

American Recovery and Reinvestment Act Fraud Prevention

*...Americans Protecting
America's Future*

U.S. Environmental Protection Agency
Office of Inspector General
Office of Investigations

What is the intent of the American Recovery and Reinvestment Act?

The purposes of the American Recovery and Reinvestment Act are to:

- preserve and create jobs and promote economic recovery.
- assist those most impacted by the recession.
- provide investments needed to increase economic efficiency by spurring technological advances in science and health.
- invest in transportation, environmental protection, and other infrastructure that will provide long-term economic benefits.
- stabilize state and local government budgets, in order to minimize and avoid reductions in essential services and counterproductive state and local tax increases.

What will you learn?

You will learn about:

- The Office of Inspector General.
- Reporting requirements under American Recovery and Reinvestment Act.
- How to monitor your project.
- How monitoring can prevent and detect fraud, waste, and abuse.
- What a fraud scheme may look like.
- What to do if you suspect fraud, waste, or abuse.
- Your Whistleblower rights and protections.

Why are you here?

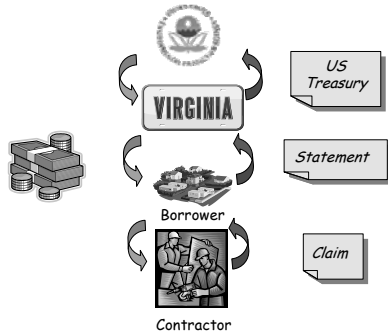
Because project monitoring can prevent and detect fraud, waste and abuse.

Monitoring is a team effort.

- Management
- Project Officers
- Engineers and Inspectors
- Compliance Officers
- Auditors and Investigators



Before we get started



Before we get started

Key terms you need to know:

- **OIG**-EPA Office of Inspector General.
 - **OI**-Office of Investigations.
 - **OA**-Office of Audit.
 - **OPE**-Office of Program Evaluations.
- **ARRA**- American Recovery and Reinvestment Act.
- **SRF**- Clean Water and Drinking Water State Revolving Funds.

Inspectors General Authority

- Derived from the Inspector General Act of 1978, as amended
- Conduct and supervise audits and investigations relating to programs and operations of the Department
- Prevent and detect fraud, waste and mismanagement in programs and operations
- Access to **ALL** records, reports, audits, reviews, documents, papers, recommendations, or other material relating to programs and operations

Mission of Inspectors General

Our work is conducted in accordance with applicable federal laws, EPA rules, regulations, policies, and procedures.

We educate EPA officials and other federal, state, local, and Tribal leaders receiving EPA funding on how to detect and report fraud, waste, and abuse.

We maintain a Hotline for the public to report fraud, waste, and abuse.

Mission of Inspectors General

We examine Agency programs and operations and make recommendations to improve economy and efficiency

We analyze and advise on government-wide initiatives, including information security, grants management, and financial management

We perform investigations involving predominantly "white collar" crimes and employee misconduct

Familiarity with Federal Programs

OIG expertise and resources to investigate Federal programs.

Access to personnel and records of Federal, state, local, tribal and non-profit agencies, contractors and sub-contractors, grantees and sub-grantees that administer Federal programs.

OIG Criminal Investigators have the authority to:
Administer and Take Oaths
Serve Subpoenas
Make Arrests
Execute Search and Seizure Warrants

Inspectors General

- Council on Inspectors General on Integrity and Efficiency consist of 67 members at the federal level
- 28 Offices of Inspectors General with agencies receiving ARRA funds
- 11,600 employees of multiple disciplines
- \$1.9 billion annually in expenditures

Results of Inspectors General

- \$16.5 billion in potential savings from audit recommendations and investigative recoveries
- Over 300,000 hotline complaints processed
- Over 17,000 indictments, prosecutions, and civil actions
- 4,296 suspensions or debarments
- 5,807 personnel actions

OIG Role Under the Recovery Act

The OIG has a prominent role under the Act, which includes education, training, outreach, audit, evaluation, and investigative activities.

Sec. 1515. of the Act allows the OIG:

(1) to examine any records of the contractor or grantee, any of its subcontractors or subgrantees, or any State or local agency administering such contract, that pertain to, and involve transactions relating to, the contract, subcontract, grant, or subgrant; and

(2) to interview any officer or employee of the contractor, grantee, subgrantee, or agency regarding such transactions.

Recovery Act reporting requirements

Note: Dates and reporting requirements subject to change.

Recipients of Recovery funds will report on the use of funds 10 days after the end of each quarter:

- The total amount of recovery funds received.
- The amount of recovery funds spent or obligated to include:
 - Name of the project or activity.
 - Description of the project or activity.
 - Completion status of the project or activity.

More reporting requirements

- An estimate of the number of jobs created and the number of jobs retained by the project.
- The purpose, total cost, and agency rationale for using recovery funds.
- Detailed information on subcontracts or subgrants.

For more detail about your reporting requirements, please visit:
www.recovery.gov

Latest in reporting requirements

Section 1512 of the Act requires:

- DUNS number (Dun and Bradstreet)
- Registration with Central Contractor Registry (CCR)
- Prime recipients and subrecipients with delegated authority must report on vendors that are paid more than \$25,000.
- The OMB guidance applies to recipients and subrecipients of grants, loans, tribal agreements, cooperative agreements and contracts made by an entity other than the federal government.

Why Should I Monitor My Project?

As a recipient of Recovery funds, you must monitor your project because:

- You are responsible for completing the project according to the approved plans and specifications.
- It helps protect the federal, State, and local investment.
- The responsibility to monitor the project begins when the loan or grant is made.
- Monitoring reduces the opportunity for fraud, waste, and abuse.
- Federal law requires an audit if you spend over \$500,000 of Federal funds.

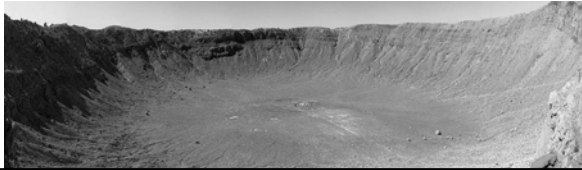
What are the Federal Audit Requirements?

- The Single Audit Act requires an audit if you spend over \$500,000 of Federal funds.
- Your audit must address compliance requirements that apply to your project. One of those requirements is "Subrecipient Monitoring."
- Here's a website to learn more about the audit and compliance requirements of the Single Audit Act:

www.whitehouse.gov/omb/circulars/a133

The Goal of Project Monitoring

Project monitoring prevents spending \$113 million and ending up with:



The Goal of Project Monitoring

When you could build this:



How Do I Monitor My Project?

Management:

- Monitoring begins when the grant, contract or loan is awarded.
- Coordinating and overseeing all aspects of the project:
 - Selecting the right people for the right jobs.
 - Overseeing the procurement process.
 - Developing relationships with the community, contractors, and government officials.
- Due diligence--know something about your contractors (engineers, construction contractors, consultants, and others) that are involved in your project:
 - Financial background
 - Past performance
 - Experience and expertise

How Do I Monitor My Project?

Financial monitoring:

- Involves reviewing billings and invoices
- Things to look for:
 - **Labor rates**--are you paying for a senior engineer, but getting the services of someone who is less qualified?
 - **Labor costs**--are the number of labor hours reasonable for the number of people working on the project?
 - **Materials**--are you paying too much or paying for materials that don't meet contract specifications?
 - **Equipment**--were you billed for unused or unnecessary equipment?
 - **Documentation**--are costs documented and reasonable? Are documents missing or altered?

How Do I Monitor My Project?

Technical monitoring:

- Involves inspecting and reviewing project progression
- Things to look for:
 - **Oversight**--Is the work performed in accordance with the terms and conditions of the contract? Is construction in accordance with plans and specifications? Are change orders appropriate? Do materials meet project specifications? Buy American provisions, as required by the ARRA?
 - **Billings**--are billings in line with project completion and milestones? Do contractors and subcontractors comply with the Davis Bacon Act?
 - **Coordination**--are technical staffs working with financial staff to ensure contractors are paid appropriately?

How does the State monitor my project?

- During-the-Award Monitoring
 - Review financial and performance reports.
 - Audit reports, reimbursement requests, construction reports, engineering reports
 - Site visits to review financial and program records and observe operations
 - Inspections, reviews, procedures
 - Regular Contact with borrowers and inquiries concerning project activities

How are some states monitoring projects?

Some States are using technology to help monitor projects:

- Emails
- Web-cams
- Construction Reports
- Websites

Here are some examples...

**CITY OF PETALUMA
ELLIS CREEK WATER RECYCLING
FACILITY PROJECT**

PROJECT NUMBER C500402



CONSTRUCTION MANAGEMENT
PROGRESS REPORT No. 29
February 2008

SUMMARY OF CONSTRUCTION STATUS

• **Contractor: KIEWIT PACIFIC CONSTRUCTION**

Base Contract Amount (Total Project).....	\$ 110,329,000.00
Change Orders Executed.....	\$ 2,842,672.00
Total Contract Cost.....	\$ 113,171,672.00
Contract Amount Earned.....	\$ 97,765,706.00
Progress Payment for February 2007 (excludes retention).....	\$ 2,638,863.00
Previous Progress Payments (excludes retention).....	\$ 85,350,916.00
Estimated Percent Complete.....	86 %

• **Design Engineer: Carollo Engineers**

Authorized Budget (Total Project).....	\$ 4,354,075.00
Billings to Date.....	\$ 3,595,286.44

Schedule

Notice to Proceed October 10, 2005
Base Contract Duration 1278 consecutive days
Original Completion Date April 9, 2009
Time Extension Authorized 67 days
Revised Duration 1345 consecutive days
Revised Completion Date **June 15, 2009**
Weather Days (included in base duration) 40 days
Weather Days Expended (included in time expended) 82 days
Time Expended 872 Days
Percent Time Expended 65%

Construction Manager's Summary

1. Schedule

The project remains on schedule for completion by June 2009.

A roll up schedule is not included with this monthly report because a project schedule update was not completed by the Contractor in February. The February update will be included with the March schedule update and included in the next monthly report.

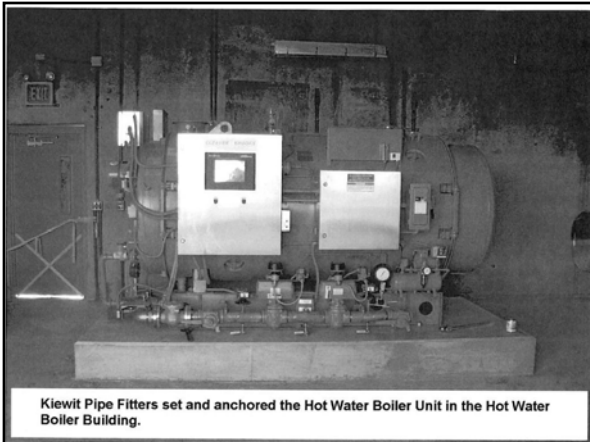
2. Work Progress

Oxidation Ditches

Kiewit continued assembling and installing aeration devices, motors, and gear shafts at the top of the Oxidation Ditches. Kiewit also began the placement of splash guards at the motors. Mass Electric ran flexible conduit to the motors which drive the aeration equipment. Mass Electric pulled wire and completed terminations to the light poles, fixtures, hand switches and junction boxes on the decks.

Secondary Clarifiers

Mass Electric completed pulling the low voltage wiring to the control panels. Kiewit completed the placement of a grout layer at the bottom of the Clarifiers. The smooth finish of this grout layer allows the sludge skimming device to remain in constant contact with the floor of the Clarifier as it rotates. Kiewit installed stairways and handrails at both Clarifier Structures.



Kiewit Pipe Fitters set and anchored the Hot Water Boiler Unit in the Hot Water Boiler Building.

Can monitoring prevent and detect fraud, waste and abuse?

Now that you know what monitoring involves, what if you suspect a problem?

- Is it an error?
- Or do you suspect fraud, waste, or abuse?

Can monitoring prevent and detect fraud, waste, and abuse?

While an incorrect labor or equipment charge or misstated invoice might be an indicator of fraud, they could also be the result of weak internal controls or poor business practices.

Weak internal controls are opportunities for fraud.

So, What is Grant Fraud?

Simply put, fraud is:

Lying, cheating, and stealing in the performance of a government grant, contract, or loan.

There is a fine line between *Fraud* and a *Mistake*...

Intent!

What are the Elements of Fraud?

- A Representation
- About a Material Point
- Which is False and Intentional
- Which is Acted Upon
- To the Victim's Damage

Let's discuss these elements in more detail...

What is a Representation?

A **Representation** in the SRF is a claim from the community to the State for reimbursement of project costs incurred. It is supported by billings and invoices from the prime contractor and subcontractors, engineering firms, consultants, and other parties involved in the project.

What is a Material Point?

- A **Material Point** is a specific issue to which evidence is presented in determining guilt regarding an alleged wrongdoing.
- A contractor's claim is **Material** because of a contractual relationship with the community and the ability to make claims for reimbursement for costs incurred using SRF funds.

What does False and Intentional Mean?

- A claim may be **False** if it does not represent the contractor's actual incurred costs.
- It is **Intentional** if the contractor knowingly claims costs which are not actually incurred.

Remember...the line between a mistake and fraud is **intent!**

How is it Acted Upon?

- A False Claim is **Acted Upon** when the contractor submits a reimbursement request to the community.
- The community relies on the claim to be true and accurate, and makes payment based on the representation.

Who are the Victims of SRF Fraud?

- As taxpayers, we are all victims of SRF fraud
- Here's why:
 - When fraud occurs, the Community pays for something it did not receive.
 - The contractor received more money than it was entitled to receive
 - The SRF paid the Community for those fraudulent costs.

Effects of Fraud

- About 7% of Federally funded programs is lost to fraud.*
- Nationally, that means about \$55 billion of ARRA funds are at risk of fraud.

* 2008 ACFE Report to the Nation on Occupational Fraud and Abuse

Now that I know what fraud is, how can it affect my project?

The most common frauds in the SRF involve construction and engineering contracts. Here are a few types of frauds:

- False Statements and Claims
- False billings/Cost mischarging
- Conflicts of Interest
- Product Substitution
- Bribery and Kickbacks
- Bidrigging--Conspiracy or Collusion

What are False Claims and Statements?

A False Claim is **knowingly** presenting a claim for payment that is not true or accurate.

It also includes **knowingly** making or using false records or statements to obtain payment by the government.

The most common cases involve situations when contractors overcharge for goods or services.

However, knowingly **failing to test** a product (as required by government specifications) or using **substandard** (not meeting specifications) or **defective products** are also false claims or statements.

For example, think of the thousands of different pumps, valves, pipes, electrical components, and other materials in a treatment plant--then think of what could happen if those parts are substandard or defective.

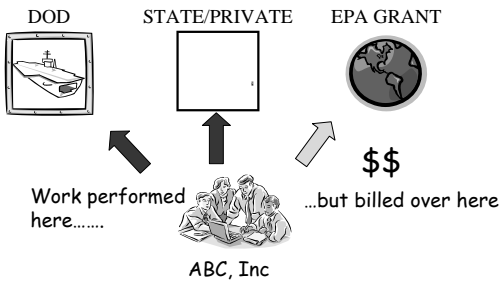
What is Cost mischarging?

Cost mischarging includes costs from one contract to another or among task orders.

Examples are:

- Billing an employee's time to multiple contracts or between task orders
- Charging for employee rates not commensurate with their expertise
Can an employee really work 38 hours per day on a project...?

LABOR COST MISCHARGING



What are Conflicts of Interest?

- **Conflicts of Interest** may occur when an individual or corporation is in a position to exploit a professional or official capacity in their personal or corporate benefit.
- **Conflicts of Interest** exist even if no improper act results from it, and can create an appearance of impropriety that can undermine confidence in the conflicted individual or organization.

**Here are
a few examples**

- A member of the City Council owns a building supply company providing materials to a contractor working on an SRF construction project.
- Purchasing materials or services from a firm where a relative is the controlling party.
- Gifts from business associates to influence decision making. Gifts may include cash or non-tangible things such as airline tickets, vacations, golf outings, etc.

**How do I deal
with a Conflict of Interest?**

- **Avoidance**
 - The best way to handle conflicts of interests is to avoid them entirely.
- **Disclosure**
 - Disclose any interests that could compromise your integrity and give the appearance of a conflict of interest.
- **Recusal**
 - Those with a conflict of interest should not make decisions where such a conflict exists. The need for recusal varies depending upon the circumstance.

For example, the board of a government agency is considering hiring a consulting firm, and a partner of one of the firms under consideration is a close relative of a board member. That board member should not vote on which firm is to be selected, and to minimize any conflict, the board member should not participate in any way.

**What are Bribery
and Kickbacks?**

Bribery is offering, giving, receiving, or soliciting something of value to influence the actions of an official as part of their public or legal duty. It alters the behavior or decisions of the person receiving the bribe.

Example--a Contractor approaches the Public Works Director about an upcoming project, and offers him money in exchange for an advance copy of the bid package. The Director agrees, resulting in an unfair advantage to the contractor.

Kickback is the result of a government employee receiving or soliciting something of value to influence the outcome.

Example-- the Public Works director approaches a contractor and promises to award the contract in exchange for money or something else of value.

What is Product Substitution?

Product substitution is supplying goods or services that do not meet contract specifications.

For example, a contractor:

- *Delivers goods which do not conform to contract requirements without informing the government.*
- *Uses foreign made products where domestic products are required (**Buy American provisions of the Act**)*
- *Uses products that do not meet specifications.*
 - *Thinner wall pipe than specified.*
 - *Roofing: 20 year vs. 40 year.*
 - *Electrical: Substandard pumps, panels, switches.*

Effects:

- *Paying for something not received (pay for a Cadillac, but get a Chevy).*
- *Increased maintenance costs (shorter useful life-20 year roof vs. 40 year).*
- *Health, safety, environmental (sewage pump failure causes over-flow).*

What is Bidrigging?

Bidrigging is collusion between two or more competitors. It is a form of price fixing. It typically involves an agreement in which one party of a group of bidders will be designated to win the government bid.

These frauds generally involve:

Subcontract bid-rigging--the conspirators agree not to submit bids, or submit inflated bids, in return for being awarded subcontracts from the successful bidder.

Bid suppression--some conspirators agree not to bid so that another conspirator can win the contract.

Complementary bidding--also called cover bidding--submitting a bid knowing it is too high or has unacceptable conditions.

Bid rotation--bidders "take turns" being the successful bidder.

Do these frauds occur in the SRF?

False billings and altered invoices:

The project was funded by the SRF, requiring the loan to be repaid by the community over 20 years. The prime contractor was investigated for altering the billings of several subcontractors for labor and materials costs. The prime contractor then billed the community for the inflated costs, resulting in the community paying an additional \$200,000 because of the false invoices and billings.

Do these frauds occur in the SRF?

Collusion and Conspiracy:

A County received an loan for a sewer project. The County hired an engineering firm to manage the project, and turned control over to the engineer. The engineer advised the community to hire a specific contractor, even though the contractor had a poor work history.

The contractor abandoned the project before completing the work, resulting in over \$500,000 in Federal funds expended for work that was not performed.

Case Example

Case referred by FBI

Allegations:

- Fraud against government
- Conspiracy
- False claims and false statements
- Product substitution

Case Example

- \$10 million project--County hired contractor because bid was \$3 million under next lowest bid
- No involvement by County
- No monitoring by state
- Problems
 - Incomplete work:
 - Abandoned work at 70% complete
 - False claims:
 - Billings for time and materials
 - Poor construction:
 - 102 of 116 manholes not installed correctly
 - Improper slope and grade of collection system
 - Product substitution
 - Connected pipe with duct tape

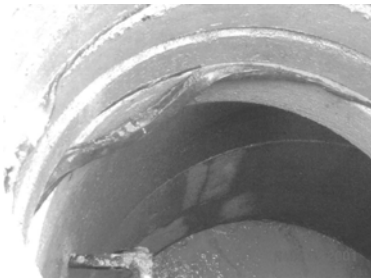
Case Example

Bad seal



Case Example

Too many riser rings, faulty installation



Case Example

Poor construction



Case Example

- Monitoring begins with Loan Award
- "...Board had received some negative information about this contractor, but they investigated the allegations and found them to be unsubstantiated."
- Missed that contractor filed bankruptcy before bidding project
- Contractor bankrupted 6 prior companies
- 28 lawsuits and 21 judgments against contractor at time of award

What are Fraud Indicators?

Fraud indicators may result from weak internal controls, and lead to opportunities to commit fraud. Here are some "Red Flags" to watch for:

- Circumvention of competitive bidding requirements (bribery/kickbacks/bidrigging).
- Contractor claims containing altered, missing, or inadequate documentation (false claims).
- A contractor's inability to provide supporting documentation (product substitution, false statements).
- Questionable transactions or agreements with related parties (conflicts of interest).
- Contractor's timesheets that exceed reasonable periods of time in a workday (cost mischarging).

Making a Referral

- Anyone may call and discuss concerns.
- Referrals can be based on hearsay, something that does not seem right, and inconsistencies.
- Your concerns do not need to be a "sure thing" to be referred to OI. You do not have to "prove" your case.
- Many investigations begin from referrals from concerned citizens and state, local and contractor employees.

**So you suspect fraud...
what do you do next?**

What you should do:

- discuss your concerns with the OIG.
- seek answers to your questions in the normal course of business.
- cooperate with the OIG and expect to be contacted and involved.

What you should not do:

- change your normal course of business unless otherwise directed.
- tip off subjects to actual or pending investigation.
- protect someone who may be committing fraud.

Key Documents

- Copy of Contracts
- Contractor billings and invoices
- Engineering records and project file reviews
- Original mailing envelopes/fax transmissions
- Reimbursement requests
- State claims to EPA
- Electronic Funds Transfers and Checks

Whistleblower Protections

The Recovery Act prohibits reprisals against a "whistleblower" of state and local government and contractor employees:

An employee of a non-Federal entity receiving Recovery funds, may not be discharged, demoted, or discriminated against for disclosing any information the employee reasonably believes is evidence of:

- gross mismanagement or waste of Recovery funds;
- a substantial and specific danger to public health or safety related to the implementation of the Recovery funds;
- an abuse of authority related to the implementation of the funds; or
- a violation of law, rule, or regulation related to a contract, grant, or other award of Recovery funds.

Whistleblower protections

An employee who believes that they have been the subject of reprisal can submit a complaint to the OIG. The OIG shall investigate the complaint and submit the findings of the investigation to the person, the person's employer, the head of the appropriate Agency, or the Recovery Accountability and Transparency Board.

Summary

Thank you for attending this presentation. Hopefully, we have made you aware of your responsibilities to monitor your ARRA funded project and what to do if you suspect fraud, waste, or abuse.

EPA's goal is to protect the environment. A large number of communities are receiving ARRA funding. Our job is to help you, the taxpayer, monitor the use of these funds.

If you suspect fraud, waste, or abuse, we are only a phone call or email away.

How do I Get Help?

OIG Hotline

1-888-546-8740

On the web:

www.epa.gov/oigearth.hotline.htm

Email:

recoveryreferrals.oig@epa.gov
