



OFFICE OF INSPECTOR GENERAL

Catalyst for Improving the Environment

Public Liaison Report

Review of State of Alaska's Actions for the River Terrace Recreational Vehicle Park, Soldotna, Alaska

Report 2005-P-00029

September 28, 2005



Report Contributors:

Dan Cox
Shek Mark

Abbreviations

ADEC	Alaska Department of Environmental Conservation
EPA	Environmental Protection Agency
OIG	Office of Inspector General
RTRVP	River Terrace Recreational Vehicle Park

Cover Photo: The site of the former dry cleaners at the River Terrace Recreational Vehicle Park, Soldotna, Alaska. The building currently houses a fish processing facility.
(Photo by EPA Office of Inspector General)



At a Glance

Catalyst for Improving the Environment

Why We Did This Review

A complainant expressed concern regarding the use of Federal grant money by the State of Alaska for a cleanup effort at the River Terrace Recreational Vehicle Park (RTRVP), Soldotna, Alaska. This review addresses issues based on the complainant's concerns.

Background

U.S. Environmental Protection Agency (EPA) Region 10 awarded a \$3 million earmark grant to the State of Alaska for contamination cleanup that had begun at the RTRVP site. A dry cleaning facility had been in operation at the site, and contamination was detected in the soil and groundwater. The site is currently used as a fish processing facility.

For further information, contact our Office of Congressional and Public Liaison at (202) 566-2391.

To view the full report, click on the following link:

www.epa.gov/oig/reports/2005/20050928-2005-P-00029.pdf

Review of State of Alaska's Actions for the River Terrace Recreational Vehicle Park, Soldotna, Alaska

What We Found

We found the following regarding the questions we sought to answer:

Are past costs used for the matching grant share valid?

Alaska's use of its past costs from a separate project to match Federal funds for the RTRVP grant is unallowable. We concluded that the matching costs claimed, for a nearby Alaska Department of Transportation project, should not have been considered a match for the RTRVP grant because the money was spent on a different project. EPA Region 10 returned this submission to Alaska due to a technical issue, and Alaska has not yet re-submitted the match request.

Is the Alaska Department of Environmental Conservation's practice of selecting contractors for work to be performed on the project in accordance with allowable contracting procedures?

Alaska followed acceptable contracting practices that sufficiently allowed for competition and were not sole source.

Are the legal costs incurred and associated with this grant allowable?

Charges by Alaska's Department of Law for services related to certain litigation matters are allowable because they were incidental to the administration of the grant and not incurred in litigation with the Federal Government.

Can the grant expiration date be extended beyond its current expiration date because of additional work?

Extension of the grant funding beyond the current expiration date of June 30, 2006, is allowable because the grant is not required to be considered expired until the funds are expended.

What We Recommend

We recommend that the Regional Administrator for Region 10 not allow the State of Alaska expenditures for the Alaska Department of Transportation site as match funds for the RTRVP grant. Region 10 did not agree that the match should be disallowed, but we maintain our position.



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

OFFICE OF
INSPECTOR GENERAL

September 28, 2005

MEMORANDUM

SUBJECT: Review of State of Alaska's Actions for the River Terrace
Recreational Vehicle Park, Soldotna, Alaska
Report No. 2005-P-00029

FROM: Paul D. McKechnie /s/
Director for Public Liaison
Office of Congressional and Public Liaison

TO: Michael Bogert
Regional Administrator
Region 10

Attached is our final report on our review of State of Alaska's Actions for the River Terrace Recreational Vehicle Park, Soldotna, Alaska, conducted by the Office of Inspector General (OIG). We initiated this assignment pursuant to a citizen's complaint.

This report contains findings and a recommendation the OIG has identified as well as Environmental Protection Agency (EPA) Region 10's comments relevant to our recommendations. This report represents the opinion of the OIG and the findings contained in this report do not necessarily represent the final EPA position. Final determinations on matters in this report will be made by EPA managers in accordance with established audit resolution procedures.

The findings in this report are only applicable for OIG Ombudsman purposes. Additionally, these findings are not binding in any enforcement proceeding brought by EPA or the Department of Justice under the Comprehensive Environmental Response, Compensation, and Liability Act to recover costs incurred not inconsistent with the National Contingency Plan. We have no objection to the further release of this report to the public.

Action Required

In accordance with EPA Manual 2750, you are required to provide a written response to this report within 90 days of the date of this report. You should include a corrective actions plan for agreed upon actions, including milestone dates. We have no objection to the further release of this report to the public. For your convenience, this report will be available at <http://www.epa.gov/oig>.

If you or your staff have any questions regarding this report, please contact me at (617) 918-1471, or Dan Cox, Assignment Manager, at (916) 498-6592.

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Purpose

The U.S. Environmental Protection Agency (EPA) Office of Inspector General (OIG) conducted a review of issues that a complainant brought to the OIG's attention related to the status of Alaska's actions for the River Terrace Recreational Vehicle Park (RTRVP) in Soldotna, Alaska. Based on the issues raised, we sought to determine:

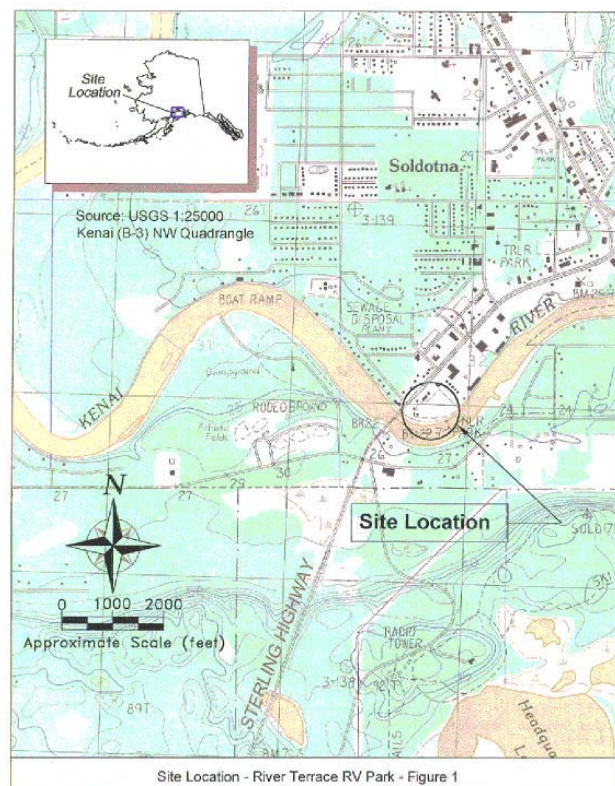
- Are past costs used for the matching grant share valid?
- Is the Alaska Department of Environmental Conservation's (ADEC's) practice of selecting contractors for work to be performed on the project in accordance with allowable contracting procedures?
- Are the legal costs incurred and associated with this grant allowable?
- Can the grant expiration date be extended beyond its current expiration date because of additional work?

Background

The RTRVP site is located in Soldotna, Alaska, adjacent to the Kenai River, a renowned sport fishing location on the Kenai Peninsula. The entire site encompasses 9.5 acres. From the mid-1960s to the late 1980s, a dry cleaning facility operated at the site. The dry cleaning facility is now used as a fish processing facility. After the dry cleaner ceased operations, the dry cleaning solvent tetrachloroethylene (PCE) and its degradation products were detected in the soil and groundwater in amounts that exceeded Alaska's soil and groundwater cleanup levels. The contaminated area encompasses approximately an acre.

Although the site was not listed on the National Priorities List, it was designated an emergency removal site under Superfund. EPA and ADEC signed a memorandum of understanding August 7, 1997. Under the agreement, EPA was responsible for cleaning up the contaminated soil, and has already done so (primarily through removal). ADEC was responsible for cleaning up the contaminated groundwater. The RTRVP property owner had elected to regain primary responsibility to perform the characterization work and monitor the groundwater while meeting ADEC's conditions.

In spring 1999, ADEC determined that work performed by the property owner was not progressing well. ADEC obtained access to the site through a court order and performed a Remedial Investigation/ Feasibility Study.



The study found additional contamination. On August 31, 2000, EPA issued a Record of Decision to address the contamination. In Fall 2000, ADEC approved the use of a biological treatment method (Hydrogen Releasing Compound) to treat the contaminated groundwater.

The State expended substantial resources on litigation and legal advice due to the property owner's refusal to grant site access and the owner's challenges to most of ADEC's actions. As a result, the State sought Federal financial assistance. On October 18, 2000, Congress appropriated \$3 million toward the cleanup effort at the Kenai River, and on May 6, 2002, EPA Region 10 awarded the funding through grant XP-97025501. The grant was for "site investigations of soil and water contamination, assessment and cleanup on a contaminated site and/or sites near the Kenai River." The State interpreted that as applying to the RTRVP site, as stated in its September 14, 2001 grant application. To date, the funds have been expended solely for the RTRVP site. The appropriation and resulting grant said the State can meet the match requirement of 45 percent with non-Federally funded pre-award expenditures for the project.

Scope and Methodology

We performed our review in accordance with *Government Auditing Standards*, issued by the Comptroller General of the United States. We conducted the review from September 24, 2004, through June 3, 2005. To accomplish our objectives, we conducted interviews with the complainant, State of Alaska, and EPA representatives. We researched laws, rules, and regulations applicable to the issues raised by the complainant; and reviewed relevant documents obtained from the complainant, State of Alaska, and EPA representatives. We did not review the system of internal controls due to the limited scope of our evaluation and the fact that such a review was not relevant to our objectives.

The findings in this report are not binding in any enforcement proceedings brought by EPA or the Department of Justice under the Comprehensive Environmental Response, Compensation, and Liability Act to recover costs incurred not inconsistent with the National Contingency Plan.

Results of Review

We found the following regarding each of the questions that we sought to answer.

Are past costs used for the matching grant share valid?

The complainant alleged the State of Alaska did not use appropriate match funds for the grant. We concluded that the State did attempt to use non-allowable match funds, as the State of Alaska submitted past costs from an Alaska Department of Transportation (ADOT) site for matching.

When Congress appropriated the \$3 million for the groundwater contamination project near the Kenai River, Congress specified in its October 18, 2000, Conference Report that "match requirements can be met with non-Federally funded pre-award expenditures by the State of Alaska for this project." Statutory grant requirements are generally specified in a grant instrument. However, the May 8, 2002, grant agreement is silent on this. There are no other matching requirements specified for this grant other than what is in the Conference Report.

Additionally, in its September 14, 2001, Application for Federal Assistance, the State also specified the funding request as for a single project. To date, the State has claimed cleanup expenditures for only the RTRVP site. Therefore, we concluded that the funding should be applicable only to the RTRVP site.

On September 14, 2001, the State submitted a \$2,379,234 funding request for pre-award expenditures for only the RTRVP project from fiscal years 1994 through 2001, which EPA accepted.

On January 28, 2004, the State submitted a request for \$1,149,437 in expenditures used for the Alaska Department of Transportation project in Soldotna to be considered match funds for the RTRVP project. Geographically, the Department of Transportation site is also near the Kenai River, prompting the State to stipulate that past expenditures from this site qualify for matching. This submission was returned by EPA Region 10 on a technical issue. The State has not resubmitted the request to use the funding as a match for the RTRVP project, pending the determination of whether these costs are allowed for matching.

The RTRVP site had been identified as the covered project under the subject grant. Therefore, any match funds should be those that the State expended specifically on the RTRVP site. Using expenditures for another site – the Alaska Department of Transportation site – is unallowable. In the State’s September 14, 2001, grant application, it specified “ADEC Groundwater Remediation Project” (singular) rather than projects (plural). Further, the contaminants requiring removal at each of the sites differ – dry cleaning solvents tetrachloroethylene and its degradation products from the RTRVP site, and salt (chloride) and petroleum hydrocarbon at the Department of Transportation site. By nature of the contamination at each site, the sites are different.

Is ADEC’s practice of selecting contractors for work to be performed on the project in accordance with allowable contracting procedures?

The complainant alleged that the State used sole-source contractors, resulting in cost inefficiencies due to the lack of competition. We concluded that ADEC followed acceptable contracting practices that were competitive and not sole source.

Alaska has a comprehensive procurement system. The Division of Finance’s Alaska Administrative Manual, Chapters AAM 81 and AAM 82, provide the Term Contracting process to secure professional service contracts, and ADEC follows this process. Additionally, ADEC has a divisional checklist that prescribes steps to be followed to obtain competitive professional services.

Term contracts are generally set up for a fixed period of time, with option terms. Term contracts are established without specifying any scope under any given project, but rather by identifying tasks that may be required in the future. ADEC uses this contracting tool to establish a pool of viable term contractors to perform any anticipated work. Term contractors for the pool are selected through a competitive procurement process required by State statutes and regulations. Typically, ADEC publishes a Request for Proposal to solicit competitive proposals for any planned project requiring outside expertise, such as a contaminated site assessment. For each Request for Proposal, ADEC convenes a five-person Evaluation Committee that independently

reviews and scores the technical portions of each proposal. The project manager (who chairs the committee) then collects all member scorings and submits the results to the Division of Information and Administrative Services for review and approval.

ADEC's contracting practice is acceptable and not a sole-source practice. Because the outside services rendered under the grant reviewed were performed by term contractors qualified under this system, we have no basis to criticize the selection for lack of competition.

Are the legal costs incurred and associated with this grant allowable?

The complainant alleged that funds from the grant were used for defending certain State employees, contrary to the purpose of the grant. We concluded that the legal costs incurred and associated with the grant are allowable.

The State's Department of Law charges ADEC for consultative services provided. With respect to this grant, the Department of Law's billed costs to ADEC consist of two types – those for administrative efforts and those related to litigation against ADEC employees. The administrative costs related to administrative efforts, such as property access and title search. The time billed for litigation matters generally related to lawsuits with the responsible party for the RTRVP site. We determined that both types of expenditures are allowable under the grant, because they are considered incidental to the administration of the grant. Generally, legal costs are allowable unless they relate to litigation with the Federal Government, and we did not note any item that was for litigation with the Federal Government.

Can the grant expiration date be extended beyond its current expiration date because of additional work?

The complainant expressed concern regarding whether the expiration date for the grant can be extended. We concluded that the expiration date for the grant can be extended.

EPA representatives stated that the appropriated funds provided through this grant do not expire until expended. EPA OIG's Office of Counsel confirmed the grant can be extended because the appropriation does not have an expiration date. Currently, the grant is set to expire June 30, 2006, but that date was set by Region 10 rather than the appropriation, and was based on the State's application. An extension may be necessary because of delays due to litigation and other matters. The State of Alaska expressed a desire to apply for an extension if the circumstances make it desirable and feasible, and EPA Region 10 representatives said extension of the grant will be allowed.

Recommendation

1. We recommend that the Regional Administrator for Region 10 not allow the State of Alaska expenditures for the Alaska Department of Transportation site as match funds for the RTRVP grant.

Agency Comments and OIG Evaluation

EPA Region 10 generally concurred with our findings regarding the complainant's concerns, except for our recommendation on the State of Alaska's use of expenditures from its ADOT site as a match for the RTRVP grant. The Region stated that our recommendation is "misleading and inappropriately speculative, and that the OIG does not answer the validity of the match for the grant amount we awarded." Accordingly, the Region disagrees with the OIG recommendation to disallow the ADOT expenditures for matching.

The congressional appropriation stipulated that the \$3 million funding be used for "...the State of Alaska Department of Environmental Conservation groundwater remediation project [singular] near the Kenai River...." Based on examining the grant application and other related documents, we believe that it referred to only one project, and since the RTRVP park project has been identified in the State's reimbursement requests, the RTRVP park project is the sole project that needs to be addressed with respect to expenditures related to the appropriation. The ADOT project was never identified as part of the RTRVP park project, so the ADOT project must be recognized as a separate project.

Region 10 also stated that a project may involve several sites pertinent to the cleanup of an underground plume of contamination. The RTRVP site and the ADOT site have two different plumes and have different contaminants. The former is related to dry cleaning solvents, while the latter pertains to salt (chloride) and petroleum hydrocarbon. Hence, the two sites cannot be attributed to a single contamination, and thus should not be lumped as a single project. Also, the Region referred to the rebuilding of a nearby bridge and indicated it may show additional contamination. We did not address rebuilding the bridge in the report and are not taking a position on whether those costs are allowable. However, the ADOT site was at no time determined as directly related to the dry cleaning RTRVP site, which is a maintenance facility site not related to the bridge rebuilding project. We believe the bridge project is coincidental and irrelevant to the cleanup at the RTRVP site, because the two sites are not under the same contamination plume.

The Region said that to question the potential award match was premature because the Region had not received an application for the remaining funds. The State on January 28, 2004, had submitted for matching expenditures \$1,149,437 incurred under the ADOT project. This was returned by EPA due to incorrect data, and does not represent just a technicality. As stated to us, it had not been subjected to a review and approval process. The State said it was going to resubmit the application, and we are commenting on that. We do not recommend the practice of disallowing a claim before its receipt. We recommend that costs submitted for matching under the XP Grant be expenditures directly related to the work performed at the RTRVP Park, as intended under the congressional appropriation.

Agency Response



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 10
1200 Sixth Avenue
Seattle, WA 98101

Reply to
Attn Of: OWW-137

MEMORANDUM

Subject: Region 10's Comments on the Public Liaison Report titled, 'Review of State of Alaska's Actions for the River Terrace Recreational Vehicle Park, Soldotna, Alaska,' Office of the Inspector General (OIG Assignment Number 2004-01516)

From: Michael Bogert
Regional Administrator
EPA Region 10

To: Paul D. McKechnie
Director for Public Liaison
Office of Congressional and Public Liaison

Thank you for the opportunity to review and comment on the draft Public Liaison Report titled, "Review of State of Alaska's Actions for the River Terrace Recreational Vehicle Park, Soldotna, Alaska." The report was prepared in response to a complaint received regarding the use of Federal grant money by the State of Alaska for a cleanup effort at the River Terrace Recreational Vehicle Park (RTRVP) located in Soldotna, Alaska. I concur with the Report's summary and findings regarding the complainant's concerns, with the exception of its treatment of the validity of the State match. I request that the analysis, summary and recommendation regarding the validity of the grant's match be revised.

The report both summarizes the history of cleanup at RTRVP and reviews the complainant's concerns well. The groundwater contamination at RTRVP has a long history, and its remediation continues today. The discussion of the concerns and the findings are clear. We are satisfied with the IG's conclusions on three of the four questions.

I am concerned that the discussion of the state's match for the grant is incomplete and that the associated recommendation is misleading and inappropriately speculative. The Report's response does not answer the question of the validity of the match for the grant amount we

awarded. We believe the state provided an appropriate and allowable match for the grant. The Report should concur with this conclusion.

The Report's response focuses on a potential match source should the State submit an application to cover additional work costs. To question the validity of a match for a potential future grant award is premature at this point. We have not received an application for the remaining funds. If in the future the State submits an application for the remaining funds and advances the value of the Alaska Department of Transportation's (ADOT) work as the match, we will examine at that time whether the DOT work is eligible to be considered for the match.

Similarly, I disagree with the Recommendation in the Report, to disallow the ADOT expenditures as a match before we receive another grant application. We respect the caution inherent in your recommendation, but believe the recommendation is inappropriately speculative. Our expanded discussion is provided in the Attachment.

I would prefer instead that the Public Liaison Report address the match issue associated with the current grant. I would also request that the recommendation refrain from advocating disallowing the match until EPA has an opportunity to review a new application with its match proposal. The summary in the "What We Found" section should be revised accordingly.

I am pleased to hear that the grant got a clean bill of health for actions to date. Region 10 is committed to ensuring that the earmark funds are used for the purpose specified in the FY 2001 Appropriations Act, and that they comply with associated Guidance. Region 10 is also committed to ensuring that the expenditures of the funds assist EPA in meeting its Strategic Goal of restoring and maintaining oceans, watersheds, and aquatic ecosystems to protect human health, support economic and recreational activities, and provide healthy habitat for fish, plants and wildlife.

If you have any questions about our comments, please call me at (206) 553-1234, or Bill Gissel, the grant's project officer, at (907) 586-7620.

Attachment

**Attachment
Region 10 Response
OIG Assignment Number 2004-01516**

Recommendation

1. We recommend that the Regional Administrator for Region 10 not allow the State of Alaska expenditures for the Alaska Department of Transportation site as match funds for the RTRVP grant.

R10 Response: We do not concur with this recommendation. The FY 2001 Appropriations Act provided \$2,903,600 (\$3,000,000 minus a small rescission) in an earmark for this project. To date, ADEC has applied for and EPA has awarded a grant of \$2,020,022 leaving \$883,578 available for future application. Our approval of the grant recognized a match of \$1,652,745, or 45%, consisting primarily of the state's pre-award expenditures at River Terrace as well as some anticipated future costs. The project, clean-up of groundwater contamination near the Kenai River, is not completed, and we do not have an application for these remaining funds at this time.

We believe it is premature to restrict a potential match that may be presented in a future grant application for the remaining funds. It is also premature to conclude that the Alaska Department of Transportation's (ADOT's) work nearby will not qualify as the match.

The Conference Report that accompanied the Agency's FY 2001 Appropriations Act included the following language:

'\$3,000,000 for the State of Alaska Department of Environmental Conservation **groundwater remediation project near the Kenai River.**' The match requirement can be met with **non-Federally funded pre-award expenditures by the State of Alaska** for this project (emphasis added). This language does not specify the River Terrace RV Park. It specifies a groundwater remediation project.

We believe that the draft Recommendation is based on definitions of "site" and "project" that differ from EPA's. The Appropriations language does not specify a site; it is not site-specific. It specifies a project and a purpose, namely a groundwater remediation project near the Kenai River. A groundwater remediation project often deals with the clean-up of an underground plume of contamination. It may be difficult to predict the extent of the plume, and a clean-up **project** may involve several **sites** as the contamination is uncovered. Thus, we believe multiple sites are allowable and eligible for expenditures of these funds.

The project's current site (River Terrace) is located near a bridge across the Kenai River, which is to be rebuilt by the Alaska Department of Transportation. It is possible that further contamination may be discovered when the bridge abutments are removed. If it appears that the River Terrace plume extends to the bridge abutments, then the ADOT costs could be eligible as a match. Even if the groundwater contamination indicates a different source, the related investigation, assessment and remediation expenditures could be potentially eligible as the

match. These site costs could be eligible because they would be part of the same project, for “groundwater remediation...near the Kenai River.”

ADEC’s grant application specified ‘River Terrace and Sites Around the Kenai River’ as the Areas affected by the project. For that reason, we awarded the grant with the Project Title and description as “site investigations of soil and water contamination, assessment and cleanup on a contaminated site and/or sites near the Kenai River.”

We recognize that any future application for these funds must meet the requirements of the statutory language described in the FY 2001 Consolidated Appropriations Act and the February 28, 2001 “Guidance for Award of Grants and Cooperative Agreements for the Special Projects and Programs Authorized by the Agency’s FY 2001 Appropriations Act.” It must also meet the grant requirements outlined in 40 CFR Part 31 and A-87.

In conclusion, we would be acting prematurely if we were to restrict potential expenditures by the State of Alaska towards meeting the matching funds requirement of the Federal funds today. The expenditures for this activity may be eligible for consideration as match for the remaining funds in this earmark. We are likely to address this question soon, as ADEC has indicated that they will be applying for the remaining funds in the near future.

Distribution

Regional Administrator, Region 10
Region 10 Audit Followup Coordinator
Office of the Administrator
Assistant Administrator for Solid Waste and Emergency Response
Assistant Administrator for Enforcement and Compliance Assurance
Agency Followup Official (the CFO)
Agency Followup Coordinator
Audit Liaison, Office of Solid Waste and Emergency Response
Audit Liaison, Office of Enforcement and Compliance Assurance
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