



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

OFFICE OF WATER

**MEMORANDUM**

**SUBJECT:** Response to Office of Inspector General Final Report titled, "EPA's Lack of Oversight Resulted in Serious Issues Related to an Office of Water Contract, Including Potential Misallocation of Funds"

**FROM:** Anna Wildeman, Acting Assistant Administrator      Wildeman, Anna  
Office of Water

**TO:** Sean W. O'Donnell, Inspector General

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This memorandum responds to the Office of Inspector General's (OIG) final report titled, "EPA's Lack of Oversight Resulted in Serious Issues Related to an Office of Water Contract, Including Potential Misallocation of Funds" Report No. 20-P-0331, dated September 25, 2020.

**I. General Comments:**

The Environmental Protection Agency's (EPA or Agency) Office of Water (OW) acknowledges OIG's effort in performing an audit over the past two and a half years on Contract Number EP-C-16-001. OIG stated in their report that the purpose of the audit was to determine whether: (1) EPA funding actions are allowable or pose risks to the Agency and (2) invoices are being approved and paid without proper review of costs. Due to our interaction with OIG during this audit, OW implemented standard procedures that will improve the management of our contracts and is appreciative of OIG's involvement in the development of these enhanced processes. In EPA's June 26, 2020 response to the draft May 28, 2020 report, we identified several areas where the language used by OIG was concerning and not substantiated by information available to OW. These areas remain a concern for the September 25, 2020 final OIG report.

In the response to the draft report, EPA requested that OIG change the title of the audit document, as it gave the impression of serious issues existing that have not been substantiated. OIG did not change the title based on EPA's comments. OIG did not demonstrate that funds were paid to contractors for work not performed or that unsatisfactory work products existed. Every example provided by OIG has been researched and evaluated by experts in OW and OMS with neither office finding any misallocation of funds. While OW has implemented procedures to improve contract management to address minor identified process issues, OW recommends that OIG not state that "potential misallocation of funds"

occurred, as no funds are missing, and the government received satisfactory work products from the contractor.

Other examples that EPA identified in the draft May 2020 report remain in the final September 2020 report. One example is in the section of the final report entitled “At a Glance.” In this section, the final report states, “Improved contract management will help the EPA become a better fiscal steward and save potentially millions of taxpayer dollars.” OIG does not provide facts nor any analysis to estimate the savings of millions of future dollars, so the statement is purely speculative, unsupported and subjective in nature. Also, language in that section goes on to state that “(EPA) paid invoices without input from the EPA staff familiar with Northbridge’s work.” This statement is incorrect. The Contract Level-Contracting Officer Representative (CL-COR) was the person at EPA most familiar with Northbridge’s work, as they had been working with the contractor for several years and closely followed all the work being produced by the contractor.

Additionally, OIG states, “Further, neither the Agency nor the OIG can determine how the Agency allocated over \$10 million of EPA funds for Contract No. EP-C-16-001.” This statement is incorrect and should be removed. The allocation of the funds to the contract is clearly defined, and all the payments and contract modifications can be found in COMPASS Data Warehouse (CDW). OW sent screenshots from CDW with this information to OIG on September 5, 2019 (for the base and option period 1). Additionally, the \$10 million figure is based on all option periods. OIG audited only the base, option period 1 and option period 2, so the \$10 million figure is misrepresentative of the audit.

In Chapter 2, OIG states, “After further analysis, we determined that, in some instances, money was not recovered and reallocated to the correct funding accounts.” This statement is also unsubstantiated and incorrect. OW has reconciled all funds for option periods 1 and 2 and provided the requested reconciliation to OIG on June 24, 2019. In addition, on December 17, 2020, OW provided confirmations from the regions that have work assignments under this contract that all excess contract funds were returned, no additional funds needed to be recouped from states and that no states received excess funds in error.

EPA requests that OIG update the title further and the language in the report to reflect findings based solely on factual data. OW has already taken steps to address OIG’s recommendations, which are delineated below, along with comments regarding the report.

## **II. OW’s Response to the Report and Recommendations:**

In Chapter 1, OIG includes information on option period 3 and option period 4 of the contract. And it is important to note that option periods 3 and 4 were not reviewed in this audit and should not be included in the audit overview.

In Chapter 2, OIG states that the CL-COR did not continuously monitor Northbridge’s work assignments, as required by the EPA Acquisition Guide (EPAAG). This statement is misleading and based solely on a single discussion of the Work Assignment Contracts Officer Representative (WACOR) invoice reviews. While the CL-COR may have, on occasion, not provided invoices to WACORs in a timely manner, the CL-COR still monitored the work assignments closely. As previously discussed with the OIG, although the CL-COR monitored the work assignments closely, the Office of Wastewater Management (OWM) has implemented procedures to ensure invoices are provided to

WACORs in a timely manner. As noted in the OIG report, several corrective actions were completed by EPA, and these procedures were sent to OIG on September 10, 2019.

In Chapter 2, Table 2 identifies funds that are potentially misallocated, which are factually incorrect:

- Table 2 identifies \$129,950.00 that may be owed to Region 9, due to CL-COR reconciliation error and unused funds. OW commented on this issue in the June 26, 2020 response to the draft OIG report, stating that OIG provided no information that explains the background on how this number was developed. OIG has retained this bullet in the final report, but still has not provided EPA with any information on where and how the value was identified or calculated. Without the background on these funds, EPA cannot provide a response.
- Table 2 identifies \$16,799.69 of unused funds to be returned to Region 9. OW provided information (contract modification 24) in the June 26, 2020 response to the draft OIG report that these funds were returned to Region 9 in September 2019 due to unanticipated overfunding of the work assignment. To cover the estimated costs of work assignments, proper financial management required these funds to be obligated to the contract before the work had begun. At the completion of the work, \$16,799.69 of the funding was not used and returned to Region 9 in September 2019. This action does not represent a misallocation of funds, and this issue is resolved.
- Table 2 identifies \$248,000 that Hawaii may owe EPA Headquarters (HQ) and \$244,460.31 that HQ may owe California. Region 9 did not correctly track the funds provided from California and Hawaii, but the Region itself identified the tracking error. OW worked with the Region, Office of the Comptroller Research Triangle Park Finance Center, and the contract office to correct the payments in the Contract Payment System. These changes have all been corrected, and all funds are accounted for and reconciled. EPA sent a statement from Region 9 on this issue to OIG in December 2020. This action does not represent a misallocation of funds, and this issue is resolved.

All Regions have been refunded funds that were in excess on the contract due to unanticipated overfunding of the work assignments, none of which represent a misallocation of funds. As previously stated, the government develops estimates for contractor work, which rarely, if ever, exactly match the actual costs. As noted above and below, the contractor worked less hours than estimated resulting in less money being spent on the contract each option period, which also accounts for part of this refund.

In Chapter 2 (page 9), OIG states “The successor CL-COR told us that “re-creation and subsequent matching to compass records is impossible.” However, our research indicated that the Agency’s financial system has indeed captured and retained all financial transactions for EPA Contract No. EP-C-16-001, which means that the Agency could complete a comprehensive financial reconciliation for all periods of the contract.” During the over two-year OIG audit process, OW staff and managers worked hundreds of hours to provide analyses, recollections, and information to fulfill the requests of OIG with multiple iterations of reconciliation provided to OIG. OW staff also participated in several meetings with OIG to explain and answer questions on these multiple iterations of reconciliations. OW performed a full and comprehensive reconciliation for the base period, option period 1 and option period 2 of the contract and submitted the document to OIG on June 24, 2019. OW does not believe that any additional reconciliation or analysis is warranted. OIG has not provided any factual data to show that any funds have been misallocated.

In Chapter 2 (page 9), OIG also states that “the CL-COR did not provide sufficient evidence to support that either (1) the contractor costs incurred did not exceed the total dollar value for of the work assignments...” OIG did not request information from the CL-COR about costs incurred for the work assignments, but the Contracting Officer for the contract provided his tracking spreadsheet to OIG on August 22, 2018 which contained the requested information. Additionally, EPA provided several items to OIG including contractor progress reports, invoices, and Contract Payment System printouts that confirm all costs were charged and paid to the contractor appropriately by EPA. These documents were provided to OIG in 2018 and 2019 in various requests.

In Chapter 2 (page 10), OIG states that “The CL-COR denied OIG access to the Option Period 2 financial transaction spreadsheet, as well as the reconciliations for all the unconventional transactions” representing a violation of the Inspector General Act and Agency Records Retention policies. The CL-COR did provide the draft option period 2 spreadsheet to OIG on August 22, 2018. This draft contained all the information on option period 2 from December 2017 to June 2018. Once the spreadsheet was provided, OIG requested different information from the CL-COR, so the CL-COR provided several different versions of the option period 2 reconciliations and did not maintain the original. The final version of the reconciliation for option period 2 was provided to OIG on June 24, 2019. EPA spent hundreds of hours researching and working to provide responsive documents to all OIG requests over the course of this two plus year audit. The intention of OW is always to fully comply with the OIG Act, which is why OW has a process in place that OIG can work through a single POC. This process ensures that OW provides OIG with information in a timely and consistent manner. OWM has implemented a standard procedure, which will ensure the retention of these documents, even those considered to be working files.

In several places in Chapter 2, OIG uses the term “unconventional transactions” to describe the payments by EPA for contractor work. The payment transactions for this contract use a common and conventional method called First In, First Out (FIFO). Since this contract is a Cost Plus Fixed Fee (CPFF) type contract with work assignments, funding is obligated at the contract level, not at the work assignment level. When work assignments are billed, EPA uses the oldest funds (first in) to pay the invoice (first out). This method is widely used and accepted across the EPA and the federal government. OIG did not provide any documentation indicating that the FIFO method was not allowed.

In Chapter 3 (page 15), OIG states that EPA paid invoices without required input. The CL-COR should have solicited input of WACORs prior to payment of invoices. As previously discussed with OIG, OWM has already implemented procedures to ensure invoices are provided to WACORs prior to their approval. This issue has been resolved.

In Chapter 3 (page 17), OIG stated that EPA failed to provide documentation regarding Recommendation 3 “Review all costs billed on Contract No. EP-C-16-001 and report any improperly paid costs to OIG.” EPA performed a review and reported all issues identified to OIG prior to the issuance of the September 24, 2020 final OIG report. After the issuance of the final report, EPA also provided all the necessary documentation to support our review. These documents were provided to OIG on December 17, 2020. EPA considers this recommendation complete.

In Chapter 4, the report states “by comparing estimated work plans to the paid invoices – that the EPA could have potentially saved an additional \$565,529 (Table 6) on direct labor and associated overhead. Funds could have been saved if Northbridge labor hour estimates had been more accurate.” OW notes that on a CPFF type contract, labor rates, hours and Professional (P) levels are estimated in the contract

and work plans before work begins. Once the actual work is determined, EPA directs the contractor how to proceed with the work via technical direction and rarely, if ever, do the estimates and actual work hours match exactly. Labor categories needed for each task are variable based on required work and level of expertise needed to perform the work. This situation also supports the use of a CPFF type contract in that the circumstances do not allow the EPA to define its requirements sufficiently to allow for a fixed-price type contract.

In Chapter 4, the OIG analysis of the costs and labor review shows an assumption that a 1:1 relationship exists between P1 and P4. This assumption is incorrect. Again, OIG provided no evidence to substantiate their supposition that a lower-rate labor category could be substituted for a higher-rate labor category and still have a satisfactory product. It depends on the nature and complexity of the work. Much of the work provided by this contract involves complex financial analysis, which may not be adequately performed by workers with little experience. The report states “We found that Northbridge’s use of the most expensive labor category far exceeded estimates, resulting in increased costs to the government.” The statement is inaccurate. In fact, OIG report acknowledges that EPA did not utilize all hours/costs for each of the contract periods and that the overall cost of the work performed was lower than estimated. Based on contractor actual expenditures, the government saved \$287,960 in the base period, \$86,009 in option period 1 and \$278,959 in option period 2 for a total of \$652,928 overall (as shown in OIG’s Analysis of Data in Table 4). These facts show that the EPA achieved cost savings using the higher PL4 level labor category to perform the work required, thus proving EPA actually spent less money than estimated for the work provided by the contractor.

For Recommendation 1 and per recent requests from OIG, OW proposes a new corrective action. OW will develop a breakdown of the actual appropriations split for option periods base, 1, and 2 organized by option period and DCN. In addition, OW will prepare a memo for the Office of the Chief Financial Officer (OCFO) to review and approve that outlines the initial estimated appropriations split, as well as an explanation and justification for any variance from that estimate for the base period, and option periods 1 and 2. After OCFO approval is obtained, OW will provided the approved memo to OIG.

For additional details on the comments provided to OIG on the draft May 2020 report, EPA’s full June 26, 2020 response memo is included in Attachment A. In addition, EPA notes that in Appendix A of the September 2020 final report, OIG inserted several responses to questions or comments posed by EPA in its June 26, 2020 response letter. Attachment B provides additional clarification or responses to OIG’s comments.

#### Agreements

<b>No.</b>	<b>Recommendation</b>	<b>Assigned to:</b>	<b>High-Level Intended Corrective Actions</b>	<b>Estimated Completion</b>
2	Recommunicate the requirements of the Federal Records Act via policy directive and training to all EPA personnel that they are to cooperate fully with OIG and provide all information that OIG	Reassigned to OW	Communicate to OW staff the importance of the Inspector General Act and Interim Records Management Act.	Completed by OW on December 22, 2020

<b>No.</b>	<b>Recommendation</b>	<b>Assigned to:</b>	<b>High-Level Intended Corrective Actions</b>	<b>Estimated Completion</b>
	requests, whether they have direct possession of that information, cognizance of that information, or access to that information. Reaffirm that denial of access—including intentionally misleading OIG, screening materials to be sent to OIG, or delaying or destroying information that OIG has requested – will not be tolerated and is a violation of the Inspector General Act of 1978, as amended.			
3	Review all costs billed on Contract No. EP-C-16-001 and report any improperly paid costs to OIG.	OW	EPA Regions reviewed all invoices and progress reports for each region/state work assignment to ensure all costs were appropriately charged.	Completed on June 16, 2020; Documentation provided on December 17, 2020

### Disagreements

<b>No.</b>	<b>Recommendation</b>	<b>Agency Explanation/Response</b>	<b>Proposed Alternative</b>
1	Reconcile all allocation of funds for Contract No. EP-C-16-001's appropriation accounts, individual work assignment funds, and document control numbers; promptly reimburse OW, regions, and states, as appropriate; and recoup any funds misallocated.	OW prepared and submitted to OIG a full reconciliation for the Base Period, Option Period 1 and Option Period 2 of the contract on June 24, 2019. To cover the estimated costs of work assignments, proper financial management required these funds to be obligated to the contract before the work had begun. After the completion of the work, EPA worked with each region and reviewed all transactions for each region/state to ensure all accounts were appropriately charged and reimbursed and does not characterize this as a misallocation of funds.	OW proposes to provide a breakdown of the actual appropriation split for the base period and option periods 1, and 2 organized by option year and DCN. Also, OW will provide a memo with the actual appropriations split and justification for any variance approved by OCFO. Proposed completion date for this corrective action is March 31, 2021.

If you or your office have questions regarding this response, please feel free to contact OW's Audit Follow-up Coordinator, Tiffany Crawford, at [Crawford.tiffany@epa.gov](mailto:Crawford.tiffany@epa.gov) or (202) 566-2375.

#### Attachments

A. June 26, 2020 Response to OIG Draft Report

B. OW's Response to the OIG Responses Contained in Appendix A of the September 25, 2020 Final Report

cc:     OIG: Katherine Trimble, Charles Sheehan, Khadija Walker, James Hatfield  
          OW: Martha Shimkin, Benita Best-Wong, Sharon Vázquez, Macara Lousberg, Tiffany  
          Crawford, Robin Danesi, Andrew Sawyers, Wynne Miller, Raffael Stein, Leo Gueriguian  
          OMS: Daniel Coogan, Janice Jablonski, Marilyn Armstrong, Kimberly Patrick, Mitchell Hauser,  
          Celia Vaughn  
          OCFO: Nikki Wood, Andrew LeBlanc, Jose Kercado-Deleon