

Advisory Report on Region 10's Award and Administration of Grants to the Western States Air Resources Council Lake Oswego, Oregon



Office of Inspector General
Advisory Report

Advisory Report on Region 10's Award
and Administration of Grants
to the Western States Air Resources Council
Lake Oswego, Oregon
Report No. WAD 99-000423--1999-S-00189

September 30, 1999

Inspector General Division Conducting the Audit

Western Audit Division

EPA Regions Covered

Region 10

Regional Program Office Involved

" Office of Air Quality

" Office of Management Programs

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September 30, 1999

MEMORANDUM

SUBJECT: Advisory Report on Region 10's Award and Administration of Grants to the Western States Air Resources Council (WESTAR)
Report No. WAD 99-000423--1999-S-00189

FROM: Truman R. Beeler
Divisional Inspector General for Audits
Western Division

TO: Charles C. Clarke
Regional Administrator
EPA Region 10

In conjunction with our audit of EPA grant costs claimed by the Western States Air Resources Council (hereafter referred to as the Audit), a number of Regional grant award and administration weaknesses were identified that caused or contributed to findings cited in the Audit or which were contrary to EPA policies/procedures or good grants management practices. This advisory report discusses these conditions, along with our recommendations for actions that Region 10 (the Region) can take to either: (i) correct an existing condition adversely affecting the WESTAR grants; or (ii) prevent similar conditions from occurring in other grants.

This report contains information that describes conditions the OIG has identified and corrective actions the OIG recommends. This report presents the conclusions of the OIG and not necessarily the final EPA position. Final determinations on matters in this report will be made by EPA managers in accordance with established OIG report resolutions procedures.

SCOPE

The evidence supporting the information and recommendations in this advisory report were obtained in accordance with OIG Manual Chapter 118, Special Assignments and the General Accounting Office (GAO) standard 2.10, Other Activities of an Audit Organization. The information and recommendations in this advisory report do not represent an audit in accordance with GAO auditing standards. This report is intended solely for the information and use of the Region and is not intended to be and should not be used by anyone other than the specified parties.

Our evidence gathering occurred during the conduct of the audit of EPA grant costs claimed by WESTAR. It included evidence obtained at both WESTAR and the Region.

BACKGROUND

WESTAR is a non-profit consortium of fifteen state air agencies and was incorporated in 1988. The Region awarded three Clean Air Act (CAA), Section 103 grants to WESTAR on May 11, 1993, September 23, 1996, and September 24, 1996. As amended, WESTAR is scheduled to perform under one or more of the grants through August 1, 2001.

The EPA awards do not include any requirement for cost sharing by WESTAR and through December 31, 1997 (the period of our audit of WESTAR costs), substantially all activities of WESTAR were related to the activities of the EPA grants. WESTAR had a staff of five employees at the time of our field work. Because of WESTAR's small staff, about two-thirds of the \$3.2 million of costs claimed under the EPA grants through December 31, 1997 was incurred by third parties and subcontractors.

IMPROVEMENTS ARE NEEDED IN REGION 10'S GRANT AWARD AND/OR ADMINISTRATION OF WESTAR GRANTS

To reduce financial losses and legal vulnerabilities, improvements needed in the Region's grant award and administration processes include:

1. Assuring that grants include only tasks authorized under Section 103 of the CAA;
2. Awarding grants and amendments that *exclude* tasks that should have been obtained under contract per EPA Order 5700.1;
3. Avoiding direct influence in matters related to WESTAR's subcontract award and administration responsibilities including: (i) developing subcontract work specifications; (ii) directing subcontract terms and condition; (iii) performing subcontract technical and financial oversight; and (iv) directing subcontractor staff hires and making recommendations for pay raises to subcontractor staff;
4. Eliminating like tasks with overlapping periods of performance; and
5. Eliminating grant provisions that permit both the direct and indirect charging of administrative activities.

These opportunities for improvement along with our related recommendations are discussed in the balance of this report.

Summary of the Region's Comments

We issued our draft report to the Regional Administrator on February 26, 1999. The Regional Administrator responded to the draft report on April 9, 1999. The Region's complete response is included as Appendix A to this report. In its response to the draft report, the Region included several attachments. These attachments are not included in Appendix 1, but are available upon request. As a result of continuing discussions with Regional management and staff throughout the course of our audit of WESTAR, the Region did not request an exit conference.

The Region disagreed with our conclusions that it: (i) awarded unauthorized tasks under the WESTAR grants; and (ii) should have obtained some tasks under contract. The Region, however, concurred with all of our recommendations for improvements as summarized below. Our recommendations are keyed to the each of the opportunities for improvement:

1. OIG Recommendation - The Region remove the questionable tasks identified by the OIG, and related funding for the remaining project period, from the WESTAR grants.

Region's Comments - The Regional Administrator commented: " Although we disagree with this finding, we concur with the audit recommendation to remove these tasks, and any remaining funding associated with them, from the WESTAR grants."

2. OIG Recommendation - The Region assess any new tasks contemplated for inclusion under the grants to WESTAR in accordance with the criteria (for determining the appropriateness of a grant or contract) included in EPA Order 5700.1. We also recommend any similar awards be re-evaluated for conformance with EPA Order 5700.1.

Region's Comments - The Regional Administrator commented: "Although Region 10 disagrees with the finding that formed the basis for this recommendation, the Region concurs with the recommendation to assess any new tasks contemplated for inclusion under the grants to WESTAR in accord with these criteria and re-evaluate any similar awards for conformance with this order."

3. OIG Recommendation - The Region cease involvement of its management and staff in WESTAR's subcontract award and administration responsibilities; and remind all project managers that directing or influencing a grantee's contractors can be construed as supervision of the contractor and lead to legal liabilities such as torts.

Region's Comments - The Regional Administrator commented: "EPA Region 10 concurs with the finding and will implement the recommendation ..."

4. OIG Recommendation - The Region require its personnel to review the project tasks under the two active EPA grants and assign like project tasks to one of the two grants; thus, eliminating like tasks being provided for in grants with overlapping periods of performance.

Region's Comments - The Regional Administrator commented: "EPA Region 10 concurs with this finding and will review the grants as recommended."

5. OIG Recommendation - The Region require WESTAR to develop, for its accounting period beginning January 1, 1999, an indirect cost rate in accordance with the provisions of OMB Circular A-122.

Region's Comments - The Regional Administrator commented: "EPA Region 10 concurs with this finding ..."

Details supporting our conclusions and recommendations and the Region's rationale for its position are presented in the balance of this report.

1. ASSURING GRANTS INCLUDE ONLY TASKS AUTHORIZED UNDER SECTION 103 OF THE CAA

The audit report questioned \$685,265 because the tasks associated with these costs, were not, in our opinion, authorized under Section 103 of the CAA. We concluded that the Region incorrectly used grant funds under Section 103 authority for: (i) non-training tasks that were the responsibility of EPA or the delegated air pollution control agencies; or (ii) CAA Title V purposes which cannot be funded through appropriated funds.

Grants to WESTAR cited Section 103 of the CAA as the authority for award. Section 103 provides for grant awards to nonprofit organizations for the following purposes:

! Grants to conduct, and promote the coordination and acceleration of research, investigations, experiments, demonstrations, surveys, and studies relating to the causes, effects (including health and welfare effects), extent, prevention, and control of air pollution (Subsection 103(a)(1)).

! Grants to conduct and promote coordination and acceleration of training for individuals relating to the causes, effects, extent, prevention, and control of air pollution (Subsection 103 (a)(5)).

! Grants to establish and maintain research fellowships (Subsection 103 (b)(5)).

Most of the tasks provided for in the WESTAR grants meet the training purpose in Subsection 103(a)(5). However, we identified four tasks that were not for training and which involved activities that were the responsibility of EPA or the delegated air pollution control agencies. Accordingly, we concluded these tasks were not authorized under the CAA. We also identified one task that we concluded was for CAA Title V purposes. In our opinion, Title V purposes cannot be funded through appropriated funds.

Non-Training Tasks. The four tasks are: (i) inspections under the National Emission Standards for Hazardous Air Pollutants (NESHAP) program in the state of Idaho (\$196,356); (ii) inspections under the National Emission Standards for Hazardous Air Pollutants (NESHAP) program in the state of Alaska (\$35,003); (iii) emissions inventory for State Implementation Plans (SIP) (\$63,349), and (iv) development of the Pocatello, Idaho SIP (\$182,697). In the case of the NESHAPS inspections, Idaho and Alaska refused the delegation of these CAA functions. Accordingly, the Region was responsible for conducting the inspections; and grant funds should not have been used when EPA is the beneficiary. The two SIP related tasks are questioned because SIP functions are only authorized under grants to air pollution control agencies under Section 105 of the CAA. Since WESTAR is not an air pollution control agency, it is not authorized to receive grants for SIP functions.

Title V Activities. The Pollution Prevention Permitting Pilot (P4) task, while involving training, is considered a prohibited use of appropriated funds. The costs claimed for the P4 task totaled \$207,860. The purpose of the P4 task was to train air regulatory staff to incorporate pollution prevention concepts into Title V operating air emission permits. The P4 task was a joint project with EPA Regions 6 and 10, the State of Oklahoma and City of Albuquerque Air Quality Division to demonstrate how pollution prevention concepts can be built into the Title V process.

We consider the use of Section 103 funds for the P4 task a prohibited use of appropriated funds. According to 31 U.S.C. '1301 (a) appropriations are to be applied only to the objects for which the appropriations were made. CAA funds were not appropriated for Title V purposes. We therefore concluded the Region incorrectly used the WESTAR grants for the P4 task.

Recommendation

In addition to the recommendations included in our WESTAR audit report relating to disallowing the costs associated with the above tasks, we recommend that the Region remove these tasks and any remaining funding associated with them from the WESTAR grants.

The Region's Comments

The Region did not concur that the questioned tasks are not eligible under Section 103 and did not concur that the costs incurred by WESTAR for these tasks should be disallowed. While the Region acknowledged that the tasks were not primarily training related, it cited several reasons why it believes the tasks are eligible under Section 103. First, it believes the broad language of CAA Section 103 (a)(1) authorizing tasks that provide for

"investigations, experiments, demonstrations, surveys and studies" covers the work that was performed under several of the questioned tasks. Second, even if the tasks were outside the authority of Section 103, the facts, including WESTAR's excellent performance and its inability to determine eligibility, justify an exception to the general rule that funds spend on unauthorized grant activities must be recovered. Third, the recommendation in the Audit to recover costs associated with the questioned tasks is inconsistent with another recent OIG audit report.

Although the Region disagreed with our conclusions, it did concur with our recommendation to remove these tasks, and any remaining funding from the WESTAR grants.

In addition to the above reasons for disagreeing that the questioned tasks are not eligible, the Region discussed each of the questioned tasks.

Idaho Asbestos NESHAP Program. The Region believes this effort qualifies as a demonstration program under Section 103 (a)(1). Idaho had not accepted delegation of the program, and the Region believed that if a financial incentive could be demonstrated, Idaho might take the program. The Region advised it wanted to demonstrate that accepting delegation would not create a financial drain on the State. The demonstration included showing the program could be run with one FTE for \$70,000 a year, and that the income from asbestos removal notification fees would allow the program to operate as a self-sustaining effort. As a result of the program, the Region advised that Idaho entered into an agreement to take the first step toward accepting delegation but later returned the program to EPA.

Alaska Asbestos NESHAP Program. The Region believes this activity also qualifies as a demonstration program. The Region advised that the program involved a series of studies which were part of a demonstration that asbestos removal notification fees would cover the cost of an inspector and enforcement actions; should the state take delegation of the asbestos NESHAP program. The Region further advised that, at least once, an instructor went to Alaska to train asbestos inspectors.

Emission Inventory Project for SIP. The Region believes that this activity qualifies principally under Section 103 (a)(1) as a "survey, study, or investigation." The Region stated that the purpose of the project was to develop and improve state agency skills in compiling emission inventories of sources of air pollution. Travel expenses were paid for state agency personnel so they could meet to examine methods of collecting emission data in order to develop a more uniform systematic approach to compiling an emission inventory. The Region also believes that the work involved training because the less-experienced states learned from the more experienced states.

Pocatello SIP. The Region believes that this activity qualifies under Section 103(a)(1) as a "study" or "survey" of emission data. The Region advised that this project was an unusually detailed emission inventory of particulate matter pollutants, covering both state and tribal lands. A final report was prepared which was used to assist the Shoshone-Bannock Tribes as it was trying to develop regulations that could be used in the future to develop the Tribal Implementation Plan. According to the Region, it was also useful to Idaho to develop its SIP to address particulates. Further, the Region advised that WESTAR took this project at the request of the State of Idaho.

Title V Activities. The Region does not believe that the P4 program is properly characterized as a Title V activity. The Region supports its view based primarily on its interpretation of EPA Headquarters guidance addressing the activities that are and are not considered Title V for purposes of determining whether the activity can be funded by grant. The guidance, includes a matrix that lists "pollution prevention initiatives ... not directly related to (a specific Title V permit) as grant eligible." The Region also advised that the Title V permit program cost for the State of Oklahoma and the City of Albuquerque were not defrayed in any way by any program grant funds. For both pilot projects, participating sources were required to pay all required Title V permit fees. In

addition, permitting authority staff time was funded solely by the permitting authorities through their collected Title V fees.

OIG Response

The Region's three principal reasons for believing that the questioned tasks are eligible under Section 103 are addressed below.

1. The broad language of Section 103 (a)(1) authorizes such tasks. The evidence that we reviewed in support of the task awards do not support the Region's response as to the actual purpose which lead to the award of the tasks; and now the Region attempts to justify them on other bases. Comments in support of our conclusion are provided below as we discuss each of the questioned tasks.

2. The questioned tasks are entitled to an exception to the general rule that funds spent on unauthorized grant activities must be recovered. The Region cited two Comptroller Decisions to support its position regarding exceptions. In our view, the decision whether EPA has the authority to grant exceptions requires a legal opinion. We believe that GAO's position in connection with the recovery of funds, as presented in Appropriations Law Volume II, Chapter 10. H.1, Page 10-83, is clear:

...As a general proposition, it has been the view of both GAO and the executive branch that the United States has not only a right but a duty to recover amounts owed to it and that this duty exists without the need for specific statutory authority... For example, grant funds erroneously awarded to an ineligible grantee must be recovered by the agency responsible for the error, including expenditures the grantee incurred before receiving notice that the agency's initial determination had been made in error...The cited decisions recognize that there might be exceptional circumstances in which full recovery might not be required, but exceptions would have to be considered on an individual basis.

3. The recommendation in the Audit report to recover costs associated with the questioned tasks is inconsistent with another recent OIG audit report. The other recent OIG audit report referenced in the Region's response was a performance audit; not a financial related audit. The performance audit had objectives focused on Agency policies, procedures, and practices; and did not address the allowability of costs claimed by a grantee. Because of these different objectives, we do not agree that there is an inconsistency between the recommendations in the two reports.

Our response to the Region's comments relating to the individual questioned tasks are as follows:

Idaho Asbestos NESHAP Program. The Region's response asserts the task was for a demonstration because it believes that if a financial incentive could be demonstrated, Idaho might take the program. The Region further advised that Idaho did enter an agreement to take the first step toward accepting NESHAP program delegation; but later returned it to EPA after taking the program for a short period.

The Region's response does not address the fact that Idaho refused to conduct the NESHAP inspections. Accordingly, it was EPA's responsibility. In our view, it is an unauthorized use of Section 103 grant authority to obtain tasks from a nonprofit organization that are the responsibility of EPA.

Documents prepared in support of the Region's decision to award this task to WESTAR clearly indicate that the Region considered contracting for the performance of the NESHAP inspections. The Region rejected contracting on the bases that: (i) it would have better control if the inspection task was under the WESTAR grant; and (ii) it had a poor experience in contracting such functions in Alaska. WESTAR performed the inspection function for Idaho over a period of several years. In our view, this indicates that it was more than a mere demonstration, it became a practice.

The selection of WESTAR as a vehicle was based upon an evaluation of the alternatives available and represented the Region's preference to obtain program goals. No mention is made of a demonstration. According to WESTAR's original (1993) workplan for the State of Idaho NESHAPS, Idaho had refused delegation of the program, no enforcement was being done in Idaho and, it was not clear how long the situation would continue.

From conception of the tasks, the Region intended that WESTAR use a specific person for the tasks (an individual who had been on an IPA assignment from the Idaho Department of Environmental Health to the EPA). In fact, WESTAR hired this person a subcontractor under its grant to perform the tasks.

There is no evidence that WESTAR ever considered the NESHAPS work as a benefit to its organization. The 1995 grant application from WESTAR clearly states that the Alaska and Idaho NESHAPS inspections "...will continue to assist Region X." Neither the workplan for 1996 nor 1997 differ substantially from the 1995 workplan.

Alaska Asbestos NESHAP Program. The Region's response regarding the Alaska NESHAP task is essentially the same as it is for the Idaho NESHAP task. Decision documents prepared by the Region show that the reason that WESTAR received this task was because Alaska would not accept the delegation. Accordingly, we concluded that this activity was an EPA responsibility and should have been done by EPA staff or under contract to EPA. Grants are not an appropriate procurement vehicle when EPA is the beneficiary of the work.

Emission Inventory Project. The Region's response argues that this task qualifies as a "survey, study or investigation" since its purpose was to develop and improve state agency skills in compiling emission inventories of sources of air pollution. The Region also believed that the task involves training because less-experienced states learn from more experienced states.

Based on our review of documents related to this task, we concluded that this task was related to the Idaho SIP. Accordingly, it should have been performed by Idaho as part of its air pollution control agency responsibilities under Section 105 of the CAA.

Grant documents relating to this task contradict the Region's position on the principle purpose for this task. The Memorandum of Understanding between the Idaho Department of Environmental Quality (IDEQ), selected Indian tribes, WESTAR and the Region states; a) "...IDEQ has first-hand expertise of the nature of emissions, b) WESTAR is administering the project for Idaho and , c) the project was to design and implement emission inventories to support state implementation plans." In our view, this is a clear indication that the principal purpose of this task was data collection in support of developing the SIP in the State of Idaho. Also, it is noted that grant documents relating to this task do not make any mention of any training function or activity.

Pocatello SIP. The Region's response advises that this task qualifies under Section 103(a)(1) as a "study" or "survey" of emission data. In discussing the task, the Region states that the effort was directed toward SIP activities. Accordingly, as stated regarding our position on the emissions inventory project involving SIP activities, we believe that SIP activities are the responsibility of an air pollution control agency; or if refused by such an agency, EPA's responsibility.

In the case of the Pocatello SIP, it is also noted that WESTAR had no involvement with the task other than to pay its subcontractor. The Region worked directly with the subcontractor.

Title V Activities. The Region responded that it does not believe the P4 task is properly characterized as a Title V activity. The Region attempts to support its view based primarily on its interpretation of EPA Headquarters guidance addressing the activities that are and are not considered Title V for purposes of determining whether the activity can be funded by grant. The Region relies on the guidance in the matrix that lists "pollution prevention initiatives ... not directly related to (a specific Title V permit) as grant eligible."

We disagree with the Region's interpretation of EPA Policy regarding Title V activities.. Our interpretation of EPA Policy is that it prohibits the use of appropriated funds, either directly or indirectly, for Title V purposes. We agree that issuing permits was not the primary intent of the task rather training Title V permit writers was the primary intention. However, we interpret the EPA Policy as prohibiting using appropriated funds for such training. Our position is supported by the matrix included in the EPA Headquarters guidance. The matrix states that training of staff for Title V implementation is a Title V Permit Fee Activity which is expected to be covered by Title V fees.

2. AWARDING GRANTS AND AMENDMENTS THAT EXCLUDE TASKS THAT SHOULD HAVE BEEN OBTAINED UNDER CONTRACT PER EPA ORDER 5700.1

EPA Order 5700.1 (the Order) provides EPA's policy for the appropriate selection of award instruments (i.e. grants, cooperative agreements or contracts). The Order implements *The Federal Grant and Cooperative Agreement Act of 1977* (FGCAA) which Congress wrote to eliminate Federal agencies attempts to circumvent procurement rules by awarding grants that would be used to accomplish directed procurements. Thus, the Order is intended to prevent the use of grants for the acquisition of goods and services for EPA's needs.

Specifically, several provisions of the Order are relevant to conditions that we found at WESTAR:

! EPA may use an assistance agreement with an eligible intermediary to provide assistance to the ultimate beneficiary, who must also be eligible. The support or stimulation need not be of benefit only to the intermediary. On the other hand, if the intermediary is not itself an eligible recipient, or if the intermediary is effectively serving as a contractor to EPA, then EPA should normally use a procurement contract to obtain the services of the intermediary in assisting eligible recipients.

! Use a contract if the principal purpose is to acquire property or services for the direct benefit or use of the federal government.

! The decision to use a contract or an assistance agreement must be based solely on the principal purpose of the relationship.

! The principal purpose test to determine whether the government is the direct beneficiary or user of the activity is: a) if EPA provides the specifications; or b) is having the project completed based on its own identified needs; or c) will directly use the information or, d) will incorporate or rely on information developed by the project in writing guidance or standards then in most cases a contract relationship exist.

! Awards that are intended to acquire goods and services cannot be an assistance agreement simply because it may be construed to provide public support or stimulation, regardless of the benefit.

! It is necessary to find that the project is being performed by the recipient for its own purposes which EPA is merely supporting.

! EPA should not direct the recipient in conducting activities for its benefit or in providing services to EPA. Mere logistical support to EPA should be performed under contract.

In reviewing selected tasks provided for by the Region under the grants to WESTAR, instances were noted where the tasks appeared inappropriate under the Order. Illustrations supporting this conclusion are as follows:

Pollution Prevention Permitting Pilot (P4) Task. This task was added to grant no. X000679-03 through amendment no. 9 dated September 19, 1995 in the amount of \$150,000. The grant amendment stated: "Added Project 96/96-14 Pollution Prevention Permitting Pilot Project - \$150,000." The project was described by the Region's project manager as a P4 for the CAA, Title V. The P4 task was continued as a task under grant no.

X990602-01 when it was awarded on September 23, 1996. The P4 task was performed for WESTAR by a subcontractor, Ross and Associates. According to WESTAR's accounting records, \$207,860 has been spent for the P4 task through December 31, 1997.

The Region's project manager for this WESTAR task indicated that the P4 task was funded under the EPA grants because the Region did not have contract funds for such activity. The task was described by the Region's project manager as a P4 for Title V and for the states benefit to implement Title V. He indicated that, if the task had been an EPA Headquarters effort, the P4 would have been a contract. It is noted that the Regional project manager was previously the work assignment manager for a prior P4 contract with EPA Headquarter's Office of Air and Radiation and Office of Air Quality Planning and Standards. Ross and Associates was also a subcontractor under the Headquarters contract.

This task met many elements of EPA Order 5700.1 indicating that a contract was the appropriate instrument:

! EPA provided the specifications for WESTAR's pilot P4 task;

! EPA will use the information obtained to assist the states in implementing the Title V program.

! EPA is involved in directing the work of the subcontractor.

! There was little evidence of WESTAR's participation in the focus or direction of the task.

The P4 task was modified to include a phase involving the State of Oklahoma. Since WESTAR's membership does not include Oklahoma, this is another indicator that the project is not for the benefit of WESTAR.

Additionally, the task's benefit to WESTAR was questioned by its executive director at the time of the amendment adding the P4 task to the grant.

National Emission Standards for Hazardous Air Pollutants (NESHAPS) Inspections Project Task. This task was included in the basic grant award under grant no. X000679-93 on May 11, 1993. It was described as task 4: "EPA Approved Asbestos Inspections (Idaho/Alaska) - \$12,000." Additional NESHAPS inspection work was included in subsequent WESTAR tasks under the grant. According to WESTAR's accounting records, \$231,359 has been spent for the NESHAPS inspection work through December 31, 1997.

The contract nature of the NESHAPS work is illustrated by the following facts. In a February 16, 1994 memorandum, the Region requested WESTAR perform "... work essential to operation of the asbestos program in Alaska." The work plan from the Region stated the Region sometimes requires personal services on a periodic or intermittent basis. The Region directed that WESTAR hire two specific individuals and the activities performed by these individuals would be in accordance with directions and instructions provided by a Regional employee.

WESTAR issued a subcontract to one of the individuals specified by the Region. (For reasons not obvious during our audit at WESTAR, the other specified individual was not issued a subcontract by WESTAR). On October 6, 1993, the Region prepared credentials for the individual authorizing her to perform asbestos inspections in the states of Alaska, Idaho, Oregon and Washington. The credentials included the Region's address but made no mention that the individual was a contract employee. The individual occupied space at the State of Idaho offices and was supervised directly by the Region's staff. Regional personnel approved her time sheets and leave requests. WESTAR asked the Region's staff for assistance in evaluating her performance. On January 12, 1995, the Region responded: "As we have stated, we would consider this person for an award if she worked for our organization." The Region recommended and WESTAR paid the individual \$1,500 for a performance award.

The WESTAR executive director at the time of the NESHAPS project tasks were performed did not consider the program consistent with WESTAR's goals. He advised the Region that WESTAR would not be responsible for the information provided from or the actions of the contract individual.

In the 1995 grant application work plan, WESTAR described the NESHAPS task in detail as follows: "WESTAR will continue to assist EPA Region X and the States of Alaska and Idaho with their asbestos programs by administering inspection contracts and continued administrative support for a full time inspector for the State of Idaho."

The subcontract for the NESHAPS work clearly indicated this task was initiated for the benefit of the Region. The subcontract specified the individual to be hired and that EPA would direct the efforts of the individual. Documentation in WESTAR's procurement files relating to the subcontract include records prepared by the Region in early 1993 showing issues of Regional necessity for the NESHAPS work, including state rejection of NESHAPS delegation; the need for Regional supervision and control over inspections; and EPA hiring freezes were driving forces in the Region's decision to have WESTAR subcontract for the NESHAPS work. The files also indicate that the Region considered a direct contract for the work; but the idea was rejected. These factors, coupled with the prior executive director's expressly questioning the benefit of the this effort, led us to conclude the principal purpose was to acquire services for the direct benefit of the Region.

We were advised that the Lane Regional Air Pollution Authority (Springfield, Oregon) has also undertaken NESHAPS work through a grant from the Region. Our comments regarding the use of grants to acquire such services may apply to the Lane Regional Air Pollution Authority or other similar recipients.

Recommendation

We recommend that the Region assess any new tasks contemplated for inclusion under the grants to WESTAR in accordance with the criteria (for determining the appropriateness of a grant or contract) included in EPA Order 5700.1.

We also recommend any similar awards be re-evaluated for conformance with EPA Order 5700.1

The Region's Comments

The Region did not concur with the finding that the P4 or the NESHAPS activities should have been contracted. The Region advised that the OIG erred in applying the criteria of EPA Order 5700.1 regarding the selection of appropriate grant or contract agreements. The Region believes the grant was an appropriate instrument and that the FGCAA does not require a benefit to WESTAR; rather it requires a public purpose and the absence of direct benefit to EPA.

The Region also advised that the WESTAR would not accept a project for which WESTAR or its member states did not receive substantial benefit and that assistance grants were awarded to WESTAR at the request of its member states.

OIG Response

The Region's response states that the grants to WESTAR complied with EPA Order 5700.1 because the grants served a public purpose and there was no direct benefit to the EPA. We disagree with the Region's position that one of the tasks under the WESTAR grants did not directly benefit EPA. Documents we reviewed clearly support our conclusion that certain of the questioned tasks directly benefitted EPA. We believe our discussion of the Region's involvement in setting the scope of the NESHAP's inspection tasks, and its direct involvement with WESTAR's subcontractor under these tasks makes a compelling case that the Region was the principal beneficiary.

With regard to the Region's comment about WESTAR not accepting a project for which WESTAR or its member state did not receive substantial benefit, we do not consider this point relevant to our basis for concluding that some of the WESTAR tasks should have been contracted. Our point, with respect to these tasks, is that EPA was the principal beneficiary. As such, the FGCAA criteria provides for the use of contract.

3. DIRECTLY INFLUENCING MATTERS RELATED TO WESTAR'S SUBCONTRACT AWARD AND ADMINISTRATION RESPONSIBILITIES

Regional officials involved themselves, on several occasions, in subcontract award and administration matters that were the responsibility of WESTAR. Such involvement is not a good grants management practice as it may create unnecessary financial and legal vulnerabilities for EPA.

To illustrate the Region's involvement, the following is provided:

! Under one subcontract, the Region directed the hiring of the individual. The Region, eventually, supervised and evaluated the individual's performance.

! Under the Environmental Education subcontract, the Region apparently directly intervened in the subcontractor's work activities. In an October 11, 1994 letter to the Region, the WESTAR executive director wrote: "I have been advised by my contractor, that EPA has asked him not to hold a teacher workshop in Tacoma, Washington as required by WESTAR's contract... I am concerned that EPA staff are authorizing changes to the WESTAR contract without our knowledge... If you anticipate any other changes to the scope of work, please advise."

! Under the Ross and Associates subcontract, the Region provided WESTAR the Request for Proposal for the subcontract solicitation and provided EPA staff to evaluate subcontractor proposals. There were also clear indications of the Regional project manager having direct contact with Ross and Associates during the performance of the subcontract and continuing to this day despite advice to the Region of this condition several months ago.

Recommendation

We recommend that the Region cease involvement of its management and staff in WESTAR's subcontract award and administration responsibilities; and remind all project managers that directing or influencing a grantee's contractors can be construed as supervision of the contractor and lead to legal liabilities such as torts.

The Region Comments

The Region concurs with the finding and will implement the recommendation especially in regard to defining appropriate roles and responsibilities when communicating with grantees and especially when interacting with contractors.

OIG Response

No response is necessary since the Region concurred with the recommendation.

4. ELIMINATING LIKE TASKS WITH OVERLAPPING PERIODS OF PERFORMANCE

One of WESTAR's accounting system weaknesses was its inability to account for costs by individual EPA grant. While the total costs for all three grants could be determined, WESTAR's accounting system did not identify costs to individual grants and project tasks within grants. This weakness precluded us from expressing

an opinion on the reasonableness, allocability and allowability of the amounts claimed under the grants by WESTAR.

This weakness occurred, in part, because, the Region awarded more than one grant to WESTAR with like project tasks and overlapping periods of performance. As a result, when WESTAR was working on a like project task, it had to make an estimate as to which grant to charge.

The following shows the overlapping periods of performance:

<u>Grant No.</u>	<u>Period of Performance</u>
X000679-93	May 1, 1993 - January 31, 1998
X990602-01	September 25, 1996 - July 1, 2001
T990780-01	October 1, 1996 - August 1, 2001

To illustrate, the following like project tasks were performed under more than one grant: P4 (grant nos. X000679-93 and X990602-01), Emission Inventory SIP (grant nos. X000679-93 and X990602-01) and the Regional Training Center (grant nos. X000679-93 and T990780-01). According to WESTAR's accounting records, like project task costs amounted to about 10 percent of all costs claimed under the three grants through December 31, 1997.

Recommendation

We recommend that the Region require its personnel to review the project tasks under the two active EPA grants and assign like project tasks to one of the two grants; thus, eliminating like tasks being provided for in grants with overlapping periods of performance.

The Region Comments

The Region concurs with the finding and will review the grants as recommended.

OIG Response

No response is necessary since the Region concurred with the recommendation.

5. ELIMINATING PROVISIONS THAT PERMIT BOTH THE DIRECT AND INDIRECT CHARGING OF ADMINISTRATIVE ACTIVITIES

The Region's efforts to provide WESTAR a method for reimbursement of its EPA grant administrative activities were not consistent with good grants management. Although amendments to the three grants made some changes in the provision for reimbursement of administrative activities, as a general observation: (i) two of the three grants (X000679-93 and X990602-01) include provision for reimbursement of some administrative activities as direct task grant costs; (ii) the same grants include a provision for reimbursement of some "allocated direct administrative costs" as specific project direct tasks; (iii) the same grants include a provision for reimbursement of some administrative activities through an indirect cost rate; and (iv) the third grant (T990780-01) provides for no reimbursement of indirect costs.

These inconsistent and somewhat conflicting grant provisions, in our opinion, led to WESTAR claiming all costs of administrative activities for the period June 1993 through December 1997 as direct task costs under grant no. X000679-93. For the most part, WESTAR did not charge direct or indirect costs for administrative activities to the other two EPA grants. Consequently, while the total costs of administrative activities claimed

by WESTAR under the three grants may be accurate, the costs of administrative activities are not properly allocated amongst the grants.

To illustrate the inconsistencies with respect to reimbursement of costs associated with the administrative activities of the grants, the following is provided relating to grant no. X000679-93.

! The 1993 Work plan provided: "**1. Administrative Tasks** including the ongoing operation of the WESTAR office, management of personnel issues; preparation and tracking of the WESTAR budget; financial management of the Council, grant administration and reporting; management of WESTAR office equipment; coordination among member States; supervision of a Administrative Assistant position; organization and conduct of WESTAR business meetings.@

! The initial grant award in May 1993 included funding for the administrative tasks as requested in the work plan as a direct grant charge and also included funding of indirect costs based upon an indirect cost rate. The grant also included a condition providing: "If indirect costs are allowed, indirect costs to this agreement may not exceed the approved rate indicated in the recipient's cost allocation plan."

! Grant amendments over the following three years continued to allow the costs of administrative tasks as a direct grant charge and also included a provision for an indirect cost rate.

! The 1997 Work plan continued including the direct administrative task and also provided: "Salaries, benefits, retirement contributions, payroll taxes and mass transit ridership incentive costs for the Director, Staff Associate and 60% of the Technical Coordinator (formerly PM Coordinator) total \$132,600. ...Additional personnel costs for the Director and Staff Associate are spread out as allocated direct administrative costs borne by several specific projects. Office rent, phone lease, supplies and miscellaneous costs for these three positions and basic supplies, postage, printing, insurance, reception services for all staff total \$59,400 ..."

With respect to indirect costs, the Work plan provided: "The previous 16.1% indirect costs will not be charged against the project grants in 1997. There are however the direct administrative costs for individual projects which will be tracked and charged against the project grants. The allocated time of the Director and Staff Associate are part of these costs, as discussed above. Other direct administrative costs include telephone, supplies, miscellaneous office support costs. This approach should serve to establish some average rate, which can be agreed upon in future years."

In summary, the above work plans and grant conditions created an opportunity under a single grant to charge administrative activities in three possible ways: (i) as a direct charge under the administrative task; (ii) as an allocated administrative cost under project specific tasks; and (iii) through an indirect cost rate.

Recommendation

Since the period of performance for two of the three EPA grants extends until 2001, we recommend that the Region require WESTAR to develop, for its accounting period beginning January 1, 1999, an indirect cost rate in accordance with the provisions of OMB Circular a-122 for the reimbursement of all administrative cost related to the grants; and discontinue the practice of charging administrative activities directly to EPA grants. In this regard, costs budgeted for administrative activities under grant no. X990602-01 should be reclassified to the indirect cost budget category to provide sufficient funds for reimbursement of the indirect costs.

The Region Comments

The Region concurs with the finding and will implement the recommendation.

OIG Response

No response is necessary since the Region concurred with the recommendation.

ACTION REQUIRED

In accordance with EPA Order 2750, the Action Official is required to provide this office with a copy of the determination on the conclusions and recommendations in this report within six months.

Please refer to the audit report number on all related correspondence. We will be pleased to provide additional accounting counsel and audit services which may be required in connection with this report and the implementation of our recommendations. If you have any questions concerning this report, please contact Robert Adachi at (415) 744-2445.