



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

WASHINGTON, D.C. 20460

MEMORANDUM

SUBJECT: Response to Draft Report entitled, "EPA's Lack of Oversight Resulted in Serious Issues Related to Office of Water Contract, Including Potential Misallocation of Funds," Project No. OA&E-FY18-0234, dated May 28, 2020

FROM: David P. Ross,
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Office of Water

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TO: Sean W. O'Donnell,
Inspector General

This memorandum responds to assertions and recommendations in the Office of Inspector General's (OIG) draft report entitled, "EPA's Lack of Oversight Resulted in Serious Issues Related to Office of Water Contract, Including Potential Misallocation of Funds" Project No. OA&E-FY18-0234, dated May 28, 2020.

I. General Comments:

The Environmental Protection Agency's (EPA) Office of Water (OW) and Office of Mission Support (OMS) acknowledge the OIG's effort in performing an audit over the past two years on Contract Number EP-C-16-001. The OIG stated in its 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 the collaborative interaction with the OIG during this audit, OW has implemented standard procedures that will improve the management of our contracts and are appreciative of the OIG's involvement in the development of these enhanced processes. However, some of the language used by the OIG in the draft report is concerning and cannot be substantiated by the information available to OW.

For example, the title of the report "EPA's Lack of Oversight Resulted in Serious Issues Related to Office of Water Contract, Including Potential Misallocation of Funds" is misleading. The OIG could not demonstrate that funds were paid to contractors for work not performed or unsatisfactory work products. Every example provided by the OIG has been researched and evaluated by experts in OW and OMS, and neither office found any misallocation of funds. While OW has implemented procedures to improve

contract management to address minor identified process issues, OW and OMS recommend that the OIG

not state that “serious issues” exist, and “potential misallocation of funds” occurred, as no funds are missing, and the government received satisfactory work products from the contractor. Either the OIG factually established that funds were misallocated or it failed to establish a sufficient factual record to substantiate such an allegation. Guessing as to “potential” misallocation is not a reasonable basis for providing conclusions and should not be considered as appropriate in an audit.

In another example, the OIG states “The EPA spent \$565,529 more than estimated on direct labor and associated overhead over three years because of Northbridge’s decision to use its most expensive labor instead of its less costly labor, as it originally estimated.” Estimated labor costs developed by the government are specifically estimates and will rarely, if ever, match actual costs. As performance of the work plan is completed, the complexity of the work and/or unforeseen circumstances may dictate a different labor skill mix as more advantageous to the government. The OIG provides no example of work performed by contractor staff that could have been performed satisfactorily by less expensive contractor staff with less experience. Without any facts to the contrary, it appears impossible that an accurate estimate of potential cost savings can be substantiated. The report itself 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. In fact, the OIG’s own analysis shows that EPA achieved a cost savings of \$652,928.00, 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.

Yet another example is in the section of the draft report entitled “At a Glance.” In this section, the draft report states, “Improved contract management will help the EPA become a better fiscal steward and save potentially millions of taxpayer dollars.” The OIG does not provide facts nor an analysis to estimate the savings of millions of future dollars, so the statement is purely speculative, unsupported, and subjective in nature. Also, language in this section goes on to state that “Contrary to EPA policy and guidance, the contract-level contracting officer’s representative paid invoices without input from the EPA staff familiar with Northbridge’s work.” This statement is incorrect. The 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, in Chapter 2, the OIG states “Further, neither the Agency nor the OIG can determine how the Agency allocated over \$9 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 the OIG on September 5, 2019 (for the base and option period 1).

Also, in Chapter 2, the OIG states, “The Agency risks considerable damage to its reputation if funds need to be recouped from states that received them in error.” EPA has reconciled all funds, confirmed that no funds needed to be recouped from states, and confirmed that no states received excess funds in error. This statement from the OIG is also unsubstantiated and incorrect.

EPA requests that the OIG update the title and the language in the report to reflect findings based solely on factual data. OW and OMS have already taken steps to address the 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, the OIG includes information on Option Period 3 of the contract. Option Period 3 was not reviewed in this audit.

In Chapter 2, the OIG states that the CL-COR did not continuously monitor Northbridge's work assignments, as required by the Environmental Protection Agency Acquisition Guide (EPAAG). This statement is misleading, and is based solely on one 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 the 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. No information is provided in the draft OIG report that explains the background on how this number was developed. 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, \$91,359.11 of the funding was not used. These unused funds were returned to Region 9 in September 2019 and June 2020. This action does not represent a misallocation of funds.
- Table 2 identifies \$16,799.69 of unused funds to be returned to Region 9. These funds were returned to the Region in September 2019 due to unanticipated overfunding of the work assignment in the same manner as described in the preceding bullet. This action does not represent a misallocation of funds.
- Table 2 identifies \$248,000.00 that Hawaii may owe 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, Research Triangle Park (RTP), and the contract office to correct the payments in the contract payment system. These changes are currently in process. All funds are accounted for and reconciled. This action does not represent a misallocation of funds.

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 actually spent less money on the contract each option period, which also accounts for part of this refund.

In Chapter 2 (page 9), the OIG states that OW has not provided proof that the financial system does not contain the information to provide all the financial transaction data for EPA Contract No. EP-C-16-001 for reconciliation purposes. The OIG states that the Agency's financial system has captured and retained all financial transactions for EPA Contract No. EP-C-16-001, so that the Agency can complete a comprehensive financial reconciliation for all periods of the contract. During the almost two-year OIG audit process, OW staff and managers worked hundreds of hours to provide analyses, recollections, and information to fulfill the requests of the OIG with multiple iterations of reconciliation provided to the OIG. OW staff also participated in several meetings with the 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 the OIG on June 24, 2019. OMS confirmed that this reconciliation was valid. OW does not believe that any additional reconciliation or analysis is warranted. The OIG has not provided any factual data to show that any funds have been misallocated. The burden of proof in this context lies with OIG, and here the allegations are unsupported.

In Chapter 2 (page 10), the OIG states that “The CL-COR denied the 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 not keep this specific spreadsheet, as their understanding of the Agency Records Retention policy was that the spreadsheet did not need to be retained after an option period closed. EPA spent hundreds of hours researching and working to provide responsive documents to all OIG requests over the course of this two-year audit. It is our fullest intention to comply with the Inspector General Act of 1978, as amended, which is why OW now has a process in place that the OIG can work through a single point of contact (POC). This process helps us ensure that we provide the OIG with the information they need in a timely 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, the 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 EPA and the federal government.

In Chapter 3 (page 13), the 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 the OIG, OWM has already implemented procedures to ensure invoices are provided to WACORs prior to their approval.

In Chapter 3 (page 14), the OIG states “Our analysis of invoices under Contract No. EP-C-16-001 noted significant variances between the hours that Northbridge estimated would be required to complete work under the contract and the actual labor hours expended for some labor categories. Based on our analysis, Northbridge estimated that it would use lower-rate labor categories to perform the work but ultimately used and billed much higher-rate labor categories. These differences in the labor mix used could have been detected had the EPA performed the required invoice reviews.” The OIG also noted that “invoices did not contain, as required by the contract, the hourly rate for each contractor labor category.”

EPA directs the contractor to perform work based on the anticipated expertise and level needed to perform the required work. As performance of the work plan is completed, the complexity of the work and/or unforeseen circumstances may dictate a different labor skill mix as more advantageous to the government. For instance, a complex task may initially not be assigned to a Professional Level (PL) 1 employee as that employee could take double or triple the number of hours to complete the task; instead, during performance, a higher skill level employee may be brought in to complete the work. In addition, many times a higher PL3 or PL4 level employee may still be needed to review and oversee the work of a junior level employee. These scenarios could increase the initial estimated work plan cost to the government. The labor categories identified are only estimates that are done prior to the work commencing the contract, so the final mix of labor hours will rarely identically match the estimates. This

situation also supports the use of a CPFF type contract in that the circumstances do not allow EPA to define its requirements sufficiently to allow for a fixed-price type contract. The OIG has provided no evidence to substantiate the supposition that specific work products could be completed by the contractor with lower-rate labor categories (as opposed to higher-rate labor categories) and still result in a satisfactory delivered work product.

In Chapter 4, the draft 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 and OMS note that on a CPFF type contract, labor rates, hours and PLs 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 EPA to define its requirements sufficiently to allow for a fixed-price type contract. The OIG’s analysis of the costs and labor review shows an assumption is a 1:1 relationship exists between P1 and P4. This assumption is incorrect. Again, the OIG provided no evidence to substantiate its supposition a lower-rate labor category can be substitute 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, the 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 actually saved \$287,960.00 in the Base Period, \$86,009.00 in Option Period 1 and \$278,959 in Option Period 2 for a total of \$652,928.00 overall (as shown in OIG’s Analysis of Data in Table 4). These facts show that 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.

Agreements

No.	Recommendation	Assigned to:	High-Level Intended Corrective Actions	Estimated Completion
3	Review all costs billed on Contract No. EP-C-16-001 and report any improperly paid costs to the 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
4	Require and implement internal controls to verify that WACORs use checklists from EPA’s Invoice Review and Approval Desk	OW	OW concurs with the OIG and has implemented standard procedures to ensure that these checklists are used when reviewing invoices. No further action is necessary.	Completed on September 10, 2019

No.	Recommendation	Assigned to:	High-Level Intended Corrective Actions	Estimated Completion
	Guide when reviewing invoices.			

Disagreements

No.	Recommendation	Agency Explanation/Response	Proposed Alternative
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 the OIG a full reconciliation for the Base Period, Option Period 1 and Option Period 2 of the contract on June 24, 2019. EPA worked with each region and reviewed all transactions for each Region/State to ensure all accounts were appropriately charged and reimbursed.	No further action required.

III. OMS's Response to the Report and Recommendations:

Agreements

No.	Recommendation	Assigned to:	High-Level Intended Corrective Actions	Estimated Completion
5	In coordination with the Office of Acquisition Solutions (OAS), provide training to applicable staff on the EPA Acquisition Guide subsection 42.3.4 requirements for the contracting officer to conduct contracting officer's representative records inspections.	OMS	<p>OMS/OAS concurs with the recommendation to provide training to applicable staff on the EPA Acquisition Guide subsection 42.3.4 requirements for the contracting officer to conduct contracting officer's representative records inspections.</p> <p>In addition, OAS will send out a reminder flash notice (FN) in reference to EPAAG 42.3.4 Contract Management Plans, notifying acquisition staff of the existing EPA Acquisition Guide's requirements for the Contracting Officer (CO) to conduct contracting officer's</p>	October 16, 2020

No.	Recommendation	Assigned to:	High-Level Intended Corrective Actions	Estimated Completion
			representative records inspections and the maintenance of documents in a file.	
6	Develop and implement internal controls to verify that all contracting officers complete contracting officer's representative records inspections annually.	OMS	<p>OMS/OAS concurs with the recommendation to develop and implement internal controls to verify that all contracting officers complete contracting officer's representative records inspections annually.</p> <p>OAS will utilize its existing internal control mechanisms, primarily OAS' Balance Scorecard, Acquisition System Performance Measurement and Management Program Guide, Part 6 - Contract Management Assessment Program, and require enhancement to assessment plans, procedures, and reporting within acquisition groups to assure COs are conducting COR records inspection reviews, as well as performing required contract management functions.</p>	October 16, 2020

Disagreements

No.	Recommendation	Agency Explanation/Response	Proposed Alternative
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 the OIG and provide all information that the OIG 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 the OIG, screening materials to be	EPA's Office of the Chief Financial Officer (OCFO) has the national lead for coordination and communication on the importance of complying fully with IG requests as detailed in the Inspector General Act of 1978, as amended.	This recommendation should be assigned to OCFO, the national program with the lead on the OIG audit coordination and ensuring that there is communication and coordination in line with the Inspector General Act of 1978, as amended.

	sent to the OIG, or delaying or destroying information that the OIG has requested—will not be tolerated and is a violation of the Inspector General Act of 1978, as amended.		
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If you have any questions regarding this response, please feel free to contact either of us.

cc: OIG: Charles Sheehan, Khadija Walker
OW: Charlotte Bertrand, Benita Best-Wong, Sharon Vázquez, 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