



U.S. ENVIRONMENTAL PROTECTION AGENCY  
OFFICE OF INSPECTOR GENERAL

*Catalyst for Improving the Environment*

## Audit Report

# EPA's Terms and Conditions as Well as Process to Award Recovery Act Interagency Agreements Need Improvement

Report No. 11-R-0016

November 16, 2010



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**Abbreviations**

CERCLA    Comprehensive Environmental Response, Compensation, and Liability Act of 1980  
EPA        U.S. Environmental Protection Agency  
IA         Interagency Agreement  
IHS        Indian Health Service (U.S. Department of Health and Human Services)  
OFPP      Office of Federal Procurement Policy (Office of Management and Budget)  
OIG        Office of Inspector General  
OSWER     Office of Solid Waste and Emergency Response

**Cover photo:**    Empty drums at the Price Landfill Superfund site in Pleasantville, New Jersey; EPA awarded \$16,300,000 in Recovery Act funds to the U.S. Army Corps of Engineers for remedial action at this site. (EPA OIG photo)



# At a Glance

*Catalyst for Improving the Environment*

## Why We Did This Review

We conducted this audit to examine the U.S. Environmental Protection Agency's (EPA's) use of interagency agreements (IAs) for American Recovery and Reinvestment Act of 2009 activities. Specifically, we sought to determine whether Recovery Act IAs identified clear lines of responsibility and whether EPA awarded Recovery Act IAs based on sound business decisions.

## Background

EPA uses IAs when it acquires goods and services from other federal agencies. From February 17, 2009, through June 30, 2010, EPA awarded \$278 million of Recovery Act funding through IAs under the Superfund and Drinking Water State Revolving Fund programs for project management services.

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/2011/20101116-11-R-0016.pdf](http://www.epa.gov/oig/reports/2011/20101116-11-R-0016.pdf)

## ***EPA's Terms and Conditions as Well as Process to Award Recovery Act Interagency Agreements Need Improvement***

### What We Found

EPA did not clearly describe its responsibilities in the terms and conditions of the Recovery Act-funded IAs we reviewed. As stated in federal guidance and EPA's internal policies, an IA should identify both the requesting and servicing agencies' responsibilities. EPA stated that defining its roles and responsibilities in IAs was unnecessary because its role was clearly defined in EPA policy and guidance. However, because EPA did not clearly define its responsibilities within its Recovery Act IAs and supporting documents, it did not effectively establish accountability for implementing those agreements.

We found that decision memoranda and matrices for EPA Recovery Act IAs met the requirements set forth in EPA policies, but we believe that additional detail would be beneficial. Specifically, for the Recovery Act IAs we reviewed, EPA's award documentation did not include an analysis of the costs of alternatives to establishing an IA to award and manage a Superfund cleanup construction contract. EPA issued several policy documents that required personnel to consider experience, capability, and cost when entering into an IA. We believe EPA could improve its processes by considering the cost and level of effort associated with the procurement, management, and oversight of construction contracts for all Superfund cleanup contracting delivery options. Such analysis would ensure that EPA has selected the most efficient and effective method from a technical, resource, and cost perspective.

### What We Recommend

We recommend that EPA amend the terms and conditions for Recovery Act IAs under the Superfund and Drinking Water State Revolving Fund programs and revise its standard terms and conditions for use in future IAs to include EPA's roles and responsibilities. We also recommend that EPA prepare a program evaluation of levels of effort and the cost of the processes associated with procuring, managing, and overseeing Superfund construction contracts, and use this program evaluation to develop a strategy for determining the best value for delivering Superfund construction contracts. In response to the draft report, EPA concurred with recommendations 2-1 through 2-3 and agreed to take corrective action. EPA asked us to modify recommendation 3-1 and provided a revised recommendation; we accepted the suggested revision and added a second recommendation to ensure implementation.



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

THE INSPECTOR GENERAL

November 16, 2010

**MEMORANDUM**

**SUBJECT:** EPA's Terms and Conditions as Well as Process to Award Recovery Act Interagency Agreements Need Improvement Report No. 11-R-0016

**FROM:** Arthur A. Elkins, Jr.  
Inspector General

A handwritten signature in black ink, appearing to read "Arthur A. Elkins, Jr.", is positioned to the right of the typed name.

**TO:** Mathy Stanislaus, Assistant Administrator  
Office of Solid Waste and Emergency Response

Peter S. Silva, Assistant Administrator  
Office of Water

This is our report on the subject audit conducted by the Office of Inspector General (OIG) of the U.S. Environmental Protection Agency (EPA). This report contains findings that describe the problems the OIG has identified and corrective actions the OIG recommends. This report represents the opinion of the OIG and does not necessarily represent the final EPA position. Final determinations on matters in this report will be made by EPA managers in accordance with established audit resolution procedures.

The estimated cost of this report, calculated by multiplying the project's staff days and expenses by the applicable daily full cost billing rates in effect at the time, is \$490,756.

**Action Required**

The Office of Water concurred with the draft report recommendations and completed corrective action as of October 28, 2010. Therefore, we will close recommendations 2-2 and 2-3 upon issuance of this report and no further response is required. For the remaining recommendations, the Office of Solid Waste and Emergency Response (OSWER) is required to provide a written response to this report within 90 calendar days, in accordance with EPA Manual 2750. OSWER should include a corrective actions plan for agreed-upon actions, including milestone dates. OSWER's response will be posted on the OIG's public website, along with our memorandum commenting on that response. OSWER's response should be provided in an Adobe PDF file that complies with the accessibility requirements of section 508 of the Rehabilitation Act of 1973, as

amended. The final response should not contain data that should not be released to the public; if the OSWER response contains such data, OSWER should identify the data for redaction or removal. We have no objections to the further release of this report to the public. We will post this report to our website at <http://www.ega.gov/oig>.

If you or your staff have any questions regarding this report, please contact Melissa Heist, Assistant Inspector General for Audit, at (202) 566-0899 or [heist.melissa@epa.gov](mailto:heist.melissa@epa.gov); or Janet Kasper, Product Line Director, at (312) 886-3059 or [kasper.janet@epa.gov](mailto:kasper.janet@epa.gov).

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# Chapter 1

## Introduction

### Purpose

As of June 30, 2010, the U.S. Environmental Protection Agency (EPA) had awarded \$278 million of American Recovery and Reinvestment Act of 2009 funding through interagency agreements (IAs) under the Superfund and Drinking Water State Revolving Fund programs.

We conducted this audit to examine EPA's use of IAs for Recovery Act activities. Specifically, we sought to determine whether:

1. EPA Recovery Act IAs identified clear lines of responsibility, and
2. EPA awarded Recovery Act IAs based on sound business decisions.

### Background

EPA awards an IA when the recipient is another federal agency and that agency is providing goods or services to EPA. When it issues an IA, EPA is the "requesting agency" and the recipient is the "servicing agency." The servicing agency can directly perform the work EPA requested, or the servicing agency can contract out the work on EPA's behalf.

#### ***EPA's Use of Recovery Act Funding***

The Recovery Act provided EPA \$7.2 billion to stimulate the national economy, create and retain jobs, and invest in environmental protection and other infrastructure. The act included \$600 million for the Superfund program and \$2 billion for the Drinking Water State Revolving Fund program. To meet Recovery Act objectives and achieve the Agency's environmental mission, EPA awarded Recovery Act funding under these two programs through several vehicles, including IAs, contracts, and cooperative agreements. From February 17, 2009, through June 30, 2010, EPA distributed \$278 million in Recovery Act funds through IAs for these two programs (Table 1).



**Table 1: EPA IA Funding by Program**

<b>Environmental Program</b>	<b>IA Funded Amount</b>
Superfund	\$ 247,721,750
Drinking Water	30,000,000
<b>Total</b>	<b>\$ 277,721,750</b>

Source: EPA's Integrated Financial Management System (as of June 30, 2010).

### Superfund Program



Groundwater sampling wells.  
(EPA OIG photo)

The Superfund program's goal is to clean up uncontrolled hazardous waste sites that pose risks to human health and the environment. The program was authorized under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA). EPA has several funding vehicles available for Superfund cleanups and must decide which vehicle is best for a site. EPA's choices for funding remediation projects include IAs, contracts, and cooperative agreements. The chief difference among these vehicles is the entity charged with awarding and managing the cleanup construction contract. Site cleanup construction contracts can be awarded and managed by EPA, an EPA contractor, another federal agency (through an IA), or a State (through a cooperative agreement). EPA awarded Recovery Act funds through EPA contracts, cooperative agreements with the States, and IAs with the U.S. Army Corps of Engineers (Corps) and the U.S. Department of the Interior.

### Drinking Water State Revolving Fund Program

Tribal set-asides account for up to 1.5 percent of the Recovery Act's allocation for EPA's state revolving fund. EPA transferred \$30 million through an IA to the U.S. Department of Health and Human Services' Indian Health Service (IHS). These funds will be used to improve the infrastructure of drinking water systems that serve Indian tribes and Alaska Native Villages.

### ***Office of Federal Procurement Policy IA Guidance***

On June 6, 2008, the Office of Management and Budget, Office of Federal Procurement Policy (OFPP), issued IA guidance titled *Improving the Management and Use of Interagency Acquisitions*. The purpose of this guidance is to help agencies achieve the greatest value from interagency acquisitions and (1) make sound business decisions to support the use of interagency acquisitions, and (2) strengthen the management of assisted acquisitions. The guidance emphasizes the importance of delineating clear lines of responsibility when developing IAs with respect to establishing requesting and servicing agencies'



roles for acquisition planning, contract administration, final inspection and certification, and other responsibilities.

## **Noteworthy Achievements**

The Recovery Act presented EPA with new challenges, including using the funds quickly and incorporating new terms and conditions. The act required that all funds be obligated by September 30, 2010. By September 30, 2009, EPA awarded all Recovery Act IAs for the Superfund and Drinking Water State Revolving Fund programs – 1 year before the deadline. The Agency also ensured that IAs included the specific terms and conditions established by the Office of Management and Budget’s Recovery Act implementing guidance. These terms and conditions addressed the period during which funds are available, new reporting requirements, and the Buy American and wage rate provisions.

At the same time EPA was awarding Recovery Act funds, it was consolidating IA management into two service centers. Even with the consolidation, EPA was able to process all the funding packages before the obligation deadline in the act.

## **Scope and Methodology**

We conducted this performance audit in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

We conducted our audit work from July 2009 to May 2010. We interviewed EPA Headquarters staff in the Office of Water, Office of Solid Waste and Emergency Response (OSWER), and the Office of Administration and Resources Management. We met with personnel from Region 2, Region 10, and the Interagency Agreement Shared Service Center. We also interviewed staff from OFPP, IHS, and the Corps.

We reviewed 5 of the 17 Recovery Act IAs that EPA awarded as of July 29, 2009. Of the 17 IAs, 15 were with the Corps and 2 were with IHS. We selected a random sample of 4 IAs that EPA Region 2 awarded to the Corps because 8 of 15 Corps IAs were in Region 2. Our sample methodology ensured that we would select two new IAs and two existing IAs that EPA amended. We used IDEA software to select this random sample. We also selected one IA with IHS under the Drinking Water State Revolving Fund Program, bringing the total to five. The 5 IAs we selected represented 34 percent of the total dollar value of the IAs EPA had awarded as of the start of our review. We selected the sample using EPA databases and determined that the reliability of the data they contained was sufficient for our audit work. We did not project the audit results to the universe

of IAs. See Appendix A for further details on the Recovery Act-funded IAs we reviewed.<sup>1</sup>

We reviewed EPA policies and procedures for IA management. We identified and tested EPA's internal controls related to our objectives and determined that EPA had a number of management controls for Recovery Act IAs. However, we identified a weakness in internal control – namely, EPA's roles and responsibilities being included in the agreements – and reported that condition in Chapter 2.

## Prior Audit Coverage

In EPA OIG Report No. 2007-P-00021, *EPA Can Improve its Managing of Superfund Interagency Agreements with U.S. Army Corps of Engineers*, issued April 30, 2007, we stated that EPA should better justify and support its decisions to enter into Superfund IAs with the Corps. In that report, we recommended that EPA include cost estimates and a cost analysis of alternatives when awarding IAs to the Corps. We also noted in the report that EPA should improve its monitoring of IAs with the Corps to better manage cost, timeliness, and quality. In response, EPA updated policy and conducted annual reviews of Corps IA justifications. On August 8, 2007, the OIG issued a memorandum to the Agency and closed all but one recommendation; the OIG closed the remaining recommendation in April 2008. EPA also submitted a Fiscal Year 2009 report to Congress regarding its review of the Agency's cost analysis practices in determining the best approach for conducting Superfund work. During this review, we followed up on EPA's actions in response to the prior report recommendations.

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<sup>1</sup> When we took the sample on July 29, 2009, EPA had awarded 17 Recovery Act IAs in the Superfund and State Revolving Fund programs. As of June 30, 2010, EPA had awarded 19 Recovery Act IAs in the Superfund and Drinking Water State Revolving Fund programs. Those agreements are listed in Appendix A, and the total amount funded is reported earlier in this chapter.

## Chapter 2

### EPA Should Update Interagency Agreement Terms and Conditions

EPA did not clearly describe its responsibilities in the terms and conditions of the Recovery Act-funded IAs we reviewed. OFPP guidance and EPA's internal policies state that an IA should identify both the requesting and servicing agencies' responsibilities. EPA stated that defining its roles and responsibilities in IAs was unnecessary because its role was clearly defined in EPA policy and guidance related to IAs. Because EPA did not clearly define its responsibilities within its Recovery Act IAs and supporting documents, it did not effectively establish its accountability for implementing those agreements.

#### Guidance Requires IAs to Include Each Agency's Role

OFPP guidance, *Improving the Management and Use of Interagency Acquisitions*, states that IA terms and conditions should include the requesting and servicing agencies' responsibilities and respective roles. This guidance applies to all agreements initiated after October 1, 2008. Agencies are to define their respective roles to ensure effective IA management and use. The guidance also states that requesting and servicing agencies should work together to define their respective roles in the IA to effectively establish accountability.

EPA guidance requires IAs to identify the roles and responsibilities of both agencies. EPA's 2008 *Interagency Agreement Policies, Procedures, and Guidance Manual* requires that each agency's responsibilities be identified, including the frequency of and procedures for EPA IA reviews. Also, the *EPA/USACE Superfund Interagency Agreement Desk Manual*, dated January 2009, specifies that EPA should include both agencies' roles and responsibilities in IAs.

All three of the guidance documents apply to EPA's Recovery Act Superfund IAs with the Corps. However, only EPA's *Interagency Agreement Policies, Procedures, and Guidance Manual* applies to the Recovery Act IA with IHS. While the guidance documents vary, all maintain that IAs should include the signatories' roles and responsibilities.

## EPA's Role Not Described

EPA did not clearly describe its responsibilities in the terms and conditions of the Recovery Act-funded IAs we reviewed. We reviewed four Recovery Act-funded IAs between EPA and the Corps for Superfund site cleanups and one Recovery Act-funded IA between EPA and IHS for Drinking Water State Revolving Fund water infrastructure projects. While the terms and conditions may differ from program to program, EPA uses standard terms and conditions for all IAs within each of those programs. In all five IAs we reviewed, the IA terms and conditions included the role and responsibilities for either the Corps or IHS, but EPA's role and responsibilities were not defined.

### ***Superfund IA Terms and Conditions***

The Superfund IAs with the Corps we reviewed did not identify EPA's role and responsibilities in three key areas the OFPP guidance identified. Those areas were:

- Procuring contracts and developing the statement of work
- Monitoring construction and operations and maintenance activities
- Final inspection and certification

Specific examples of the terms and conditions for these IAs follow.

**Procuring contracts and developing the statement of work.** The term and condition regarding how contracts would be procured and how the statement of work would be developed did not specify EPA's role in the process. The scope of work included with the terms and conditions in one IA we reviewed stated that the Corps will be responsible for:

Procuring the services of a remedial action contractor to perform the soil remedial action at the former Imperial Oil facility. This entails the development of the technical statement of work and awarding the contract to a private firm(s).

This term and condition did not describe the Agency's role in procuring contractors or developing statements of work. OFPP guidance recommends that requesting agencies develop the statement of work with the servicing agency to ensure clearly defined requirements. Since the statement of work defines what the contractor is going to do at the site, and EPA is responsible for the cleanup, EPA should describe its participation in developing the statement of work.

**Monitoring construction and operations and maintenance activities.** The term and condition regarding monitoring construction and operations and maintenance activities stated that EPA would coordinate with the Corps, but did not specify

what EPA would do. The statement of work in one IA stated that the Corps will be responsible for:

Providing oversight and monitoring of construction in coordination with the EPA Remedial Project Manager (RPM) to ensure compliance with all contract requirements. In addition, the [Corps] will provide weekly updates and meetings on the site to discuss construction progress, problems, or any other pertinent issues.

EPA did not include a description of the actions it would take to coordinate oversight and monitoring of the project. OFPP guidance recommended that requesting agencies include in their IAs activities to conduct appropriate oversight. EPA should describe its participation in overseeing and monitoring construction, as well as any meetings it will attend.

**Final inspection and certification.** The term and condition pertaining to the final inspection and certification of completed projects was equally vague as to EPA's role and part in the process. The statement of work in one IA stated that the Corps will be responsible for:

. . . conducting final inspection and certification of the completed remedial action in coordination with the EPA RPM.

EPA has ultimate responsibility for Superfund site cleanup. EPA's *Interagency Agreement Policies, Procedures, and Guidance Manual* requires it to identify the responsibilities of each party. OFPP guidance recommends that requesting agencies "ensure deliverables are received and quality is acceptable." EPA should include a description of the actions it would take for final inspection and certification.

### ***Drinking Water State Revolving Fund IA Terms and Conditions***

We reviewed one of two Recovery Act IAs that EPA established with IHS for water infrastructure projects on tribal lands and Alaska Native Villages. We noted that the servicing agency's role is clearly defined, but EPA's roles and responsibilities were not.

One IHS term and condition stated that EPA shall be:

. . . formally notified of and invited to participate in the conceptual design meeting, the final plans and specification review . . .

This term and condition did not describe whether the Agency would participate in the conceptual design meeting or the final plans and specification review, or whether it would participate in any changes to the statement of work. EPA's *Interagency Agreement Policies, Procedures, and Guidance Manual* requires that

EPA identify its participation in design and planning activities. EPA should have articulated in the IA whether its role in the conceptual design meeting and final plans and specification review is one of comment or approval.

The scope of work attached to the IA with IHS stated:

The IHS will provide quarterly, project-specific financial and progress reports using the existing progress report format, which will include, at a minimum, actual expenditures and milestones achieved to date . . . IHS will make available to the EPA Headquarters a progress report through an automated reporting feature in its Sanitation Tracking and Reporting System (STARS).

This term and condition did not describe how EPA would use these reports. EPA should have articulated how it will use these reports to ensure project progress and financial accountability. For example, EPA could describe steps it would take to address late reports and stalled projects.

The IHS scope of work also stated:

The EPA shall be formally notified of and invited to participate in the . . . final inspection for projects in which EPA funds are utilized. IHS shall notify EPA at least 10 business days prior to these events to allow optimal participation.

This term and condition did not state whether EPA would participate in the final inspection. EPA should have stated how it would respond to any such invitation.

## **EPA Defined Its Role in Policy Rather Than Within the IA**

The Agency stated that defining EPA's roles and responsibilities in IAs was unnecessary because its role was clearly defined in the relevant EPA policy and guidance. EPA defined many of its Superfund IA roles and responsibilities in its Superfund desk manual. EPA defined its roles and responsibilities for overseeing IHS IAs in its *Oversight Protocol of Tribal Projects Executed through an Interagency Agreement with the Indian Health Service Funded by the 2009 American Recovery and Reinvestment Act*. Although EPA's roles and responsibilities were presented in these policy and guidance documents, the Agency's roles and responsibilities in Recovery Act IAs were not clearly defined because the IAs did not reference these policies or the responsibilities defined therein.

## **Clearly Defined EPA Roles in IAs Would More Effectively Establish Accountability**

Because EPA did not clearly define its role in implementing Recovery Act IAs, it did not effectively establish its accountability for implementing those agreements. EPA did a good job of defining its role in its policies and procedures. However, the Agency should have defined those responsibilities within the IAs. When EPA's role is not included in IAs, the Agency may incur higher costs and possible delays due to duplication of effort or misunderstanding of various agencies' roles.

### **Recommendations**

We recommend that the Assistant Administrator for Solid Waste and Emergency Response:

- 2-1. Revise standard terms and conditions for future IAs with the Corps to include EPA's roles and responsibilities and amend Recovery Act IAs with the Corps as they are modified.

We recommend that the Assistant Administrator for Water:

- 2-2. Amend the terms and conditions in Recovery Act IAs with IHS to include EPA's roles and responsibilities in the areas of design and planning, construction monitoring, and final project inspection.
- 2-3. Revise standard terms and conditions for future IAs with IHS to include EPA's roles and responsibilities in the areas of design and planning, construction monitoring, and final project inspection.

### **Agency Response and OIG Comments**

OSWER concurred with the recommendations and made a suggestion regarding only updating the terms and conditions for modified Recovery Act IAs. OSWER agreed to amend the standard terms and conditions by October 30, 2010. The OIG agreed with the suggestion and amended the recommendation.

The Office of Water concurred with recommendations 2-2 and 2-3 and completed corrective action as of October 28, 2010. The OIG believes that the revised terms and conditions meet the intent of the recommendations and we will close these recommendations upon issuance of this report. No further response from the Office of Water is required.



## **Chapter 3**

### **EPA's Superfund IA Award Documentation Met Requirements, but Improvements Can Be Made**

We found that decision memoranda and matrices for EPA Recovery Act IAs met the requirements set forth in EPA policies, but we believe that additional detail would be beneficial. Specifically, for the Recovery Act IAs we reviewed, EPA's award documentation did not include an analysis of the costs of alternatives to establishing an IA to award and manage a Superfund cleanup construction contract. EPA issued several policy documents that required personnel to consider experience, capability, and cost when entering into an IA. When entering into IAs, OSWER considered the cost of the Corps' awarding and managing the cleanup. OSWER stated that it performs a "best value decision" based on a number of considerations that emphasize technical and resource requirements. We believe EPA could improve its process by considering the cost of alternative methods when deciding how best to fund the management of Superfund cleanups. Such analysis would ensure that EPA has selected the most efficient and effective method from a technical, resource, and cost perspective.

#### **Policies Establish IA Award Documentation Requirements**

EPA issued several policy documents regarding IA justification. The policies vary in how they address the issue of cost. Some policies state that EPA is to consider the cost of the other federal agency's management of the IA. Another policy states that IA decisions are to be based on whether the IA will be an efficient approach, considering both time and cost. Recent congressional language in the Duncan Hunter National Defense Authorization Act for Fiscal Year 2009, Section 865, included a requirement that regulations be updated to include a determination that the IA is the best procurement vehicle.

EPA issued Interim Policy Notice 08-04 to ensure that Agency officials made sound business decisions when considering IAs. This policy notice states that all IAs over \$200,000 awarded under statutory authority other than the Economy Act are subject to a best-interest determination that considers the servicing agency's authority, experience, expertise, and the reasonableness of its fees.

EPA also issued Grants Policy Issuance 02-01, which requires EPA offices to document why they will be using an IA and to consider time and cost for all IAs submitted after January 31, 2002. This policy issuance requires a statement that the cost of the proposed work is reasonable, considering efficiency, based on an independent estimate of cost or other appropriate cost information EPA developed. The policy states:

An approving office must document the reasons why it wants to use an IA and include the reasons in the decision memorandum. In general, the decision should be based on a finding that the IA will be an efficient approach, considering both time and cost.

OSWER Policy 9200.1-83<sup>2</sup> requires regional offices to develop a decision memorandum to document the analysis and decisions regarding use of the Corps for Superfund work. Regional offices must complete a decision matrix that lists several factors to consider, including whether:

- Sufficient EPA resources are available for the acquisition of remedial design or remedial action support.
- Sufficient EPA resources are available to provide a significant or extensive federal presence, if needed, at the site.
- Particular experience such as with large, complex construction projects is desirable.
- The Corps, another federal agency, a State, or an EPA contractor such as a remedial action contractor has unique or particularly relevant experience working at the site or a similar site.

The policy also requires that EPA regional offices document and discuss all vehicles considered:

The decision memorandum and matrix should document all vehicles considered (e.g., Corps, other Federal agencies, EPA contractors such as RAC [remedial action contractors], or contracting options through state agencies), and discuss the various factors and basis for the selection of Corps to conduct the work.

These policies assist EPA in making sound business decisions that support EPA's selection of an IA to conduct remedial actions that are protective of human health, as required by CERCLA.

In the Duncan Hunter National Defense Authorization Act for FY 2009, Congress requested an update to the Federal Acquisition Regulation. This update will require agencies to determine that an IA is the best procurement alternative. Agencies must include sufficient documentation in that determination to ensure an adequate audit. When this update is complete, EPA will have to update its policies.

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<sup>2</sup> OSWER 9200.1-83, *Policy for Issuing Superfund Interagency Agreements for Assigning Superfund Remedial Design or Remedial Action Work to the U.S. Army Corps of Engineers and Other Federal Agencies*, issued April 3, 2008.

## EPA Met Its Requirements, but Improvements Are Needed

We found that decision memoranda and matrices for EPA Recovery Act IAs met the requirements set forth in EPA policies. The decision memoranda we reviewed showed that EPA selected IAs with the Corps based on the Corps' capabilities and experience, and the reasonableness of its fees. EPA documented all of the factors it considered, and included explanations for some of its decisions. EPA also estimated the Corps' cost for managing and overseeing construction.

During our review, we noted that OSWER policy required regional offices to consider alternatives to an IA in its IA award documentation. The two new Recovery Act-funded IAs in our sample included the following statement when discussing EPA's decision to use an IA:

Options were evaluated for the assignment and execution of the work specified in the statement of work of this IA through various available vehicles, including USEPA contractors and the US Army Corps of Engineers. After consideration of each factor, EPA has selected the Corps for the construction . . .

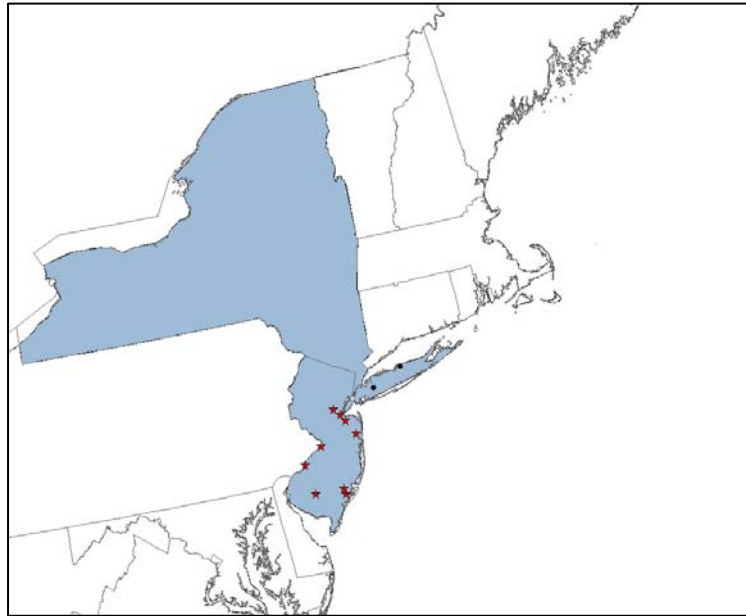
While this discussion meets the requirements of the OSWER policy, we believe the policy should also require regional offices to analyze the costs of alternatives to awarding and managing the remedial activities at a site. A prior EPA OIG report included a similar conclusion and a recommendation about this issue. After the OIG report, the U.S. House of Representatives included language in the 2008 House Appropriations Report (HR 110-87) stating the need to analyze the cost of alternatives. The 2008 House Report stated:

. . . the Agency needs to develop its own independent cost estimates of the [Corps] work and conduct cost analysis of alternatives prior to determining whether or not to engage the [Corps].

After the OIG and U.S. House of Representatives reports, OSWER updated Policy 9200.1-83. This policy required staff to consider the cost for the Corps to award and manage remedial activities, but did not go as far as to require a cost analysis of alternatives.

EPA has several choices when determining who will manage cleanups, and regions differed in the choices they made when awarding Recovery Act funds. Region 2 more than other regions awarded IAs to the Corps. Region 2 selected the Corps for cleanups at 9 of 11 Recovery Act-funded Superfund sites. Figure 1 illustrates the Recovery Act vehicles used in Region 2 (New York and New Jersey shown in blue). Red stars represent sites the Corps manages, and black dots represent sites an EPA contractor manages. (See map in Appendix B for Recovery Act funding for all Superfund sites.)

**Figure 1: Region 2 Cleanup IAs**



Source: U.S. Department of the Interior National Atlas Website and EPA EnviroMapper database.

EPA stated that a cost analysis of alternative funding vehicles is not necessary because it performs a “best value decision” based on a number of considerations, including cost, and that basing decisions solely on least cost criteria is not in the best interest of the government. Staff in EPA’s Office of Superfund Remediation and Technology Innovation explained that EPA decided many years ago that it was inherently more efficient to work with another federal agency that had construction management experience than expand EPA’s expertise in the area. The partnership with the Corps provides EPA with the flexibility to target the right funding vehicle (i.e., an IA, a contract, or EPA-managed contract) to the situation. While EPA has stated that the Corps is more efficient, it does not have documentation to support that the Corps is cost effective.

## **EPA Should Consider the Cost of Alternatives**

EPA did not consider the cost of alternatives to an IA with the Corps. As a result, the Agency could not demonstrate that the use of an IA to award and manage remedial activities was cost effective. Site cleanup construction contracts can be awarded and managed by EPA, an EPA contractor, another federal agency (through an IA), or a State (through a cooperative agreement). When making the decision to award an IA to the Corps, EPA considers technical and resource requirements and the cost of the Corps’ management of the IA. However, the Agency does not consider alternative methods, such as using an EPA contractor,

when cost could be a significant factor. According to an Agency official, cost could be a significant factor for consideration in some circumstances, but there are instances in which other factors, such as technical and resource considerations, must take precedent. We believe that EPA should consider the cost of alternatives when other factors have not precluded the decision.

EPA should firmly establish that its choice of funding vehicles for Superfund cleanups is based on sound business decisions. We believe that EPA could improve its processes by considering the cost and level of effort associated with the procurement, management, and oversight of construction contracts for all Superfund cleanup contracting delivery options. This strategy would address Congress's concern that EPA should use not only the most timely but also the most cost-effective mechanism to complete cleanups. EPA should periodically review its process to develop and maintain current cost estimates and address the changing trends and needs of the Superfund program.

## **Recommendations**

We recommend that the Assistant Administrator for Solid Waste and Emergency Response:

- 3-1. Prepare a program evaluation of levels of effort and the cost of the processes associated with procurement, management, and oversight of the construction contract for projects delivered by the Corps, EPA, or remedial action contractors to support decisionmaking in selecting the method of obtaining construction delivery services.
- 3-2. Use this program evaluation to provide transparency and aid in developing a contracting strategy that will allow the EPA regional offices to make informed decisions when determining the best value for delivering Superfund construction projects.

## **Agency Response and OIG Comments**

In its response to the draft report, OSWER stated that it recognizes the benefit of evaluating levels of effort and associated costs to procure, manage, and oversee a construction contract for different construction delivery mechanisms. However, OSWER believes that when selecting the Corps, a comparison of costs for each possible funding vehicle is not practical or useful on an individual IA basis. The suggested alternative is the program evaluation currently underway to analyze practices and resources related to having different entities (EPA, contractors, Corps) to procure, manage, and oversee construction. OSWER stated that this evaluation may provide transparency and aid in developing a contracting strategy that will allow the regions to make informed decisions when determining the best value for delivering Superfund construction projects.

OSWER explained that projects require different levels of technical, procurement, and project management expertise. A major factor in selecting the contracting vehicle is whether EPA has sufficient and skilled resources to oversee the remedial action. EPA also considers project-specific requirements, such as the construction delivery schedule and whether an expedited construction contract is needed. These factors are considered when choosing the contracting vehicle, and the determination of best value is documented in the decision memorandum.

OSWER did not agree with the original draft recommendation, but proposed an alternative action. Recommendation 3-1 reflects the OSWER proposal, with an additional requirement for considering cost of various contracting vehicles during the program evaluation. We also added recommendation 3-2 to require OSWER to use the results of the program evaluation to develop a contracting strategy. In responding to the final report, OSWER should provide a milestone date for completing its evaluation and an action plan, with a milestone date, for addressing recommendations 3-1 and 3-2.

# 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
2-1	9	Revise standard terms and conditions for future IAs with the Corps to include EPA's roles and responsibilities and amend Recovery Act IAs with the Corps as they are modified.	O	Assistant Administrator for Solid Waste and Emergency Response	10/30/10*		
2-2	9	Amend the terms and conditions in Recovery Act IAs with IHS to include EPA's roles and responsibilities in the areas of design and planning, construction monitoring, and final project inspection.	C	Assistant Administrator for Water	10/28/10		
2-3	9	Revise standard terms and conditions for future IAs with IHS to include EPA's roles and responsibilities in the areas of design and planning, construction monitoring, and final project inspection.	C	Assistant Administrator for Water	10/28/10		
3-1	14	Prepare a program evaluation of levels of effort and the cost of the processes associated with procurement, management, and oversight of the construction contract for projects delivered by the Corps, EPA, or remedial action contractors to support decisionmaking in selecting the method of obtaining construction delivery services.	O	Assistant Administrator for Solid Waste and Emergency Response			
3-2	14	Use this program evaluation to provide transparency and aid in developing a contracting strategy that will allow the EPA regional offices to make informed decisions when determining the best value for delivering Superfund construction projects.	U	Assistant Administrator for Solid Waste and Emergency Response			

<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

\* Although the milestone for Recommendation 2-1 has passed, the Agency has not provided the OIG with the documentation needed to verify implementation of the recommendation.



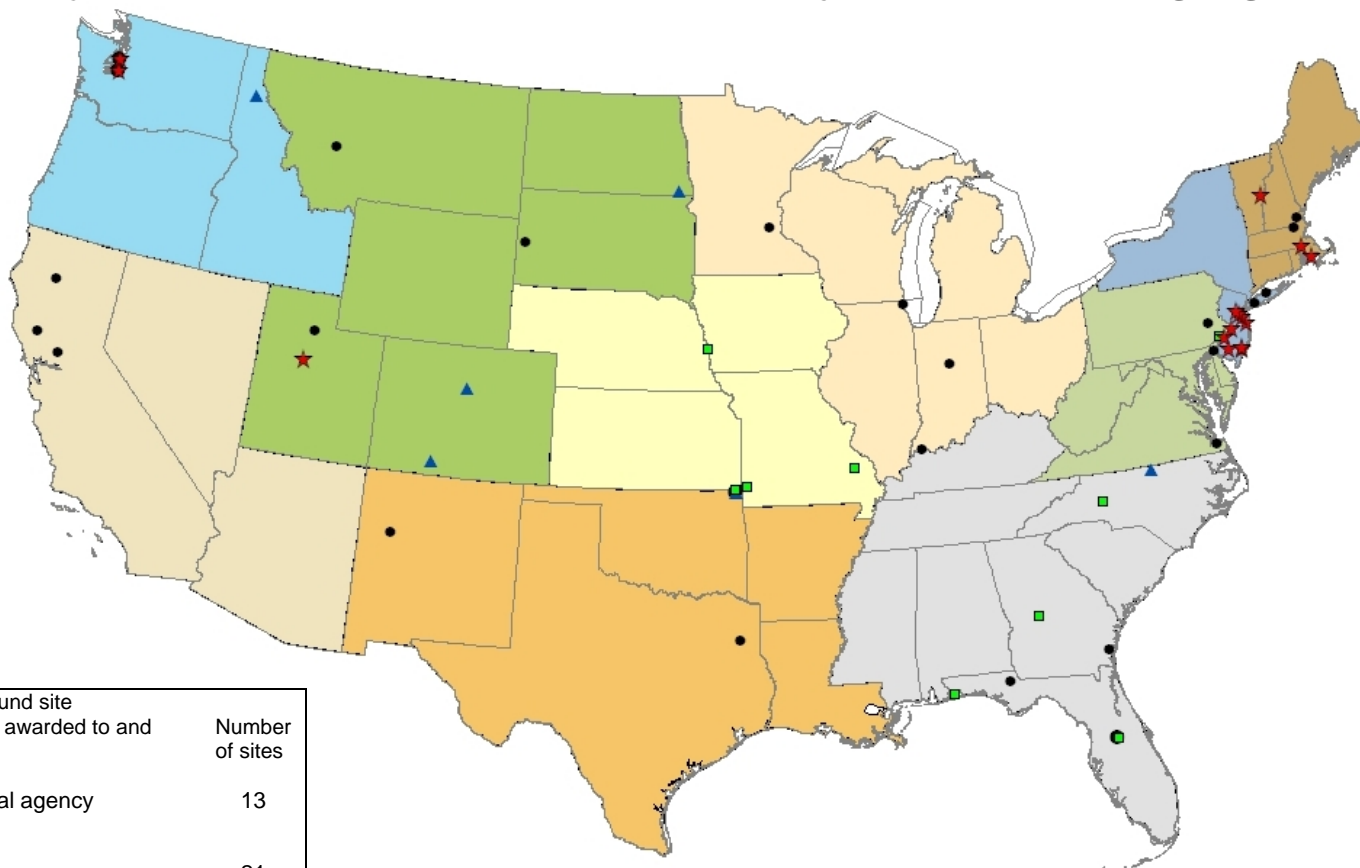
## Superfund and Drinking Water State Revolving Fund Recovery Act IAs

IAs We Reviewed			
Cooperating Agency	IA Number	IA Amount	Purpose
Corps	DW96941836	\$20,000,000	Remedial Action – Vineland Chemical Company – Operable Unit 3 – Vineland, NJ
Corps	DW96941935	\$22,000,000	Remedial Action – Welsbach & General Gas Mantle Site – Camden County, NJ
Corps	DW96942175	\$16,300,000	Remedial Action – Price Landfill – Operable Unit 2 – Egg Harbor and Pleasantville, NJ
Corps	DW96942176	\$25,260,750	Remedial Action - Imperial Oil/Champion Chemical – Operable Unit 3 – Morganville, NJ
HIS	DW75957660	\$30,000,000	Drinking water infrastructure projects for Indian tribes and Alaska Native Villages
IAs We Did Not Review			
U.S. Department of the Interior	DW14953927	\$400,000	Remedial Action – Eureka Mills Superfund site – Eureka Mills, UT
Corps	DW96940355	\$13,703,000	Remedial construction work at the Hatheway and Patterson Superfund site – Patterson, NJ
Corps	DW96940356	\$8,000,000	Non-Time-Critical Removal Action for the Elizabeth Mine Superfund site – Strafford, VT
Corps	DW96940357	\$34,500,000	Remedial work at the New Bedford Harbor Superfund site – New Bedford Harbor, MA
Corps	DW96941843	\$6,000,000	Remedial Action Welsbach & General Gas Mantel – Operable Unit 1 – Camden County, NJ
Corps	DW96942093	\$27,000,000	Remedial Action for Slag Area and Sediments at the Roebing Steel Superfund site – Operable Units 3/5 – Florence Township, NJ
Corps	DW96942133	\$5,000,000	Remedial Action for Operable Unit 2 at the Horseshoe Road Superfund site – Sayreville, NJ
Corps	DW96942166	\$30,000,000	Soil Remediation for Operable Unit 2 – Cornell Dubilier Electronics Superfund site – South Plainfield, NJ
Corps	DW96942177	\$3,000,000	Remedial Action for Operable Unit 1 – Monitor Devices/ Intercircuits, Inc. Superfund site – Lakewood Industrial Park – Monmouth County, NJ
Corps	DW96942178	\$3,958,000	Remedial Action - Operable Unit 2 – Emmell's Septic Landfill Superfund site – Galloway Township, Atlantic County, NJ
Corps	DW96953858	\$700,000	Remedial Design – Eureka, UT
Corps	DW96953896	\$25,400,000	Remedial Action – Eureka, UT
Corps	DW96957691	\$1,500,000	Demolition of equipment and structures at Operable Units 2 and 4 – Wycoff/Eagle Harbor Superfund site – Bainbridge Island, WA
Corps	DW96957692	\$5,000,000	Remedial Action – contaminated yards – Ruston and North Tacoma, WA
<b>Total:</b>		<b>\$277,721,750</b>	

Source: EPA's Integrated Financial Management System (as of June 30, 2010).

Note: The table reflects all EPA Recovery Act IA awards as of June 30, 2010, under the Superfund and Drinking Water State Revolving Fund programs.

## Recovery Act-Funded Superfund Site Projects and Managing Entities



Recovery Act Superfund site construction contract awarded to and managed by:	Number of sites
★ Another federal agency	13
● EPA contractor	21
■ EPA	8
▲ EPA and a State	5
Combination of site managers (Appropriate symbols from above are both present)	4

Source: U.S. Department of the Interior National Atlas Website and EPA EnviroMapper database.

## ***Agency Responses to Draft Report***

OCT – 4 2010

### **MEMORANDUM**

**SUBJECT:** Response to OIG Draft Audit Report, *EPA Terms and Conditions and Process to Award Recovery Act Interagency Agreements Need Improvement*

**FROM:** Mathy Stanislaus  
Assistant Administrator

**TO:** Melissa Heist, Assistant Inspector General  
Office of Audit

Thank you for the opportunity to review and respond to the Office of Inspector General (OIG) draft audit report, *EPA Terms and Conditions and Process to Award Recovery Act Interagency Agreements Need Improvement* dated August 25, 2010. We appreciate the continued dialogue and openness that the OIG team has afforded Office of Solid Waste and Emergency Response (OSWER) during the course of this audit.

The comments below represent a response from OSWER with coordination and comment from the Office of Administration and Resources Management (OARM). The Office of Water is responding separately. First, we would like to address each of the recommendations and provide information about planned or initiated actions related to those recommendations. Second, we provide additional comments to ensure that the final audit report contains accurate information.

### **OIG RECOMMENDATIONS AND OSWER RESPONSE**

**OIG Recommendation 2-1:** Amend the terms and conditions in Recovery Act Interagency Agreements (IAs) with the Corps to include EPA's roles and responsibilities.

#### **OSWER Response:**

OSWER suggests modifying this recommendation to read "Amend the terms and conditions in new or modified Recovery Act Interagency Agreements ...." In light of existing policy, guidance, and training for EPA Remedial Project Managers (RPM), and project officer roles during the implementation of design and construction, amending existing IAs is of limited value and would involve expending limited resources. OSWER intends to update standard terms and conditions pertaining to EPA's role in procuring contracts and developing the statement of work; monitoring construction and operations and maintenance activities; and final inspection and certification. Once updated, the standard terms and conditions will be incorporated into Recovery Act IAs as they are amended.

**OIG Recommendation 2-2:** Revise standard terms and conditions for future IAs with the Corps to include EPA's roles and responsibilities.

**OSWER Response:**

To meet the intent of the OFPP guidance, *Improving the Management and Use of Interagency Acquisitions*, and to provide documented EPA accountability, OSWER is committing to drafting standard terms and conditions outlining EPA's roles in the IA implementation process. OSWER is coordinating with the Corps and our Regional program offices to develop generic terms and conditions pertaining to EPA's role in procuring contracts and developing the statement of work; monitoring construction and operations and maintenance activities; and final inspection and certification.

OSWER plans to have these generic terms and conditions drafted by October 30, 2010. Once drafted, these terms and conditions will be added to the standard Superfund terms and conditions for Superfund IAs that are used for all new IAs and existing IAs, as they are amended.

**OIG Recommendation 3-1:** When cost is a viable consideration in selecting the funding vehicle, require that EPA offices compare the total cost of each funding vehicle as part of the decision matrix. The decision matrix should be supported by sufficient documentation as to how the costs were compared. If cost is not a viable consideration, the decision matrix should document why it is not.

**OSWER Response**

OSWER recommends replacing recommendation 3-1 with a recommendation for a more comprehensive comparison of construction delivery options:

3-1 Prepare a program evaluation of levels of effort and processes associated with procurement, management and oversight of the construction contract for projects delivered by the Corps, EPA or Remedial Action Contractors to support decision making in selecting the method of obtaining construction delivery services.

OSWER recognizes the benefit of evaluating levels of effort and associated costs to procure, manage, and oversee a construction contract for different construction delivery mechanisms. However, OSWER believes when selecting the Corps, a comparison of costs for each possible funding vehicle is not practical or useful on an individual IA basis. The suggested alternative is the program evaluation currently underway to analyze practices and resources related to having different entities (EPA, contractors, Corps) to procure, manage and oversee construction. This evaluation may provide transparency and aid in developing a contracting strategy that will allow the Regions to make informed decisions when determining the best value for delivering Superfund construction projects.

Additional Explanation:

Each Superfund construction project is unique. Some projects are relatively straightforward while other projects are more complex. Projects require different levels of technical expertise, procurement expertise, or project management expertise. The evaluation of these considerations is fundamental in determining which construction delivery mechanism is best suited for the project.

When EPA Regions are determining how to deliver a construction project, the Regions evaluate who will procure, manage, and oversee the construction contract. The Regions have several options: in-house procurement, use an Architecture/Engineering Firm (Remedial Action Contractor), use EPA Emergency Removal and Response (ERRs) contractor, use the State through a Cooperative Agreement (CA), or use the Corps. When determining which vehicle is most appropriate for a specific construction project, EPA evaluates the Regional EPA resources required to deliver the project and the project/site characteristics.

The EPA Superfund remedial program and contract staff required and the relative level of effort necessary to deliver the construction project depends on the delivery vehicle as well as the size, scope and duration of the construction project. For project-specific contracts procured in-house, EPA Regions evaluate whether there are sufficient and skilled EPA resources and sufficient time available for those resources to provide government construction cost estimating expertise, contract procurement, contract management, and construction management and oversight. In evaluating which contract instruments are used, our ongoing analysis has found this is a major factor in determining which vehicle is used. When EPA contracts out these services, EPA staff and resources are required to manage and oversee the Remedial Action Contractor, the ERRs contractor or the Corps delivery of these services. The Corps, however, conducts the procurement and oversight steps that would be performed by contractors or EPA staff depending on the vehicle. (See Attachment 1) In addition to an evaluation of EPA resources, EPA also evaluates whether existing Regional contract resources have sufficient capacity or contract ceiling to provide procurement, management and oversight functions necessary to deliver the size, scope and duration of the construction project.

In addition to determining whether the necessary EPA resources and contract capacity are available, EPA considers project-specific characteristics. When delivering a construction project, construction delivery schedule constraints or expedited procurement of the construction contract may be necessary. As such, EPA may require a delivery vehicle that will provide expedited procurement of the construction contract. In addition, some construction projects require relocation or real estate acquisitions, and EPA may require a delivery vehicle that can provide such these services. Furthermore, EPA projects vary in size and complexity. Size and complexity provide characterization and design challenges that may lead to project-specific uncertainties. These uncertainties result in project risks that, if realized, may result in a significant change to project schedule and/or project cost. When evaluating these project risks, EPA may require a construction delivery vehicle that provides both construction and contract management expertise and flexibility.

The factors discussed above are the considerations that are evaluated and used to determine which construction delivery vehicle is the best value for the government. When EPA chooses

the Corps as the delivery vehicle, the determination of best value is documented in the decision memorandum.

Once the best value determination is made and if EPA chooses to contract out construction delivery services, EPA prepares an Independent Government Cost Estimate (IGCE) for the construction project to ensure that the resulting contract or IA is cost-effective. In its Independent Government Cost Estimate guide, the Office of Acquisition Management (OAM) defines an IGCE as “the Government’s detailed projection of what a reasonably prudent business person should pay to obtain the best value for a product or service, including priorities and assumptions current at the time the estimate was made”. EPA requires IGCEs before entering into both contracts and IAs. The EPA - prepared IGCE evaluates the levels of effort and associated costs deemed necessary to procure, manage, and oversee the construction contract. It also references the construction contract cost estimate from the design, which was finalized and agreed upon by EPA when the final design was submitted. Therefore, the construction contract cost will be the same for an IGCE prepared for either a contract or an IA. The IGCE is then compared to the cost proposed by the contractor of the Corps for their staff efforts. Discussions and negotiations are based off of this IGCE estimation process. The final contractor or Corps costs are a result of this process. Once the contract or IA is awarded, the Corps or contractor then competes, negotiates and awards the construction contract on behalf of EPA.

## **OTHER OSWER COMMENTS:**

### **At a Glance**

1. We recommend modifying the last two sentences in the “What We Found” section as follows:

We believe EPA could improve its process by considering the cost **and level of effort associated with procurement, management and oversight of the construction contract for all Superfund clean-up contract delivery options.** ~~of alternative methods when deciding how best to fund the management of Superfund clean-ups.~~ Such analysis would ensure that EPA has selected the most efficient and effective method from a technical, resource, and cost perspective.

2. The last sentence in the “What We Recommend” section does not seem consistent with the recommendation in the text. The statement leads the reader to believe that you are recommending a cost analysis for all IAs. The recommendation, as it currently reads in Chapter 3, does not state this. We recommend that you consider our response to Recommendation 3-1 above and ensure that both the overview and the Chapter 3 recommendation are consistent.

### **Chapter 1**

#### **Comment 1**

On page 2, under “Superfund Program” the last sentence states:

“EPA awarded Recovery Act funds through EPA contracts, cooperative agreements with the State, and IAs with the U.S. Army Corps of Engineers (the Corps) and the U.S. Department of Health and Human Services.”

Superfund stimulus dollars were not obligated to the U.S. Department of Health and Human Services. They were awarded to the Corps and the Department of the Interior. We recommend that you correct this reference.

#### Comment 2

On page 4, under the “Prior Audit Coverage” heading, we recommend you add an additional sentence to clarify Congress’s acceptance that EPA met the cost requirement requested by preparing an IGCE and comparing EPA’s estimate to the servicing agency’s estimate.

### **Chapter 3**

#### Comment 1

On page 11, you reference CERCLA by providing the following language:

“ ..... select a remedial action that is protective of human health and the environment, that is cost-effective, and that utilizes permanent solutions and alternative treatment technologies or resource recovery technologies to the maximum extent practicable”

The quotation comes from CERCLA section 9621 which discusses the selection of a remedy. This section of CERCLA further states that:

“In evaluating the cost effectiveness of proposed alternative remedial actions, the President shall take into account the total short- and long-term costs of such actions, including the costs of operation and maintenance for the entire period during which such activities will be required.”

The cost effectiveness discussed in this context refers to the remedy selection process and does not define “cost effectiveness” in the context of construction delivery services. As such, we recommend that this CERCLA quote be omitted since it is out of context.

#### Comment 2

Page 12: The third paragraph cites the 2007 OIG report recommendation and 2008 House Report recommendation for a “cost analysis of alternatives prior to determining whether or not to engage the [Corps].”

In Chapter 1, under “Prior Audit Coverage”, it states (related to the 2007 audit):

“On August 8, 2007, the OIG issued a memo to the Agency and closed all but one recommendation; the OIG closed the remaining recommendation in April 2008”.



This language reiterates that OSWER responded to the OIG with its corrective actions and the OIG accepted the response. The acceptance is documented by the OIG closing out all recommendations. OSWER's response to the recommendation cited above was to complete an IGCE for the Corps staff time needed to procure, manage and oversee the construction contract.

Furthermore, in response to the House Report, EPA submitted a response stating that we meet the cost requirement by preparing an IGCE and comparing EPA's estimate to the servicing agency's estimate. This was accepted by the House.

Based on the facts stated above, the items are resolved and we recommend striking reference to the previous OIG recommendation since it is closed and the OIG accepted OSWER's corrective action.

### Comment 3

Page 12, last paragraph: We suggest the following revision:

EPA has several choices when determining who will manage cleanups, and regions differed in the choices they made when awarding Recovery Act funding. (See map in Appendix B.) Region 2 more than other regions ~~had a preference toward~~ awarded IAs with the Corps. Region 2 selected the Corps for cleanups at 9 of 11 Recovery Act funded Superfund sites. ~~While OSWER has stated that the Corps is a cost effective approach, it does not have the detailed documentation to support that position.~~ The following map illustrates the Recovery Act vehicles used in Region 2 (New York and New Jersey shown in blue). Red stars represent sites the Corps manages, and black dots represent sites a contractor manages.

### Comment 4

Page 12, fourth paragraph: We recommend striking the following sentence:

“For the Recovery Act IAs we reviewed, the procurement/assistance costs were a substantial portion of the IA”.

From our discussion above in Recommendation 3-1, the construction contract cost estimate is a deliverable from the design. This estimate is the cost documented in the “procurement/assistance” portion of the IA. As argued above, this number is a fixed estimate for the construction contract and will be the same for any construction delivery vehicle. Once the delivery vehicle is chosen as the best value for procuring, overseeing, and managing the construction contract, the construction contract itself is then competed in the open marketplace and awarded as a separate contract.

As such, we recommend that this sentence be omitted.

### Comment 5

Page 13, chapter title: “EPA Could Not Demonstrate Using an IA was Cost Effective.” As stated above in OSWER’s response to recommendation 3-1, OSWER believes that by definition, an IGCE provides detailed documentation to support the position that the USACE is a cost-effective option.

OSWER recommends that this title be changed.

### Comment 6

Page 14, last paragraph before “Recommendation” section: EPA disagrees with the statement that a cost analysis for all viable funding vehicles, not just Corps’ management of an IA, is needed in order to firmly establish the choice of the Corps is a sound business decision.

OMB defines the following factors as criteria for making a sound business decision for non-economy agreements: authority, experience, expertise, ability, performance, and reasonableness of fees. We believe that these criteria have been met and that a sound business decision to use the Corps, by definition, was done. Furthermore, the OIG agreed on page 12 (first sentence) that:

“The decision memoranda we reviewed showed that EPA selected IAs with the Corps based on the Corps’ capabilities and experience, and the reasonableness of its fees”.

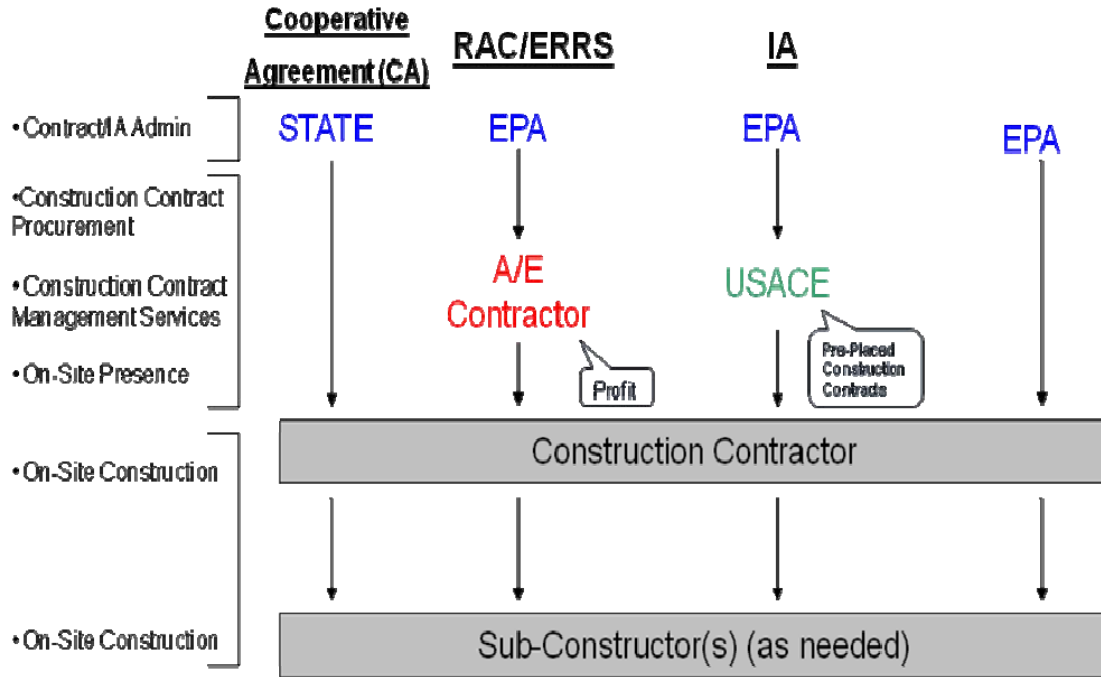
We recommend that this paragraph be modified. In its place, perhaps the OIG can have a discussion on a Superfund program evaluation of costs to procure, manage, and oversee construction contractors to support the modified recommendation 3-1 suggested above.

Thank you for the opportunity to review the draft report. If you have any questions regarding our comments please contact Kate Garufi at 703-603-8827 or Johnsie Webster, OSWER Audit Liaison at 202-566-1912.

### Attachment 1

cc: Lisa Feldt, OSWER  
Barry Breen, OSWER  
Renee Wynn, OPM  
James Woolford, OSRTI  
Robin Richardson, OSRTI  
Cheryl Upton, OSRTI  
Elizabeth Southerland, OSRTI  
David Cooper, OSRTI  
John Smith, OSRTI  
Barbara McDonough, OSRTI  
Emily Johnson, OSRTI  
Kate Garufi, OSRTI

Attachment 1 – Superfund Construction Delivery Options



SEP 27 2010

OFFICE OF  
WATER

**MEMORANDUM**

**SUBJECT:** Draft Office of Inspector General (OIG) Audit Report:  
EPA's Terms and Conditions and Process to Award Recovery Act Interagency  
Agreements Need Improvement  
(Project No . OA-FYgg-q919, August 25, 2010)

**FROM:** Peter S. Silva, Regional Administrator

**TO:** Melissa Heist, Assistant Inspector General  
Office of Audit

On August 25, 2010, the Office of Inspector General (OIG) released a report entitled "EPA's Terms and Conditions and Process to Award Recovery Act Interagency Agreements Need Improvement." I thank you for acknowledging the efforts of EPA's Tribal drinking water program and our partner agency the Indian Health Service (IHS) to ensure that all funds under the State Revolving Fund (SRF) drinking water tribal set-aside were obligated ahead of the September 30, 2010, deadline in the American Recovery and Reinvestment Act.

We concur with your report recommendation to amend the terms and conditions in the Recovery Act Interagency Agreement (IA) with IHS to include EPA's roles and responsibilities in the areas of design and planning, construction monitoring, and final project inspection (Recommendation No. 2-3). We are acting on this recommendation and will provide you with a copy of the amended Recovery IA when completed. Text of the proposed additions is included as an attachment to this memorandum.

We also concur with your recommendation to revise the standard terms and conditions for future IAs with IHS to include descriptions of EPA's roles and responsibilities in the areas of design and planning, construction monitoring, and final project inspection (Recommendation No. 2-4). We have addressed this recommendation. The terms and conditions for the future IAs with IHS are also included in the attachment. The revised terms and conditions for future IAs with IHS have been provided to the Interagency Agreement Shared Service Center (IASSC) West for incorporation into the Integrated Grants Management System (IGMS) standard conditions for IAs with IHS.

If you have any questions concerning the contents of this memorandum, you may contact me or have your staff contact Ron Bergman, Chief, Drinking Water Protection Branch, Office of Ground Water and Drinking Water, at (202) 564-3823.

Attachment

cc Armina Nolan, Manager, IASSC West  
Denise Benjamin Sermons, Deputy Director, Office of Grants and Debarment

## **Attachment**

### **EPA IHS IA Language Additions to Address EPA's IG Recommendations included in EPA IG Report # OA-FY09-0919 (August 25, 2010)**

#### EPA OIG Recommendation:

- 2-3 Amend the terms and conditions in Recovery Act IAs with IHS to include EPA's roles and responsibilities in the areas of design and planning, construction monitoring, and final project inspection.

#### Proposed Additions under EPA Contributions in Recovery Act IA:

12. Where appropriate, EPA Regions shall provide comments to IHS Area Offices on the design and planning documents associated with projects funded by the IA within 30 days of receiving said documents.
13. EPA Regions shall monitor construction progress with: data from the IHS database, discussions with the IHS Area Offices and field site visits as necessary to ensure the level of expended funds is reasonable given the reported milestone dates.
14. The EPA Regions will participate in the final project inspection, resources permitting. At project completion, the EPA Region will review the final technical and financial reports provided by the IHS Area Office and will initiate the necessary EPA closeout process.
15. The EPA Regions will acknowledge and respond to IHS Area Offices invitations to participate in project activities within 10 days of receipt.

#### EPA OIG Recommendation:

- 2-4 Amend the terms and conditions for future IAs with IHS to include EPA's roles and responsibilities in the areas of design and planning, construction monitoring, and final project inspection.

#### Additions under EPA Contributions in future IAs with IHS:

7. Where appropriate, EPA Regions shall provide comments to IHS Area Offices on the design and planning documents associated with projects funded by the IA within 30 days of receiving said documents.
8. EPA Regions shall monitor construction progress with: data from the IHS database, discussions with the IHS Area Offices and field site visits as necessary to ensure the level of expended funds is reasonable given the reported milestone dates. The EPA will consult with the IHS Area Office quarterly to discuss project status.
9. The EPA Regions will participate in the final project inspection, as deemed necessary and resources permitting. At project completion, the EPA Region will review the final technical and financial reports provided by the IHS Area Office and will initiate the necessary EPA closeout process.
10. The EPA Regions will acknowledge and respond to IHS Area Offices invitations to participate in project activities within 10 days of receipt.

***Distribution***

Office of the Administrator  
Assistant Administrator for Solid Waste and Emergency Response  
Assistant Administrator for Water  
Assistant Administrator for Administration and Resources Management  
Regional Administrator, Region 2  
Agency Followup Official (the CFO)  
Audit Followup Coordinator  
General Counsel  
Associate Administrator for Congressional and Intergovernmental Relations  
Associate Administrator for External Affairs and Environmental Education  
Director, Office of Grants and Debarment, Office of Administration and Resources Management  
Audit Followup Coordinator, Office of Solid Waste and Emergency Response  
Audit Followup Coordinator, Office of Water  
Audit Followup Coordinator, Office of Administration and Resources Management  
Audit Followup Coordinator, Region 2