

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

OIG Response 1:

The internal control deficiencies and potential misallocation of funds noted in Chapter 2 were confirmed and validated by information provided within the CL-COR's emails, in interviews, and by the CL-COR's multiple reconciliation iterations that contained errors and omissions. The reconciliation iterations lacked any essential supporting documentation to verify the financial data expressed in the multiple accounting schedules.

OW Response:

OW believes that all the reconciliation iterations were done properly using data from EPA's financial systems. Requests to the OIG asking for clarification on what "essential supporting documentation" was lacking did not provide any meaningful clarification.

OIG Response 2:

The OIG disagrees with the following Agency statement:

"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 OIG notes that, on the contrary, it is the EPA's responsibility to review monthly invoices and progress reports and to determine whether the labor categories used were appropriate for the work performed. The EPA's Invoice Review and Approval Desk Guide cautions that costs can increase quickly when the contractor uses more higher-level staff than needed. The Desk Guide further states that if an invoice contains an excessively rich labor mix, the invoice contains questionable costs and should be suspended pending receipt of adequate contractor support justifying this labor mix. We found no evidence that EPA staff questioned why the contractor was using a higher percentage of its most expensive labor category than it originally estimated. Finally, to calculate potential cost savings, we used the estimates prepared by Northbridge and approved by the EPA.

OW Response:

As a result of interaction with OIG, OW implemented standard operating procedures to ensure the timely review and approval of monthly invoices and progress reports. In addition, OW determined that the labor categories by the contractor were appropriate for the work performed. OIG has not provided any specific or concrete examples of deliverables that could be successfully accomplished by lower level contractor staff. Without these specific examples of work products, the OIG claims remain unsupported.

OIG Response 3:

The Agency stated that the CL-COR was the person at the EPA most familiar with Northbridge's work, as that CL-COR had been working with the contractor for several years and closely

followed all the work being produced by the contractor. The Agency's position is incorrect. The EPA's Administrative Control of Appropriated and Other Funds manual states:

"Because many agency contracts involve numerous tasks for the contractor to perform, the COR delegates the review of invoices to the local work assignment manager or delivery order COR. These officials are in a better position to approve the invoices, since they work more closely with the contractor, and are more familiar with the actual goods and/or services being delivered."

For this contract, the CL-COR told us that there was no time to wait for input from the WACORs. The CL-COR also told us that there is an unwritten agreement between CL-CORs and WACORs: if a WACOR notices something wrong with an invoice, the WACOR will contact the CL-COR. Otherwise, the assumption is that the invoice is approved for payment.

OW Response:

As previously stated, the CL-COR was familiar with all work associated with this contract. OW has since implemented standard operating procedures to ensure the timely review and approval of monthly invoices and progress reports.

OIG Response 4:

The Office of Water's statement that the OIG's allegations are unsupported and "based solely on one discussion of the Work Assignment Contracts Officer Representative (WACOR) invoice reviews" is incorrect. The fact-based assertions and deficiencies reported in Chapter 2 were verified and substantiated by numerous individuals, including the retired and successor CL-CORs, the contracting officer, the funds control officer, other Office of Water staff and supervisors, and contractor staff.

OW Response:

In the response to the OIG Draft Report, OW provided three specific examples of incorrect OIG assertions of misallocations of funds. OIG did not refute any of these examples in the Final Report.

OIG Response 5:

The following Office of Water statement is both misleading and untrue:

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.

The "full and comprehensive reconciliation" cited by the Office of Water is in actuality a summary schedule of total funds obligated and expended for the aforementioned periods. This summary lacked any financial accounting for the numerous unconventional transactions undertaken by the CL-COR during the course of the contract. In addition, we identified errors and omissions during our analysis of the CL-COR's reconciliations, including the following errors and omissions in the "Reconciliation of Option Period 2 EPA-16-001 June 24.xlsx" spreadsheet:

1. The CL-COR reported that “Carry-over” funds equaled \$556,684.00; however, Modification 10 indicates that only \$303,718.21 was carried over into Option Period 1.
2. The CL-COR reported that \$770,861.62 was carried over from Option Period 1 to Option Period 2; however, per Modification 14, only \$460,615.27 was carried over.

What is more concerning is that, in an August 20, 2020 reply to the OIG’s follow-up to the Agency’s response to our draft report, the Office of Water and the Office of Mission Support corrected their initial response and verified that neither office validated the reconciliations.

OW Response:

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. This reconciliation is valid and accurate. The last statement in the OIG report is incorrect, OW did not state to the OIG that our reconciliation was not validated. In addition, OW requested written documentation from OIG that OMS believed the reconciliation to be invalid, but OIG did not provide this documentation.

Additionally, OW provided the information on “carry-over” funds noted in OIG bullets 1 and 2 above derived at the end of the base period and option period 1. EPA noted the funds that were present when each option period ended. The OIG cited information from modifications that happened months after the end of each option period. Modification 10 was to move excess funds from the base period to option period 1 and is dated 9/12/2017 and the base period ended on 11/30/2016 (10 months difference). Similarly, option period 1 ended on 11/30/17 and modification 14, also to move excess contract funds, is dated 8/20/2018 (9 months difference). These actions represent a common practice at EPA. The values the OIG is trying to compare do not represent errors or omissions, instead they represent numbers that are representative of different snapshots in time for the contract and cannot be compared. The information presented by the OIG is misleading not only because the information was collected months apart, but also because it is not representative of the same information.

OIG Response 6:

The Office of Water’s claims that “payment transactions for this contract use a common and conventional method called First In, First Out (FIFO)” and that this methodology is “widely used and accepted across EPA and the federal government” are misleading.

During our audit, the chief of staff of the Office of Acquisition Solutions confirmed that the FIFO language is not in the United States Code and that the CL-COR is to follow the accounting procedures and policies identified in EPAAG subsection 32.7.4 for this contract. The Agency relies on EPA Office of Grants and Debarment Policy CGI-01-02, Multiple Appropriations Awards Policy, dated June 4, 2001, to support its position that FIFO is permitted. However, this policy, which is applicable to grants and cooperative agreements, does not state that the FIFO method is universally permitted for contracts.

OW Response:

OW maintains that the FIFO method is used across the federal government and OW's use of the FIFO method is not unconventional or uncommon. OIG did not provide any documentation indicating that federal agencies or the OW are not allowed to use the FIFO method.

OIG Response 7:

The EPA stated:

Based on contractor actual expenditures, the government actually 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 (also shown 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.

While the EPA is correct that it spent less money overall than the contractor estimated, there is no evidence that the cost savings were due to the use of the higher PL4 labor category. Rather, the evidence suggests that the cost savings were more likely a result of considerably less work being performed than the EPA and the contractor originally estimated. For example, for Work Assignment 08, the EPA and the contractor estimated that 1,240 total hours would be required and divided as follows: 490 hours for PL4, 300 hours for PL3, and 450 hours for PL2. Instead, only 482 total hours were expended, all by the PL4 labor category. It is unlikely that the use of 482 PL4 hours, which closely matches the 490 hours estimated for that specific labor category, was the reason that only 482 of 1,240 estimated hours were expended.

OW Response:

As previously stated, OIG has never provided any specific or concrete examples of deliverables that could be successfully accomplished by lower level contractor staff. No evidence of any kind has been provided to suggest that any work performed could have been satisfactorily done by lower paid contractor staff.