application of the requirements from State to State. In the 27 grant agreements and locally led contracts we reviewed, the applicable required “buy American” provisions were absent from over half and the Davis Bacon wage rate requirements were absent from over a third.

None of the 27 agreements addressed whistleblower protection or GAO/IG access. When we spoke to NRCS national office officials about this problem, they acknowledged the guidance was lacking and stated they would issue revised guidance to the States. We also discussed these missing provisions with officials in the Office of the General Counsel, who agreed that contracts and grant agreements needed to be modified to include the required provisions.

<sup>12</sup> User Guide for Projects Funded by the American Recovery and Reinvestment Act of 2009, dated January 22, 2010.

We recommend that NRCS:

- Issue guidance for grant agreements and locally led contracts to specify all required award terms for each agreement type.
- Amend existing active grant agreements and locally led contracts to include all award terms required by the Recovery Act and OMB.

Please provide a written response within 5 days outlining your proposed corrective action for this issue. If you have any questions, please contact me at (202) 720-6945, or have a member of your staff contact Ernest M. Hayashi, Director, Farm and Foreign Agricultural Division, at (202) 720-2887.

## Exhibit A: Award Terms Required by the Recovery Act

Award Type	Original Award Amount	Award Terms Not Included							
		Recipient Reporting	Buy American Iron, Steel, Goods-Construction Mats	Notice of Buy American Iron, Steel, Goods-Construction Mats	Buy American Under Trade Agreements	Notice of Buy American Under Trade Agreements	Davis-Bacon Wage Requirements	Whistleblower Protection	GAO/IG Access
		2 CFR §176.50	2 CFR §176.140	2 CFR §176.150	2 CFR §176.160	2 CFR §176.170	2 CFR §176.190	OMB M-09-15	OMB M-09-15
Grant	\$2,000,000.00				N/A 5/	N/A 5/		X	X
Grant	16,000,000.00				X	X		X	X
Grant	\$22,949.00	N/A 2/			N/A 5/	N/A 5/		X	X
Grant	\$91,409.84	N/A 2/			N/A 5/	N/A 5/		X	X
Grant	\$84,896.18				N/A 5/	N/A 5/		X	X
Grant	\$650,000.00				N/A 5/	N/A 5/	X	X	X
Grant	\$2,050,000.00	X	X	X	N/A 5/	N/A 5/	X	X	X
Grant	\$1,513,514.00	X	X	X	N/A 5/	N/A 5/	X	X	X
Grant	\$3,273,744.00			X	N/A 5/	N/A 5/		X	X
Grant	\$132,244.00				N/A 5/	N/A 5/		X	X
Grant	\$3,850,000.00				N/A 5/	N/A 5/		X	X
Grant	\$1,655,000.00		N/A 8/	N/A 8/	N/A 5/	N/A 5/	N/A 7/	X	X
Grant	\$345,000.00				N/A 5/	N/A 5/		X	X
Grant	\$24,343.00	N/A 3/		X	N/A 5/	N/A 5/		X	X
Grant	\$40,920.00	N/A 2/		X	N/A 5/	N/A 5/		X	X
Grant	\$1,979.00	N/A 3/		X	N/A 5/	N/A 5/	N/A 6/	X	X
Grant	\$22,984.00			X	N/A 5/	N/A 5/		X	X
Grant	\$32,253.00			X	N/A 5/	N/A 5/		X	X
Grant	\$45,353.00	N/A 2/		X	N/A 5/	N/A 5/		X	X
Locally Led Contract	\$513,275.00	N/A 4/	X	X	N/A 5/	N/A 5/	X	X	X
Locally Led Contract	\$8,000.00	N/A 4/	N/A 8/	N/A 8/	N/A 5/	N/A 5/	X	X	X
Locally Led Contract	\$6,500.00	N/A 4/	N/A 8/	N/A 8/	N/A 5/	N/A 5/	X	X	X
Locally Led Contract	\$5,000.00	N/A 4/	N/A 8/	N/A 8/	N/A 5/	N/A 5/	X	X	X
Locally Led Contract	\$1,272,325.00	N/A 4/	X	X	N/A 5/	N/A 5/	X	X	X
Locally Led Contract	IDIQ 1/	N/A 4/	N/A 8/	N/A 8/	N/A 5/	N/A 5/	N/A 7/	X	X
Locally Led Contract	IDIQ 1/	N/A 4/	N/A 8/	N/A 8/	N/A 5/	N/A 5/	N/A 7/	X	X
Locally Led Contract	IDIQ 1/	N/A 4/	N/A 8/	N/A 8/	N/A 5/	N/A 5/	N/A 7/	X	X
27 Total Agreements/Contracts	\$33,641,689.02	2 of 13 15.4%	4 of 20 20.0%	11 of 20 55.0%	1 of 1	1 of 1	8 of 22 36.4%	27 of 27	27 of 27

1/ Indefinite delivery, indefinite quantity contract. This type of contract provides for an indefinite quantity of supplies or services, at a set price, during a fixed period of time.

2/ Individuals are not required to report.

3/ Projects receiving less than \$25,000 are not required to report.

4/ Sub-recipients are not required to report.

5/ This award term only applies to agreements in excess of \$7,804,000.

6/ This award term only applies to projects valued at \$2,000 or more.

7/ This requirement is for laborer and mechanics. This project involved neither.

8/ This requirement is for projects involving construction. This project did not involve construction.

**USDA'S**

**NATURAL RESOURCES  
CONSERVATION SERVICE'S**

**RESPONSE TO AUDIT REPORT**



Natural Resources Conservation Service  
P.O. Box 2890  
Washington, D.C. 20013

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DATE: July 12, 2011

AUDIT  
NUMBER: 10703-4-KC (1)

TO: Gil H. Harden  
Assistant Inspector General for Audit

FROM: Dave White \s\  
Chief  
Natural Resources Conservation Service

SUBJECT: American Recovery and Reinvestment Act (ARRA) –Watershed Protection and  
Flood Prevention Program – Grants and Locally Led Contracts Do Not Include All  
Required Recovery Act Award Terms

NRCS has received your letter dated July 1, 2011, providing the findings of the Office of the Inspector General (OIG) review of NRCS American Recovery and Reinvestment Act (ARRA) grants, agreements, and locally-led contracts. The review found that there was an inconsistent inclusion of relevant clauses required by ARRA, Office of Management and Budget (OMB) directives, and the U.S. Code of Federal Regulations (CFR).

**NRCS Summary Response:**

NRCS takes exception to the statement that the lack of required provisions in ARRA agreements and locally led contracts was due to the failure of NRCS National Headquarters to issue timely and complete guidance regarding these provisions. Your letter further states that NRCS did not issue guidance on recipient reporting and “Buy American” provisions until 9 months after OMB issuance.

To provide efficient dissemination and quick accessibility, NRCS utilized an internal sharepoint site dedicated to ARRA information. NRCS timely posted a series of documents on this site under a folder entitled “Contracts and/or Agreements” including:

- ARRA Contracting Operations Guide (March 20, 2009)
- ARRA Frequently Asked Questions (April 7, 2009)
- Federal Register notices on required Recovery Act provisions, such as GAO Access to Contractor Employees; Buy American for Construction Materials; Reporting Requirements; Publicizing Contracting Actions; GAO\_IG Access; and Whistleblower Protections (all posted on April 7, 2009)
- Updated Chapter 5 to the ARRA Contracting Operations Guide (April 22, 2009)



The “Frequently Asked Questions” document provided links to the new clauses and specifically addressed the need to modify these clauses for inclusion in locally-awarded grant agreements with contracting local organizations pending specific language from OMB.

NRCS acknowledges that guidance for the inclusion of these provisions was not immediately issued in policy, and will rectify this by the corrective action listed below.

OIG makes two recommendations regarding issuing full and complete guidance of required award term clauses and amending all existing active agreements/locally led contracts to include said award term clauses. Per your request, NRCS is proposing the following corrective actions with respect to your recommendations.

**OIG Recommendation 1:**

Issue guidance for grant agreements and locally led contracts to specify all required award terms for each agreement type.

**NRCS Corrective Action:**

NRCS will issue specific national policy for ARRA funded grants and agreements that require inclusion of the award terms identified in your July 1 letter within 30 calendar days of the date of this response. The guidance will specifically address the inclusion of:

- Recipient Reporting 2CFR Part 176.50
- Buy American 2 CFR Part 176.140 – 176.170
- Wage Rate Requirements 2 CFR Part 176.190
- GAO/IG Access OMB M-09-15 Section 5.9
- Whistleblower Protection OMB M-09-15 Section 5.9

**OIG Recommendation 2:**

Amend existing active grant agreements and locally led contracts to include all award terms required by the Recovery Act and OMB.

**NRCS Corrective Action:**

As part of the guidance issued in response to the first recommendation, NRCS will direct its State Offices to amend existing active grants and agreements to include all award terms listed above within 45 days. NRCS will require State Conservationists to report the accomplishment of these amendments within 30 days after completing the amendment.

It should be noted that ‘locally led contracts’ are the result of NRCS entering into agreements with local project sponsors. Such agreements form the basis for locally led contracts between the sponsors and contractors. NRCS is not a party on the locally led contracts and there is no contractual relationship between NRCS and the contractor when this type of instrument is used. Therefore, NRCS cannot amend the locally led contracts to include ARRA provisions.

If you have any questions, please contact Edward Biggers, Jr., Senior Acquisition Advisor at [Edward.Biggers@wdc.usda.gov](mailto:Edward.Biggers@wdc.usda.gov) or by telephone at (202) 720-8758.