



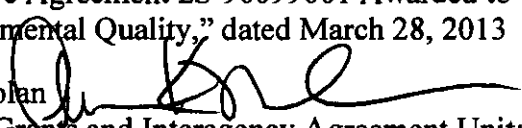
**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY**  
**REGION 10**  
1200 Sixth Avenue, Suite 900  
Seattle, WA 98101-3140

OFFICE OF  
MANAGEMENT PROGRAMS

September 9, 2013

**MEMORANDUM**

**SUBJECT:** Response to Office of Inspector General Final Report No. 13-R-0206  
"Audit of American Recovery and Reinvestment Act-Funded  
Cooperative Agreement 2S-96099601 Awarded to the Idaho Department  
of Environmental Quality," dated March 28, 2013

**FROM:** Armina Nolan   
Manager, Grants and Interagency Agreement Unit; Action Official for  
Assistance Agreement Audits

**TO:** Arthur A. Elkins, Jr.  
Inspector General

Thank you for the opportunity to respond to the issues and recommendations in the subject audit report. Following is a summary of the agency's overall position, along with its position on each of the report recommendations.

**AGENCY'S OVERALL POSITION**

Region 10 substantially agrees with the findings and recommendations of the subject audit. Corrective Actions have already been completed to implement the recommendations we agree with (see the tabular information, below).

Region 10 does not agree with recommendation #3, and the related recommendation #4(c), as we believe that compliance with the requirement for accident and catastrophic insurance is not feasible, and the requirement is not necessary. We have researched this issue in an attempt to provide guidance to the State of Idaho Dept. of Environmental Quality (IDEQ) on this matter, and IDEQ has attempted to find a provider for such insurance, without success.

Through informal discussions with staff at EPA headquarters we have found that there is general agreement that the requirement is not necessary, and have learned of a proposal to remove it from the regulations at 40 CFR Part 35, Subpart O.

Please see our proposed action below.

## AGENCY'S RESPONSE TO REPORT RECOMMENDATIONS

### Agreements

No.	Recommendation	High-Level Intended Corrective Action(s)	Estimated Completion by Quarter and FY
1	Require IDEQ to review and gain an understanding of the requirements of 40 CFR 35.6550(b)(3) and ensure that all current and future bid proposals contain CIPD language.		Action taken by IDEQ in response to report – recommendation closed on issuance of report.
2	Require IDEQ to ensure that all contracts issued under this CA include the 10 year record retention period as required by Title 40 CFR 35.6705.	Follow up with IDEQ to verify contracts are modified to include the requirement.	<b>Action completed:</b> August 5, 2013
3	See below		
4	<p>Require IDEQ to update its policies and procedures to ensure that they address:</p> <p>a. Bid proposal certification of independent price determination language as required by 40 CFR 35.6550(b) (3).</p> <p>b. 10 year record retention period as required by Title 40 CFR 35.6705.</p>	Verify that IDEQ has completed the recommended updates to policies and procedures.	<b>Action completed:</b> August 5, 2013

**Disagreements**

No.	Recommendation	Agency Explanation/Response	Proposed Alternative
3	Require IDEQ to ensure that current and future contractors are covered by accident and catastrophic loss insurance as required by Title 40 CFR 35.6590 (b).	<p>From our own research, as well as that of IDEQ, we have come to believe that compliance with this requirement is not feasible. See the attached letter from IDEQ which explains their efforts to comply with this requirement.</p> <p>Through informal consultations with EPA program and Office of General Council staff, we have formed the opinion that, if this provision is not based on a statutory or executive order requirement, the Superfund Program could request a class deviation from this provision under 40 CFR Part 35, Subpart O. We also believe the Superfund Program could also pursue elimination of this provision from Subpart O.</p>	<p>In lieu of EPA pursuing a Superfund Program class waiver to address this finding, EPA Region 10 will pursue a cooperative agreement-specific waiver from requirement under 40 CFR Part 35.6590(b). We hope to achieve this by the end of 2014/1. Once approved, Region 10 will provide a copy of the waiver to the OIG and IDEQ.</p> <p>In the meantime, Region 10 will instruct IDEQ in writing to not require their contractors to acquire accident and catastrophic loss insurance, pending the waiver determination.</p>
4c.	Require IDEQ to update its policies and procedures to ensure that they address: Accident and catastrophic loss insurance as required by Title 40 CFR 35.6590 (b).	See above.	See above.

**CONTACT INFORMATION**

If you have any questions regarding this response, please contact: Tamara Langton, Project Officer, EPA Region 10, Office of Environmental Cleanup, Remedial Cleanup Program, Site Cleanup Unit #1 at (206) 553-2709 or [langton.tamara@epa.gov](mailto:langton.tamara@epa.gov), or Bob Phillips, Region 10 Audit Followup Coordinator at (206) 553-6367 or [phillips.bob@epa.gov](mailto:phillips.bob@epa.gov).

Attachment

Cc: Robert Adachi, OIG  
Tamara Langton, ECL  
Bob Phillips, OMP



STATE OF IDAHO  
DEPARTMENT OF  
ENVIRONMENTAL QUALITY

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OFFICE OF  
ENVIRONMENTAL CLEANUP

1410 North Hilton • Boise, Idaho 83706 • (208) 373-0502

C.L. "Butch" Otter, Governor  
Curt Fransen, Director

September 3, 2013

Tamara J. Langton  
Superfund Remedial Project Manager  
Environmental Protection Agency, Region 10  
1200 Sixth Avenue, Suite 900  
Seattle, WA 98101

Dear Ms. Langton:

On behalf of the Idaho Department of Environmental Quality I would like to thank you and Region X, EPA for the chance to request a waiver from Title 40, CFR 35.6590(b).

The State of Idaho and DEQ currently require the following insurances in its contracts: Idaho Worker's Comp, Employer's Liability (minimum amount \$100,000), Comprehensive General Liability (minimum amount \$1,000,000 per occurrence) and Automobile Liability (no less than \$1,000,000). We continue to believe that these requirements, especially the Comprehensive General Liability would suffice under Title 40, CFR 35.6590(b).

DEQ was originally informed of the potential finding related CFR 35.6590(b) in July of 2012. At that time we responded by providing the auditor with the list of required insurance and at that time requested a definition of "accidents and catastrophic loss insurance" and how it differed from our current requirements. Neither the auditor nor EPA was able to provide us an answer to the question. Although we originally agreed to add the requirement to our standard contract language we were not sure how we could explain to potential contractors what additional insurance they would need. Our Contract Officer contacted numerous insurance providers (including the providers used by our then current contractors) throughout the state and asked if they could provide this type of insurance, and was unable to ascertain from them if they could provide it. The Contracts Officer also contacted the state's Office of Risk Management for assistance and they could not define what or if there was specific insurance that would qualify. The one constant response we received was that the description was too ambiguous to be quantified.

We believe that DEQ has done its due diligence in trying to comply with this requirement and hereby requests a waiver from this provision. If you have any questions or need additional information, please contact me at (208).373.0292 or [dave.sande@deq.idaho.gov](mailto:dave.sande@deq.idaho.gov).

Sincerely,

  
Dave Sande, CPA  
Financial Officer