



U.S. ENVIRONMENTAL PROTECTION AGENCY
OFFICE OF INSPECTOR GENERAL

Catalyst for Improving the Environment

Site Inspection Report

American Recovery and Reinvestment Act Site Inspection of the Clean Water State Revolving Fund Projects at the City of Long Beach, California

Report No. 11-R-0082

February 1, 2011



Report Contributors:

Glen Chabotar
Kevin Collins
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Abbreviations

DBA Davis-Bacon Act
SWRCB State Water Resources Control Board

Cover photo: Colorado Lagoon Restoration project under construction at the City of Long Beach, California. (EPA OIG photo)



At a Glance

Catalyst for Improving the Environment

Why We Did This Review

The U.S. Environmental Protection Agency Office of Inspector General conducts site inspections of American Recovery and Reinvestment Act of 2009 clean water and drinking water projects. We selected the projects at the City of Long Beach, California, for review.

Background

The city received \$5,813,786 in Recovery Act funds from the California State Water Resources Control Board under the Clean Water State Revolving Fund Program. This amount comprised \$4,319,107 for the Colorado Lagoon Restoration project, \$539,634 for the Los Angeles River Vortex Separation System, \$403,200 for the Los Angeles River Trash Nets, and \$551,845 for the Los Angeles River Trash Separation Device. The Recovery Act funds were for principal forgiveness.

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

The full report is at:
www.epa.gov/oig/reports/2011/20110201-11-R-0082.pdf

American Recovery and Reinvestment Act Site Inspection of the Clean Water State Revolving Fund Projects at the City of Long Beach, California

What We Found

We conducted unannounced site inspections of four projects at the City of Long Beach, California, in May 2010. We toured the four projects. For the largest project, the Colorado Lagoon Restoration project, we also conducted interviews of city representatives and contractor personnel, and reviewed documentation related to Recovery Act requirements.

Our site inspections identified a wage compliance issue that merits attention from and action by the city, the California State Water Resources Control Board, and the U.S. Environmental Protection Agency.

What We Recommend

We recommend that the U.S. Environmental Protection Agency Regional Administrator, Region 9, require the California State Water Resources Control Board to verify that the city is implementing controls to ensure compliance with the Davis-Bacon Act and California state prevailing wage requirements.



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

THE INSPECTOR GENERAL

February 1, 2011

MEMORANDUM

SUBJECT: American Recovery and Reinvestment Act Site Inspection of the
Clean Water State Revolving Fund Projects at the
City of Long Beach, California
Report No. 11-R-0082

FROM: Arthur A. Elkins, Jr.
Inspector General

A handwritten signature in black ink, appearing to read "Arthur A. Elkins, Jr.", is written over the printed name of the Inspector General.

TO: Jared Blumenfeld
Regional Administrator, Region 9

This is our report on the subject site visit conducted by the Office of Inspector General of the U.S. Environmental Protection Agency. The report summarizes the results of our inspections of the four projects located in the City of Long Beach, California, funded under the American Recovery and Reinvestment Act of 2009.

We performed the site inspections as part of our responsibility under the Recovery Act. The purpose of our site inspections was to determine the city's compliance with selected requirements of the Recovery Act pertaining to the Clean Water State Revolving Fund Program. The city received a total of \$5,813,786 in Recovery Act funds.

The estimated cost of this report, calculated by multiplying the project's staff days by the applicable daily full cost billing rate in effect at the time, is \$91,326.

Action Required

In accordance with EPA Manual 2750, you are required to provide a written response to this report within 90 calendar days. You should include a corrective action plan for agreed-upon actions, including milestone dates. Your response will be posted on the Office of Inspector General's public website, along with our memorandum commenting on your response. Your response should be provided as 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 you do not want to be released to the public; if your response

contains such data, you should identify the data for redaction or removal. We have no objection to the further release of this report to the public. This report will be available at <http://www.epa.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; or Robert Adachi, Product Line Director, at (415) 947-4537 or adachi.robert@epa.gov.

Purpose

The purpose of our unannounced site inspections was to determine the compliance of the City of Long Beach, California, with selected requirements of the American Recovery and Reinvestment Act of 2009 that pertain to the Clean Water State Revolving Fund Program.

Background

U.S. Environmental Protection Agency Region 9 awarded grant 2W-06000209 to the California State Water Resources Control Board (SWRCB) on May 20, 2009. The total amount awarded was \$280,285,800. The purpose of the grant was to provide funding under the Recovery Act to the SWRCB to capitalize its revolving loan fund for the financing and construction of wastewater treatment facilities and associated infrastructure, green infrastructure, nonpoint source projects, estuary projects, and program administration.

The City of Long Beach received four loans totaling \$5,813,786 from SWRCB under the grant for the following projects:

- The Colorado Lagoon Restoration project received \$4,319,107. The project consists of installing low flow diversion structures and trash separation devices, building a vegetated bioswale along the western arm of the lagoon, and cleaning and modifying the existing culvert to improve the tidal flushing.
- The Los Angeles River Vortex Separation System project received \$539,634. The project consists of installing a vortex separation system on a large storm drain leading to a pump station on the Los Angeles River to fully capture trash, debris, and sediment.
- The Los Angeles River Trash Nets project received \$403,200. The project consists of constructing a trash net system to capture trash and debris before they are pumped into the Los Angeles River.
- The Los Angeles River Trash Separation Device project received \$551,845. The project consists of installing a trash separation device in the forebay of a city pump station to fully capture trash and debris before they are pumped into the Los Angeles River.

SWRCB used Recovery Act funds to offset 100 percent of the city's indebtedness through principal forgiveness on all four loans.

Scope and Methodology

Due to the time-critical nature of the Recovery Act requirements, we did not perform the site inspections in accordance with generally accepted government auditing standards. Specifically, we did not perform certain steps that would allow us to obtain information to assess the city's internal controls and any previously reported audit concerns. As a result, we do not express an opinion on the adequacy of the city's internal controls or compliance with all federal, state, or local requirements.

We conducted the unannounced site inspections on May 4–5, 2010. During our inspections, we performed the following steps:

1. Toured the four projects.
2. Interviewed city and contractor personnel for the Colorado Lagoon Restoration project.
3. Reviewed documentation maintained by the city and its contractors for the Colorado Lagoon Restoration project on the following matters:
 - a. Buy American requirements under section 1605 of the Recovery Act
 - b. Wage rate requirements under section 1606 of the Recovery Act that are pursuant to the Davis-Bacon Act (DBA)
 - c. Reporting requirements under section 1512 of the Recovery Act
4. Reviewed documentation maintained by the city on the procurement of the contracts for the four projects.

We did not review the remaining three projects for compliance with Buy American, DBA, and Recovery Act reporting requirements. Two of the projects were inactive at the time of the site inspections. The third project was active but only had two or three employees on-site, thus limiting the work we could have accomplished.

Results of Site Inspection

During our site inspections, we found that the contractor did not fully comply with DBA and California's prevailing wage requirements. We summarize the specific inspection results below.

Davis-Bacon Act Compliance

Our review of DBA compliance at the Colorado Lagoon Restoration project found that employees were not paid the minimum required DBA or state prevailing rates. Section 1606 of the Recovery Act requires all laborers and mechanics employed on projects that are funded in whole or in part by the Recovery Act be paid DBA rates. DBA rates are rates not less than those prevailing on projects of a character similar in the locality as determined by the

Secretary of Labor in accordance with United States Code, title 40, chapter 31, subchapter IV. The loan agreement between SWRCB and the city requires compliance with the DBA rates or the prevailing rates established under the California Labor Code, whichever is higher.

We tested payroll data for one pay period. The pay period included 18 employees. Three of the 18 employees were either clerical or management; such positions are not subject to DBA or state prevailing wage requirements. Of the remaining 15 employees included in the test, 9 were paid below the minimum state prevailing rates, which are higher than the DBA rates. One employee was also paid below the DBA rate. These employees were underpaid \$0.07 to \$1.27 per hour. The total amount underpaid for the pay period was \$84.96.

We brought this issue to the contractor's attention. The contractor concurred with the finding and stated that when the job started, the contractor was not notified of the additional fringe benefit requirement because the Colorado Lagoon Restoration project is a public works project. The contractor informed us on September 2, 2010, that it had made the corrections to comply with the wage requirements going forward. The contractor will review and adjust prior payments retroactively to the start of the project. The noncompliance may have affected 26 pay periods starting with the week ending March 7, 2010, until September 2, 2010, when the contractor advised us of the correction. Although the estimated total underpaid amount of approximately \$2,200 is not substantial, we believe the noncompliance is significant based on the number of occurrences and should be brought to the attention of the U.S. Environmental Protection Agency, SWRCB, and the city for consideration in future monitoring activities.

The contract also contains the following provision: "Contractor shall forfeit, as a penalty to the City, Fifty Dollars (\$50) for each laborer, worker or mechanic employed for each calendar day, or portion thereof, that such laborer, worker or mechanic is paid less than the prevailing wage rates for any work done by Contractor, or any subcontractor, under this Contract." Assuming the compliance situation applied to all 26 weeks, the total penalty would be approximately \$58,500.

Buy American Requirements

We did not identify any Buy American issues of concern. The Buy American requirement was included in the contract bid documents and loan agreements. The contractor certified that it had read the requirement and is able to comply. According to the contractor, the requirement was communicated to all suppliers. City officials also stated that purchase orders were required to be submitted to the city for review. During our site visit, we observed and traced two different types of pipe being used at the Colorado Lagoon Restoration project. No issue was noted.

Recovery Act Reporting Requirements

We did not identify any Recovery Act reporting issues of concern. We reviewed the loan agreement between SWRCB and the city and obtained an understanding of the expenditure payment process. A third-party field inspector monitors work at the construction site. According to city officials, the contractor creates a monthly invoice, and the field inspector reviews it. City project managers review and approve the invoice and accompanying supporting documentation before submitting to SWRCB for reimbursement. After city project managers receive payment from SWRCB, funds are released to the contractor within 30 days.

We reviewed the job creation/retention report submitted by the city to SWRCB under Recovery Act section 1512 for the quarter ended March 31, 2010. Hours used in the job creation/retention calculations were properly supported.

Contract Procurement

We did not identify any issues of concern. All contracts were competitively bid and awarded to the lowest responsive bidder.

Recommendation

We recommend that the U.S. Environmental Protection Agency Regional Administrator, Region 9:

1. Require SWRCB to verify that the City of Long Beach is implementing controls to ensure compliance with DBA and state prevailing wage requirements.

Agency, Recipient, and Subrecipient Comments

We issued a discussion draft on December 21, 2010. Formal written comments were not requested. We held an exit conference on January 6, 2011, with the city, SWRCB, and region to obtain and discuss their comments.

The discussion draft contained two recommendations. The city and Region 9 did not comment on recommendation 1 to require SWRCB to verify that the city is implementing controls to ensure compliance with DBA and state prevailing wage requirements. SWRCB representative stated that it will work with the city to ensure the city has proper controls in place for wage compliance.

City representatives did not agree with recommendation 2 to advise the SWRCB and the city to consider imposing a penalty under the contract provision that provides a \$50-a-day-per-worker penalty if any worker is paid less than the amount required. One city representative stated that the underpayment was not substantial and that the penalty was excessive and unnecessary since the contractor has already made the

adjustments retroactively. He believed it was an honest mistake and the contractor corrected it as soon as it was brought to its attention. Assessing the penalty may hurt the city's relationship with the contractor and could harm the city's reputation, considering the amount of the penalty versus the amount of the error uncovered.

Another city representative stated that the city has proper controls in place to ensure DBA and state wage compliance and that this is the first time the city had a labor compliance issue in 25 years. The city always employs a person who is dedicated to labor compliance. At the time the errors occurred, the city's labor compliance employee was no longer working in that capacity, and the city was using temporary employees to perform the function. The city representative believed that the transition in personnel was the reason for the noncompliance.

The SWRCB representative also believed that the penalty was not warranted and that it does not have the authority to enforce the penalty.

Region 9's representatives stated that EPA does not have the authority to mandate the penalty and that it would support dropping the penalty recommendation.

OIG Response

We considered the city's comments for not assessing the penalty acceptable. We have adjusted the report to eliminate that recommendation.

Status of Recommendations and Potential Monetary Benefits

RECOMMENDATIONS						POTENTIAL MONETARY BENEFITS (in \$000s)	
Rec. No.	Page No.	Subject	Status ¹	Action Official	Planned Completion Date	Claimed Amount	Agreed To Amount
1	4	Require SWRCB to verify that the City of Long Beach is implementing controls to ensure compliance with DBA and state prevailing wage requirements.	O	Regional Administrator, Region 9			

¹ O = recommendation is open with agreed-to corrective actions pending;
 C = recommendation is closed with all agreed-to actions completed;
 U = recommendation is undecided with resolution efforts in progress

Distribution

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